11 PLC v. MILAN INDUSTRIES LTD & 2 ORS. (SC/CV/374/2023): RIGHT OF ACCESS TO COURT AND THE CONSTITUTIONAL LIMITS OF OUSTER CLAUSES.

By
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The decision of the Supreme Court in ***11 PLC v. MILAN INDUSTRIES LTD & 2 ORS*** is one of the most consequential commercial law decisions delivered in recent years. The decision is both fascinating and complex, raising a range of significant legal issues that merit close appraisal. It stands out as a landmark decision with far-reaching implications for commercial law in Nigeria. Beyond its immediate impact on the parties, the judgment will serve as an important reference point in future disputes relating to the legal effect of under-stamped security interests, the enforcement of mortgage transactions, the scope and enforcement of AMCON's statutory powers, and most importantly, the constitutional limits of legislative restrictions on judicial remedies.

While the Supreme Court ultimately upheld the powers of AMCON and affirmed the sale of the mortgaged property, the most controversial aspect of the decision lies in the court's interpretation of s. 34(6) of the AMCON (Amendment) Act 2021 *("AMCON Act")*. The Supreme Court held that the provision operates as a valid ouster clause, depriving courts of jurisdiction to entertain actions seeking restorative reliefs against AMCON. That conclusion has generated significant constitutional debate because it appears to sit uneasily with s. 1(3), 4(8), and 6(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as altered).

This article examines the reasoning of the Supreme Court and argues that, although the court was arguably correct in affirming the enforceability of the mortgage security and statutory powers of AMCON, its treatment of s. 34(6) raises difficult constitutional questions that may require future judicial reconsideration.

FACTS AND BACKGROUND OF THE CASE.

Further to a banker-customer relationship between the 1st respondent - Milan Industries Limited ("Milan") and the 2nd respondent - Polaris Bank Limited ("Polaris"), Polaris granted Milan a loan facility of US$29,800,000 for the construction of the Lagos Continental Hotel[1]. Milan subsequently obtained additional loans, including an overdraft of ₦500, 000,000.00, all deployed into the construction project[2].

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[1] 11 Plc v. Milan Industries Ltd & Ors (SC/CV/374/2023) judgment delivered 20 February 2026, p. 2.
[2] Ibid.

The security for these facilities was a legal mortgage on the land and the building of the hotel. In this respect, Milan executed a Deed of Legal Mortgage on 10 September 2010 in favour of Polaris. It also charged its property at plot 244 and 255 Kofo Abayomi Street, Victoria Island, Lagos as continuing security for the loan. The legal mortgage was registered at the lands registry and the Corporate Affairs Commission. However, in the payment of stamp duties, Polaris made a statutory payment assessed at ₦2, 000,000,000.00[3]

When Milan failed to liquidate the facilities despite several demands, Polaris appointed a receiver under clause 6.05 of the Deed of Legal Mortgage. The facility became a non-performing loan with accrued interest exceeding ₦15, 000,000,000.00, rendering it an eligible bank asset under the AMCON Act. AMCON purchased the loan from Polaris as a collateralised and secured loan and subsequently sold the property to the Appellant, 11 Plc[4].

Prior to filing the action leading to this appeal, Milan had approached the Federal High Court in Suit No. FHC/L/CS/241/2019, which was subsequently withdrawn after the parties joined issues and a notice of preliminary objection was filed. The trial judge, Aikawa J., dismissed the suit. While the Order of dismissal subsisted, Milan filed a fresh action in Suit No. FHC/L/CS/1643/2020, which eventually gave rise to this appeal[5].

At trial, 11 Plc, Polaris, and AMCON filed a notice of preliminary objection challenging the competence of the action and the jurisdiction of the trial court. The court dismissed the objections but found that Milan did not present enough evidence to show it had repaid ₦2 Billion, as its exhibits were incomplete[6].

Milan appealed the decision to the Court of Appeal, while the defendants filed a cross-appeal. The Court of Appeal overlooked the defects in the exhibits of Milan and found that Milan established its repayment of ₦2, 000, 000,000.00. It held further that Polaris could not proceed against the security for the unsecured amount of the loan, and that it was illegal for Polaris and AMCON to have bought and sold the collateral property. Piqued by the decision, 11 Plc appealed to the Supreme Court[7].

ISSUES FOR DETERMINATION

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[3] Ibid., p. 2-3.
[4] Ibid., p. 3.
[5] Ibid., p. 3-4.
[6] Ibid., p. 4.
[7] Ibid., p. 5.

The Supreme Court distilled two issues for determination, treating the first as a threshold:

1. Whether, bearing in mind the fundamental nature of a court's jurisdiction and having regard to the express provision of s. 34(6) of the AMCON Act, there was jurisdiction *ab initio* in the trial court to entertain the originating process that precipitated this appeal.

2. Whether, having regard to the Deed of Legal Mortgage executed between the 1st and 2nd respondents, the statutory powers of the 3rd respondent, and the state of Nigerian law, the lower court was wrong to allow the appeal and grant the reliefs sought in the originating summons.

The appellant also raised issues concerning denial of fair hearing, abuse of court process, failure to serve pre-action notice, and the mode of commencement of the action by originating summons. However, the Supreme Court found it unnecessary to delve into these issues after resolving the two principal issues, particularly the jurisdictional question[8].

ARGUMENTS OF COUNSEL

- **Appellant's submissions (11 Plc)**

Learned counsel for the appellant, Chief Wole Olanipekun, CFR, SAN, submitted that exhibits M4 and M5 (the bank statements relied on by Milan) were incomplete and mutilated documents with no evidential value. He argued that a decision based on an incomplete record occasions a miscarriage of justice[9]. On the security issue, learned counsel argued that the Deed of Legal Mortgage secured all of Milan's debts in the sum of ₦15billion and not only the ₦2, 000,000,000.00 for which stamp duty was paid. He relied on ss. 197 and 202 of the Companies and Allied Matters Act (CAMA), arguing that even if the charge was void for non-registration, the obligation to repay the entire debt remained[10]. He submitted further that s. 34(6) of the AMCON Act ousted the jurisdiction of the court to grant restorative reliefs, such as setting aside a sale or restoring possession, and that a successful litigant is only entitled to monetary compensation[11]. He argued that as a special statutory creature, AMCON has legal title to all of the property that secures an eligible bank asset, regardless of registration challenges.

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[8] Ibid., p. 33.
[9] 11 Plc v. Milan Industries Ltd & Ors (SC/CV/374/2023) p. 7-8.
[10] Ibid., p. 8-9
[11] Ibid., p. 11-12.

- **1st respondent's submissions (Milan Industries Limited)**

Learned counsel for the 1st respondent, Ahmed Raji, SAN, argued that exhibits M4 and M5 were of probative value, on the ground that they were relevant to the fact of repayment of the ₦2, 000,000,000.00. It was his submission that there had been no objection to those exhibits at the trial, and that Polaris had not produced any contrary bank statements[12]. On the issue of security, counsel argued that under s. 202 of CAMA, a charge as security is void to the extent of any amount in excess of the duly paid appropriate stamp duty. He argued that Milan had repaid the ₦2, 000,000,000.00 secured portion, so the security was extinguished, and the remaining debt of ₦13, 000,000,000.00 became unsecured[13]. Submitting on the jurisdiction of the trial court to determine the suit, counsel posited that s. 34(6) of the AMCON Act only restricts remedies, not jurisdiction. He argued that the provision does not prevent a court from entertaining a suit; it merely limits the remedies available to monetary compensation[14]. He contended further that the trial court had jurisdiction because the secured debt had already been discharged before AMCON acquired the loan[15].

DECISION OF THE COURT AND ITS RATIONALE

The Supreme Court resolved both issues in favour of the appellant.

Issue One - Jurisdiction

Deciding the fundamental issue of jurisdiction, the Supreme Court held that the trial court lacked jurisdiction *ab initio* to entertain the suit. S. 34(6) of the AMCON Act prohibits courts from granting restorative reliefs such as setting aside a sale or restoring possession, restricting a successful litigant to monetary compensation only. The reliefs sought by Milan included orders setting aside the sale of its mortgaged property. Their Lordships held that these were clearly restorative and fell within the prohibition. As such reliefs are not grantable, ***the trial court had no jurisdiction to grant them or even to entertain the suit***. The Supreme Court rejected the argument of Milan that s. 34(6) only restricts remedies rather than ousting jurisdiction entirely. Any statutory provision that restricts the court in any way, including the extent of remedies it can administer, is necessarily an ouster provision[16].

- **Issue Two – Merits**

[12] Ibid., p. 15-16.
[13] Ibid., p. 16-17.
[14] Ibid., p. 19-20.
[15] Ibid., p. 19.
[16] Ibid., p. 27.

Despite having determined that the trial court lacked jurisdiction to entertain the suit, the court proceeded to address the issue of the Deed of Legal Mortgage. The Supreme Court held that the Deed of Legal Mortgage secured all of Milan's debts, ₦15, 000,000,000.00, not just the ₦2, 000,000,000.00 covered by the stamped charge. Examining ss. 197 and 202 of CAMA (now ss. 222 and 227 of CAMA 2020), Their Lordships held that even if the charge was void for non-registration or under-stamping, that did not release Milan from its obligation to repay the entire debt. Milan could not benefit from its own default in complying with registration requirements[17].

The Supreme Court also noted that a third party, AMCON, had intervened in the transaction. AMCON is a statutory creation with *sui generis* powers to acquire and manage non-performing loans. By virtue of s. 34(1) of the AMCON Act, legal title to all assets securing an eligible bank asset vests in AMCON, irrespective of whether the underlying security interest is legal or equitable. Their Lordships, consequently held that AMCON was duly empowered to realise the security.

Consequently, the Supreme Court answered in the affirmative that the lower court erred in allowing the appeal as well as in granting the reliefs sought. The court held that s. 34(6) of the AMCON Act, which limits the court to awarding monetary compensation only, constitutes a valid ouster clause.[18] Their Lordships held further that the trial court had no jurisdiction to grant the reliefs sought, or even to entertain the suit. In reaching this conclusion, the court relied heavily on ***Agwuna v. Attorney-General of the Federation***[19], a case decided during military rule when decrees enjoyed supremacy over the Constitution.

FINAL DISPOSITION

The appeal was allowed. The decision of the Court of Appeal was set aside. The Supreme Court further ordered that its decision in this Appeal will abide by Appeal No. SC/CV/943/2023. No order as to costs.

CRITIQUE AND OPINION

In this part, we undertake a critical review of the decision of the apex court, with specific focus on its holding that s. 34(6) of the AMCON Act operates to oust the jurisdiction of the court. It must be stated in clear terms that the reasoning of the Supreme Court warrants critical reconsideration. While the court held that the referenced provision

[17] Ibid., p. 28-30.
[18] 11 Plc v. Milan Industries Ltd & Ors (SC/CV/374/2023) judgment delivered 20 February 2026, p. 25-27.
[19] Agwuna v. Attorney-General of the Federation (1995) 5 NWLR (Pt. 396) 418.

constitutes a valid ouster clause, that position appears constitutionally flawed for several justifications.

In reaching the conclusion above, the court relied heavily on ***Agwuna v. Attorney-General of the Federation***[20], a case decided during the military rule when decrees enjoyed supremacy over the Constitution. The Supreme Court considered the effect of ouster clauses contained in military decrees, specifically s. 11(1) & (2) of Special Tribunals (Miscellaneous Offences) Act, Cap. 410 Laws of the Federation of Nigeria, 1990, and held that where an ouster clause is clear and unambiguous, the court must give effect to it and cannot inquire into the validity of the action taken under the decree. The court explicitly held that under a military regime, Decrees are the supreme laws of the land, making the Constitution inferior and subject to them.

This reasoning is fundamentally incompatible with the constitutional order established by the 1999 Constitution. The Supremacy of the Constitution is now entrenched in s. 1(1), which provides that it shall have a binding force on all authorities and persons throughout the Federal Republic of Nigeria. S. 1(3) provides that any law inconsistent with the Constitution is void to the extent of its inconsistency. In a democratic dispensation, legislative enactments are subordinate to the Constitution, not superior to it. Reliance on *Agwuna's case* to validate statutory ouster clauses in a civilian democracy is therefore constitutionally problematic. This section therefore, interrogates the reasoning of the Supreme Court below.

First, the Constitution of the Federal Republic of Nigeria, 1999 is the supreme law. S. 6(6)(b) vests judicial power in the courts to determine *"… any question as to the civil rights and obligations of that person"*[21]. S. 4(8) expressly prohibits the National Assembly from enacting any law that ousts the jurisdiction of the courts[22]. Yet the effect of s. 34(6) is precisely to oust the jurisdiction of courts by circumscribing reliefs that can be granted by the courts against AMCON in matters relating to the exercise of its power under the Act to recover debt or realize eligible bank asset. The jurisdiction of courts to grant injunctive and restorative orders are specifically ousted by the referenced provision. Interestingly, the Supreme Court treated the enactment as mandatory, concurring with the appellant's position that courts are duty-bound to enforce the express provisions of legislations. Equally striking, however, is the apex court's conclusion that this provision

[20] Agwuna v. Attorney-General of the Federation (1995) 5 NWLR (Pt. 396) 418.
[21] Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999.
[22] Section 4(8) of the Constitution of the Federal Republic of Nigeria, 1999: "Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law."

is not unconstitutional, notwithstanding the broad judicial powers conferred by ss. 4(8) and 6(6)(b) of the Constitution of the Federal Republic of Nigeria. While the pronouncement of the court on this point now stands as binding authority, it remains difficult to reconcile with established principles of constitutional supremacy.

The Constitution is the grundnorm, and by its very nature overrides any legislative enactment, including the AMCON Act. The tension between the reasoning of the court and the entrenched doctrine that no statute can oust constitutional judicial review underscores the complexity, and perhaps the controversy, of this decision. For emphasis, a statute cannot do what the Constitution explicitly forbids. The reliance by the Supreme Court on the decision in ***Ibiowotisi v. Agbaje***[23] and ***Balogun v. Ode***[24] to validate the ouster clause cannot override the clear and unambiguous provisions of ss. 4(8) and 6(6)(b) of the Constitution, which preserve the judicial powers of the courts and prohibit any law that seeks to oust or unduly restrict their jurisdiction.[25] In fact, the same Supreme Court in *Ibiowotisi v. Agbaje* held that: *"For a provision to be regarded as ousting the jurisdiction of court or as an ouster clause, it must be direct and unequivocal, leaving no one in doubt that it is an ouster clause. A statutory provision which does not expressly provide for the ouster of jurisdiction of court is not an ouster clause. In the instant case, a look at section 13(4) - of the Chiefs Law of Ondo State under consideration would show that there is nothing in it that remotely signals an intention to oust the jurisdiction of the court, hence it is by no means an ouster clause. Thus, the provisions do not oust the jurisdiction of the court, if they did, they would be inconsistent with section 6(6)(b) of the Constitution and would therefore be unconstitutional."*

This pronouncement makes the subsequent decision of the court regarding s. 34(6) of the AMCON Act appear difficult to reconcile with its earlier constitutional reasoning. In *Ibiowotisi*, the court unequivocally affirmed that a statutory ouster clause, if it in fact excludes the jurisdiction of the courts, would be inconsistent with s. 6(6)(b) of the Constitution and therefore unconstitutional. Yet, in the later AMCON decision, the Supreme Court upheld the validity of s. 34(6), notwithstanding its effect of restricting access to certain restorative reliefs, on the basis that the provision was enacted by the National Assembly.

With due respect, this reasoning appears internally inconsistent. The constitutional validity of an Act of the National Assembly cannot rest solely on the fact of its enactment. Under the supremacy clause in s. 1(3) of the Constitution, every legislative enactment derives its validity from, and remains subject to the Constitution. Consequently, where a statutory provision purports to oust or substantially restrict the constitutionally vested

[23] (2026) 1 NWLR (Pt. 2024)115
[24] (2007) 4 NWLR (Pt. 1023) 1.
[25] Ibiowotisi v. Agbaje (supra) n. 23.

judicial powers of the courts, it ought to be declared void to the extent of its inconsistency, irrespective of its legislative origin. To hold otherwise would undermine the supremacy of the Constitution and diminish the constitutional guarantees embodied in ss. 4(8) and 6(6)(b).

Secondly, the reasoning of the court appears inconsistent with the well-established principle of *restituo in integrum* in proprietary claims. The underlying principle is that **proprietary claims are about enforcing rights in specific property**, not merely compensating for loss. Courts recognize that damages are inadequate where the claimant's interest is in the property itself, especially if it is unique, irreplaceable, or carries rights beyond monetary value. Milan had a proprietary right in the property in question, which was subsequently sold. The Court of Appeal found that the sale was unlawful. However, the Supreme Court, while not disturbing that finding, effectively denied Milan the restoration of its property, limiting the remedies instead to monetary compensation, as provided for in the AMCON Act. It is submitted that such a remedy does not correspond with the nature of the right purportedly infringed. A proprietary right in specific immovable property is not, in all circumstances, adequately compensated by an award of damages, particularly where the property may have significantly appreciated in value beyond the underlying debt, and where the nature of the *res* in dispute is such that it is unique and irreplaceable, as in this instance. By substituting restitution with compensation, the Supreme Court departed from the principle that a remedy must be commensurate with the right violated, thereby undermining the very maxim it seeks to uphold[26].

Furthermore, the counter-argument that AMCON requires special powers to safeguard financial stability cannot justify a constitutional infraction. While financial stability is a legitimate policy objective, it cannot be pursued at the expense of fundamental legal principles or through breach of constitutionally guaranteed rights. The legislature cannot, under the guise of economic regulation, validly oust the jurisdiction of the courts over disputes involving fundamental rights or other constitutionally protected interests. If an ordinary statute can validly exclude the jurisdiction of the courts in relation to proprietary rights, there is no principled basis to determine where such legislative exclusion would end. Such a precedent may effectively open the door to the ouster of jurisdiction in respect of any category of dispute, thereby eroding the constitutional role of the judiciary.

THE HIERARCHY OF "SHALL" IN THE CONSTITUTION vs. STATUTES

[26] Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227: here, the Supreme Court applied this principle, 'ubi jus ibi remedium', to ensure substantial justice in novel scenarios.

The core of the dispute under this section, lies in the conflict between two competing mandatory legal directives. S. 4(8) of the Constitution provides that: *"The National Assembly shall not enact any law that ousts jurisdiction."* S. 34(6) of the AMCON Act, otherwise provides that: *"Restorative reliefs shall not be granted."*

The word "shall" when used in a statutory provision imports that a thing must be done. It is a form of command or mandate. It is not permissive; it is mandatory as consistently decided by the Supreme Court.[27]

It is respectfully submitted that the decision of the Supreme Court in *11 Plc v. Milan Industries Ltd.* raises significant constitutional concerns. Having characterised s. 34(6) of the AMCON Act as an ouster clause, the court nevertheless upheld its validity despite the express prohibition in s. 4(8) of the 1999 Constitution of legislation that ousts or restricts the jurisdiction of the courts. By virtue of s. 1(3) of the Constitution, any statutory provision inconsistent with the Constitution is void to the extent of its inconsistency. Consequently, the mandatory language of s. 4(8) must prevail over the mandatory language of s. 34(6) of the AMCON Act.

In according equal force to the statutory directive and the constitutional command, the court failed to give full effect to the doctrine of constitutional supremacy. For this reason, the decision is open to criticism as representing a departure from established constitutional principles governing judicial review and legislative competence. The court ought to have construed s. 34(6) of the AMCON Act narrowly, as limiting the scope of available remedies rather than constituting a complete ouster of the jurisdiction of the court.

In the alternative, legislative amendment may be necessary to provide restorative reliefs where secured debts have been satisfied or restitution is required to prevent manifest injustice. To permit AMCON unfettered discretion over eligible bank assets is to endorse arbitrary conduct at the expense of the business community, while leaving aggrieved parties to the slow machinery of enforcement against a government agency. Ultimately, a right without an effective remedy is illusory, and the denial of meaningful enforcement undermines the very essence of constitutional justice.

CONCLUSION

The Supreme Court allowed the appeal in this case, overturned the decision of the Court of Appeal and found that the trial court "did not have jurisdiction *ab initio,* as s. 34(6) of the AMCON Act clearly forbids reliefs of a restorative nature against AMCON. The apex

[27] Emordi v. Igbeke (2011) 9 NWLR (Pt. 1251) 24; Ani v. State (2025) 2 NWLR (Pt. 1976) 243.

court held further that, the Deed of Legal Mortgage covered the whole ₦15,000,000,000.00 indebtedness and that AMCON's statutory authorities conferred legal title to the property, notwithstanding any deficiencies in the stamping thereof, or the title acquired by AMCON.

Ultimately, the case presents a classic tension between commercial expediency and constitutional principle. While the need to preserve AMCON's effectiveness is undeniable, the constitutional commitment to judicial oversight remains equally fundamental. It is hoped that future judicial consideration, or legislative amendment, will provide a clearer framework for balancing these competing interests without compromising the supremacy of the Constitution or the right of litigants to obtain meaningful remedies from the courts.

Babalakin & Co. is a firm with extensive experience in complex commercial litigation and dispute resolution generally. If you have any questions or would like further information on the issues discussed, please contact:

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