

**HALLMARK
OF JUSTICE**

**COMMENTARIES ON SELECTED
JUDGEMENTS OF
HON. JUSTICE M.M.A. AKANBI**



Edited by: I. A. Yusuf
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BRIEF COMMENTS ON THE MAN---JUSTICE M.M.A. AKANBI

"Justice Akanbi is a stickler to protocol, decency, order and propriety. And knowing Justice Akanbi as I know him and as I hold him in reverence, high esteem and respect, his invitation took preference and priority over other assignments for this day. I did not hesitate to put aside other things for today on my calendar and here I am to honour a man of integrity, honesty, humility and correctness in all sense of those words. Justice Akanbi is an icon, a paragon of rightness and rectitude. He is a role model and a nationalist"

. His Excellency Chief Olusegun Obasanjo GCFR, former President of Nigeria

"Hon Justice Mustapha Akanbi is an embodiment of hard work, dedication, selfless service and above all justice and fairness... As a jurist he has traversed the judiciary and bestrode like a colossus, catapulting to the enviable position of President of the Court of Appeal... As a jurist, he was as tough and uncompromising as he was fair.... His outstanding records of achievement as the President of the Court of Appeal, were rewarded in 2000 when he was brought out of retirement to head the newly formed anti-corruption body, the Independent Corrupt Practices and Other Related Offences Commission (ICPC). As Chairman of the ICPC, he investigated and prosecuted several high profile corruption cases, which ensured a drastic fall in corruption, in the process instilling sanity and discipline in the public sector.....A man of integrity and intellect, he was also known for his bluntness. He was reputed to be always taking a bow, when the ovation was loudest. In retirement, he has continued to be active within the polity. He is an apostle of the enthronement of good governance and support for the downtrodden in the society... He also started the Mustapha Akanbi Foundation, which is dedicated to the fight against corruption and the strengthening of the civil society groups, governmental and private concerns by helping them imbibe the culture of transparency and accountability....Justice Mustapha Akanbi is a pious man; a devout Muslim, who has contributed a lot to the development of the religion and has been at the vanguard of enlightening and educating the society on the virtues character of Muslims. He has at various fora openly condemned all forms of religious extremism, which he said were antithetical to teachings of Islam while always preaching the doctrine of peace and mutual understanding amongst religious adherents.....The life and times of this highly respected anti-corruption czar is worthy of emulation. The name Justice Mustapha Akanbi has been synonymous with law. A man who rose from a humble beginning and by dint of hard work and perseverance attained an enviable position, is worthy of emulation".

- Good-will message from His Excellency Arc. Mohammed Namadi Sambo, GCON,

Vice President of the Federal Republic of Nigeria.

"May I with great pleasure seize this opportunity to felicitate with my Lord Hon. Justice Mustapha Akanbi, a remarkable jurist and quintessential public servant who truly served his God, his country and humanity excellently. My knowledge of Hon. Justice Akanbi dates back to about five decades when we were both students in England. Since then and till date, he has struck me as an outstanding personality whose achievements will surpass any publication".

- Good-will message by Hon. Justice Aloma Mariam Mukhtar GCON (Former CJN)

"Hon. Justice M.M.A. Akanbi (Rtd) a man for whom I have tremendous regard and who was notorious for his stainless transparency both when he was justice of the Court of Appeal and the President of that Court. My Lord, at the risk of stating the obvious, you remain one of the greatest Nigerians on our time and history will etch your name in letters of gold for your sterling and uncommon actions and deed as a result of which you have left indelible marks in the judiciary and the Independent Corrupt Practices Commission (ICPC), where you were the pioneer Chairman".

- Are Chief Afe Babalola OFR, CON, SAN, LL.D, D.Litt

Alhaji Abdullahi recalls with gratitude the leadership, encouragement and support he received from M.M.A. Akanbi while the practice lasted. He said thus:

"To him (Akanbi) money is nothing. He lived and still lives a life of simplicity and contentment. Although I was younger, I spent more money than him. Whenever I travelled out of town to conduct cases he used to tell clients to take proper care of me and that I would not stay with anyone but in a hotel. We never sat down to talk about money, whenever there was money, we spent. The approach and attitude of our time was that money is not the primary thing. Bribe was an abomination. Whatever you got was sufficient. You lived or managed on it. This attitude of money was later replicated in Abdullahi Ibrahim & Co...Continuing. Ours was a formidable team. We had well-prepared backgrounds in the Ministry of Justice and other places where we had worked before starting the practice. Justice Akanbi had the reputation of being fierce on the cross examination of witnesses. As former prosecutors, we now found ourselves on the side of the defence. We had no difficulty in puncturing the arguments of the prosecutors. When Justice Akanbi left I continued with the cases he was handling and completed them".

Culled from "A Life Shared" by Alhaji Abdullahi

"We bear witness to the dignity, courage and honour Honourable Justice Mustapha Akanbi brought to bear during his eventful tenures both at the bar and the bench. Record shows that retired Justice Mustapha Akanbi is an acknowledged judicial officer with integrity, steadfastness and fairness in the process of adjudication on the bench even under a hostile military regime. As the pioneer Chairman of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), he mainstreamed ICPC from nowhere as an institutional bulwark against public graft. Notwithstanding the limitations of resources and political hostility, ICPC under him investigated and arrested some judges of the High Court, Customary Court and Sharia Court for collecting bribes. The judges were eventually dismissed by the NJC. To the credit of his legendary modesty, Justice Akanbi bowed out of the Commission in 2005, even when he had the right of tenure extension".

Goodwill message by Comrade Issa Aremu, Vice-President NLC

"Mustapha Akanbi has made indelible contributions to the corpus of law and jurisprudence in Nigeria. His vision of law is firmly rooted in his strong conviction that law is an instrument for social justice. In a third world country caught in the iron grip of social-political instability and debilitating poverty, a stand point such as this, is undeniably, an act of courage. Akanbi has consequently become, in a subtle, understated manner, an activist judge, with a strong liberal tradition in the footsteps of the famous African American Jurist Mr. Thurgood Marshall. He epitomizes some of the finest qualities of a jurist. He is an avid reader, with interests in a wide range of subjects from religion, oceanography to modern classics".

Prince Emeka Obasi (Journalist/Publisher)

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Chapter 17

Suit No: CA/L/239/87

Between:

GEORGE BABATUNDE SADIKU.....PLAINTIFF

And

ATTORNEY-GENERAL OF LAGOS STATE.....DEFENDANT

COURT OF APPEAL (LAGOS DIVISION)

MUHAMMED MUSTAPHA ADEBAYO AKANBI, P.C.A. (Presided and Read the Leading judgment),

SAMSON ODEMWINGIE UWAIFO, J.C.A,

IBRAHIM TANKO MUHAMMED, J.C.A. MONDAY, 20TH JUNE, 1994

Comments by A. O. Sambo*

INTRODUCTION:

This case borders on an appeal from the decision of the Lagos State High Court to the Court of Appeal. The High Court had dismissed an originating summons brought by the appellant for the appointment of an arbitrator to determine the quantum of compensation payable to him by the Lagos State government which compulsorily took over appellant's private school. The High Court dismissed the action on the ground that the matter ought to have been brought by way of motion on notice in a case of this nature. The second ground is that the High Court lacked jurisdiction in matters relating to compulsory land acquisition by government as Public Land Acquisition (Miscellaneous Provisions) Decree, 1976 had ousted the court's jurisdiction and vested it exclusively in the Land Tribunal established by the Decree. The Court of Appeal unanimously set aside the decision of the High Court and ordered the appointment of the arbitrator.

The main principles of law enunciated from the above decision border essentially on court jurisdiction. In more specific terms, one important issue here is whether the trial judge was right to take up *suo motu* and decide without hearing from the counsel that action ought to have been initiated by motion on notice and not by way of originating summons. The second main issue in this case is whether the trial judge was right in holding that the Public Lands Acquisition (Miscellaneous Provision) Decree 1976

effectively ousted the jurisdiction of the High Court. Against the above backdrop, this chapter is intended to discuss the decision of the Court of Appeal on the main principles of law enunciated in the case under review. The principles are institution of action by motion on notice vis a vis originating summons and ouster clauses. The analysis will show the relative strengths and or weaknesses of the conclusions reached by the Court of Appeal in the above matter.

FACTS OF THE CASE:

The appellant was the proprietor of a private school in Lagos State. In 1976, the Lagos State Government acquired the school compulsorily pursuant to the Education (Private Secondary Institutions) (Special Provisions) Edict, 1976. As against a claim the appellant submitted to the Government as compensation, the latter offered the appellant a much lower sum and he refused to accept it. Relying on the provisions of the Education Law 1973 of Lagos State, the appellant demanded that issue of compensation be referred to arbitration. The government however held the view that any dispute in respect of such compensation should be referred to the Lagos State Land Tribunal.

The appellant pressing forward with his demand duly filed an originating summons in the High Court, Ikeja seeking an appointment of an arbitrator. The respondent opposed the originating summons on the ground inter alia that it was the Land Tribunal set up by the Lagos State Government and not the High Court that has jurisdiction in the matter. After hearing submission of counsel from both parties, the learned trial Judge in his ruling suo motu raised the issue of the competence of seeking the appointment of an arbitrator in a matter like this by way of Originating Summons as done by the appellant. He did not invite counsel to address him on the point. In his ruling, he held that the application ought to have been made by motion on Notice and not by Originating Summons. He was therefore of the view that the latter process was incompetent and he struck out the application. The court then went on to also hold that the applicable law to the subject-matter of the dispute was the Public Lands Acquisition (Miscellaneous Provisions) Decree 1976 which according to it rendered "impotent" any rights the appellant may lay claim to under the Education Law of 1973, including a recourse for arbitration and that by virtue of the 1976 Decree the matter in dispute was within the exclusive jurisdiction of the land Tribunal and that the High Court lacked jurisdiction. In consequence, he held that the application lacked merit and he dismissed it.

Being dissatisfied with the decision of the trial court the appellant appealed to the Court of Appeal, which in the determination of the appeal considered the provisions of Order 5, Rule 3 of the Supreme Court Rules of England and Section 13 of the Schools Take-over (validation) Decree 1977.

PRINCIPLES OF LAW ENUNCIATED IN THE CASE:

a. Institution of action by motion on notice vis a vis originating summons

The law appears settled that actions are instituted by means of motion on notice in situations where there is dispute on questions of facts or in circumstances where there is likelihood of disputes on questions of facts. In other words, motion on notice is meant for contentious actions which the justice of the case demands that the matter be set down for pleadings upon which evidence will be called to determine matters in controversy before the court.¹⁴⁹

On the other hand, originating summons is used in matters that do not involve disputes on questions of facts or likelihood on disputes as to facts.¹⁵⁰ It mainly involves matters that essentially border on construction of statutes or legal documents. It is not meant for matters of hostile proceedings.¹⁵¹

The above position of the law shows that the issue before the court was mainly whether an arbitrator should be appointed in the circumstances of this case. It is submitted that this issue involves mainly the question of construction of law and does not involve any dispute on questions of facts. In the circumstance, the action ought to have been initiated by way of originating summons as it was done by the appellant in this case. So, the Court of Appeal in this case was right to have held that the action was correctly initiated by originating summons as against motion on notice advocated by the High Court.

b. Ouster Clauses in Statutes

Ouster clauses are provisions in the statutes that take away or purport to take away the jurisdiction of a competent court of law.¹⁵² It denies the court the ability to make any meaningful contribution with respect to a particular matter brought before the court.¹⁵³ At the initial stage of the National polity in Nigeria, most of the ouster clauses were based on the areas of chieftaincy matters.¹⁵⁴ The ability of the courts to exercise powers or jurisdictions in this area was further restricted by the legitimacy given to these ouster provisions by the then Constitution.¹⁵⁵ Thus, the court at this period had to give effect to the provision of the ouster clauses.¹⁵⁶ In fact, judicial review of ouster

¹⁴⁹ See *B. A. Adegboye (Oyo) (1983) 7 SC 85 at 215/216*; *National Bank (Nig) Ltd v Alakija & Anor (1978) 2 L R N 78*; *Doherty v Doherty (1968) NMLR*
¹⁵⁰ *Ibid*
¹⁵¹ *Ibid*
¹⁵² See A. G. Sambo & A. B. Abdulhadi, "Ouster Clauses: Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and
¹⁵³ *Wazirika (2012) vol. 49* OIDA International Journal of Sustainable Development 96-108
¹⁵⁴ See *Alabi M. O. A.*, "The Supreme Court in the Nigerian Political System 1963-1997" Demos Press Ltd, Nigeria, 2002, at 244
¹⁵⁵ Chieftaincy matters relate to the actions based on the regularity or otherwise of challenging the appointment of persons as chiefs
¹⁵⁶ See section 148(4)(a) and 161(3) of the Republican Constitution of 1963
¹⁵⁷ See the Supreme Court of Nigeria in the case of *Finwezor v Onyejekwe (1964) NSCC 9* which gave effect to ouster clauses by not exercising jurisdiction
¹⁵⁸ In chieftaincy matters under section 158(4)(a) and 161(3) of the 1963 Constitution. The Supreme Court was also of the view in the case of *Adeyeye v*
¹⁵⁹ *Adeyeye (1987) NSCC 1084* that section 11(a) of the Chiefs (Appointment and Deposition) Law of the Northern Nigeria and section 78(6) of the Constitution
¹⁶⁰ of the Northern Nigeria 1963 ousted the Court's jurisdiction with respect to chieftaincy affairs

clauses suffered many set backs in this period as courts' jurisdictions were effectively ousted by these provisions.

Thus, in the case of *Salami Olaniyi v Gbadamosi Aroyehun and others*,¹⁵⁷ the plaintiff challenged the validity of the appointment and installation of *Oni Ira of Ira*. The High Court of Kwara State assumed jurisdiction. The Court of Appeal reversed the decision of the Court on the ground that the Court lacked jurisdiction because the matter concerns chieftaincy matters. The Supreme Court affirming the decision of the Court of Appeal was of the view that section 3 of the Chieftaincy Disputes (Preclusion of Courts) Ordinance No. 30 of 1948 was an existing law and therefore ousted the jurisdiction of the Court from matters relating to Chieftaincy affairs. The decision of the Court in the many cases that follow this case continued in this line of reasoning by not reviewing any matter that concerns chieftaincy.¹⁵⁸

Apart from chieftaincy matters, the Supreme Court had an opportunity to react to ouster clauses that border on governmental powers and functions or constitutional matters in the case of *Senator Chief T. Adebayo Doherty v Sir Abubakar Tafawa Balewa and others*.¹⁵⁹ In that case, the Commission and Tribunals of Enquiry Act gave power to the Prime Minister to issue a commission, appointing commissioners to hold a commission of Enquiry relating to matters specified in the Act and that the action of the Commission and that of the Prime Minister should not be subject to question in any court of law in Nigeria. The Prime Minister exercised this power by appointing Commissioners to hold an enquiry into the activities of certain persons which included the plaintiff. The Supreme Court, although, holding the action to be a valid legislative exercise of the Parliament, invalidated Section 3(4) of the Act as unconstitutional because it seeks to limit the jurisdiction of the Court to hear and determine civil rights and obligation and constitutional matters contrary to Sections 21, 31 and 108 of the then Constitution.

In the same vein, ousting the courts' power could take the form of sharing the powers of the courts with another body. Thus, in *J.S. Olawoyin v Commissioner of Police*,¹⁶⁰ the Court was of the view that the law which provided for the sharing of powers of the High Court with any other person or body of persons will be declared void as being inconsistent with the provision of the Constitution except it is expressly permitted in the Constitution.

¹⁵⁷ (1991) 1 SCNJ 25

¹⁵⁸ See for instance the case of *Chief Uuedor Uti and Six Others v Jacob Umarharta Onyiah and five others* (1991) 1 SCNJ 25 where the Supreme Court in majority decision of 4:1 to one upheld section 16 of the Chiefs Law, Cap 57, Laws of Bendel State of Nigeria, 1976 and section 16(1), (2) and (3) of the then 1979 Constitution and held that questions relating to the validity of the selection, selection, upgrading, deposition or abdication of the Chief cannot be questioned in any Court of law. See also the Supreme Court in the case of *Governor of Oyo State and Others v Oba (Oloade Folayan)* (1995) 9 SCNJ 50 at 80 where the Court held that the existing law determined the Court jurisdiction at the time cause of action arose and that by sections 158(4) (a) and 161(3) of the then 1979 Constitution, the jurisdiction of the Court was effectively ousted over chieftaincy affairs.

¹⁵⁹ (1961) NSC C 248

¹⁶⁰ (1961) ALL NLR 203

During the period of the military regimes, a number of Decrees and Edicts were promulgated to oust the jurisdiction of the courts. The Supreme Court was bold enough to review these clauses despite the fact that it was made by the military government although not without reactions from the military. The opportunity to review these clauses came before the Supreme Court in the case of *Council of University of Ibadan v N.K. Adamalekun*.¹⁶¹ In that case, the government promulgated an Edict to establish the Western Nigeria Court of Appeal when an appeal against the decision of the Ibadan High Court was pending. This Edict No. 35(2) denied the appellant the right to appeal to the Supreme Court directly without first appealing to the newly established Western Nigeria Court of Appeal. The Court accordingly nullified this Edict on the ground that it infringed upon the constitutional right of the appellant to appeal directly to the Supreme Court.

Similarly, in the case of *Lakanmi and Anor v Attorney General of the West and Another*¹⁶², an Edict (subsequently validated by Decree No. 45 of 1968) was enacted to forfeit the assets of some named individuals. The Decree contained an ouster clause precluding the court from entertaining any matter relating to the forfeiture of the assets. The Supreme Court declared the Edict and the Decree null and void for ousting the court's jurisdiction and 'nothing short of legislative judgment, an exercise of judicial powers.'

The Military government reacted seriously to the review of these clauses as they saw it as an open challenge in the guise of judicial interpretation. It, therefore, promulgated another Decree¹⁶³ shortly after the Supreme Court's decision which expressly nullified the Supreme Court decisions in the two cases above. The Decree also entirely restricted the powers of the court to review laws made by the Military government.¹⁶⁴ This Decree, therefore, had effects on judicial review of ouster clauses contained in the laws made by the Military throughout the era and remained uncontested.¹⁶⁵

Thus, the Court in the case of *Chief Adejumo v Colonel Mobolaji Johnson, Military Governor of Lagos State*¹⁶⁶ refused to review even an executive instrument purported to have been made under an Edict.¹⁶⁷ The Court was of the view that it had the same protection of the Decree and Edict thereby denying judicial review.¹⁶⁸

¹⁶⁰ (1967) NSCC 210

¹⁶¹ (1970) NSCC 143

¹⁶² The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970

¹⁶³ Ibid. See Section 1(2) of the Decree. This Decree was in effect given a retrospective effect so that it could nullify the decisions of the Supreme Court

¹⁶⁴ This Decree also appears not to be the first situation in Nigeria where a law was passed to nullify Court's decision. The Western Parliament enacted the Constitution of the Western Nigeria (Amendment Law) on 27/05/63 and back dated to 02/10/60 thereby nullifying the decision of the Privy Council in the case of *Adegbeye v Akintola* (1963) AC 614 before the 1963 Constitution was passed to abolish appeals to the Privy Council

¹⁶⁵ Eyo Kayode, *The Mystery Gunman: History, Politics, Power-Play, Justice*, Spectrum, Ibadan, 1996 at 27

¹⁶⁶ (1972) All NLR 164

¹⁶⁷ This case was incidentally presided over by the Chief Justice of Nigeria who was the one that presided over the earlier decisions of *Council of University of Ibadan v N.K. Adamalekun* (n. 52) and *Lakanmi and Anor v Attorney General of the West and Another* (n. 53) nullified by Decree No. 28 of 1970

¹⁶⁸ See also a later case of *Ademure v Colonel Mobolaji Johnson* (1974) All NLR 26 which also denied judicial review on the ground that Decree No. 29 precluded the Courts from enquiring to declare the validity or otherwise of the Decree or Edict

However, one important rule on ouster clauses on statutes is that ouster clauses must be strictly construed so as not to take away the rights of individuals.¹⁶⁹ This principle was rightly applied by the Court of Appeal in the case under review by holding that Decree 36 of 1976 was not all encompassing as to cover situations of schools take over. The Court held that the Education Law in question was applicable and that Public Lands Acquisition Decree 36 of 1976 had no application to the present case. Nevertheless, it can be said that despite the availability of numerous Supreme Court decisions on the interpretation of ouster clauses, none was cited by the Court of Appeal to support its decisions on ouster clauses although the principles were rightly applied.

CONCLUDING REMARKS:

The Court of Appeal in the case under review correctly applied two main principles of law which essentially border on the courts' jurisdiction i.e. mode of commencing actions (motion on notice and originating summons) and interpretation of statutes ousting the courts' jurisdiction. The decision rightly shows that in situations where there are no disputes as to facts, or where the matter involves questions of construction of law, originating summons is the mode of commencing an action. It is also clear that statutes that oust the courts' jurisdictions are strictly construed so as not to take away the rights of individuals. This important principle was however applied without relying on any courts' decisions to support the view. Nonetheless, the decision is still in tandem with the current position of the law and constitutes a hallmark of substantial justice as delivered by the lead and presiding Justice, M. M. A. Akanbi.

¹⁶⁹ *Onyiah v. Eastern States Interim Assets and Liabilities Agency* (1974) All NLR 685; *Barclays Bank of Nigeria v. Central Bank of Nigeria* (1976) NSCC 291 at 297; *Agip (Nig.) Ltd v. Attorney General of Lagos State* (1977) NSCC 442; *Peenok Investments Ltd v. Hotel Presidential Ltd* (1982) NSCC 477.