

**AN ANALYSIS OF THE LEGAL STATUS OF THE
INVESTMENTS AND SECURITIES TRIBUNAL
VIS-À-VIS THE JUDICATURE PROVISIONS OF
THE 1999 CONSTITUTION OF NIGERIA**

BY

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DECLARATION

I hereby declare that this thesis is a record of my own research work and has not been previously presented in any previous application for a higher degree. Information derived from published and unpublished works of others has been acknowledged by means of reference.

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CERTIFICATION

This thesis entitled "AN APPRAISAL OF THE LEGAL STATUS OF THE INVESTMENTS AND SECURITIES TRIBUNAL VIS-À-VIS THE JUDICATURE PROVISIONS OF THE 1999 CONSTITUTION OF NIGERIA" meets the regulations governing the award of the Degree of Master of Laws (LL.M) of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to my Late Father Alhaji Ibrahim Ndotti Dasin, to my mother Hajiya Halima, my wife Hajiya Astajam (Astie) and to my children Modibbo (Modi), Fatima (Ummi), Ibrahim (Hanif) and Abdulhamid (Walid).

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ABSTRACT

Owing to increase in investment opportunities occasioned by the economic reforms of the last decade in Nigeria, the need had arisen for a judicial mechanism to strengthen market regulations. As a result, the Federal Government, following the recommendations of the Chief Denis Odife Report, introduced measures that enhanced the powers of the Securities or Exchange Commission (SEC) and established the Investments and Securities Tribunal (IST) by the instrumentality of the Investments and Securities Decree 1999. The Decree was repealed by the ISA No. 29 of 2007, the current law on the subject. The thesis examines the status of the IST as established by the ISA 2007 especially in relation to the judicature provisions of the 1999 constitution. Contradictions exist in the jurisdiction of the IST and that of the Federal High Court. The ISA confers concurrent jurisdiction on both the IST and the Federal High Court. Whereas the jurisdiction of the Federal High Court is exclusive and conferred by the 1999 constitution as amended, that of the IST is conferred by an Act of the National Assembly. There is also contradiction in the provisions of the ISA relating to the status of the IST. Whereas the ISA confers the equivalent of jurisdiction of the Federal High Court on the IST in respect of capital market matters, it does not confer the status and benefits of the judges of the Federal High Court on the judges of the IST. There is therefore need to amend the provisions of the Federal High Court Act and also the ISA to make the IST an arm of Federal High Court and bring it within the ambit of the Federal High Court so that the IST and its Judges may enjoy the status of a court of record without necessarily amending the Constitution.

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CHAPTER ONE

1.1 INTRODUCTION

1.2 BACKGROUND TO THE THESIS

Financial systems the world over comprise the money market and the capital market. The money market is a market for sourcing short term funds. Banks are the major players in this market. The capital market on the other hand is a market for sourcing medium and long term funds and is a market that is divided into two sub-markets, namely:

- 1) Stock Market dealing in shares, bonds and other derivatives; and,
- 2) Commodity Market where tangible goods and their derivatives are traded.

This research is concerned with the capital market and the several players in the market, the activities which require regulation and, where necessary, adjudication. It is the adjudicatory aspect of the capital market that is the main focus of this research.

To ensure transparency, fairness and discipline in any financial system, there must be regulation; which means rules and orders prescribed for instilling discipline in the financial system which will in turn foster investors' confidence thereby attracting additional investments.¹

Disputes resolution agencies are set up to ensure that activities which do not comply with legislations and rules are dealt with appropriately. In Nigeria, legislations and rules for dispute resolution in the capital market have generally been directed at protecting the confidence of the investor and the sanctity of the capital market.

In 1973, the Capital Issues Commission (CIC); the first body to formally regulate the capital market in Nigeria, was established pursuant to Capital Issues Commission Decree 1973.² The Capital Issues Commission was exclusively empowered to resolve disputes in the Nigerian capital market. By virtue of Section 6(1) and (2) of the Decree,

¹ The ISA 2007 vests the power of regulation in the Securities and Exchange Commission (SEC) established as the apex regulatory body in the Nigerian capital market. See generally the *Investments and Securities Tribunal 2007 Annual Report* pp.4 & 5.

² Decree 45 Reenacted in Cap. 124, LFN, 2004.

appeals from the decisions of the CIC went to the Federal Commissioner of Finance, who had the final decision. Aggrieved parties, however, could institute civil actions in pursuit of their civil rights and obligations as long as the Commission was not a party to the action.

In 1980, the Securities and Exchange Commission (SEC) was established pursuant to the enactment of the Securities and Exchange Commission Act of 1979. The dispute resolution arrangement of the 1973 Decree was however, retained by the Act.

In 1988, the 1979 Act was reviewed and repealed by the Securities and Exchange Commission Act of 1988, which vested the Federal High Court with jurisdiction over offences and violations arising from capital market transactions. The Act also empowered the SEC to set up an "Administrative Hearing Committee (AHC)" to resolve capital market disputes. Any party that was dissatisfied with the decision of the APC could appeal to the Federal High Court. The actions

and the decisions of the Commission were subject to judicial review by the Federal High Court as well.

In 1995, the Federal Government of Nigeria set up a panel which was headed by Chief Denis Odife, to undertake a comprehensive review of the operations of the Nigerian capital market, in line with international best practices and standards; and to prepare the necessary framework for its further development to serve the Nigerian economy through means like the strengthening of market regulations. Key among the recommendations and work of the panel was the drafting of the Investments and Securities Act (ISA) 1999 which was promulgated on 29th May, 1999 (ISA 1999). One of the far-reaching recommendations embodied in the Act was the conception and establishment of the Investment and Securities Tribunal (IST). The Act empowered the tribunal to resolve disputes and controversies that may arise by operation of the Act and rules made there under.

The Act established the IST “to exercise the jurisdiction, power and authority conferred on it by or under this Act”.

The Commission however retained its power to administratively adjudicate on complaints arising from transactions in the capital market as well as breaches of the provisions of the Act and the rules made there under. Decisions of the AHC in accordance with the Act are now subject to appeal to the IST. Appeals on the IST's judgment/rulings lie to the Court of Appeal and from there to the Supreme Court.

Under the 1999 Act, aggrieved parties could take their matter DIRECTLY to the tribunal as originating applications without recourse to the APC of the SEC or of any Self Regulatory Organization (SRO) in the market. This was the position of the law until 2007 when the IST 1999 was reviewed to take account of modern trends in the market. Thus, the enabling law in the capital market today is the ISA No. 29 of 2007.

The establishment of the IST in 1999 was greeted with much controversy particularly relating to its authority and

jurisdiction. While writers like Akume³ saw it as an affront on the supremacy of the constitution, the grundnorm of Nigeria, others like Udora saw it as merely an expression of the power of the legislature to make laws for the good governance of the Country⁴.

The IST was first established by the Investments and Securities Decree, 1999 one of the last and rushed pieces of legislations in the last days of military regime in Nigeria. As a result, it was riddled with several typographical and structural defects and given its military background, a lot of military undertone in its language and disposition. It was therefore not surprising that no sooner was it promulgated that the legal status of some of its provisions were called into question.

The primary aim of the ISA was to strengthen the regulation of the Nigerian capital market to make it globally competitive and expand the functions of the Securities and

³ Akume, A.A., *The Unconstitutionality of the Securities and exchange Tribunal in Nigeria*; Benue State University Law Journal Vol. 3 of 2004, P.51.

⁴ Udora, C.A: “*The Machinery for Dealing with Grievance in the Nigeria Capital Market*”. A paper delivered at the Workshop on Opportunities in the Nigeria Capital Market for the Development of Kebbi State.

Exchange Commission (SEC) to enhance its effectiveness in the regulation of the capital market.⁵ It is against the backdrop of the foregoing general goals that the IST was established to adjudicate on disputes among capital market participants and operators in order to maintain the integrity of the market and boost investors confidence.

Six years into the implementation of the 1999 Investments and Securities Act (ISA) (1999-2005), the Securities and Exchange Commission (SEC) as well as other key stakeholders observed areas requiring review in order to strengthen the provisions of the Act, remove ambiguities and enhance the international competitiveness of the Nigerian capital market. This culminated in the Report of the Technical Committee on the review of the IST 1999 which was forwarded to the National Assembly, which deliberated and passed it into law as the ISA 2007.⁶

⁵ *Report of the Technical Committee on Review of the Investments and Securities Act (ISA)*, No.45 1999, Vol.1 Executive Summary, April 2006, p.1.

⁶ No. 29, 2007.

1.3 STATEMENT OF THE PROBLEM

The touchstone of the validity of any legislation is the extent of its conformity with the provisions of the constitution, the grundnorm of the country. Thus, it is provided in Section 1 of the 1999 constitution of Nigeria that the constitution is supreme and if any other law is inconsistent with the provisions of the constitution, the constitution shall prevail and that other law shall to the extent of its inconsistency be void. It is primarily against this backdrop that one seeks to examine the jurisdiction of the IST vis-à-vis the judicature provisions of the 1999 Nigerian constitution. This is an attempt at highlighting some areas of conflict with the provision of the constitution, with a view to proffering suggestions on the way forward.

As mentioned earlier the constitutionality of the establishment of the IST has been subject of serious contention amongst legal writers. While it may be argued that the underlying reasoning for establishing the tribunal is a creation of a specialized body for speedy resolution of

capital market disputes, this should not disregard the necessity for any such body to be properly created in conformity with the constitution. Due legal process should not be sacrificed on the altar of convenience or expediency. Particularly of concern to this study are the provisions of Part XVI of the ISA 2007. This deals with “establishment, jurisdiction, authority and composition” of the IST. Considered against the backdrop of the judicature provisions of jurisdiction of the courts established by the constitution”, some areas of conflict are clearly discernible. These areas of conflict stem from the establishment and composition, jurisdiction and authority of the IST.

It is noteworthy that although some of these areas of conflict predated the amendment of the Investments and Securities Act 1999 in 2007, the legislature did not seem to have comprehensively addressed them with a view to resolving the conflicts.

1.4 OBJECTIVE OF THE STUDY

The ISA 2007 was enacted to improve on the deficiencies of the Investments and Securities Act 1999. Some of the provisions of the ISA 2007 concerning the subject of this study have hardly been tested in our courts. Even where there are judicial pronouncements on the 1999 Act⁷, the legislature did not seem to have taken them into cognizance in enacting the ISA 2007. For instance while the Court of Appeal's decision in NBN Ltd VS Oasis Group Ltd⁸ seems to hold that the IST and the High Court should at best have coordinate jurisdiction, the ISA 2007 vests exclusive jurisdiction on the IST on all matters mentioned in section 284(1) of the Act⁹.

Similarly while a court may rectify its record on minor slips, it is definitely assuming an appellate jurisdiction if

⁷ *Shittu Onigbinde & Ors. vs Samuel Balogun & Anor* (2002) 2 SCNJ 219 and *Charles Udegbeunam vs. F.C.D.A & Anor* (2003) 5 SCNJ, 131.

⁸ (2004) 2 ISLR 143

⁹ The Technical Committee on the Review of the ISA 1999 concerned itself primarily with composition of the Board of the Securities and Exchange Commission, powers of the Commission, Mergers and Takeovers, Collective Investment Schemes, Whistle Blowing, Internal Control System and other Corporate Responsibilities as well as Decriminalization of some offences in the ISA. See Vol. 1 of the Executive Summary of the Report, April, 2006, pp.3-6. See also Section 240 & 252, 1999 Constitution.

empowered to review, reconsider or vary its decision¹⁰. Also, while there has been some academic writing challenging the constitutionality of the IST¹¹, these do not seem to have had any bearing on the ISA 2007. Even though Section 312(3) of the ISA 2007 acknowledges the superiority of the constitution, it is not reconcilable with the provision of section 284(1) of the Act vesting exclusive jurisdiction on the IST on the matters mentioned therein.

This study among other things therefore, aims at the following:

A. examining the status of the IST vis-à-vis the Federal High Court and questioning the distinction in the qualification for appointment of the chairman and members of the tribunal vis-à-vis the qualification for appointment of president and judges of the Federal High Court.

B. examine the ISA vis-à-vis other superior courts of record established by the constitution especially as

¹⁰ Section 290(f) gives the tribunal Power to dismiss an application for default or deciding matters ex-parte.

¹¹ Raji, K.G: *Constitutional Limitations of the Investment and Securities Tribunal; Modern Practice Journal of Finance and Investment Law*, January/April, 2002 Vol.6 No.1-2; p.104,

- regards the provision of section 6 (4) (b) of the 1999 constitution.
- C. to appraise the exclusive jurisdiction of the IST vis-à-vis the Federal High Court, High court and the Court of Appeal on the one hand, and the appellate jurisdiction of the Court of Appeal on the other.
- D. make suggestions for reforms in view of the present political dispensation's aim at reviewing the 1999 constitution or in the alternative propose amendment of the ISA 2007, where necessary, to resolve the areas of dispute between it and the constitution.

1.5 SCOPE OF THE STUDY

The study is primarily concerned with an analysis of the legal status of the IST as enacted in ISA 2007 juxtaposed against the power of the judicature established in the 1999 constitution of Nigeria. Primarily of concern, therefore, is the 1999 constitution, the ISA 2007 and the rules of the IST.

This is viewed against the economic background preceding the establishment of the IST and the aims of establishing it.

1.6 JUSTIFICATION

One central aim of legislation in the Nigerian capital market is maintaining the integrity of the market and the confidence of investors. The attainment of these goals cannot be possible on a shaky legal framework. The investors and other participants in the market must be confident in the legal premises on which they operate. The adjudication authority (IST) must be reliable not only in its composition but also on the legality of its action. Where its status may be impugned for any reason, any judgment obtained there from may not be supported by law.

It is therefore important to articulate any inconsistency in the status of the IST with the constitution in order to proffer suggestion to bring it in conformity with the constitution. It is one's humble view that the IST can only be better placed to discharge its duties where the constitutional premises of its existence cannot be successfully challenged.

1.7 RESEARCH METHODOLOGY

This research is doctrinal, primary sources consulted consist of statutes such as the Investments and Securities Act (ISA), the companies and Allied Matters Act(CAMA) etc relative to the subject.

Secondary sources are captured in the Bibliography and consist of text books, journal articles, etc. the above sources was utilized in analyzing the status of the IST and its jurisdiction in arriving at our findings and recommendations as contained in chapter five of this work.

1.8 LITERATURE REVIEW

The IST 2007 is barely four years old. Existing literature on the operations of the IST established by it is existent only in journal writings, and seminar papers which are secondary sources. These papers have dwelt more on the question of its establishment and functions without an in-depth incursion into its composition, status and jurisdiction against the background of other courts already established by the

constitution. No attempt has been made to explain why the variation in the terms of office of the personnel of the IST and the Federal High Court even though the tribunal and the Federal High Court appear to enjoy coordinate jurisdiction.

Adjekughele in his article¹² perfunctorily highlighted the IST and its statutory functions without examining its constitutional basis. Authors like Akume¹³ questioned the constitutionality of the IST, but fell short of proffering any justification for the variation of term of office and qualification for membership of the IST vis-à-vis that of the Federal High Court and the effect of the variation to the resolution of disputes in the capital market. Udora¹⁴ on the other hand justified the establishment of the IST on the premise of the overriding powers of the legislature to make laws. These authors' positions predate the ISA 2007, particularly Section 312(3) of the ISA 2007 which recognizes the supremacy of the constitution.

¹² Adjekughele, K.L.; *Enforcement of Compliance in the Nigeria*, being a Paper Presented at the Workshop on Introduction to Capital Market for Students and Others;

¹³ Akume, A.A., Op. cit. (End Notes No.3).

¹⁴ Udora, C.A., Op. cit. (End Notes No.4).

This study therefore attempts to examine whether the review and amendment of the ISA in 2007 has settled the lingering question of the conflict between its provisions and certain provisions of the constitution. It further examines the justification, if any, of the composition, term of office of its officials as well as jurisdiction and powers of the tribunal.

It is observable also that section 277 of the ISA 2007 fixes the term of office of Chairman and members of the tribunal to be a term of five years and four years respectively renewable once only. The question is why should a tribunal the status of which is equated with that of the Federal High Court has a Chairman that can only serve for a maximum term of ten years only when the Chief Judge and judges of the Federal High Court hold office until retirement?

1.9 ORGANIZATIONAL LAYOUT

This study comprises five chapters. Chapter one introduces the work, sets out the statement of the problem and defines the objectives of the study. It also proffers the justification

for the study and the consideration of the existing literature in this area with a view to bringing out or identifying areas of improvement.

In chapter two some conceptual clarification and definition of some key words from the legal and the literary point of view have been discussed. This is with a view to appreciating the context of their use in this work.

Chapter three deals with the legal framework of the IST; that is, the establishment, composition, term of office of its officials as well as jurisdiction and powers of the tribunal. Its central aim is identifying the areas of conflict or controversy with the 1999 constitution in order to provide the premise for the discourse in chapter four.

Chapter four juxtaposes the legal framework of the IST vis-à-vis the judicature provision of the 1999 constitution. This is with a view to discerning the findings of the study in order to provide basis for the suggestion and recommendations for improvement or solutions as discussed in chapter five.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND DEFINITION

2.1 INTRODUCTION

Prior to the comprehensive review of the Nigerian capital market that led to the promulgation of the ISA in 2007, the Securities and Exchange Commission (SEC) had, as part of its enforcement function, set up an Administrative Hearing Committee (AHC) in 1993 for purposes of fair hearing of cases relating to allegations of violations of the securities laws, professional misconduct and suspected fraud in the capital market. The AHC which later became Administrative Proceedings Committee (APC) together with the rules of Self Regulatory Organizations (SROs) like the Chartered Institute of Stock Brokers (CISB), Central Securities Clearing Systems Limited, CSCS, provided administrative adjudication but devoid of the coercive powers of a court or tribunal.

It was as a result of the short comings of the APC and the SROs and the need to keep the market and operators in

check that a judicial and independent body known as the IST was established under part XVI (sections 274 – 297) of the ISA 2007 with powers as detailed in section 290 of the Act thus:

S. 290 powers and procedures of the tribunal.

- (1) The tribunal may make rules regulating its procedures.
- (2) The tribunal shall have, for the purpose of discharging its functions under this Act power to:
 - a) summon and enforce the attendance of any person and examine him on oath;
 - b) require the discovery and production of documents;
 - c) receive evidence on affidavits;
 - d) call for the examination of witnesses or documents;
 - e) review its decision;
 - f) dismiss an application for default or deciding matters ex-parte;
 - g) set aside any order or dismissal of any application for default or any order made by it ex-parte' and

- h) do anything which in the opinion of the tribunal is incidental or ancillary to its functions under this Act.
- (3) Any proceedings before the tribunal shall be deemed to be a judicial proceeding and the tribunal shall be deemed to be a civil court for all purposes.
- (4) Proceeding of the tribunal may be held in camera as and when deemed appropriate in the interest of the public.

In this chapter an attempt has been made to define and clarify some basic legal concepts and/or terms necessary for proper understanding of the **constitution** and constitutionality of the status of the tribunal as established under section 274 of the ISA and the concept of **jurisdiction** as it relates to the exercise by the IST of its own jurisdiction as provided for in section 284 of the ISA. Discussed in this chapter also are the terms **judicial precedent** and **decision/judgment** as pertains the time frame of three months within which the tribunal shall deliver its judgment as provided in section 289 (5) of the ISA 2007.

Two Latin maxims, *Functus officio* and *Res Judicata* and their application to the power of the tribunal have also been discussed here. Finally the judicial concept of “**appeal**” as a request for a higher authority or court to reconsider or review the decision of a lower body or court is considered against the backdrop of the exercise by the tribunal of its powers to hear appeals from decisions of the Securities and Exchange Commission (SEC) as provided in section 289 of the ISA and most importantly, appeal, by parties, against decisions of the tribunal to the Court of Appeal and to the Supreme Court as provided for under section 295 and 297 of the ISA.

2.2 CONSTITUTION

Constitution is said to be the fundamental and organic law of a nation or state. It establishes the institutions and apparatuses of government, defines the scope of governmental sovereign powers, and guarantees individuals

rights and civil liberties. It is the instrument embodying this fundamental law, together with any formal amendments¹.

It is necessary in modern society to have a government and since government is made up of institutions and their powers for promoting orderliness in society, it is necessary to limit arbitrariness inherent in government by way of setting limits to powers of institutions and persons. This, among others, is what every constitution sets to achieve.

A written constitution serves four functions². These are, firstly, to constitute people inhabiting contiguous area or territory into a polity or state, second to institute a frame of government armed with powers and institutions necessary and adequate to ensure the effective management of public affairs, thirdly, to limit those powers in the interest and the protection of the liberty of the individual and, fourthly,

¹ *Black's Law Dictionary* 8th Edition (West, Thomson) 2004 page 330.

² Nwabueze, B. *Constitutional Democracy in Africa Vol.1* (Spectrum Books Limited), 2003, page 36.

declare the ideals and objectives of the nation and the duties of the state to its subjects³.

Clearly, the first two functions above flow from the definition of a constitution as meaning the act of constituting a state or government or both as well as the law or rules of government that are constituted⁴.

In providing a connection between our definition of constitution and the provision of the ISA, it is clear that the ISA established the IST. It provides in its section 74 that:

there is established a body to be known as the Investments and Securities Tribunal (in this Act referred to as "the tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Thus laws or rules for establishment of the tribunal and regulation of the capital market are by this provision, constituted.

³ Ibid P. 37.

⁴ Arendt, H., *On Revolution* (1962) page 145; Quoted in Nwabueze, Ben *Constitutional Democracy in Africa Vol.1* page 36.

This judicial body, IST was thus created as an independent body to **the exclusion of any other court of law or body in Nigeria** to exercise jurisdiction to hear and determine any question of law or dispute involving matters listed in the section⁵.

The Nigerian military government hurriedly enacted Investments and Securities Decree 1999 for the country by promulgation on 26th May, 1999, of Decree No. 45 of 1999 under which law the IST was created on 19th December, 2002. This Decree became an Act (ISA 1999) by virtue of section 315 (i) (a) and (b) of the 1999 constitution which came into effect on 29th May, 1999

The ISA 1999 was later reviewed in 2006 and repealed in 2007. In its place, the ISA 2007 was enacted by the National Assembly on 25th day of June, 2007.

The constitution is for all intent and purposes the supreme law of the land as provided for in section 1 (1), of the

⁵ Section 284 *Investments and Securities Act 2007*.

constitution. To emphasize its subordinate nature and reinforce the supremacy of the constitution, the ISA has made this position of the law clearer in section 312 (1) – (3).

In fact sub section (3) says:

Apart from the Constitution of the Federal Republic of Nigeria, if the provisions of any other law, in relation to capital market matters including the enactments specified in subsection (1) of this section is inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall, to the extent of the inconsistency, be void.

It is against the foregoing background that the establishment, jurisdiction, authority and composition of the IST is analyzed with a view to ascertaining the legal status of the tribunal vis-à-vis the provisions of the constitution and proffer suggestions for reforms.

2.3 JURISDICTION

Jurisdiction is an aspect of our procedural law which forms or accounts for a large percentage of defenses in both civil and criminal cases that come before the courts. Jurisdiction or lack of it is therefore the bedrock of every adjudication. According to Black's law Dictionary⁶, jurisdiction is "a court's power to decide a case or issue". It appears that this definition is terse. It is therefore best to gather the meaning from its judicial interpretation.

The Supreme Court, per Karibi-Whyte JSC (as he then was) held in National Bank of Nigeria Ltd Vs Soroye⁷ that:

the word jurisdiction means the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision.

⁶ 8th Edition (West, Thomson) 2004 page 855.

⁷ (1977) 5 SC 181. See also *A. G. of the Federation vs A. G. of Abia State and 35 Ors* (2001) 7 SC (Pt.1) 100.

Text writers have also provided valuable contribution to the search for definition of this term. I.D. Uzo Esq⁸ chronicled definitions of the term jurisdiction to include:

the legal right by which judges exercise their authority... it is the power and authority of court to hear and determine a judicial proceeding and power to render a particular judgment in question. It is the right and power of a court to adjudicate concerning the subject matter in a given case...

These definitions and many more found in texts and several reported cases have a central feature; that is, **authority** and **power**. This therefore presupposes that where a court decides a matter without jurisdiction, it does so without the power and without authority to so do. Jurisdiction is therefore a radical and crucial question of competence for if the court has no jurisdiction to hear the case; the entire proceeding leading to the decision is definitely a nullity.

To connect the above to the ISA, Section 284 (1) of the ISA 2007 provides for the jurisdiction of IST thus:

⁸ *Preliminary Objection to Jurisdiction*, Law Digest Publishing Company (2004) page 3.

284 (1) the tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving;

- a) A decision or determination of the Commission in the operation and application of this Act, and in particular, relating to any dispute:
 - i) Between capital market operators;
 - ii) Between capital market operators and their clients
 - iii) Between an investor and a securities exchange or capital trade point or clearing and settlement agency;
 - iv) Between capital market operators and self regulatory organization.
- b. The commission and self regulatory organization;
- c. A capital market operator and the commission;
- d. And investor and the commission;
- e. An issuer of securities and the commission; and
- f. Dispute arising from the administration, management and operating of collective investment schemes.

- (2) The tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.
- (3) In the exercise of its jurisdiction the tribunal shall have the power to interpret any law, or regulation as may be applicable.

However, sections 251(1)(e), 257 (1) and 272 of the constitution provide:

i) "Section 251(1)(e) Notwithstanding any thing 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 – arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operations of companies incorporated under the Companies and Allied Matters Act".

ii) Section 257(1) says:

"subject to the provision of section 251 and any other provision of the constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of legal right, power, duty, liability, privilege, interest, obligation or claim is in issue."

iii) Section 272(1) states:

“272(1) subject to the provisions of section 251 and other provisions of this constitution, the High Court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person”.

It is clear from the above provisions of sections 251(1)(e), 257 (1) and 272(1) of the constitution that there are three high courts in Nigeria, that is, Federal High Court, High Court of the Federal Capital Territory, Abuja, and State High Court and that subject to section 251 of the constitution the High Courts have unlimited jurisdiction. Therefore section 284 of the ISA which sought to give exclusive jurisdiction to the IST regarding matters mentioned therein may be said to be in direct conflict with the 1999 constitution, and will therefore be found to be ultra vires. Since we have indicated, and rightly too, that the constitution is supreme and that any law that is inconsistent with its provisions is void to the extent of the inconsistency, section 284 of ISA

needs to be reviewed. The reason is simply that as a provision of a subordinate legislation, section 284 of the ISA needs to be reviewed to bring it into conformity with the provisions of the constitution by allowing the High Courts have Jurisdiction to entertain matters under the ISA or allow appeal from decision of the IST to lie to (at east) the Federal High Court. Secondly, it is trite that a statute (not the constitution) cannot create a body or court/tribunal and exclude another court created by the constitution (whose jurisdiction is specified in the constitution) from inquiring or adjudicating on matters specified in the jurisdiction of the court/tribunal that is a creature of a mere statute. As enunciated by the Court of Appeal in the case of SEC vs Prof. A.B Kasunmu (SAN) & Anor⁹ where the court quoted with approval the judgment of the trial court:

"It is pertinent to say that the Federal High Court is a creature of the constitution. S.249 of the constitution established this court. The scope and extent of the court's jurisdiction and powers are spelt out in section 251 and

⁹ (2009) 10 NWLR (pt.1150) 509

252 of the same constitution. It is therefore the same constitution that can oust or limit its jurisdiction and curtail its powers..... it is my view that S.242 of the Act which is now deemed to be an Act of the National Assembly and not a constitutional provision and in so far as it has provided that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the tribunal constituted under the Decree is empowered to determine is inconsistent with the provision of S.6(6) (b) of the aforesaid constitution which provision has conferred on this court judicial powers on all matters between persons or between governments or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of that person. That section to the extent that it purports to oust the jurisdiction of this court is invalid”.

Both the High Courts of the Federal Capital Territory, Abuja and the State High Courts have, subject to the provisions of section 251 of the constitution, “Unlimited Jurisdiction”.

Secondly since the Federal High Court has exclusive jurisdiction in matters “arising from the operation of the Companies and Allied Matters Act (CAMA) or regulating the operation of companies incorporated under CAMA, it is

difficult to draw a line between capital market matters and “operation of companies incorporated under CAMA”.

Most importantly, it must also be mentioned that section 6(4) (b) of the 1999 Constitution has lent credence to the argument that the jurisdiction of the IST should have been subordinated to the jurisdiction, or at best, be made coordinate to that of the High Court and the Federal High Court.

This is because section 6 (4) (b) provides as follows:-

Section 6(4) (b) nothing in the foregoing provisions of this section shall be construed as precluding the National Assembly or any House of Assembly from establishing Court, other than those to which this section relates **with subordinate jurisdiction to that of the High Court**¹⁰.

Therefore section 295 (1) of the ISA which provided for “any person dissatisfied with a decision of the tribunal” to appeal against such decision to the Court of Appeal in spite of what the constitution provided in sub-section (b) of section 6

¹⁰Emphasis supplied.

above (since the IST is not of subordinate jurisdiction to the High Court) may be said to be in conflict with the Constitution. If tested in court, this conflict may be resolved in favour of the supreme law of the land – the Constitution.

This argument should not however be carried too far because of the provisions of sections 240 and 246(2) of the Constitution. The sections provide as follows:

Section 240: subject to the provisions of this constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a state and from decisions of a Court Martial or other tribunal as may be prescribed by an Act of the National Assembly".

"Section 246(2) the National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly".

It is incredible that the constitution that says in section 6(4)(b) that nothing in its provisions shall be construed as

precluding the National Assembly or any House of Assembly from establishing court, other than those to which this section relates with subordinate jurisdiction to that of the High Court has provided in section 240 that the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals "... from decisions of... other tribunal as may be prescribed by an Act of the National Assembly". Also that (section 246(2)) the National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly.

There is therefore a need for resolving the real conflict between these provisions of the constitution on the one hand and between the said provisions and section 295(1) of IST 2007.

2.4 JUDICIAL PRECEDENT

Judicial precedent is an indirect way of law making by a court in recognition and applying new rules while administering justice. In other words it means a decided case that furnishes a basis for determining later cases involving similar facts or issues¹¹. Once a judicial pronouncement is made it carries the force of law on the matter.

In Ngwu vs Monye¹² it was held that the doctrine of judicial precedent otherwise called *stare decicis* requires all subordinate courts to follow decisions of superior courts even where these decisions are obviously wrong having been based upon false premise and that this is the foundation on which the consistency of our judicial decision is based.

The justification for the doctrine of judicial precedent is that it ensures some amount of certainty in the law.

¹¹ *Black's Law Dictionary* 7th Edition (West Group) 1999 page 1195.

¹² (1970) All N.L.R. 91

In Nigeria 9 types of courts have been created by the constitution, viz;

- 1) the Supreme Court of Nigeria
- 2) the Court of Appeal
- 3) the Federal High Court
- 4) the High Court of the Federal Capital Territory, Abuja
- 5) the High Court of a State
- 6) the Sharia Court of Appeal of the Federal Capital Territory, Abuja
- 7) the Sharia Court of Appeal of the State
- 8) the Customary Court of Appeal of the Federal Capital Territory, Abuja
- 9) the Customary Court of Appeal of the State

This provision of the law as enshrined in section 6 (1) (5) (a- j) shows the number and the hierarchy of courts in Nigeria. By the doctrine of judicial precedent all subordinate courts are bound by the decision of superior courts in the order listed above.

There are however **such other courts as may be authorized by law**¹³ to exercise jurisdiction on matters with respect to which the National or the State House of Assembly may make laws.

The IST found its origin from the constitutional provision of section 6(1) (5) (i) as one of “such other courts” authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws. Appeals from this tribunal lie to the Court of Appeal and subsequently to the Supreme Court.

2.5 DECISION OR JUDGMENT

The word “judgment” in its ordinary usage connotes the resolution by a person with respect to a cause of action between competing alternatives. In its technical sense in which it is used in judicial proceedings, the supreme had held in *Osafire Vs Odi (No.1)*¹⁴ that:

¹³ Emphasis supplied. See section 6(1)(5)(i) of the 1999 constitution.

¹⁴ (1990) 3 NWLR (part 137) page 130.

“the word ‘judgment’ connotes a binding decision of a court or tribunal in a dispute between two persons and that the determination is enforceable by the exercise of the coercive jurisdiction of the court at the instance of the party in whose favour the judgment has been made. A judicial decision is decision after consideration of the fact and the law; especially, a ruling, order, or judgment pronounced by a court when considering or disposing of a case. It is a court’s final determination of the rights and obligations of the parties in a case”.

In the Indian case of *Bharat Bank Limited, Delhi Vs Employees of the Bharat Bank Ltd, Delhi*¹⁵, the Indian Supreme Court laid down what judicial decision or judgment presuppose, thus:

“A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites;

- (1) The presentation (not necessarily orally) of their cases by the parties in the dispute;
- (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence.

¹⁵ Quoted in Rajeesh Gupta; *Karkara’s Art of Writing Judgments*; Delhi Law House Publishers, 2nd Edition (2008), page 1.

- (3) If the dispute between them is a question of law, the submission of legal argument by the parties.
- (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and application of law of the land to the fact so found, including where required, a ruling upon any disputed question of law”.

In an attempt to provide a nexus between what ‘judgment’ is vis-a-vis the ISA, three provisions of the Act readily come to mind. Section 293(1) and (2), section 295(1)(a), (b), (c) and section 289(5). The sections provide as follows:

1. Section 293 (1) says the tribunal shall
 - i) give its judgment in writing and may make orders as to fines, suspensions, withdrawal of registration or licenses, specific performance, or restitution as it may deem appropriate in each case.
 - ii) A certified true copy of the decision of the tribunal shall be supplied to the parties upon request.
 - iii) An award or judgment of the tribunal shall be enforced as if it were judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the tribunal.

2. Section 295(1) ISA 2007 says:

any person dissatisfied with a decision of the tribunal may appeal against such decision to the Court of Appeal if;

- a. the decision was taken in the exercise of its appellate jurisdiction, on point of law only; or
- b. it is a final decision taken in the exercise of its original jurisdiction, on point of law; or mixed law and fact; or
- c. it is an interlocutory decision of the tribunal, on points of law only.

Subsection (2) of section 295 ISA 2007 says without prejudice to the power of the tribunal to review its own decision only persons who participated in the proceedings of the tribunal may appeal against decision of the tribunal.

2. By virtue of S.289(5) of the ISA, the IST shall in the exercise of its powers, conduct its proceedings in such manner as to avoid undue delays and shall dispose of any matter before it finally within 3 months from the date of the commencement of the hearing of the substantive action.

This is a commendable provision since quick disposal of matters before the tribunal will guarantee confidence of investors in the Nation's capital market. The provision may however be criticized if the intention of the legislature is to expedite the disposal of cases by the tribunal only. Whereas

on the one hand the provision is capable of unclogging the machinery of justice as litigants can be assured that their cases would not drag on for too long as is the trend in our regular courts today, on the other hand justice must not be sacrificed on the altar of quick dispensation of justice¹⁶. It makes not only good law but good sense as well that justice delayed is justice denied but justice hurried may also be justice denied. In the Unilever case, an application dated 22nd Feb, 2005 was filed Pursuant to S.236 (5) of the ISA 1999¹⁷ and under the inherent jurisdiction of the tribunal seeking the order of the tribunal to strike out the entire suit against the Applicant/Respondent for want of competence of the tribunal. The ground of the application was that the action had commenced on **17th Nov 2004** and ought to have been disposed of by the three months statutory period of **17th Feb 2005** and by effluxion of time of three months as stipulated under S.236 (5) of ISA 1999 the tribunal

¹⁶ Unilever Nigeria Plc Vs International Standard Securities (2007) 2 NISLR 267.

¹⁷ Now S. 289 (5) ISA 2007

ceased to have competence. Delivering his ruling on the matter Justice Sam Chukwunyere said:

“The subject here is the capital market which is a sensitive market. Arguing that matters which have not suffered undue delay but go beyond the three months from the date of filing instead of from the date of hearing should be struck out and parties should file the action again will affect the sensitivity of the market. The object of the legislature is to ensure quick dispensation of justice where technicalities do not bog down the proceedings of the court; and where there is expeditious hearing, not necessarily to shut out parties before they were even heard.”

The Supreme Court has put this argument to perfect rest in Chairman NPC Vs Chairman Ikare Local Government Area¹⁸

where Ayoola JSC held:

“Notwithstanding that the procedure adopted by the commission may have been good intentioned in an effort to dispose of as many complaints as possible within a limited time, proceedings cannot be hurried at the expense of justice. Justice delayed, it is often said, is

¹⁸ (2001) 13 NWLR (pt 731) 540 at 559 Para A – H

justice denied but it is equally true that justice hurried may be justice buried”.

Before coming into effect of the IST, the apex capital market regulator; the Securities and Exchange Commission (SEC) and the Self Regulatory Organization (SROs) like the Nigerians Stock Exchange (NSE) and the Chartered Institute of Stock Brokers (CIS) were inundated with cases from the market place. But without the powers of a court, the SEC and the SROs had been limited in their enforcement abilities. With the coming of the IST it is on record that through specific performance¹⁹, misappropriated client’s money by market operators have been recovered by the tribunal and cases of non-remittance of issue proceeds by Issuing Houses to the issuer/company has been enforced²⁰. The tribunal has expanded the frontiers of capital market jurisprudence in Nigeria with its decisions. These decisions as reported in the volumes of Investments and Securities Law Reports (ISLR),

¹⁹ Chief Ezemegbe Livinus Vs. Nigeria Stock Exchange & Anor. (2009) 3 N.I.S.L.R. 113.

²⁰ F.I.S. Securities Limited vs. Securities Exchange Commission (SEC) (2004) 1 N.I.S.L.R. 116. See also Lighthouse Assets Management Company Limited Vs. SEC. (2004) 1 N.I.S.L.R. 81.

have positively changed the routine way of doing things in the Nigerian capital market.

2.6 FUNCTUS OFFICIO

This is a Latin expression meaning “having performed his or her office”. It relates to a status of an officer or official body who, having performed his or her function in respect of a judicial matter remains “without further authority or legal competence because his duties and functions have been fully accomplished”²¹. If the task of a court or tribunal is performed, it has fulfilled its function, discharged its responsibility or accomplished its purpose and is therefore of no further force or authority. As pointed out by the Court of Appeal in UBN plc vs CFAO²², a Court after making an order or giving a judgment becomes *functus officio* and has no power to review such order or judgment except in cases of correction of mistakes and accidental slips.

²¹ Black’s Law Dictionary 8th Edition (West Group) 2004 page 696.

²² (1997) 11NWLR (part 527) page 118 at 127 para D.

Section 290(2) of the ISA is however at variance with this trite law. The section provides as follows:-

“The tribunal shall have for the purposes of discharging its functions under this Act, power to:

- a) Summon and enforce the attendance of any person and examine him on oath.
- b) Require the discovery and examination of documents.
- c) Receive evidence on affidavits
- d) Call for the examination of evidence or documents
- e) Review its decisions
- f) Dismiss an application for default or deciding matters ex-parte
- g) Set aside any order or dismissal of any application for default or any order made ex-parte, and,
- h) Do anything which in the opinion of the tribunal is incidental or ancillary to its functions under this Act.

Mention must be made of the fact that without prejudice to the power of the tribunal to review its own decision, only persons who participated in the proceedings of the tribunal may appeal against the decision of the tribunal. The word

“may” here is important. A person whose interest is affected by the decision of the tribunal may appeal against the decision even though he is not a party at the proceedings. This is to protect the proprietary right of a share holder in a disputed transaction.

The point being made here is that section 290 (2) (e) is clearly against the established legal principle of *functus officio* as enunciated in the UBN case above. Consequently allowing the tribunal to review its decision as provided in subsection (2) (e) of section 290 offend the old age legal principle of incompetence of a court or tribunal to reopen a case after delivery of judgment as the court or tribunal will be said to be ***Functus Officio*** and therefore without further authority or legal competence to do so having fulfilled its function.

2.7 REST JUDICATA

This is a Latin maxim meaning “things adjudicated”. It means an issue that has been definitely settled in a judicial

decision. Thus “where a Court of competent jurisdiction issues a final decision on matters in dispute between the parties, neither party nor his privy may re-litigate that issue again by bringing a fresh action.”²³ The matter is said to be *res judicata*. As succinctly put by the Court of Appeal in *N.B.N. Ltd Vs. P.B. Olatunde & Co. (Nig) Ltd*²⁴ a plea of *res judicata* presupposes that:

- a) the judgment in question is a judicial decision only pronounced by a court or tribunal having competent jurisdiction in that behalf;
- b) the judgment was final
- c) it was or involved a determination of the same question or that sought to be controverted in the litigation on which the estoppel was raised, and,
- d) the parties to the judicial decision were the same persons as the parties to the proceedings in which estoppel is raised and in respect of the same cause of action or that the decision was in rem.

²³ Black’s Law Dictionary 8th Edition (West Group) 2004 page 1336 -1337.

²⁴ (1994) 3 NWLR (pt 334) 512.

Res judicata is an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or on any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the same suit²⁵.

Three essential elements for occurrence of this in a judicial trial are:-

- i) An earlier decision on the issue
- ii) A final judgment on the merit, and
- iii) The involvement of the same parties, or parties in privity with the original parties.

As succinctly put in Ige vs Farinde²⁶, for a plea of *Res Judicata* to succeed, the parties, the subject matter, and the issues in the two cases must be shown to be the same.

It has therefore been a settled principle of law that as a rule of public policy no man shall be vexed twice for one and the

²⁵ Black's Law Dictionary 8th Edition (West Group) 2004 page 1337.

²⁶ (1994) 7 N.W.L.R. (Pt. 354) Para 11 P. 42 at 75 para F.

same cause on the same issue (nemo debet bis vexari una et eadem causa)

It seems to be very clear that section 290 (2) (e) which empowers the tribunal to review its decisions for the purposes of discharging its function under the Act offends this principle of law. Please see page 65 for detailed analysis on this issue.

2.8 APPEAL

Appeal refers to a proceeding to have a decision reconsidered by a higher authority, especially the submission of a lower court or agency's decision to a higher court for review and possible reversal²⁷.

The nature of an appeal is such that it is not an inception of a new case and it is generally regarded as a continuation of the original suit rather than an inception of a new case. It is an invitation to the higher court to review the decision of the

²⁷ Black's Law Dictionary 8th Edition (West Group) 2004 page 105.

lower court to find out whether, on a proper consideration of the facts placed before it, it has arrived at a correct decision

Under the ISA 2007, appeal from decision of the IST shall lie to the Court of Appeal. Section 295 (1) of the Act provides that any person dissatisfied with a decision of the tribunal may appeal against such decision to the Court of Appeal if:

- a) the decision was taken in the exercise of its appellate jurisdiction on points of law only, or
- b) if it is a final decision taken in the exercise of its original jurisdiction on point of law or mixed law and fact, or
- c) if it is an interlocutory decision of the tribunal on points of law only.

From the foregoing, it is evident that appeals against the judgment or award of the tribunal may be made only on points of law to the Court of Appeal. This is based on the fact that section 275 (1) ISA 2007 has provided that ten

(10) persons shall be appointed as members of the tribunal thus:-

- (a) A full time chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters.
- (b) Four full time members, three of whom shall be legal practitioners of not less than ten years experience and one person who shall be knowledgeable in capital market matters who shall devote themselves to issues relating to adjudication and shall not exercise any administrative function.
- (c) Five other part time members who shall be persons of proven ability and expertise in corporate and capital market matters.

So the members who are not lawyers but have cognate experience in capital market operations would have resolved all facts relating to the market issues at the sitting of first

instance. In a way therefore, the tribunal is seen as a final court on issues of facts. That is the import of section 295(a)–(c) ISA 2007 detailed above.

Section 277 (1) and (2) provided for terms of office of the chairman of the tribunal as five years renewable for another term of five years only. This should not have been as limiting the chairman's tenure to two terms only deprives the tribunal of his experience once he vacates office.

It is also worth mentioning that since the tribunal appears to be of coordinate jurisdiction with the Federal High Court, the requirement of Fifteen years cognate experience for appointment as chairman as against ten years for a judge of the Federal High Court is discriminatory as no clear justification for this requirement is discernible from the provisions of the Act.

CHAPTER THREE

LEGAL FRAMEWORK OF THE INVESTMENTS AND SECURITIES TRIBUNAL

3.1 ESTABLISHMENT OF THE Investments and SECURITIES TRIBUNAL (IST)

Section 274 of the ISA 2007 established the IST to exercise the jurisdiction, powers and authority conferred on it by the Act.

Section 280 ISA provides that the salaries and allowances¹ of the Chairman, members and Chief Registrars of the tribunal shall be equivalent to that of the Chief Judge, judges and Chief Registrar of the Federal High Court respectively.

Section 295 (1) ISA provides that any “person dissatisfied with the decision of the tribunal may appeal against such decision to the Court of Appeal...”²

¹ Emphasis supplied.

² Emphasis supplied.

The combined effect of these provisions of sections 274, 280 and 295(1) ISA is tantamount to equating the IST with the status of the Federal High Court. This runs contrary to the provision of section 6 (3) of the constitution which states:

The courts to which this section relates, established by this constitution for the federation and for the states, specified in subsection 5 (a) to (j) of this section shall be the only superior courts of records in Nigeria...³

Subsection 5 (a)-(i) of section 6 lists the courts as follows:-

- a. The Supreme Court of Nigeria
- b. The Court of Appeal
- c. The Federal High Court
- d. The High Court of the Federal Capital Territory
- e. The High Court of a State
- f. The Sharia Court of Appeal of the Federal Capital Territory
- g. The Sharia Court of Appeal of the State

³ Emphasis supplied.

- h. The Customary Court of Appeal of the Federal Capital Territory
- i. The Customary Court of Appeal of the State

The first question here is, does the National Assembly have the power to establish the IST? The answer, it is submitted, is in the affirmative. This is because Section 6(4)(a) of the Constitution says the National Assembly or any state House of Assembly can establish courts other than those listed in section 6(5)(a)-(j)⁴ above provided that the court the National Assembly or the State House of Assembly may establish is of subordinate jurisdiction to that of a High Court⁵. Even if the court or tribunal that may be so created is not of subordinate jurisdiction, sections 240 and 246(2) of the constitution seem to suggest that the National Assembly may still establish them thus further justifying the power of the National Assembly to establish the IST.

The Second question to ask is, does the National Assembly have the power to clothe the IST with status equal to the

⁴ Emphasis supplied.

⁵ Emphasis supplied.

Federal High Court as it has done by virtue of section 295 (1) of the ISA? This again, may also be answered in the affirmative. However, provisions of section 6(4)(a) may tempt one to answer this question in the negative. The section provides that:

Nothing in the foregoing provision of this section shall be construed as precluding the National Assembly or any House of Assembly from establishing Court, other than those to which this section relates with subordinate jurisdiction to that of a High Court⁶.

It is trite that the High Court enjoys coordinate jurisdiction with the Federal High Court and appeals from divisions of the Federal High Court lie to the Court of Appeal. It is clear that also the National Assembly has power to create Courts but inferior to the status of the superior courts of record mentioned in Section 6(5)(a)-(v)⁷. Therefore, to do otherwise, that is, making the IST to be of coordinate Jurisdiction with the Federal High Court which runs contrary

⁶ Emphasis supplied.

⁷ Emphasis supplied.

to section 312 (3) of the ISA, and section 6 (4) (a) of the constitution calls for a review of the status of the IST.

3.2 COMPOSITION OF THE IST

Section 275(1) of the ISA provides that the tribunal shall consist of ten (10) persons to be appointed by the Minister as follows:

- a. A full time Chairman who shall be a Legal Practitioner of not less than fifteen (15) years with cognate experience in Capital Market matters.
- b. Four other full time members, three of whom shall be legal practitioners of not less than ten (10) years experience and one (1) person who shall be knowledgeable in capital market matters who shall devote themselves to issues relating to adjudication and shall not exercise any administrative function.

- c. Five (5) other part time members who shall be persons of proven ability and expertise in corporate and Capital Market matters.

The problem with this provision is that it is not consistent with the status of the tribunal which is sought to be equated with that of the Federal High Court. This is primarily because, by virtue of section 250 (3) of the Constitution, a person is eligible to hold the office of the Chief Judge of the Federal High Court, if and only if he is qualified to practice as a Legal Practitioner in Nigeria and has been so qualified for a period of not less than ten (10) years⁸. There seem to be no clear justification for the difference in eligibility for appointment of the Chairman of the tribunal and that of the Chief Judge of the Federal High Court since the ISA has equated the status of the tribunal to that of the Federal High Court.

Another problem with this provision is that by virtue of S.275 ISA 2007, the tribunal shall consist of 10 persons to be appointed by the

⁸ Emphasis supplied.

Minister of Finance. The independence and impartiality of the IST can be questioned on this basis because it's Chairman and members are appointed by the Minister of Finance, a member of the Executive arm of government who supervises the SEC whose actions and decisions the IST adjudicates. This, it may be argued contravenes S.36 of the 1999 constitution which provides that:

Section 36(1) "In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality"⁹.

Since the Minister of Finance appoints members of the tribunal, the tribunal's independence and impartiality may be compromised in favor of the ministry. Why, one may ask, should the appointment of Chairman and members of the tribunal (appeal from decision of which goes to the Court of Appeal) not be done by the National Judicial Commission (NJC) like judges of regular courts since it

⁹ Emphasis supplied.

appears to be a court of coordinate jurisdiction with the Federal High Court?

On the other hand it may be argued that the President of the Federal Republic of Nigeria appoints the Chief Justice of Nigeria and the President of the Court of Appeal. Does it therefore mean that the Judicial impartiality of these justice/judges is impugned when matters involving the President are brought before them? Furthermore, it may also be argued that the Industrial Arbitration Panel (IAP) exercises judicial function, yet its members are appointed without reference to NJC¹⁰. Despite these submissions however, one is of the view that there is still the need to make appointment of Chairman and members of the tribunal by the NJC considering the importance of the tribunal and the hierarchy it occupies in the list of courts in this country. Failure to do so again calls to question, the conformity of the IST to the provisions of section 361 of the constitution on account of independence and impartiality of the tribunal.

¹⁰ Section 9 (2) (a) and (b) Trade Dispute Act (CAP 18 LFN 2004)

3.3 TERM OF OFFICE

Section 277 of the IST provides for term of office for the Chairman and members of the tribunal as follows:

1. The Chairman shall hold office for a term of five (5) years renewable for another term of five (5) years and no more.
2. Other members shall hold office for a term of four (4) years renewable for another term of four (4) years and no more.

The pertinent question here is why should a tribunal that is equated with the Federal High Court have a Chairman that must have ten years cognate experience as a prerequisite for his appointment, while appointment to the Federal High Court bench requires ten years experience? Secondly, of what practical utility or purpose is the limitation of the terms of office of the Chairman of five years and renewable once for another five years, and for members for a term of four years renewable once? Even though for appointment, they

are required to be experienced in capital market matters, this experience can by no means match that which is gained on the job. This benefit of “on the job” experience will definitely be lost for all new comers into the office. This is not suggestive of a life appointment for the Chairman or members of the tribunal, but that they should be left in office until retirement age like their counterparts in the Federal High Court.

3.4 JURISDICTION AND POWERS OF THE IST

As earlier stated, Section 284 (1) provides for the jurisdiction of IST as follows:-

“The tribunal shall, to the exclusion of any other court of law or body in Nigeria¹¹, exercise jurisdiction to hear and determine any question of law or dispute involving:

¹¹ Emphasis supplied.

- A. A decision of the Commission in the operation and application of this Act, and in particular, relating to any dispute:-
- i. Between Capital Market Operators
 - ii. Between Capital Market Operators and their clients
 - iii. Between an investor and a securities exchange or capital trade point or clearing and settlement agency;
 - iv. Between Capital Market Operators and self regulatory organizations
- B. The Commission and Self Regulatory Organization
- C. A Capital Market Operator and the Commission
- D. An Investor and the Commission

- E. An issuer of securities and the Commission
- F. Disputes arising from the administration, management and operation of collective investment schemes.

In addition, section 290(3) ISA provides that the proceedings before the tribunal are judicial proceedings and the tribunal is deemed to be a court for all purpose.

The problem with this provision lies in the exclusive jurisdiction it confers on the IST as regards the matters mentioned therein. This runs contrary to the provisions of sections 251(1)(e) and 257 of the constitution which give exclusive jurisdiction to the Federal High Court on matters under Companies and Allied Matters Act (CAMA) and High Court of a state's jurisdiction "to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue...". The result, it is submitted is that this

provision needs to be streamlined with the provisions of sections 251(1)(e) and 257 of the constitution.

3.5 REVIEW POWER OF THE IST

Under section 290 (2) ISA, the tribunal shall have, for the purpose of discharging its function under the Act. More specifically the IST shall have power under paragraph 2 (e) of S. 290

- a) Summon and enforce the attendance of any person and examine him on oath;
- b) Require the discovery and production of documents;
- c) Receive evidence on affidavits;
- d) Call for the examination of witness or documents;
- e) Review its decision;
- f) Dismiss an application for default or deciding matters *ex-parte*;

- g) Set aside any order or dismissal of any application for default or any order made by it *ex-parte*; and
- h) Do anything which in the opinion of the tribunal is incidental or ancillary to its functions under this Act.

Of concern here is subsection the (2) (e) which gives the Tribunal power to review its decision¹².

The problem with this power is that it is unduly wide. Unlike subsection (f) and (g) of the section which are very specific on particular circumstances, subsection (e) leaves too much to the whims and caprices of the tribunal. This could be liable to abuse.

Secondly, the power of the tribunal to review its decisions is capable of rendering the appellate jurisdiction of the Court of Appeal provided by the ISA and the constitution nugatory. The power, if not circumscribed could render established legal principles ineffective. For example, it is trite that once a court decides a matter the court becomes *functus officio*

¹² Emphasis supplied.

and can no longer reopen same issue with a view to deciding upon it¹³. Similarly, parties remain bound by a decision of a court and a party to a dispute already decided cannot re-litigate the same issue as the issue is said to be *res judicata*.¹⁴

Still on this issue of review powers of the tribunal, one is at loss as to what the tribunal is empowered to review. Is it its final judgment or its interlocutory ruling? The Act did not define what is to be reviewed. This is susceptible to abuse and should be expunged from the powers of the tribunal to allow appeal against any of its decisions.

These are fundamental principles of law which go to the root of the jurisdiction of the court in the adjudication of disputes.

3.6 APPELLATE JURISDICTION

As we have seen in 3.4 above, by section 284 of the ISA 2007 the IST is also an appellate Court. In its appellate

¹³ UBN Plc vs CFAO (1997) 11 N.W.L.R. (pt 527) 118 (CA); Op cit page 45

¹⁴ Ige vs Farinde (1994) 7 N.W.L.R. (part 354) page 42 at 75 ; Op cit page 49

jurisdiction, the tribunal resolves disputes from capital market transactions as follows:-

- i) through the Self Regulatory Organizations (SROs)/ Alternative Dispute Resolution (ADR) system;
- ii) through the SROs/ADR systems and then to the tribunal;
- iii) through the SROs/ADR system then to SEC and to the Tribunal; and
- iv) through SEC to the tribunal. From the tribunal, the matter could proceed on appeal to the Court of Appeal and thereafter, to the Supreme Court. This emphasizes the coordinate jurisdiction of IST with the Federal High Court and State High Court, hence the need for equal treatment with respect to terms of office of their judges.

3.7 CONCLUDING REMARKS

In our efforts to examine the legal framework of the IST, we have discussed the establishment and constitution of the tribunal and came to the conclusion, and correctly so, that making the IST to be of coordinate jurisdiction with the Federal High Court as provided in sections 280 and 295(1) of the ISA may be said to run contrary to the provisions of section 6(4)(a) of the Constitution. We have also pointed out that giving the tribunal Jurisdiction to the exclusion of any other court of law or body in Nigeria to determine any question of law or dispute involving the persons or bodies detailed in section 284(1) may be said to be contrary to the provisions of sections 251, 257(1) and 272(1) of the 1999 Constitution regarding the jurisdiction of the Federal High Court and High Court of the Federal Capital Territory, Abuja and of the High courts of the states.

We have also seen that giving power to the tribunal to review its decision is against established legal principles of ***Res Judicata*** and is capable of rendering the appellate jurisdiction of the Court of Appeal nugatory.

CHAPTER FOUR

THE IST AND THE JUDICATURE PROVISIONS OF THE 1999 CONSTITUTION

4.1 INTRODUCTION

The focus of this chapter is to examine the constitutionally established courts at the federal and state levels vis-a-vis the IST, and in particular examine the IST's review powers with a view to determining whether or not establishment of the IST does not go against the appellate jurisdiction of superior courts of record established by the constitution.

Our discussion in this chapter shall be limited to the judicature provisions in the 1999 constitution as relates to federal and State courts without the Sharia and Customary Courts of Appeal. We limit the discussion to these courts because the jurisdictions of the Sharia and Customary Courts of Appeal of the Federal Capital Territory, Abuja and that of the states are specified to be appellate and

supervisory in civil proceedings involving questions of Islamic personal Law and customary law only¹.

The judicature provisions are contained in chapter VII of the constitution. The chapter is divided into four parts spread over 67 sections from sections 230- 296.

Part 1 contains matters relating to federal courts thus:-

- i. The Supreme Court of Nigeria
- ii. The Court Appeal
- iii. The Federal High Court
- iv. The High Court of the Federal Capital Territory, Abuja
- v. The Sharia Court of Appeal of the Federal Capital Territory, Abuja
- vi. The Customary Court of Appeal of the Federal Capital Territory, Abuja.

¹Sections 262, 267, 277 and 282 of 1999 Constitution.

Part II of the chapter contains provisions relating to state

Courts. These are:-

- a. High Court of a State
- b. Sharia Court of Appeal of a State
- c. Customary Court of Appeal of a State

Part III is on Election Tribunal, which is contained in section 285 of the constitution only, while part IV is the Supplemental provision.

4.2 ESTABLISHMENT OF COURTS UNDER THE 1999 CONSTITUTION

The Courts we shall be discussing here are the Supreme Court of Nigeria, Court of Appeal, Federal High Court and High Court of the States.

4.2.1 The Supreme Court

By the provision of section 230 of the 1999 constitution there shall be a Supreme Court of Nigeria which shall consist

of the Chief Justice of Nigeria and such number of Justices not exceeding twenty one, as may be prescribed by an Act of the National Assembly.

4.2.2 The Court of Appeal

Section 237 of the 1999 constitution established this Court which, according to the section, shall consist of a President of the Court of Appeal and such number of justices not less than forty nine of which not less than three shall be learned in Islamic Personal Law, and not less than three shall be learned in Customary Law, as may be prescribed by an Act of the National Assembly.

4.2.3 The Federal High Court

According to section 249 of the 1999 constitution there shall be a Federal High Court which shall consist of a Chief Judge and such number of judges of the Federal High Court as may be prescribed by an Act of the National Assembly².

²Section 1 (1) (b) Federal High Court Act Chapter F12 Laws of the Federation of Nigeria 2006 Volume 6.

4.2.4 The High Court of the Federal Capital Territory.

The High Court of the Federal Capital Territory, Abuja has been established by section 255 of the 1999 Constitution consisting of a Chief Judge and such number of Judges of the High Court as may be prescribed by an Act of the National Assembly.

The High Court Act chapter 510 Laws of the Federation of Nigeria (Abuja) 1990 which established the High Court of the Federal Capital Territory, Abuja did not specify the number of Judges for this Court. But in a 2009 Diary of the Law Office of M/S Rickey Tarfa and Co., 30 names were listed as judges of the Court as at that year.

4.2.5 High Court of a State

Section 270 of the 1999 Constitution prescribed that there shall be a High Court for each State of the Federation. The High Court of a State shall consist of a Chief Judge of the state and such number of Judges of the High Court as may

be prescribed by a law of the House of Assembly of the State.

4.3 THE STATUS OF THE HIGH COURT AND THE FEDERAL HIGH COURT.

Status of a thing presupposes its state of affairs, condition standing, position, rank, importance³. As pointed out earlier all courts are creatures of the constitution or the Statutes establishing them. It is therefore the statute which establishes a court that gives its standing, position, rank, etc among other things.

4.3.1. High Courts

The origin of High court in Nigeria can be traced back to 1922 when the Court reform by the Colonial Government curtailed the territorial jurisdiction of the then Supreme Court and established High Court for the protectorates. Attainment of federal status by the Country in 1954 necessitated reflection of the new status by the judiciary leading to the creation of High Courts for Lagos and for each

³ Chambers Dictionary (1998 Edition) P.1616

of the territories of Western, Eastern and Northern Regions. This position remained even after the first Military Coup in 1966. It was in 1967 and 1976 that the country was divided into 12 and 19 states respectively and each State was empowered to establish its own High Court. Both the 1990 and the 1999 constitutions maintained the same status as each of the 36 states of the federation today has its own High Court.

It is pertinent to point out that the High Court of a State is one and it is for purposes of judicial and administrative convenience that each State has more than one High Court and different judicial divisions.

A State High Court has original, appellate and supervisory jurisdiction as a Superior Court of record.

In its original jurisdiction, it has been provided in section 272 (1) that subject to section 251 of the Constitution and other provisions of the Constitution, the High Court shall have jurisdiction to hear and determine any civil proceedings

in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claims is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

The High Court can therefore exercise jurisdiction and judicial power on all matters (both State and Federal) except on those matters which the constitution has expressly excluded from its jurisdiction and there are 3 instances where the constitution has done so. These are:

- a) The constitution has conferred exclusive jurisdiction on the Federation High Court in respect of civil causes and matters specifically contained in Section 251 (1) of the constitution.
- b) In the exercise of power of the House of Assembly of a State to remove a Governor or Deputy Governor from office, the constitution has

provided that no proceedings or determination of the panel of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court as provided by section 188 (1) of the 1999 Constitution. However, the current position of the law in the light of Inakuju vs Adeleke⁴ is that the law makers must have acted within the framework of the law in the process of the impeachment, otherwise their action may be questioned in the courts of law.

- c. In respect of Election Petitions, the constitution confers exclusive jurisdiction on Governorship and Legislative House Election Tribunal to hear and determine petition as to whether any person has been duly elected to the office of the Governor or Deputy Governor or as a Member of the Legislative House of the State.

⁴ (2007) 4 NWLR (pt. 1025) 423

It follows therefore that in the absence of Constitutional provision to that effect no Act of parliament whether State or National can oust or curtail the jurisdiction of a High Court in any matter. The Court of Appeal has put this matter beyond the realm of argument in the case of SEC vs Prof. A.B Kasunmu (SAN) & Anor⁵ where the Court of Appeal quoted with approval the judgment of the trial court as follows:

"It is pertinent to say that the Federal High Court is a creature of the constitution. S.249 of the constitution established this court. The scope and extent of the court's jurisdiction and powers are spelt out in section 251 and 252 of the same constitution. It is therefore the same constitution that can oust or limit its jurisdiction and curtail its powers..... it is my view that S.242 of the Act which is now deemed to be an Act of the National Assembly and not a constitutional provision and in so far as it has provided that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the tribunal constituted under the Decree is empowered to determine is inconsistent with the provision of S.6(6) (b) of the aforesaid constitution which provision has conferred on this court judicial powers on all matters

⁵ (2009) 10 NWLR (Pt 1150) 509 OP cit, page 53

between persons or between governments or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of that person. That section to the extent that it purports to oust the jurisdiction of this court is invalid”.

So where lies the exclusivity of the jurisdiction of the IST as contained in section 284 (1) of the ISA 2007?

4.3.2 Appellate Jurisdiction of the High Court

Under section 272(2) of the Constitution, the High Court of a State is conferred with jurisdiction to entertain appeals from decisions of subordinate courts like Magistrate Court, Rent Control and Recovery of Residential Premises Tribunals, Customary Courts, etc. But it is important to note that section 272 and 282 of the Constitution have curtailed the appellate jurisdiction conferred by the constitution on the High Court in civil proceedings involving question of Islamic personal Law and vests same in the Sharia Court of Appeal. Also by the provision of section 282, appeals from the decision of Area Courts in Civil proceedings involving

question of Customary Law shall vest in the Customary Court of Appeal.

4.3.3 *Supervisory Jurisdiction of a High Court*

By section 272 (2) of the 1999 Constitution reference to criminal and civil proceedings in the section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before it to be dealt with by the Court in the exercise of its appellate and supervisory jurisdiction.

The supervisory jurisdiction conferred by section 272 (2) is exercisable by the High Court over inferior Courts, tribunals and executive or statutory bodies of government by means of prerogative orders of certiorari, prohibition and mandamus and also by declaratory judgments on lack of jurisdictions.

The exercise of supervisory Jurisdiction by the High Court is to correct patent errors of an inferior court in terms of excess or lack of jurisdiction or procedural errors.

4.3.4 Jurisdiction on Reference of Questions

Under section 295 (1) of the constitution special jurisdiction is conferred on High Courts in relation to reference of Questions as to interpretation or application of the constitution between parties in a case. As pointed out in

Governor of Ogun State Vs The President Federal Republic of Nigeria⁶, what this section seeks to do is to save a lower court from fumbling with an important constitutional question, especially where that question is capable of more than one interpretation.

4.3.5 Concurrent Jurisdiction of the High Court and Federal High Court

By virtue of the provision of the Constitution, the Federal and State High Courts are courts of coordinate jurisdiction. The courts are however autonomous and independent of each other. In some areas both courts exercise concurrent jurisdiction over the same subject matter. The areas include

⁶ (1981) 2 NCLR 672

application for enforcement of fundamental right in section 46 of the Constitution, dispute arising from banker and customer relationship, interpretation of the provision of the Constitution and trial of criminal cases and matters.

In 1973 the Federal Government established a court known as Federal Revenue Court for "the more expeditious disposal of Revenue cases particularly those relating to Personal Income Tax, Customs and Excise Duties, Illegal Currency Deals, Exchange Control Measures and the like, which the High Courts had been too tardy to dispose of especially In recent years"⁷.

Prior to 1973 the High Courts had Jurisdiction on these matters. However due to the delay in the disposal of cases particularly those involving the revenue of the Federal Government by the various State High Courts, the Federal Government saw the need to establish the Federal Revenue Court. The Court was established by the Federal Revenue

⁷ *Jammal Steel Structures Vs A.C.B. (1973) ALL NLR (pt. 1) 222*

Court Decree No. 13 of 1973. The Act conferred original jurisdiction on the Federal Revenue Court to the exclusion of any other court in respect of certain specified matters.

The court continued to exercise Jurisdiction conferred on it until 1979, when the Federal High Court succeeded it. Section 30 (2) of 1979 Constitution restyled the Federal Revenue Court as Federal High Court and preserved the jurisdiction and power conferred on the court by the existing legislation. In 1993 by virtue of the provision of the Constitution (Suspension and Modification) Decree No. 107 of 1993, the 1979 Constitution in relation to the jurisdiction of the Federal High Court was amended by substituting section 220 (1) with a new subsection (1). The amendment expanded the jurisdiction of the Federal High Court beyond Federal Government revenue related matters. The same provision was adopted as section 251 (1) of 1999 constitution.

4.3.6. Civil Jurisdiction

The Civil Jurisdiction of the Federal High Court has been prescribed in section 251 (1) of the 1999 Constitution as follows:-

“Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:

- (a) Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;
- (b) Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation.
- (c) Connected with or pertaining to Customs and Excise Duties including any claim by or against the Nigeria Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to Customs and excise duties and export duties.

- (d) Connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank.

- (e) Arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.
- (f) Any Federal enactment relating to copyright, patent design, trade marks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, Standard of good and commodities and industrial standards.
- (g) Any Admiralty Jurisdiction, including shipping and navigation on the River Niger or River Benue and their confluence and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal Ports (including the constitution and powers of the ports

authorities or Federal ports) and carriage by sea.

- (h) Diplomatic, consular and trade representation;
- (ii) Citizenship, naturalization and aliens deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passport and visa.
- (j) Bankruptcy and insolvency.
- (k) Aviation and safety of aircraft;
- (l) Arms, ammunition and explosives;
- (m) Drugs and poisons;
- (n) Mines and minerals (including oil fields, oil, mining, geological surveys and natural gas).
- (o) Weights and measures;
- (p) The administration or the management and control of the Federal Government or any of its agencies;
- (r) Subject to the provisions of this Constitution, the operation and interpretation of this constitution in so far as it affect the Federal Government or any of its agencies.
- (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, and

- (t) Such other Jurisdiction Civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly

Provided that nothing in the provisions of paragraphs (p), (q) and (r) of this subsection shall prevent a person from seeking redress against the Federal government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactments, law or equity⁸.

4.3.7 Criminal Jurisdiction.

Prior to the promulgation of the 1979 Constitution, the criminal jurisdiction of the Federal High Court was based on the Federal High Court Act 1973 and it was not an exclusive Jurisdiction⁹.

⁸ In considering paragraphs (q) and (r) of s.251 of the constitution it has been held that in simple contract involving federal agencies the state High Court has exclusive jurisdiction. Please see *Onuorah vs KRPC Limited (2005) 6 NWLR (pt. 921) 393* contra *NFA vs Elegbero (2002) 18 NWLR (pt. 798) 79*.

⁹ See generally Lawal, Pedro; *Jurisdiction of Courts in Nigeria Materials and cases* (Lagos), Lagos State Ministry of Justice Law Review Series (2006) pt. 79- 80.

The 1979 Constitution which became the Supreme Law of Nigeria, made the provisions of the Federal High Court Act that conferred jurisdiction on the Federal High Court subject to the provisions of the Constitution. Section 230 (1) of Constitution 1979 provides:

“Subject to the provisions of 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 jurisdiction:

- ii) In such matters connected with or pertaining to the revenue of the Government of the Federation as may be prescribed by the National Assembly.
- ii) In such other matters as may be prescribed in respect to which the National Assembly has power to make Laws.

Further more under section 236(1) of the 1979 Constitution, the High Court of a State has “Unlimited Jurisdiction” and

the jurisdiction conferred on the Federal High Court by section 230 (1) of the same constitution was not exclusive but made subject to the provisions of the constitution such as section 230 (1) which conferred “unlimited jurisdiction” on the High Court to hear and determine any civil or criminal proceedings. See the case of Bronik Motors Limited V Wema Bank Limited¹⁰.

In the case of Savannah Bank of Nigeria Limited V Pan Atlantic & Transport Agencies Limited¹¹ the Supreme Court considered the effect of the Provision of section 8(1) of the Federal High Court Act and held that it was section 7(1) of the Act which confers jurisdiction on the Federal (Revenue) Court that is saved by section 230(2) of the 1979 constitution and that section 8(1) which excluded or ousted the jurisdiction of State High Court in the matter (Admiralty) is inconsistent with the provisions of the constitution particularly section 236(1) of the constitution 1979 which

¹⁰ (1981) 1 SCNLR 286

¹¹ (1987) 1 NWLR (Pt.49) 212.

confers unlimited jurisdiction on the High Court. The jurisdiction of the Federal High Court was however expanded by Federal High Court (Amendment) Decree 60 of 1991. Substantial part of the provision of the said Decree 60 of 1991 was incorporated into the Constitution (Suspension and Modification) Decree No 107 of 1993 under section 230(1). The same provisions were substantially adopted a section 251 (1) of the 1999 constitution.

The criminal jurisdiction of the Federal High Court under the present 1999 constitution of Nigeria is prescribed for in section 251 (2) of the Constitution and it provides:-

The Federal High Court shall have and exercise Jurisdiction and powers in respect of treason, treasonable felony and allied offences.

And section 251 (3) provides that:

The Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by subsection (1) of this section.

The Federal High Court Act (CAP 134 Laws of the Federation of Nigeria) 1990¹² restates the above provisions of the constitution in its section 7 (1) (r) and (2). The Act also conferred additional jurisdiction in the Federal High Court in section 7 (3) where it provides that:

The jurisdiction conferred by subsection (2) of this section in respect of criminal causes and matters shall without prejudice to the generality of the subsection and section 64 (3) of this Act, include original jurisdiction in respect of offences under the provisions of the Criminal Code Act, the Penal Code (Northern Region) Federal Provision Act being offences in relation to which proceedings may be initiated at the instance of the Attorney General of the Federation.

From the above, it is clear that the criminal jurisdiction conferred in the Federal High Court is exercisable in respect of criminal cases and matters arising out of or connected with any of the matters in respect of which civil jurisdiction is conferred on the court by section 251(1) of the 1999 Constitution and section 7(1) of the Federal High Court Act.

¹² Now CAP. F12 Laws of the Federation of Nigeria 2004

4.3.8 Appellate Jurisdiction.

The appellate jurisdiction of the Federal High Court is conferred by section 28 of the Federal High Court Act (CAP 134 Laws of the Federation of Nigeria) 1990¹³ as amended. Under the section, the Court has the appellate jurisdiction to hear and determine appeals from:-

- a. The decision of Appeal Commissioners established under the Companies Income Tax Act and the Personal Income Tax Act in so far as applicable as Federal Law.
- b. Decision of the Customs, Immigration and Prison Services Board established under the Customs Immigration and Prison Services Act¹⁴
- c. Decision of Magistrate Courts in respect of civil or criminal causes or matters transferred to such courts pursuant to the Federal enactment or law in respect

¹³ Now CAP. F12 Laws of the Federation 2004

¹⁴ CAP 89 Law of Federation of Nigeria 1990

of matters concerning which jurisdiction is conferred by the Act.

4.3.9 *Supervisory Jurisdiction.*

The Federal High Court, being a superior court of record, exercises supervisory jurisdiction by way of judicial review over inferior courts or Tribunals, or over acts and omissions of persons or bodies performing judicial or quasi judicial functions in administering a statute in respect of matters over which the court has jurisdiction either under the constitution, Federal High Court Act or any other enactment of the National Assembly.

The supervisory jurisdiction of the Federal High Court has not been expressly conferred by the Constitution as in the case of the High Court of the Federal Capital Territory Abuja and High Court of a State. It is section 7(9) of the Federal High Court Act (as amended) that expressly conferred supervisory jurisdiction on the Federal High Court. It is the combine provisions of sections 6(6)(a) and 252 of the 1999

constitution that conferred in the Federal High Court inherent supervisory power over inferior courts and tribunals. The Court also has supervisory jurisdiction over matters relating to operation of companies.

4.4 APPELLATE JURISDICTION OF THE COURT OF APPEAL

4.4.1 In Civil Appeals”

Section 243 of the 1999 Constitution provides that:

“...any right of appeal of the Court of Appeal from the decision of the Federal High Court or a High Court conferred by this Constitution shall be... exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter.

4.4.2 In Criminal Appeals

Section 243 of the constitution 1999 provides that:

Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or the High Court conferred by this constitution shall be exercisable in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this constitution and any power conferred upon the Attorney General of the Federation

or the Attorney General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed.

The Sharia Court of Appeal, Customary Court of Appeal and Election Petition Tribunal have no jurisdiction to entertain criminal causes or matters. Therefore no criminal appeal can lie from their decisions to any court.

In the case of the Code of Conduct Tribunal, the right of appeal from its decision to the Court of Appeal is conferred by section 246(1) (a) of the 1999 constitution and shall be exercisable at the instance of a party to the proceeding and in accordance with the rules of courts for the time being in force regulating the power, practice and procedure of the Court of Appeal. Likewise in the case of an appeal from the decision of a Court Martial the right of appeal shall be exercisable at the instance of a party to the proceeding and in accordance with the rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal. It would be observed from the above, that

the appellate criminal jurisdiction of the Court of Appeal could be invoked by any of the parties in the criminal proceedings in the Federal High Court, State High Court and High Court of Federal Capital Territory, Abuja, the Court Martial and Code of Conduct Tribunal. This means only the accused person and the prosecutor are competent to invoke criminal jurisdiction of the Court of Appeal. "Person having interest" in the matter such as a complainant, his relations or friends and relations of an accused person have no right of appeal against any decision of a High Court either as of right or with the leave of court.

4.4.3 Jurisdiction on Reference of Questions

By virtue of the provision of section 295(3) of the Constitution 1999, where any question as to the interpretation or application of the Constitution arises in any proceedings in the Court of Appeal and the court is of the opinion that the question involves a substantial question of Law, the court has the jurisdiction to *suo motu* and if any

party to the proceedings so requests, to refer the question to the Supreme Court for determination.

Section 295(3) of the Constitution provides;

where any question as to the interpretation or application of the constitution arises in any proceedings in the Court of Appeal and the court is of the opinion that the question involves a substantial question of law, the court may, and shall, if any party to the proceeding so request, refer the question to the Supreme Court which shall give its decision upon the question and give such directions to the Court of Appeal as it deems appropriate.

4.5 JUDICIAL PRECEDENT, DECISION OF THE IST AND JURISDICTIONAL CONFLICTS

Judicial precedence is the making of law by courts. Courts do also make laws in recognition and applying new rules while administering justice. Judicial precedent therefore means a decided case that furnishes a basis for determining later cases involving similar facts or issues. The IST has applied the doctrine of judicial precedent otherwise called *stare decicis*.

4.5.1 Decision of the IST

The IST is mandated to give its judgment in writing and may make order as to fines, suspensions, withdrawal of registration of licenses, specific performance or restitution. A certified true copy of the decision of the Tribunal shall be supplied to the parties upon request¹⁵.

An award or judgment of the tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Registrar of the Federal High Court by the tribunal¹⁶.

However as we have seen¹⁷, this provision of section 293 (3) of the ISA is as superfluous as it is unnecessary because it is capable of undermining the authority of the IST. Why would the IST not be conferred with powers to execute its own judgment is hard to imagine. The situation as it is makes it arguable (that since judgment of the IST has to be

¹⁵ Section 293 (2) ISA 2007

¹⁶ Section 293 (3) ISA 2007

¹⁷ Page 13 Supra

registered with the Federal High Court to be efficacious) whether appeal against the judgment of the IST should not go to Federal High Court instead of the Court Appeal.

One may also argue that enforcement of judgment is a matter adequately provided for under the Sheriff's and civil processes law and not that of jurisdiction of a court or otherwise. Therefore could not the IST be conferred with powers to execute its own judgment? Failure to do so by the Act impugns jurisdiction of the IST as it would have been better for appeals against judgment of the IST to go to the Federal High Court.

By the provisions of section 293, 294 ad 295 of the IST:

- a) Judgment of the tribunal shall be enforced as if it were a judgment of the Federal High Court.
- b) The tribunal shall have exclusive jurisdiction on matters specified in the Act; and
- c) The tribunal has power to review its own decision.

The tribunal has, in its short years of existence expanded the frontiers of capital market jurisprudence in Nigeria through its decisions. Some of the landmark cases so far decided by the tribunal are summarized below:-

- (a) Chief Ezemegbe Livinus Vs Nigeria Stock Exchange & Anor¹⁸ This case dwelt on the application of the Investors Protection Fund provided for under Part XIV (sections 197 – 221 of the ISA) for the compensation of investors who suffer defalcation in the hands of stock broking firms or their employees. In its judgment, the tribunal directed the Nigerian Stock Exchange (NSE) and the Securities & Exchange Commission (SEC) to within 90 days, draw up and make public rules and guidelines for the application of the Investors Protection Fund to compensate Investors in deserving cases. The tribunal equally held that it is not a prerequisite that a stock broking firm must have wound up for an investor to access the Fund and directed that

¹⁸ (2009) 3 NISLR 113

the Plaintiff be compensated from the Fund. Prior to this decision, the Investor Protection Funds in Nigeria had been lying dormant without any rule to regulate its use and nobody had been compensated there from.

- (b) FIS Securities Ltd Vs Securities & Exchange Commission (SEC)¹⁹. This was an appeal from the decision of the Administration Proceedings Committee (APC) of SEC. Here a syndicate acting through some 20 stock broking firms forged the certificates of the shares of Nestle, Union Bank, First Bank, etc and sold same on the floor of the Nigerian Stock Exchange. The Tribunal, in its decision, varied SEC's order on the Appellant to buy back the share to avoid a multiple buy-back effect, as the shares had passed through several bonafide purchasers for value without notice. Rather, it upheld the order of refund with interest where the value of the shares has appreciated.

¹⁹ (2004) 1 N.I.S.L.R. 166

(c) Lighthouse Assets Management Company Ltd va SEC²⁰.

Here the Administrative Proceedings Committee (APC) of SEC at the end of its hearing, awarded costs to itself. In up turning APC's decision, the tribunal held that costs are for the parties and that an adjudicating body or an administrative body performing quasi-judicial functions (as APC) is not allowed to award costs to itself.

(d) Molten Trust Ltd & Or vs. SEC²¹ Here the tribunal held

that the capital market is a very sensitive one and that stock brokers must adhere to acceptable standards, such as the principle of "know your customer" in order to avoid executing share transactions for imposters.

(e) Olisaemeka vs. SEC²² In this case, the tribunal restated

its resolve not to be slave to technicalities and forms, by virtue of its statutory mandate to dispense quick, flexible and affordable justice.

²⁰ (2004) 1 NISLR 81

²¹ (2007) 2 NISLR 139

²² (2007) 2 NISLR 177

4.6 **CONCLUDING REMARKS**

In the 1999 Constitution chapter viii contains provisions relating to establishment and status of courts. Of particular importance to this part of this study is the jurisdiction of the courts discussed vis-à-vis the jurisdiction of the IST. We have discussed the original jurisdiction of the courts together with the appellate and supervisory jurisdiction as well their jurisdiction on reference of question regarding interpretation of the constitution.

The status and jurisdiction of the High Court and the Federal High Court vis-à-vis that of the IST as provided for in the ISA made an interesting study. It is obvious from the study that there is a need to reform the jurisdiction of the IST to make it subject to the jurisdiction of the High Court and the Federal High Court. Similar situation of jurisdictional conflict between the High Court and the Federal High Court that existed prior to 1979 had been resolved by way of amendment of that Constitution by substituting section

230(1). The amendment not only expanded the jurisdiction of the Federal Court but made it subject to other provisions of the Constitution including the jurisdiction of the High Court. The same provision was adopted as section 251 of the 1999 Constitution.

It is our opinion that making jurisdiction of the IST subject to that of the Federal High Court will be a better way of establishing precedence of jurisdiction in capital market cases.

CHAPTER FIVE

5.1 SUMMARY

This research work critically analyzes the law regulating activities of the several players in Nigeria's capital market and the institution vested with the adjudication of disputes which may arise between the operators.

In chapter one, the work chronicles the laws, rules and bodies/commissions prescribed, over time, for instilling discipline in the market. These include:

- a) The 1973 Capital Issues Commission (CIC) established pursuant to Capital Issues Commission Decree 1973.
- b) Enactment in 1979 of the Securities and Exchange Commission (SEC) Decree 1999 which among many reforms also retained the dispute resolution arrangement of the 1973 Decree.
- c) Repeal of the 1979 Act by the *Securities Exchange Commission Act 1988* which vested the Federal High

Court with the jurisdiction over the offences and violations arising from the capital market transactions.

The setting up in 1995 of the Dennis Odife Panel which recommended the drafting of the *ISA 1999* which was promulgated on 29th May, 1999 and established the Investment and Securities Tribunal (ISA) was also chronicled. Finally, the *ISA 1999* review which took effect in 2005 taking into account the modern trends in the contemporary world of capital markets which led to the promulgation of *ISA Act No. 29 of 2007* was detailed.

In this chapter also the background to the establishment of the IST as established by the *ISA 2007* was discussed. Of significance to this study is the controversy which greeted the establishment of the IST particularly regarding its authority and jurisdiction as well as validity of the legislation *ISA 2007* and the extent of its conformity with the provisions of the constitution, the grundnorm of the country. The chapter not only analyzes the aims and objectives of the research work, which is to highlight the deficiencies in the

ISA 2007, but also focused on the scope of the work; that is, analysis of the legal status of the IST as enacted in the *ISA 2007* juxtaposed against the power of the judicature established in the 1999 constitution. The chapter, in addition, highlights the justification of the research which is finding ways and means of monitoring integrity of the capital market and the sustenance of confidence of investors.

Finally, the chapter explicitly spelt out the research methodology, which depended mostly on doctrinal research conducted in libraries. It also details out literature review on the operations of the IST, its composition, status and jurisdiction against the background of other courts already established by the constitution. There is also the organizational layout of the work in this chapter.

Chapter two contains conceptual clarification and definition of some basic legal concepts and/or terms necessary for understanding this work. These are: -

- i. "Constitution" which relates to the establishment of the IST.

- ii. "Jurisdiction" as relates to the exercise by the IST of its own jurisdiction.
- iii. "Judicial precedent" which is the making of law by the Court (IST) in recognition and applying new rules while administering cases before it.
- iv. "Decision/Judgment" as pertains the time of three months within which the tribunal shall deliver its judgment as provided in Section 289 (5) of the *ISA 2007*.
- v. "Functus Officio" relating to status of an officiating officer/court or tribunal who becomes "without further authority to adjudicate the matter twice".
- vi. "Res Judicata" as relates to an issue that has been definitely settled in judicial decision.
- vii. "Appeal" which refers to a proceeding to have a decision reconsidered by a higher authority.

Chapter three of the research work looks at the legal structure of the IST. This includes its establishment, composition, term of office of Chairman and members of the

tribunal, jurisdiction and powers of the tribunal, its review powers as provided in Section 290 (2) (h) of the Act as well as the tribunal's appellate jurisdiction of resolving disputes arising from capital market transactions. It eventually provides the foundation for consideration of the status of the provision of the *ISA 2007*.

Chapter four deals with the IST and the judicature provisions of the 1999 Constitution. Under this, establishment of the Supreme Court, the Court of Appeal, Federal High Court and the High Court of the FCT and of the states were discussed. Considered here also are the status of the High Courts and the Federal High Court, the appellate Jurisdiction of High Court and the Federal High Court as well as the appellate jurisdiction of the Court of Appeal in civil and criminal matters and jurisdiction of Reference of questions. The concept of jurisdictional conflicts has also been considered in this chapter. It dealt with the areas of conflict with established legal principles and the 1999 constitutional provisions.

Finally chapter five gives a brief summary of the work. It also contains observations made through the course of the research as well as preferred suggestions/recommendations and in the final analysis, a concluding remark.

5.2 CONCLUSIONS/FINDINGS

We have observed in the course of this research that the rating of a country's securities market is, to a large extent, based on ease of access to justice by citizens to ventilate grievances arising from dealing in the market. Thus as we have seen the establishment of the IST is borne out of commercial exigency as conceived by the Chief Denis Odife Panel in 1995. The thinking is that as against the regular courts, the IST as conceived is a special know-how court system that should be immune from drudgery and tardiness, hence prompt orders or restraints are given by the tribunal taking into account the progress of the market.

However, in the course of the research the following were observed as the shortcomings of the IST:

- i. Vesting exclusive jurisdiction on the IST on all matters mentioned in Section 284 (1) of the *Investments and Securities Act (ISA) 2007* conflicts with the constitutional provision in section 251 (1) (e) and section 272 of the 1999 constitution which gives the Federal High Court and State High Courts jurisdiction, subject to Section 251 thereof, to hear and determine "*any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue...*"
- ii. Section 290(2) of the *ISA 2007* which gives the IST, for the purposes of discharging its functions under the Act, power to review its decision is a very strange provision especially because the Act has not provided the circumstance under which the tribunal shall do this.

This provision of the *ISA 2007* directly offends the established legal principle of *functus officio*.

Applying this legal principle, the court held in UBN vs CFAO (1997) 11 NWLR (pt 527) page 118 that if the task of a court or tribunal is performed, it has fulfilled its function, discharged its responsibility or accomplished its purpose and by this legal principle, the court or tribunal is therefore of no further force or authority. Consequently a court after making an order or giving a judgment becomes *functus officio* and has no power to review such order or judgment except in case of correction of mistakes and accidental slips or where the judgment was obtained by fraud. The subsection complained of also offends the legal principle of *res judicata*.

This principle presupposes that an issue that has been definitely settled in a judicial decision cannot be reopened. To do otherwise as Section 290 (2) (h) provides, would mean that there will be no end to litigation.

iii. Another observed shortcoming of the IST can be found in section 293 (3) of the *ISA 2007*. The subsection says that an award or judgment of the Tribunal shall be enforced as if it were judgment of the Federal High Court "*upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the Tribunal*". The issue that is pertinent here as can be observed from our study is that Section 295 (1) of the *ISA* says any person dissatisfied with the decision of the IST may appeal to the Court of Appeal. This means that the IST is not subordinated to the Federal High Court. Then why must a copy of the judgment of the IST (court of coordinate jurisdiction) be registered with the Chief Registrar of the Federal High Court for it to be efficacious as provided in 293 (3) of the *ISA 2007*?

iv. Another observation is the issue of eligibility to hold the office of Chairman and members of the IST vis-à-vis the eligibility for the office of the Chief Judges and judges of the Federal High Court. Second observation is the issue of salaries and allowances of the Chairman and members of the tribunal and that of the Chief Judge and judges of the Federal High Court and even that of the Chief Registrars of both courts which are said to be the same as provided in Section 280 of the *ISA 2007*.

While for eligibility to hold the offices, section 275 (1) *ISA 2007* says the Chairman shall be a Legal Practitioner of not less than 15years standing with cognate experience in capital market matters, the 1999 constitution in Section 250 (3) says a person shall be eligible to hold the office of the Chief Judge of the Federal High Court if he qualifies as a lawyer for a period of not less than ten years only. There seem to be no clear justification for the

difference in eligibility for appointment of Chairman of the tribunal and that of the Chief Judge of the Federal High Court since the ISA has, by fixing same salaries for them, equated the status of the tribunal to that of the Federal High Court. More so since appeals from both courts lie to the Court of Appeal.

5.3 RECOMMENDATIONS

1. It is a fact that despite the provision of Section 284 (1) of the *ISA 2007* which gives **exclusive jurisdiction** to the IST on all matters mentioned therein, the provisions of section 251(1) (e) of the 1999 constitution gives the Federal High Court **exclusive jurisdiction** regarding matters under CAMA. It is therefore recommended that Section 284(1) *ISA 2007* be amended to allow both the tribunal and the Federal High Court have jurisdiction to adjudicate on disputes arising under the ISA and regulations made there under. In the alternative appeal from the judgment of the tribunal be made to the Federal

High Court instead of to the Court of Appeal. Yet another alternative is for the IST to be merged with the Federal High Court and a specialized unit be created in the Federal High Court to be known as Capital Market Dispute Resolution Division like the Admiralty Division of the High Court in England, to handle disputes from the capital market.

2. The power to review its decision as given to the IST in Section 290 (2)(h) of the *ISA 2007* be expunged as it offends the age long settled legal principles of *functus officio and res judicata* and the long line of cases decided based on these principles.
3. The issue of registering the judgment or award of the tribunal at the Federal High Court for it to be enforced as enshrined in Section 293(3) *ISA 2007* should be done away with. It is submitted that this tantamount to giving a judicial responsibility without authority. Enforcement of judgment is clearly a process of the *Sheriffs and Civil Processes Law* as applied by the Federal High Court.

Same can be made to be applicable to judgments of the IST.

4. Also eligibility to hold office by the Chairman and members of the IST should be made same as for the Chief Judge and judges of the Federal High Court since the tribunal's judgment is unenforceable until it is registered at the Federal High Court, the salaries and allowances of the judges are the same and that appeals lie from both courts to the Court of Appeal.
5. The term of office of the Chairman and members of the tribunal should also be made same with that of the Chief Judge and judges of the Federal High Court because it is not of any practical utility or purpose to limit the tenure of Chairman and members of the tribunal to a term of five and four years renewable only once respectively. Law is like wine. The older one is in it the better he becomes. The benefit of on the job experience will definitely be lost for all new comers into the office of Chairman and

members of the tribunal while their counterparts in the Federal High Court suffer no such disability.

BIBLIOGRAPHY

A. Books

Blacks Law Dictionary, 8th Ed. West Thomson, 2004

Chambers Dictionary, 1998

Nwabueze, B., Constitutional Democracy in Africa
vol. 1, Spectrum books, 2003

Odife, D., understanding the Nigerian Capital
market 1986, Vintage press, New York.

B. Journals /seminars

Aigbekaen, E.K. The role of the Investments &
Securities Tribunal (IST) in the
enforcement of capital market
laws; paper presented at the
workshop on IST & investor
protection, securities & exchange
commission (SEC) training
school Lagos, 16th June, 2004.

Akume, A.A; The unconstitutionality of the
IST, PhD Seminar, presented at
the Faculty of Law, A.B.U. Zaria,
2007.

Idigbe, A. Conducting a Case at the IST;
paper presented at the
Conference on the IST, SEC
Training School Lagos, 16th June,
2004.

- Lomnicka, E., Reforming UK Financial Services Regulation: The Creation of a single Regulator (1999) Journal of Business law 480, 485.
- Mani, U.D., Historical Development of the Nigerian Stock Exchange, Paper presented at a Seminar with the theme "Understanding the Capital Market" organized by the Katsina State Local Government Service Commission at the Conference Hall, Katsina University, on the 21st, March, 2007.
- Ndanusa, S.A., Implications of Judicial Decisions on Capital Market in the Nigerian Economy; paper presented at the seminar on Securities Law & the Capital Market, Nicon-hilton hotel, Abuja, 5th - 6th Dec. 2003.17.
- Ogowewo, T., The Market for Corporate Control and the Investment and Securities Act, 1999 (British Council of International and comparative Law, London, 2002) p.4.

- Oluwanuga, S.E., Dispute Resolution in the Nigerian Capital Market, being a paper delivered at the Workshop on Introduction to Capital Market Organized by the SEC in Lagos on the 18th day of May, 2005. P.9.
- Raji, K.G., Constitutional Limitations of the Investment and Securities Tribunal, Modern Practice Journal Law, Nigerian and International, A Comparative Review of Law and Practice, Vol. 6, Nos. 1-2, p. 104.
- Usman, B., Framework for Resolution of Disputes in Nigerian capital market; paper presented at the workshop on Introduction to Capital market II, SEC Training School, Abuja, 28th Aug., 2003.