

**1. DR. TA1WO OLORUNTOBA-OJU**

**(Chairman, Academic Staff Union of  
Universities (ASUU), Unilorin Branch)**

**2. DR. BODEOMOJOLA**

**(Vice-Chairman (ASUU) Unilorin Branch)**

**3. DR.YFTUNDEOSUNFISAN**

**4. DR. ADEYINKA BANWO**

**5. DR. SOLA ADEMILUKA**

**PROFESSOR B1SI OGUNSINA**  
(Head of Dept. of Linguistics, Unilorin)  
V.

1. PROFESSOR P. A. DOPAMU
2. DR. BADEAJAYI
3. MR. SUNDAY ODODO
4. PROF. SHUAIB OBA ABDULRAHEEM

(Vice-Chancellor. University of Ilorin)

5. TUNDE BALOGUN

(Registrar. University of Ilorin)

6. UNIVERSITY OF ILORIN

THE GOVERNING COUNCIL OF UNILORIN

SC.89/2003

SUPREME COURT OF NIGERIA

SYLVESTER UMARU ONU. J.S.C. (*Presided*)

DAHIRU MUSDAPHER. J.S.C.

GEORGE ADESOLA OGUNTADE. J.S.C. (*Read the Leading Judgment*)

IBRAHIM TANKO MUHAMMAD. J.S.C.

PIUS OLAYIWOLA ADEREM1, J.S.C.

FRIDAY. 22ND FEBRUARY, 2008

CONSTITUTIONAL LAW - *Existing Jaw - Where inconsistent with provision of 1999  
Constitution - Effect.*

CONSTITUTIONAL LAW - Jurisdiction of court - Where Constitution ousts jurisdiction of  
court - Effect.

COURT- Declaratory relief- Nature of- Power of court to grant Extent of- Whether unlimited.

COURT- Federal High Court - Exclusive jurisdiction of over matters involving Federal

Government or any of its agencies - Section 251(1 )(p), (q) and (r), 1999 Constitution - Whether  
exclusivity applies to National Industrial Court irrespective of nature of claim

COURT- Jurisdiction of court - What determines - Capacity in which claim is brought - Whether relevant. COURT - Jurisdiction of court - Where the Constitution jurisdiction of court - Effect.

COURT -National Industrial Court - Jurisdiction of- Scope of- Whether has jurisdiction to hear and determine all employment matters.

COURT - National Industrial Court - Jurisdiction of under section 20, Trade Disputes Act - Determination of trade dispute referred thereto - Time limit therefor.

JUDGMENT AND ORDER - Declaratory relief- Nature of- Power of court to grant - Extent of- Whether unlimited.

JURISDICTION - Jurisdiction of court - What determines - Capacity in which claim is brought - Whether relevant.

JURISDICTION - Jurisdiction of court - Where the Constitution ousts jurisdiction of court - Effect.

JURISDICTION - National Industrial Court - Jurisdiction of- Scope of - Whether has jurisdiction to hear and determine all employment matters.

JURISDICTION - National Industrial Court - Jurisdiction of under section 20, Trade Disputes Act - Determination of trade dispute referred thereto - Time limit therefor.

LABOUR-LAW - National Industrial Court - Jurisdiction of- Scope of - Whether has jurisdiction to hear and determine all employment matters.

LABOUR-LAW - National Industrial Court - Jurisdiction of under section 20, Trade Disputes Act - Determination of trade dispute referred thereto - Time limit therefor.

LABOUR-LAW - "Trade Dispute" - Meaning of- Section 47. Trade Disputes Act.

PRACTICE AND PROCEDURE- Declaratory relief- Nature of- Power of court to grant - Extent of- Whether unlimited.

PRACTICE AND PROCEDURE-- Jurisdiction of court - What determines - Capacity in which claim is brought - Whether relevant.

TRADE DISPUTE-"Trade dispute"-Meaning of -section 47, Trade Disputes Act.

TRADE DISPUTE- National Industrial Court - Jurisdiction of under section 20, Trade Disputes Act - Determination of trade dispute referred thereto - Time limit therefor.

WORDS AND PHRASES-"Trade Dispute"- Meaning of- Section 47. Trade Disputes Act.

**Issue:**

Whether the Court of Appeal was right in affirming the ruling of the trial court that the Federal High Court has no jurisdiction to entertain the appellants' suit.

**Facts:**

At the Federal High Court, Ilorin the appellants issued an originating summons against the respondents and sought the termination of ten questions. The questions included inter alia whether the 4<sup>th</sup> respondent had the power under and by virtue of the Provisions of the University of Ilorin Act to unilaterally appoint the Dean of any Faculty of the University of Ilorin; whether the 4<sup>th</sup> respondent had the power to unilaterally appoint a Head of Department for any Department of the University of Ilorin under the University of Ilorin Act: whether the 4<sup>th</sup> respondent had the power to appoint the 1<sup>st</sup> respondent as the Acting Dean of the Faculty Of Arts of the University; whether the appointment of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as Acting Heads of the Departments of Linguistics and Performing Arts respectively in the Faculty of Arts was not ultra vires the power of the 4<sup>th</sup> respondent having regard to the provisions of the University of Ilorin Act: and whether the respondents could conduct any valid and/or credible degree examination without the participation and/or moderation of appropriate examiners and whether the 4<sup>th</sup> respondent could unilaterally remove and replace any examiner of the University.

The appellants claimed, amongst others, a declaration that the purported appointment of the U: respondent as the Acting Dean of the Faculty of Arts of the University of Ilorin the 4<sup>th</sup> respondent by virtue of the letter to that effect addressed to the U: respondent and signed by the 5<sup>th</sup> respondent was ultra vires, unconstitutional, illegal, unlawful, null and void and of no effect whatsoever having been made in flagrant violation of the provisions of the University of Ilorin Act, Cap. 455. Laws of the Federation of Nigeria. 1990; a declaration that the purported appointment of the 2<sup>nd</sup> respondent as the Head of Department of Linguistics in the Faculty of Arts of the 6<sup>th</sup> respondent by the 4<sup>th</sup> respondent was ultra vires, unconstitutional, null and void and of no effect whatsoever having been made in flagrant violation of the procedure in and provisions of the University of Ilorin Act: an order compelling the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents to restore the 6<sup>th</sup> respondent to the position of the Head of Department of Linguistics in the Faculty of Arts of the 6<sup>th</sup> respondent: and a declaration that the purported appointment of the 3<sup>rd</sup> respondent as Acting Head of Department of the Performing Arts in the Faculty of Arts of the 6<sup>th</sup> respondent by the 4<sup>th</sup> respondent was ultra vires, null and void and of no effect whatsoever having been made in flagrant violation of the procedure in the University and the provisions of the University of Ilorin Act.

The appellants also claimed a declaration that the arrangement or purported conduct of degree examination by the respondents without moderation and/or participation of appropriate examiners

provided for in the University of Ilorin Act vv as ultra vires illegal unlawful null and void and of no effect whatsoever.

The originating summons was supported by a 49-paragraph affidavit.. Some documentary evidence were exhibited and annexed to the affidavit.

In reaction to the originating summons, the respondents filed in application seeking an order striking out the suit on the ground of jurisdiction to entertain same. The ground relied upon by; respondent was that the issues raised in the sun related to trade; in respect of which the trial court lacked jurisdiction. In the affidavit in support of the application, the respondents deposed that was a dispute- between some member:- of the Academic Staff of Universities. University of Ilorin Branch and the 4<sup>th</sup> -7<sup>th</sup> respondents who were their employers and principal and important; s of then employer's respective y: that dispute dealt with employment, terms of employment and conditions of work of some members of the Union: and that the appellants were members of a trade union and they filed the action for themselves: - and on behave of members of the trade union.

After hearing the application, the trial court in its ruling held that it lacked jurisdiction to entertain the appellant's suit and struck out the suit

The appellants' appeal to the Court of Appeal was dismissed the Court of Appeal affirmed the ruling of the trial court.

Dissatisfied, the appellants appealed to the Supreme Court. In determining the appeal, the Supreme Court considered the provision of section 251(p), (q) and (r) of the constitution of the federal Republic of Nigeria, 1999 and sections 20 and 47; 1 of the trade Dispute Act. Cap. 43. Laws of the Federation of Nigeria. 1990. Section 251 (p.). (q.) and (r) of the Constitution of the Federal republic of Nigeria. 1999 states:

"251(1) 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 –

- (p) The administration of the management and control of the Federal Government or any of its agencies;
- (q) Subject to the provisions of this Constitution the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;
- (r) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

“Sections 20 and 47 of the Trade Disputes Act. Cap 432, Law of the Federation of Nigeria, 1990 provide:

- "20(1) The Court shall to the exclusion of any other court have jurisdiction:-
- (a) To make awards for the purpose of settling trade disputes: and
  - (b) To determine questions as to the interpretation of-
    - (i) Any collective agreement.
    - (ii) Any award made by an arbitration tribunal or by the court under Part 1 of this Act.
    - (iii) The terms of settlement of any trade dispute as recorded in any memorandum under section 7 of this Act.
- (2) The court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute.
- (3) No appeal shall lie to any other body or person from any determination of the court.
- (4) Nothing in subsections i 1) and (2) of this section shall prejudice any jurisdiction of the Supreme Court of Nigeria under section 359 or 213(2) of the Constitution of the Federal Republic of Nigeria or any jurisdiction of a High Court under section 242 of the Constitution.
- "47(1) In this Act. Unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say -
- "trade dispute' means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person.

**Held** (*Unanimously allowing the appeal*):

1. *On what determines jurisdiction of court* -It is fundamental that it is the claim of the plaintiff that determines the jurisdiction of the court which entertains the claim. Thus, it is the claim brought by the plaintiff and not in the capacity in which the claim was brought that should be relevant consideration in determining the question of which court has jurisdiction in the matter. In the instant case, although the appellants brought their suit for themselves and on behalf of the Academic Staff Union of Universities, Unilorin Branch, it is the claim brought by them that should determine the jurisdiction of the court and not the capacity in which the claim was brought. From the totality of the appellants' claims, their grievance related more to the infraction of the provisions of the University of Ilorin Act than in the mere pursuit of trade union activities. [Western Steel Works Ltd. v. Iron it Steel Workers Union of Nigeria (1987) 1 NWLR (Pt. 49) 284; determine v. Opeyori (1976) 9-, 10 SC 31 referred to.] I Pp. 23. Paras. B-D; 24. Para. H; 35, punts. B-C)
2. *On exclusive of the federal high court over matters involving Federal Government or any of its agencies* -  
By virtue of section 251(1) (p), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999, notwithstanding anything to the contrary contained in the 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 relating to:

- (p) The administration or the management and control of the Federal Government or any of its agencies;
- (q) Subject to the provisions of the Constitution the operation and interpretation of Constitution in so far as it affects the Federal Government or any of its agencies;
- (r) Any action or proceeding for a declaration injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

Section 251(1) (p), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 are 'substantive the same with section 230(1) (q), (r) and (s) of the Constitution of the Federal Republic of Nigeria, 1979 as amended by the Constitution (Suspension and Modification) Decree No. 107 of; 1993. The provisions are clear and unambiguous and do not admit of what counsel or court thinks otherwise they are. The combined effect of the provisions is that the federal High Court is vested with power to enter into adjudication of any action or proceeding seeking declaratory and injunctive reliefs. *University of Abuja v. Ologe* (1996) 4NWLRJ (Pt. 445) 706 referred to.] (Pp. 25-26, paras. F-F; 36, paras A-B)

3. *On exclusive of the federal high court over matters involving Federal Government or any of its agencies -*

The aim of section 251(1), (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agents is a party. In the instant case, the University of Ilorin is an agency of the Federal Government, and the claims or reliefs being sought by the appellants were purely within the context of section 251 of the Constitution. It is the Federal Court that has jurisdiction. [*NEPA v. Edegero* (2002) 18 NW1JR (Pt. 798) 96 referred to.] (Pp. 31-32, paras. H – C)

4. *On Effect where the Constitution ousts jurisdiction of a court -*

A High Court and any court of record has the jurisdiction under the 1999 Constitution to declare what the law is when invited by process of litigation. But where the Constitution, the grundnorm of the land, has declared that a court cannot exercise jurisdiction over a matter, any provision to the contrary is null and void and of no effect. [*Utih v. Onoyivwe* (1991) 1 NVVLR (Pt. 166) 166 referred to.] I P. 35, paras. C-D)

5. *On Jurisdiction of the National Industrial Court under the Trade Disputes Act -*

By virtue of section 20 of the Trade Disputes Act. Cap. 432, Laws of the Federation of Nigeria, 1990, the National Industrial Court shall to the exclusion of any other court have jurisdiction -

- (a) to make awards for the purpose of settling trade disputes; and
- (b) to determine questions as to the interpretation of -
  - (i) any collective agreement,
  - (ii) any award made by an arbitration tribunal or by the court under Part 1 of the Act,

- (iii) the terms of settlement of an trade dispute as recorded in any memorandum under section 7 of the Act.

The National Industrial Court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute. No appeal shall lie to any other body or person from any determination of the court. However, nothing in section 20(1) and (2) shall prejudice any jurisdiction of the Supreme Court or any jurisdiction of a High Court. In the instant case, the appellants' claims **cannot be said to have fallen within** the subject matters upon which the National Court has jurisdiction. (Pp. 32-33, paras. D-B)

6. On Whether the National Industrial Court 1 jurisdiction to hear and determine all employment matters -

To construe the interpretative clause in section 47 the Trade Disputes Act, Cap. 432, Laws of the Federation of Nigeria, 1990 as conferring on the National Industrial Court the jurisdiction to adjudicate on all manner of disputes concerning employment mailers, would do a great violence to the provisions of section 251(1 )(q), (r) and (s) of the Constitution of the Federal Republic of Nigeria 1999. It would take a more specific provisions of the Act and not just an interpretation clause to have such a far-reaching effect which overrides the clear provisions of section 251(1) (q). (r) and (s) of the Constitution. (P.30, paras. A-B)

7. *On Whether the National Industrial Court has jurisdiction to hear and determine all employment matters -*

It will overburden the National Industrial Court designed to be a special purpose court if the court is given jurisdiction in all matters relating to disputes in employments matters.

8. *On Meaning of "trade dispute" -*

By virtue of section 47 of the Trade Disputes Act. Cap. 432. Laws of the Federation of Nigeria. 1990, "trade dispute" means any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person. In the instant case, the appellants' suit pertained to whether or not the respondents complied with the provisions of the University of Ilorin Act in the discharge of their statutory duties. Even if some of the appellants were employees of the 7<sup>th</sup> respondent, that did not change the nature of their suit to be connected with the employment or non-employment or the terms of employment and physical conditions of work of any person. (7! 28. Paras. D-F; 36. Paras. A-E)

9. *On Effect where existing law inconsistent with provision of 1999 Constitution -*

Any provision of an existing law which is in conflict with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 must be pronounced void to the extent of such inconsistency. Thus, the Trade Disputes Act, Cap. 432. Laws of the Federation of Nigeria, 1990 being an existing law within the meaning of section 315 of the Constitution cannot be given an effect which overrides the clear-provisions of section 251(1) (q), (r) and (s) of the Constitution. (P. 30, para. D)

10. *On Nature of declaratory' relief -*

When a litigant claims declaratory relief, he does no more than to invite the court to declare what the law is on the issue. Whatever the court of law may say in acceding to that imitation is not executory; indeed, the grant of such a relief is discretionary. Therefore, a plaintiff who intends to have an enforceable legal right from a declaratory

judgment or order in his favour must, in addition, seek injunctive order or damages. (P. 35, paras. A-B)

11. *On Extent of power of court to grant declaratory relief*

The power of a court of record to make a declaration where it is only a question of defining rights of two parties is almost unlimited. In other jurisdictions, any limitation to be placed on the exercise of such power it is only at the discretion of the court. The court retains the power to declare contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else. [Obi I.N.E.C. (2007) 11 NWLR (Pt. 1046) 560 referred to.] (P. 36, paras. F-H)

**Nigerian Cases Referred to in the Judgment:**

Adeyemi v. Opeyori (1976) 9-10 SC 31  
NEPA v. Edeghero (2002) 18 NWLR (Pt. 798) 79  
O/7i v. INEC (2007) 11 NWLR (Pt. 1046) 560  
University of Abuja v. Ologe (1996) 4 NWLR (Pt. 445)  
Uthi v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166  
Western Steel Works Ltd. Re Iron ct Steel Workers Union  
0987) 1 NWLR (Pt. 49)284  
Eke v. Nagro Rubber Industries Lid. Re Clara Eke (1993)4  
NWLR (Pt. 286) 176

**Nigerian Statutes Referred to in the Judgment:**

Constitution of the Federal Republic of Nigeria. 1963 Constitution of the Federal Republic- of Nigeria. 1979. s. 277(1) (e)  
Constitution of the Federal Republic of Nigeria. 1999. S. 251(1), (p). (q). (r)  
Decree No. 107 of 1993. S. 230(1) (q). (r) & (s)  
Decree No. 11 of 1993. S. 1 of Schedule  
Trade Dispute Act. Cap. 432, Laws of the Federation of Nigeria, 1990. Ss. 20(1) (a) (i), (ii), (iii). (2). (3) & (4) and 47(1) University of Ilorin Act. Cap. 455, Laws, of the Federation of Nigeria. 1990

**Appeal:**

This was an appeal against the decision of the Court of Appeal dismissing the appeal against the ruling of the Federal High Court which struck out the appellants' suit for want of jurisdiction. The Supreme Court, in a unanimous decision, allowed the appeal.

**History of the Case:**

*Supreme Court*

Names of Justices that sat on the appeal: Sylvester Umaru Onu, J .S.C. (Presided); Dahiru Musdapher, J .S.C.; George Adesola Oguntade. J.S.C. (Read the Leading Judgment): Ibrahim Tanko Muhammad. J.S.C.; Pius Olayiwola Aderemi. J.S.C.  
Appeal No.: SC. 89/2003  
Date of Judgment: Friday, 22nd February, 2008  
Names of Counsel: Dayo Akintayo. Esq. (with him, Richard Baiyeshc, Esq.) -for the Appellants  
K. K. Eleja, Esq. (with him, B. Ajanaku) - for the Respondent

*Court of Appeal:*

Division of the Court of Appeal from which the appeal was brought: court of Appeal,  
Ilorin

Names of Justices that sat on the appeal: Muritala Aremu  
Okunola. J.C.A. (Presided); Patrick Ibe Amaizu. J.C.A.  
(Read the Leading Judgment I: Waller Samuel Nkanu  
Onnoghen.J.C.A.

Appeal No.: CA/IL/17/2002

Date of Judgment: Tuesday. 10<sup>th</sup> December. 2002

Names of Counsel: J. O. Baneshea (with him. Funke  
Abolanu and M. O. Abdullah!) - for the Appellant  
Yusuf O. AH. SAN (with him, B. Ajanakun) - for the  
Respondent

**High Court:**

Name of tin High Court: Federal High Court Ilorin

Name of the Judge: Tsoho. J.

Suit No.: FHC/1L/CS/19/2001

Date of Ruling: Tuesday, 9th October. 2001

Names of Counsel: Adekunle Amurin (holding brief of "Mr.  
J. O. Baneshea) -for the Plaintiff

S. A. Oke (with him, Olaitan Ishola) - for the Defendant

Counsel:

Dayo Akintayo. Esq. (with him. Richard Baiyeshe. Esq.) - for the Appellants

K. K. Eleja. Esq. (with him. B. Ajanaku) - for the Respondent

OGUNTADE, J.S.C. (Delivering the Leading ,appellants were the plaintiffs at the Federal High Court, Ilorin where on 07/05/2001. they issued their originating summons against the respondents as the defendants. They sought for the determination of the following questions:

- "1. Whether the 4th defendant has the powers under the and by virtue of the provisions of University of Ilorin Act to unilaterally appoint the Dean of any faculty of the University of Ilorin.
2. Whether the 4th defendant has the powers to unilaterally appoint a Head of Department for any Department of the University of Ilorin under the University Act.
3. Whether the 4th defendant has powers to appoint the 1st defendant as the Acting Dean of Faculty of Arts University of Ilorin.
4. Whether the 4th defendant has the power to unilaterally remove the substantive Dean of Faculty of Arts University of Ilorin Professor F. F. Adegbija and appoint 1st defendant to act in that position.
5. Whether the appointment of the 1<sup>st</sup> defendant as the Acting Dean of Faculty of Arts University of Ilorin by the 4th defendant is not ultra vires.
6. Whether the appointment of the 2nd and 3rd delendants as Acting Heads of Departments of Linguistics and Performing Arts respectively in the faculty of Arts is not ultra vires the power of the 4lh defendant; having regard to the provisions of the Unilorin Act.



7. Whether the purported replacement of the Dean Faculty of Arts. 2nd plaintiff as Head of the Department of Performing Arts and 6th plaintiff as Head of Department of Linguistics, with 1st, 2nd and 3rd defendants respectively in acting capacity is not tantamount to victimization on political and other grounds and contrary to the laws and the Constitution of the Federal Republic of Nigeria. 1999.
8. Whether the defendants can conduct any valid and/or credible degree examination without the participation and/or moderation of appropriate examiners and whether the 4th defendant can unilaterally remove and replace any examiner of the University.
9. Whether the 4th defendant has the power to bait the plaintiffs and /or instruct /order security officers and agents of the University of Ilorin to prevent the plaintiffs and other members of ASUU from entering the premises of the University of Ilorin and whether such ban is not contrary to the provisions of the Constitution of the Federal Republic of Nigeria. 1999.
10. Whether the defendants are entitled to victimize the plaintiff by taking decisions that can be adverse or prejudicial to their appointment with the (The defendant or participating in a National protest/strike action as directed by then National Executive ( council and whether said defendants are not in violation of the statute of the University and the Constitution of the Federal Republic of Nigeria by intimidating, harassing and threatening compelling the plaintiffs to abandon their legitimate struggle against oppression/suppression by the 4<sup>th</sup> defendant.

Depending on the answers given by the court to the above questions the reliefs claimed against the respondents are:

1. A declaration that the purported appointment of the 1st defendant as the Acting Dean of the Faculty of University of Ilorin by the 4th defendant by virtue of the letter to that effect addressed to the 1st defendant and signed by the 5th defendant is *ultra vires*. Unconstitutional, illegal, unlawful, null and void and of no effect whatsoever having been made in flagrant violation of the provisions of University of Ilorin Act. Cap. 455. Laws of the Federation. 1999.
2. An order nullifying and setting aside the said purported appointment of the 1st defendant as the Acting Dean of the Faculty of Arts University of Ilorin (6<sup>th</sup> defendant).
3. A declaration that –
  - (i) the purported appointment of the 2nd defendant as the Head of Department of Linguistics in the Faculty of Arts of the 6<sup>th</sup> defendant by the 4<sup>th</sup> defendant is *ultra vires*, unconstitutional, null and void and of no effect whatsoever having been in flagrant violation of procedure and provisions of the University of Ilorin Act.
  - (ii) the 6<sup>th</sup> plaintiff is at all material times the Head of the said Department.
3. An order setting aside and nullifying the purported appointment of 2<sup>nd</sup> defendant as the Head of Department of Linguistics in the Faculty of Arts of the 6th defendant.
5. An order compelling the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants to restore the 6<sup>th</sup> plaintiff to the position of Head of Department of Linguistics in the Faculty of Arts of the University of Ilorin (6<sup>th</sup> defendant).
6. A declaration that the purported appointment of the 3rd defendant as Acting Head of Department of the Performing Arts in the Faculty of Arts of the University of Ilorin (6<sup>th</sup> defendant) by the 4<sup>th</sup> defendant is *ultra vires*, null and void and of no effect whatsoever

- having been made in flagrant violation of the laid down procedure in the University and the provisions of the University of Ilorin Act.
7. An order setting aside and nullifying the purported appointment of the 2<sup>nd</sup> defendant as the Head of Department of Performing Arts in the Faculty of Arts of the 6<sup>th</sup> defendant.
  8. An order compelling the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> defendants to reinstate and restore the 2<sup>nd</sup> plaintiff to the position of the Head of Department of Performing Arts in the Faculty of Arts of the 6<sup>th</sup> defendant.
  9. A declaration that the arrangement or purported conduct by the defendants of degree examination without moderation and/or participation of appropriate examiners (external & internal) as provided for in the statute of the University, that is Unilorin Act is ultra vires, illegal, unlawful, null and void and of no effect whatsoever.
  10. A declaration that it is wrongful, unlawful and unconstitutional for the defendants a! the instance and/ or the instruction of the 4<sup>th</sup> defendant to prevent the plaintiffs and other members of their Union (ASUU) who they represent from entering the premises or campuses of the I University (6<sup>th</sup> defendant) or restricting and preventing the plaintiffs from using, operating, meeting and generally carrying out their legitimate duties and functions in the ASUU secretariat located the mini-campus of the 6<sup>th</sup> defendant.
  11. An order of injunction restraining the 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants whether by themselves or through their agents, privies, officers/officials by whatsoever named called or by any description from disturbing or preventing the plaintiffs and other members of their Union (ASUU) Unilorin Branch from entering the premises (campuses) of the 6<sup>th</sup> defendant.  
(ii) An order of injunction restraining the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants whether by themselves or through their agents, privies, officers/officials by whatsoever name called from preventing the plaintiff and other members of their Union from entering their offices in the University or from operating, meeting and generally, associating and carrying out their duties and functions from the ASUU secretariat located in the mini-campus of the 6<sup>th</sup> defendant.
  12. A declaration that it is wrongful, unlawful and unconstitutional for the defendants to prevent and disturb the plaintiffs and their Union members from entering or gaining access into the campuses of the 6<sup>th</sup> defendant or from entering their respective offices within the said campuses of the Universities or restricting their movements into and out of the said campuses of the university.
  13. An order declaring as void all actions, decisions and steps taken by the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants' while purported to Act in their respective positions since the time their purported acting appointments were made by the 4<sup>th</sup> defendant.
  14. An order prohibiting/restraining the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants from taking any decisions or acting in any manner or doing any thing whatsoever that will adversely affect or prejudice the plaintiffs appointment/ employment with the 6<sup>th</sup> defendant."

In compliance with the requisite procedure the appellants filed '49 paragraph affidavit in support of **their originating summons**.

They annexed to the said affidavit some documentary identified as "A" to "R".

The defendants (now respondents) in reaction to the plaintiff appellants originating summons filed an application wherein they prayed for the following:

- (i) An order of the Honourable Court striking out this suit on the ground of lack of jurisdiction to entertain same and/or

- (ii) An order of the Honourable Court dismissing the case for being a gross abuse of the process of the Honourable Court.
- (iii) An order of the Honourable Court striking out the ease on the ground of misjoinder of causes of act
- (iv) .....

The grounds relied upon by the defendant/respondents for bringing the application were stated to be the following:

- "1. The issues raised in the suit relate to trade dispute in respect of which this Honourable Court lacks jurisdiction.
2. The plaintiffs had already filed an action against the 5th and 6th defendants the subject matter of which is same with the present action and which action is subsisting.
3. The plaintiffs' action in the circumstances constitutes flagrant abuse of the process of the Honourable Court.
4. The causes of action of the plaintiffs are distinct and peculiar to the plaintiffs and the causes of action cannot be joined.
5. It is in the (sic) justice to grant this application-."

In the affidavit in support of the application, paragraphs 3 and 4 which are relevant to this judgment read:

"3. That I know as a fact upon at perusal of the processes filed in this case and the documents annexed thereto that:-

- (i) There is a dispute between some members of Academic Staff Union of Universities. University of Ilorin and the 4th-7th defendants who are their employers and principal and important organs of the employer respectively.
  - (ii) The dispute deals with employment and terms of employment and conditions of work of some members of Academic Staff Union of Universities, University of Ilorin Branch, (iii) the plaintiffs are members of a trade union (ASUU) and they filed this action for themselves and on behalf of the members of the said trade union.
  - (iv) The issue in the case also includes the propriety or otherwise of the use of strike action to press home the demand of the plaintiffs and their trade union members.
  - (v) The issue raised in the case also deals with the use of a Trade Union's Secretariat (ASUU Secretariat) and the entitlement of the employer to recover same and assign another one to the Trade Union. The failure of some members of ASUU (a trade union) to call off a strike action and refusal to return to work is also an issue in the case.
4. That I know as a fact based on the foregoing that the issues raised in the case are ones for determination before the National Industrial Court hence this court lacks jurisdiction to entertain the case

“The trial court received arguments on the application. On i-10-2001, the court struck out the plaintiffs/appellants' suit. Its conclusion on the application at pages 218-219 of the record reads:

"I rely on the pronouncement of the Supreme Court in *Tukur v. Government of Taraba State* (supra) at p.577 paras. C-D that a court is competent to try an action when the subject matter of the case is within jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.

Section 20 of the Trade Disputes Act (Cap. 432) and section 1A of the Trade Disputes (Amendment) Decree No 47 of 1992 give exclusive jurisdiction to the National Industrial Court in matters of trade disputes. See *Udoh v. O.H.M.B.* (1993) 7 NWLR (Pt. 304) 139 at 748 or (1999) 7 S.C.NJ. 436 at 443.

At this juncture, I wish to identify with the view of the learned defence counsel that both the Trade

Disputes Act, Cap. 432 and Decree 47 existing laws by virtue of section 315 Of Constitution. I further agree with him that unless a law is expressly repealed, it is deemed to be still in exist and there cannot be a repeal by implication. In so far as it is the Constitution by itself that has created S preserved special jurisdictions of certain courts, I do not accept that such jurisdiction as conferred in r 432 and Decree 47 are inconsistent with the provision of the Constitution. A parallel to this is found in the provisions of section 251(1) of the Constitution of the Federal Republic of Nigeria, which confers exclusive jurisdiction on this court in respect of matters specified therein. It has thus been held in *Ajuebor v. Attorney. General of Edo Slate* (2001) 5 NWLR (Pt. 707) 466 at 481 paras. C-D that though the law is settled that courts guard their jurisdiction jealously, if however, in any given case where the court's jurisdiction is expressly and unambiguously ousted by the provisions of the Constitution, an Act of Parliament or a Decree, then there must be a compliance with such an ouster clause. Equally, in *Nwankwo v. Nwankwo* (1992) 4 NWLR (Pt. 238) 693 at 710. paras. E-G. it is held that although the High Court has jurisdiction to grant declaratory reliefs. Such declaration will not be made where the Constitution has already given exclusive jurisdiction in respect of such matters to another tribunal.

I hold that the cases of *Adisa v. Oyinwola* and *Bendel Stale v. Obayuwana* {supra} are not applicable in the circumstances of this case. *Obayuwuna's* case for instance, decides that a citizen has unfettered right to seek to redress in court for the determination of any question as to the civil rights and obligations. Therefore, where he. by a declaratory action, raises a constitutional issue he cannot be inhibited by procedural laws like the Petition of Rights Law, and Public Officers Protection Law. In the present case, the inhibition against the declaratory action of the plaintiffs is not by a mere procedural law but a substantive law; enjoying the force of the Constitution itself. That is the difference.

In the light of all the foregoing, I declare that this court lacks jurisdiction to entertain the plaintiff, suit as presently constituted. It is hereby, consequently struck out."

Dissatisfied with the ruling of the trial court, the plaintiffs brought an appeal against it before the Court of Appeal, Ilorin hereinafter referred to as 'the court below'). On 10-11-02, the court below dismissed the appeal, thus affirming the ruling of the trial t. The court below at pages 304-305 of its judgment reasoned thus:

"When the above affidavit evidence is considered together with the appellants claim, it becomes clear that the present suit was instituted in order to protect the collective interests of the appellants. This fact is confirmed by the strike action the appellants undertook in order to get the 6th and 7th respondents look into what the appellants considered to be the excesses of the 4th respondent.

It is clear from the foregoing that the collective interests of the appellants can not be protected without making the issue between the appellants and the respondent a trade dispute as defined in section 47 of the Trade Disputes Act. Cap. 431, Laws of the Federation of Nigeria, 1990. In the section 'trade dispute' is defined. (See the above for the definition). A careful look at the definition shows that the reliefs are caught by the said definition.

I am aware that some of the reliefs relate to the appellant's right of Association and the interpretation of the University of Ilorin Act, but, those disputes are ancillary to the main complaint of the appellants which is against the repressive style of administration of the 4th respondent. Being a dispute between an employer and its workers, the provisions of section 1(i) of the Trade Disputes Act apply.

In that case it is improper to approach a court that is competent to determine some of the issues raised, which in this case happen to be ancillary issues. This is because a court cannot adjudicate over an ancillary claim if it has no jurisdiction to entertain the main claim.

In the result, having regard to the foregoing, I hold the view that this appeal lacks merit. And accordingly dismissed. I make no order as to costs."

Still dissatisfied, the plaintiffs have come before this court ' final appeal. In their notice of appeal filed on 23/12/2002, the plaintiffs raised five grounds of appeal. They have distilled from their ground appeal three issues for determination. The issues are these:

- "1. Whether the Court of Appeal was right in holding the Federal High Court had no jurisdiction to entertain the plaintiffs/appellants' case having regard to the provisions of S.251 of the Constitution of the Federal Republic of Nigeria, 1999. (Grounds 1 and 4 of the grounds of appeal).
2. Whether the Court of Appeal was right in relying on the plaintiffs/ appellants' affidavit evidence instead of their claims/reliefs to hold that the Federal High Court had no jurisdiction to entertain the case. (Grounds 2 & 5 or the grounds to appeal.)
3. Whether the plaintiffs/appellants case was/is a Trade dispute and if so, whether the Court of Appeal was right in holding that the jurisdiction of the Federal High Court was ousted by Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree 47 of 1992. (Ground3 of the grounds of appeal)."

The defendants/respondents formulated two issues for determination. The said issues are covered by the plaintiffs/ appellants" issues. The three issues raised for determination by the plaintiffs/appellants could be conveniently taken together and I intend so to take them.

The pith of the appeal relates to the question whether or not the two courts below were right to have held that having regard to the nature of plaintiffs/appellants claims, the Federal High Court has no jurisdiction to entertain the suit. The two courts below held that the claims raised matters in respect of which only the National industrial court has exclusive jurisdiction. Now in *Western Steel Works Ltd.v Iron & Steel Workers Union of Nigeria* (1987) 1 NSCC 133 at 140; (1987) 1 NWLR (Pt. 49) 284, this Court per Kanbi-Whyte. J.S.C said whilst considering the relevant determinants of the jurisdiction of a court to hear a matter when objection is raised as to the exercise of such jurisdiction:

"Therefore the jurisdiction of the court will be determined by the subject-matter of the claim and not the claim relating to the injunction which was an ancillary relief and depends on

the primary claim. In *Adeyemi & Ors. v. Oyeyori* (1976) 1 F.N.L.R. 149, the Supreme Court stated the position clearly as follows-

'It is fundamental that it is the claim of the plaintiff that determines the jurisdiction of the court which entertains the claim.'

I earlier in this judgment set out serially the claims which the plaintiffs/appellants raised against the defendants/ respondents. Although the plaintiffs/appellants brought the suit 'for themselves and on behalf of Academic Staff Union of Universities, Unilorin Branch', it is the claim brought by them and not the capacity in which the claims were brought that should be the relevant consideration in determining the question which court has jurisdiction in the matter. When the claims of the plaintiffs/ appellants are carefully scrutinized it becomes clear that the gravamen of their complaint is the alleged unconstitutional removal of the 6th plaintiff from the position of Head of the Department of Linguistics of the 7th defendant University and replacing him with the 2nd defendant in the same position. It was alleged that the said removal was in a manner not consistent with the provisions of the Act creating the 7th respondent - University of Ilorin Act. It was further alleged that the conduct of degree examination by the defendants/respondents without the participation of the appropriate examiners was contrary to the provisions of the University of Ilorin Act. Finally, they claimed that it was unlawful and unconstitutional for the defendants to prevent the plaintiffs/appellants and their members from gaining access to their respective offices within the University of Ilorin campus.

"In paragraphs 14 - 18 of the affidavit deposed to in support of the originating summons, the deponent said:

- "14. That no academic staff can become a Dean or Head of Department without being elected by academic members of the Faculty and Department respectively. And that no Dean or Head of Department in the" University can be removed unilaterally by the 4k defendant or by any other power or authority with compliance with the statute of the University and other relevant regulations made by the defendants. That if necessary for this court to give interpretation to the said statutes, regulations and documents one of which is the internal memorandum of 8/7/99 issued by the 5th defendant. Copy is attached herewith as exhibit 'B'
15. That all the other plaintiffs are members of the Faculty Board of the Faculty of Arts who also participated in the election of the Dean of the Faculty, Professor E .E. Adegbija sometime in the year 2000 and so, individually and collectively we have a stake in the affairs and administration of the said Faculty.
16. That if the Dean of the Faculty is lo be removed for any reason whatsoever, the Vice-chancellor 4th defendant cannot do it unilaterally, it has to be done fully in accordance with the statute establishing the (University.
17. That the purported removal of the said Dean by the 4<sup>th</sup> defendant is borne out of victimization as it is shown in the letter of Professor E. E. Adegbija dated 3/4/2001 to the 4th defendant and the minutes of the 4th defendant on the said letter which clearly shows that 4th defendant is claiming that the Dean is not 'loyal" to the Vice-chancellor. Copy of the said letter with the minutes thereon is attached herewith as exhibit 'C.
18. That the 4th defendant purported to have appointed the 1st defendant as the Acting Dean of faculty of Arts which is wrong. And the 1st defendant while purporting to act as the Dean circulated the letter with the VC's minutes referred to in paragraph 17 above by a memorandum dated 6th April, 2001 copy of which is attached herewith as exhibit 'DV'

It seems to me that from the totality of the plaintiffs/appellants claims, their grievance relates more to the infraction of the provisions of the University of Ilorin Act than in the mere pursuit of Trade Union activities. Considering the fact that the plaintiffs/appellants suit was a spill-over from a union strike action embarked upon by the plaintiffs/appellants Union, it is easy to see suggestions of posturing and grievance suffered by the plaintiffs/ appellants. That however would not turn their suit into a trade dispute. It seems to me that the trial court had the duty to sift the grain from the shaft at the end of hearing and determine which of the claims truly arose out of the failure to abide by the provisions of the University of Ilorin Act and which did not.

Section 251(l), (p), (q) and (r) provide:

- "(1) 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 -
- (p) The administration or the management and control of the Federal Government or any of its agencies;
  - (q) Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;
  - (r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;

"In *University of Abuja v. Ologe* (1996)4 NWLR (Pt. 445) 706 1(722.1 had this to say on the ambit of section 230(1) (q), (r) and (s) of Decree No. 107 of 1993 which is in substance the same with section 251 (1) (p), (q) and (r) above.

"In the instant case, in which section 230(1) (q)(r) and (s) confers the exercise of jurisdiction on the Federal High Court to the exclusion of any other Court in civil causes or matters arising from:-

- (q) The administration or the management and control of the Federal Government or any of its agencies;
- (r) Subject to the provisions of this Constitution in so far as it affects the Federal Government or any of its agencies; and
- (s) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies a in which by virtue of section 277(1) of the 197 Constitution 'Public Service of the Federation' include:
  - "(e) Staff of any educational institution established' or financed principally by the Government of the Federation, of which the respondent is a staff; and
  - (ii) the University of Abuja is listed in S i of the Schedule to Decree No. 11 of the 1993 as item 2;

The provisions of Section 230(1) (q) (r) and (s) which clearly confer jurisdiction exclusively on the Federal High Court in instances such as this is not difficult to see. The issue is not interpretation of statutory provisions. The provisions are clear and unambiguous and do not admit of what counsel or court thinks otherwise they are. In addition, the University is clothed with legal status to sue and be sued. It has a perpetual succession with a common seal and can sue or be sued in its corporate name. It needs not join any body or the Federal Government.

The action before the lower court is a proceeding for declaration that their letters of suspension by the University is illegal and void. That action is well within the ambit or provision of section 230(1) (q) of the 1979 Constitution (Suspension and Modification) Decree No. 107 of 1993. The pursuit to sue or join the Federal Government is a wild goose chase. It is a non-sequitor. "

The trial court in its judgment at page 217 - 218 of the record said:

"The originating summons of the plaintiffs in this case ordinarily seems founded on fundamental rights issues whose determination requires only statutory and constitutional interpretation. However some alien characteristics are identifiable therefrom. Very prominent among these is the fact that the plaintiffs have expressed having taken the action 'For themselves and on behalf of Academic Staff Union of Universities it is incontestable that ASUU is a Trade Union as defined m

Section 1(1) of the Trade Unions Act (Cap. 437) Laws of the Federation of Nigeria, 1990. That being so. It seems difficult to seek to maintain an action aimed at protecting group or collective rights without introducing some elements of industrial dispute. Credence seems lent to this view particularly by nos. 9 and 10 questions for determining. They read thus:

'9. Whether the 4th defendant has the power to ban the plaintiffs and/or instruct/order security officers and agents of the University of Ilorin to prevent the plaintiffs and other members of ASUU from entering the premises of the University of Ilorin and whether such ban is not contrary to the provisions of the Constitution of the Federal Republic of Nigeria. 1999.

10. Whether the defendants are entitled to victimize the plaintiff (sic) by taking decisions that are be (sic) adverse or prejudicial to their appointment with the 6th defendant for participating in u national protest/strike action as directed by their National Executive Council and whether said (sic) defendants are not in violation of the statute of the University and the Constitution of the Federal Republic of Nigeria by intimidating, harassing and threatening, compelling the plaintiffs to abandon their legitimate struggle against oppression, suppression by the defendant.'

Admittedly, the plaintiffs have raised constitutional questions but which in my humble opinion, are so tied to the matter of trade dispute with their employers that they appeal inseparable.

The term 'trade dispute' as defined in section 47(1) of the Trade Disputes Act (Cap. 432) means any dispute, between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person. This definition substantially covers the issues for determination in the **originating summons. There are** complaints of removal of some officers and the replacement with others, the right to go on strike action and so forth. These among other issues touch and concern the terms of the plaintiffs' employment Therefore, the way the plaintiffs' action is formulated makes it more suited for a court with specialized jurisdiction. This is because the issues no doubt have arisen from administration of the University of Ilorin (6th defendant) which is a Federal government Agency but the aspect of trade dispute is foreign to this court's jurisdiction."



The passage reproduced above from the judgment of the trial court seems to suggest that its conclusion that the Federal High Court has no jurisdiction in a case as this was largely influenced by the fact that the action was brought by the representatives of a trade union.

Section -17 of the Trade Disputes Act, Cap. 432. Laws of the Federation. 1990 defines a dispute as meaning -

"any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person."

The suit brought by the plaintiffs/appellants appertains to whether or not the provisions of the University of Ilorin Act were complied with b) the defendants/respondents in the discharge of their statutory duties. Even if some of the plaintiffs/appellants were employees of the 7th defendant/respondent, that did not change the nature of their suit "connected with the employment or non-employment or the terms of employment and physical conditions of work of any person".

The court below followed the reasoning of the trial court when in its judgment at pages 302-303 of the record it said:

"In my considered view, the appellants in the action before the lower court are not the above six named, i.e. Dr. Taiwo Oloruntoba-Oju and the other five persons, but, Dr. Taiwo-Oju and the other five representing the Academic Staff Union of Universities. Unilorin Branch. It is therefore not a personal, but, a representative action. *Erowa Enang & Ors. v. Fidelis IkorAdu* (1981) 11-12 SC 25 at 28 & 32.

I observe that in a representative action every member of the class represented by the named plaintiffs is equally a party to the action though unnamed. They are unnamed party in the action because each and every member of the class represented will be bound by the eventual decision of the court. See *A. Y. Eke & Or. v Nagro Rubber Industries Lid. & Or. Re Clara Eke* (1993) 4NWLR (Pt. 286) p. 176.

It follows that the appellants in the present case is, the Academic Staff Union of the Universities, Unilorin Branch. It is trite that a right of action is exercisable by a person who has complaints touching on his civil rights and obligations against another person. The only way the present suit may be justified in law, is that, it was brought by the appellants in order to determine their complaints against the respondents.

Section 47 of the Trade Disputes Act, Cap. 432. 1990. Laws of the Federation of Nigeria defines 'Trade Dispute' as -

'any dispute between employers and workers or between workers and workers, which is connected with the employment or not employment, or the terms of employment & physical conditions of work of any person.'

From the affidavit evidence before the lower court, the appellants' grievance is. in the main against the arbitrary rude and unconstitutional manner their employers are running the University of Ilorin. That collective right cannot be protected without treating it as a trade dispute in the light of the above definition. This is because the dispute is between the employers and workers and it is connected with employment, terms of employment etc."

It is my view that both courts below erred in viewing this case as a trade dispute. The suit in its true form was a challenge by the plaintiffs/appellants to the manner in which he 6th plaintiff was removed from office. The suit did touch upon the collective employment terms of the plaintiffs/appellants' union. The 6<sup>th</sup> plaintiff/appellant could have on his own brought the suit to contend that his removal did not comply with the University of Ilorin Act.

That his academic staff union chose to pursue the suit with him did not alter the nature and substance of the facts leading to the dispute.

It seems to me too that to construe the interpretation clause in section 47 of Cap. 432, 1999, Laws of Federation as conferring on the National Industrial court the jurisdiction to adjudicate on all manner of disputes concerning employment matters could do a great violence to the provisions of section 251(1)(q), (r) and (s) of the 1999 Constitution. It would in my view take a more specific provision of Cap. 432 and not just an interpretation clause to have such a far reaching effect which overrides the clear provisions of section 251(1)(q), (r) and (s) of the Constitution. It cannot be overlooked that Cap. 432 being an existing law within the meaning of section 315 of the 1999 Constitution cannot be given an effect which overrides the clear provisions of section 251 (1 )(q), (r) and (s) of the 1999 Constitution. Any provision of an existing law which is in conflict with the provisions of the 1999 Constitution must be pronounced void to the extent of such inconsistency.

Finally on the point, it seems to me that to give jurisdiction in all matters relating to disputes in employment matters to the National Industrial Court will clearly overburden a special purpose court which the National Industrial Court was designed to be.

I would accordingly allow this appeal as I have come to the 1 conclusion that the Federal High Court has the jurisdiction to hear and determine the plaintiffs/appellants case. It is directed that the case be heard on the merit by another Judge of the Federal High Court Ilorin. I would award N 10.000.00 costs in favour of the appellants.

**ONU, J.S.C.:** Having been privileged to read before now the judgment of my learned brother, Oguntade, J.S.C., I am in entire agreement with him that the appeal is meritorious and must therefore succeed. Consequently, I allow the appeal. I make no order as to costs.

**MUSDAPHER, J.S.C.:** I have had the preview of the judgment of my Lord Oguntade, J.S.C. just delivered with which I entirely agree. For the same reasons so eloquently and exhaustively canvassed in the judgment of my Lord aforesaid, which I respectfully adopt as mine, I too, allow the appeal and hold that the Federal High Court has the jurisdiction to hear and determine the appellants' case. I abide by the order for costs contained in the judgment.

**MUHAMMAD, J.S.C.:** My learned brother, Oguntade, J.S.C. has graciously permitted me to read in draft form the judgment he has just delivered. I agree with my brother's reasoning and conclusion. I think it needs be clearly re-stated over and over again that with the enlarged jurisdiction of the Federal High Court as provided by section 251 of the Constitution of the Federal Republic of Nigeria, 1999 that any dispute irrespective of the nature of the claim, once the Federal Government or any of its agencies is involved that dispute has to be solely decided by the Federal High Court. Section 251 of the said Constitution confers general jurisdiction in the Federal High Court. The section is wide. I will be contented in relation to this case to reproduce some part thereof:

"251(1) 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: (p) the administration or the management and control the Federal Government any of its agencies;

(q) subject to the provisions of this Constitution operation and interpretation of this Constitution in so far as it affects the Federal Government or any of it's agencies;

(r) any action or proceeding for declaration or affecting the validity of any executive or administrative action or decision by Federal Government or any of its agencies."

The University of Ilorin is an Agency of the Federal Government. In the case of NEPA v. Edegbem & Ors. (2002) 12 SCNJ 173 at 183 -185; (2002) 18 NWLR (Pt. 798) 96 this court held per Ogundare, J.S.C. as follows:

"The aim of paragraphs (q), (r) and (s) of sub-section 1 of section 230 was to vest exclusive jurisdiction in the Federal High Court in matters in which the Federal Government or any of its agents was a party. A State High Court would no longer have jurisdiction in such matters notwithstanding the nature of the claim in the action." (Italics mine for emphasis)

The exclusivity of the Federal High Court jurisdiction on those matters must by necessary implication apply to other courts including the National Industrial Court, irrespective of the nature of the claim filed before it.

Thus, if one takes a hard look at the questions of law submitted by the plaintiff in their originating summons before the trial court, the claims or reliefs being sought by the plaintiffs were purely within the context of section 251 of the Constitution. It is the Federal High Court that has jurisdiction. See: NEPA v. Edegbem & O.s. (supra)

The general jurisdiction of the National Industrial Court is provided by the Trade Dispute Act. Cap 432. LFN which provides:

"20(1) the court shall to the exclusion of any other court, have jurisdiction:-

- (a) to make awards for the purpose of settling trade disputes; and
  - (b) to determine questions as to the interpretation of-
    - (i) any collective agreement,
    - (ii) any award made by an arbitration tribunal or by the court under Part 1 of this Act.
    - (iii) the terms of settlement of a trade dispute as recorded in any memorandum under section 7 of this Act.
- (2) The court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute.
  - (3) No appeal shall lie to any other body or person from any determination of the court.
  - (4) Nothing in subsections (1) and (2) of this section shall prejudice any jurisdiction of the Supreme Court of Nigeria under section 359 or 213(2) of the Constitution of the Federal Republic of Nigeria or any jurisdiction of a High Court under section 242 of the Constitution."

The above represents the jurisdiction of the National Industrial Court. ; plaintiffs claims/reliefs, and of course the whole case cannot by 'AC slightest imagination, in view of the potency of the constitutional provisions conferring jurisdiction on the Federal High Court, which represents the supreme law currently in operation be said to have fallen within the subject matters upon which the National Industrial Court has jurisdiction. Section 47 of the Trade Dispute Act (supra) defines "Trade Dispute" to mean any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person. The dispute in the matter on hand has more to do with the interpretation of the University of Ilorin Act. Cap. 455, LFN. 1990 *vis-à-vis* the management of day to day running of the University by the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents. This can hardly be within the competence of the National Industrial Court.

I hold that it is the Federal High Court that has jurisdiction over the matter on hand and not the National Industrial Court. I allow this appeal. I make no order as to costs.

**ADEREMI, J.S.C.:** The appellants, who were the plaintiffs at the Federal High Court, had. In their originating summons, issued on the 7th of May. 2001, sought for the determination of ten questions which have been set out in details, in the leading judgment of my learned brother. Oguntade. J.S.C. Subject to the answers given by the trial court to the said ten questions, the plaintiffs/appellants had claimed some declaration and injunctive orders which are also set out in full in the leading judgment of my learned brother. A 49-paragraph affidavit to which were attached some exhibits, was filed in support of the said originating summons. In their reaction to the originating summons, the respondents, as defendants, brought an application to either strike out or dismiss the suit for grounds which again, have been set out in details in the leading judgment. The trial court took arguments from the respective counsel of the parties and on the 5<sup>th</sup> of October, 2001 struck out the suit for the reason of lack of jurisdiction.

Dissatisfied with the ruling striking out the suit, the appellants lodged an appeal against it to the court below which court, after taking arguments of counsel, in a reserved judgment on the 10th of

December, 2002, dismissed the appeal, thus affirming the ruling of the trial court. It is against the judgment of the court below that the plaintiffs/appellants have approached this court by a notice of appeal filed on the 23rd of December, 2002 in which it was incorporated five grounds. And distilled from the aforesaid grounds of appeal are three issues which as set out in the appellants' brief of argument filed on 9th June, 2003 are in the following terms:-

- "(1) Whether the Court of Appeal was right in holding that the Federal High Court had no jurisdiction to entertain the plaintiffs/appellants case having regard to the provisions of section 251 of the Constitution of the Federal Republic of Nigeria, 1999.
- (2) Whether the Court of Appeal was right in relying on the plaintiffs/appellants' affidavit evidence instead of their claims/reliefs to hold that the Federal High Court had no jurisdiction to entertain the case.
- (3) Whether the plaintiffs/appellants, case was/is a Trade Dispute and if so, whether the Court of Appeal was right in holding that the jurisdiction of the Federal High Court was ousted by the Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree 47 of 1992."

For their part, the respondents raised two issues for determination which, as contained in their brief of argument filed on 26th April. 2004 are as follows:-

- "(1) Whether the Court of Appeal was not right in considering the affidavit evidence in addition to the reliefs/claims adumbrated on the originating summons in coming to its (sic) conclusion and in holding that the Federal High Court lacks jurisdiction to entertain the appellants' case as formulated.
- (2) Whether the Court of Appeal was not right in holding that the provisions of the Trade Dispute Act, 1976 and Trade Disputes (Amendment) Decree No. 47 of 1992 and in affirming the trial court are ruling striking out the case.

As I have said above, the reliefs sought before the trial court are merely declaratory and injunctive in nature. When litigant claims declaratory relief he does no more than to invite the court to declare what the law is on the issue. See *Peter Obi v. INEC & Ors.* (2007) II NWLR (Pt. 1046) 560. Whatever a court of law may say in that invitation is not executory. Indeed, the grant of a relief is discretionary. Therefore, a plaintiff who intends to obtain an enforceable legal right from a declaratory judgment or order; favour must, in addition, seek injunctive order or

damages. I have had a close reading of the reliefs sought, the most fundamental that calls for determination in this case is. Whether the trial court has

Jurisdiction to entertain the suit as constituted. I then pause the question: what determines the jurisdiction of the court?' In answering the question. I say it is the claim of the plaintiff that the jurisdiction of the court to entertain the suits. See *Adeyemi & Ors v. Opeyori* (1976)9 & 10. S.C.31.A High Court, In deed, any Court of records has the jurisdiction under the 1963, 1979, 1999 Constitutions to declare what the law is when invited by process of litigation. But, where the Constitution: the grundnorm of law, has declared that a court cannot exercise jurisdiction over a matter, any provision in the contrary is null and void and of no effect. See *Uthi v. Onoyevwe* (1991)1 NW LR (Pt.166) 166.

What is the provision of the Constitution that is relevant to this case? I say that it is section 25 It (1), (q) and (r) which provide

"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 the National Assembly the Federal High Court shall have and exercise jurisdiction.

- (p) the administration or the management and control of the Federal Government or any of its agencies:
- (q) subject to the provision of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.
- (r) any action or proceeds for a declaration or injunction affecting the validity of an executive or administrative action or decision by the Federal Government or any of its agencies."

The combined effect of the provisions reproduced above the Federal High Court is vested with the power to enter adjudication of any action or proceeding seeking declaratory injunctive reliefs. Instead, section 251 aforesaid defines the jurisdiction of the Federal High Court. True, it is that the representatives of a trade union brought this action and section 47 Trade Disputes Act, Cap. 432. Laws of the Federation. 1990 define ' a "Trade Disputes" as meaning:-

"any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person."

But a careful study of the suit leaves in no doubt that it relates to the issue whether or not the provisions of the University of Ilorin Act were complied with by the defendants/respondents in discharging their official or statutory duties. Granted that some of the plaintiffs/ appellants were employees of the University Council of Unilorin-the 1<sup>st</sup> respondent, this has not changed the nature of the suit formulated by the plaintiffs/appellants from one of merely inviting the court to declare what the law is in its interpretative duty' and so as to give that interpretation of the law a legal bite, to couple it with an injunctive order. I repeat, this does not give the suit a coloration of a suit "connected with the employment or non-employment or the terms of employment and physical conditions of work of any person".

The trial court and the court below in my respectful view, were wrong to have construed the case as one importing "Trade Dispute'. Let it be said, and this finds support in a number of judicial authorities. That the power of a court of record to make a declaration where it is only a

question of defining rights of two parties is almost unlimited. In jurisdictions other than ours, it has been said that if any limitation is to be placed on the exercise of such power, it is only at the discretion of the court. I may further say that the court retains the power to declare contested legal rights, subsisting or future of the parties represented in the litigation before it and not those of anyone else; see Peter Obi's case supra. With due respect. I cannot subscribe to the contention that the present suit falls within the exclusive jurisdiction of the National Industrial Court. This is therefore a matter at should be sent back for re-trial before another Judge of the Federal High Court in Ilorin.

It is for this little contribution, but most especially for the lucid exhaustive reasoning in the leading judgment of my learned brother, Oguntade, J.S.C. that I also will allow this appeal and hereby

Say that the Federal High Court has jurisdiction to entertain the suit. I abide by all other consequential orders contained in the leading of my learned brother including the order as to costs.

*Appeal allowed.*