



**THE ROLE OF NIGERIAN COURTS AND TRIBUNALS
IN THE ADMINISTRATION OF JUSTICE**

BY

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DECLARATION

I, AHMED MUHAMMED ZANGI hereby declare that this project has been produced by me and is a record of my own research work. It has not been presented in any previous application for a higher degree by anybody. All published and unpublished materials cited have been duly acknowledgement.

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SIGNATURE

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DATE



CERTIFICATION

This project titled “THE ROLE OF NIGERIAN COURTS AND TRIBUNALS IN THE ADMINISTRATION OF JUSTICE”, meets the regulations governing the award of the Postgraduate Diploma in Military Judge Advocacy of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This project is dedicated to the Almighty Allah for his grace and mercy. It is also dedicated to any one who was victimized by virtue of technicalities in the practice and procedures of Nigerian Courts.



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I am profoundly grateful to many sources, firstly, to Almighty God for the opportunity, strength and good health to enable me undertake this study.

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ABSTRACT

The judicial powers of the Federation and of States are vested in Courts established by section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other courts established for the Federation by an Act of the National Assembly or in case of States, Law made by the relevant State House of Assembly. The Judicial powers gradually, due to increase in litigations and criminal trials beyond the capacity of the regular courts, were no longer exclusive to the Courts but rather had to be shared with tribunals established for particular purposes. This development consequently brought about two parallel systems of adjudicating institutions operating side by side.

While some tribunals, like the investment and Securities Tribunal, have justified their establishment by dispensing Justice timeously and by experts in the particular field of the tribunal's jurisdiction, others seem to have defeated the very essence of their establishment like Code of Conduct Tribunals. Tribunals like the Code of Conduct Tribunal apart from being redundant is seen as an agent of the Federal Government since it is absolutely controlled by the Code of Conduct Bureau, which is directly under the Presidency. This explains the redundant nature of the tribunal as it serves more or less as a stooge of the Presidency from where most of the culprits should have been arraigned.



The Laws establishing various tribunals have their inbuilt shortcomings that hinder the trial procedure or occasion unnecessary delays contrary to the very essence of establishing the tribunals.

The courts in Nigeria could be said to have contributed in some measure to the development of Law, particularly in the field of animal Law and Constitutional Law. However administration of Justice seems to suffer several challenges. Some of these challenges were attributed to factors associated with adversarial system, coupled with rancorous nature of proceedings and so on. Details of this has been vividly elucidated. The development in respect of funding of Courts has been pointed out.



LIST OF ABBREVIATION

All F.W.L.R	-	All Federation Weekly Law Reports
All N.L.R	-	All Nigeria Law Reports
CA	-	Court of Appeal
C.F.R.N	-	Constitutional of the Federal Republic of Nigeria
E.N.L.R	-	Eastern Nigeria Law Report
E.R.N.L.R	-	Eastern Region of Nigeria Law Report
Ibid	-	Same citation with the one fully cited above
Infra	-	Discussed elsewhere after this
ISA	-	Investment and Securities Act
IST	-	Investment and Securities Tribunal
L.F.R.N	-	Laws of the Federation of Nigeria
L.R.S.C.N	-	Law Reports of supervisor Courts of Nigeria
N.C.L.R	-	Nigerian Constitutional Law Reports
N.E.L.R	-	Nigerian Election Law Report



N.L.R	-	Nigerian Law Report
N.W.L.R	-	Nigerian Weekly Law Report
N.S.C.C	-	Nigerian Supreme Court Cases
Op cit	-	Cited elsewhere
PFA	-	Pension Funds Administrator
PenCom	-	National Pensions Commission
PFC	-	Pension Funds Custodian
SC	-	Supreme Court Report
Supra	-	Cited elsewhere before this
WACA	-	West African Court of Appeal
W.L.R	-	Weekly Law Report
W.N.L.R	-	Western Nigeria Law Report
W.R.N	-	Weekly Report of Nigeria



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CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 INTRODUCTION

The court of law is an organ belonging to the judiciary department in the 3 arms of government in Nigeria. Public administration of justice is the primary function of the court. The courts are established with certain powers. The doctrine of separation of powers, places the three arms of government (Executive, Legislature and the Judiciary) on equal pedestals but with different areas of authority and responsibility. While the executive, implements laws enacted by the legislature in the course of governance, the courts interprets same for easy implementation. The courts, therefore, has long been an instrument of stabilization and a tool for administration of civil Justice.

Administration of justice is one of the vital functions of the courts. Generally, the word justice may mean reasonableness, fairness, equality of treatment e.t.c however, the courts have the most authoritative say in the determination and pronouncement of what justice is in every situation involving



claims and counter claims to legal rights and duties. Justice viewed in this context is an attempt to define the workings of the Nigerian courts in relation to how it determine and adjudicate matters brought before it. Relevant to this, is the concept of fair hearing, composition of the courts and the correctness of procedural rules. All these must be taken into account before the courts can perform its role and function Justiciably; hence section 36 of the 1999 constitution emphasizes on the right to fair hearing both in civil and criminal matters. This implies both substantive and procedural fairness taking into accounts jurisdiction and composition of courts.

The relevance of the courts has been emphasized by the jurists and writers to include as part of the functioning tools in governance. A court occupies a very unique position and performs near omnipotent functions, deriving from the role assigned to it in the constitution¹. In Nigeria, the 1999 Constitution of the Federal Republic of Nigeria (CFRN) provides that, “The judicial power of the federation shall be vested in the courts.”² This power includes the power to adjudicate disputes between all persons, government and any person, interpretation of the law, determination of appropriateness of all actions, proceedings, citizens’ rights and obligations of government, agencies, corporate bodies or persons.³ The



functions of the courts therefore, include the promotion of justice, rule of law, stability, democracy, human rights and good governance and opportunity for sustainable progress, all of which form the bedrock of civil justice. In other words, the courts play a vital role in ensuring justice, by enabling a conducive atmosphere for

¹ Eri, U. "An Overview of the Role of the Judiciary under the Constitution". Paper Delivered at the All Nigerian Judges' Conference 2001, P. 200.

² Section 6 (1) Constitution of the Federal Republic of Nigeria 1999.

³ Chapter VII Constitution of the Federal Republic of Nigeria 1999.

individuals and groups to appreciate their potentials and strive to contribute their quota in dispensation of justice. The court does not only guarantee humane and tolerable governance but also ensures stability in the political system⁴.

As highlighted above, the judicial powers of the Federation and of States are vested in courts established by section 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and other courts established for the Federation by an Act of the National Assembly or in case of states, law made by the relevant State House of Assembly. The judicial powers gradually, due to increase in litigations and criminal trials beyond the capacity of the regular courts,



were no longer exclusive to the courts but rather had to be shared with tribunals established particular purpose. This development consequently brought about two parallel systems of adjudicating institutions operating side by side.

While some tribunals, like the investment and Securities Tribunals, have justified their establishment by dispensing justice timeously and by experts in the particular filed of the tribunal's jurisdiction, others seem to have defeated the very essence of their establishment like Special Military Tribunals, which hardly respect the fundamental right to fair hearing much less any other right. Tribunals like the Code of Conduct Tribunal apart from

⁴ Oputa, C. "Journal of Contemporary legal Problem Vol. 3" (July, 1990), P.20.

being redundant is seen as an agent of the Federal Government since it is absolutely controlled by the Code of Conduct Bureau, which is directly under the Presidency. This explains the redundant nature of the tribunal as it serves more or less as a stooge of the Presidency from where most of the culprits should have been arraigned.⁵ The laws established various tribunals have their inbuilt shortcomings that hinder the trial procedure or occasion unnecessary delays contrary to the very essence of establishing the tribunals. The problems shall be scrupulously appraised.



Civil justice remains a cardinal goal of every nation. It can be said to be a multi-dimensional phenomenon that encompasses physiological, cultural, social, economic and political dimensions. Thus, civil justice may as well encompass fairness in all endeavours. It embraces such aspects of improved quality of life through social justice, freedom, equality of opportunity, equitable distribution of income, resources and good governance. Hence, it is the concern of this research to examine the role of the courts and tribunals in the administration of justice.

Generally, the term Court of law relates to judges and their judgments, as one can talk of judicial decision⁶. The courts through its roles, acts as a stabilizer that interprets controversial issues with the view to stating the law as well as ensuring justice. Thus, its role includes a process of bringing

⁵ Hussein, M. the role of Tribunals and dispute resolution centers in the administration of justice in Nigeria. (PhD Dissertation unpublished) submitted to the school of Post Graduate, ABU Zaria (2012) P viii

⁶ Tobi N, "the Role of the judiciary in National Decision-Making in Nigeria". Paper Presented at National War colleges, Abuja 5 October, 2004



about fundamental sustainable improvement in the lives of the people.⁷ Although, this latter role is sometimes prevented by some shortcomings such as prolong cases, Persistent misuse of interlocutory applications, misuse of preliminary objections and jurisdictional challenges and so on; however, there is the need to study the role of courts and tribunals in the administration of justice in order to appraise the Nigerian situation. The seeming shortcomings of the courts and tribunals the desire to juxtapose the two institutions motivated the interest in this study.

1.2. STATEMENT AND OBJECTIVES OF THE RESEARCH

Administration of justice has from time immemorial been the exclusive preserve of courts of law. The establishment of tribunals with judicial powers parallel to those of courts of law is sometimes, due to efficacy of tribunals in carrying out an expedient trial devoid of technicalities that may prevent the access of justice. The administration of justice in our Nigerian Courts, at times is prevented by some technicalities; for instance, every conceivable defence in Court is leveled on jurisdiction. The implication of this is that, the defence of jurisdiction will be trashed first before the merits are considered; except in the cases of proceedings brought by originating summons whereby the Court takes



the jurisdictional objection with the merit. In all other forms of proceedings, the jurisdiction is taken

⁷ Lagon, S.S “The Role of the Independent Judiciary” Freedom Paper Series 1993.

first, the ruling is delivered and that becomes a whole new litigation. Whoever loses goes to the Appeal Court and from there to the Supreme Court. And meanwhile, the case itself gets bogged down, because the case would not be tried until the question on whether there is jurisdiction is resolved. Sometimes, this might take as much as 10 years awaiting Court verdict on the jurisdictional challenge. Many litigants in this circumstance usually abandon the proceedings, only few continue the struggle after many years of delay and legal expenses. Albeit these shortcomings, it is desirous to examine the role of the courts and tribunals in the administration of justice with the view to examining the establishment and powers of the courts and tribunals vis-à-vis their challenges in the administration of justice. It is in this regard that the study seeks to find answers to the following questions:

- a. What are the roles of courts and tribunal?
- b. How the courts and tribunals were established?



- c. What are the powers of the courts and tribunals in the administration of justice?
- d. What are the challenges faced by the courts and tribunals in Nigeria?

The main objective of the study is to examine the role of the Nigerian courts and tribunals in the administration of justice. The specific objectives of the study are:

- a. To examine the roles of courts and tribunals in Nigeria.
- b. To examine the establishment & powers of courts and tribunals in the administration of justice.
- c. To identify the challenges posed to the courts and tribunals in Nigeria.

1.3 NATURE AND SCOPE OF THE RESEARCH

This research work seeks to examine the role of courts and tribunals in the administration of justice. In determining this, the research will look at the establishment and powers of courts and tribunals vis-à-vis judicial review, the exercise of such powers by the courts, efficacy of tribunals and so on.

Judicial reviews is vital for maintenance of the rule of laws and protection of individual's rights, interest and liabilities hence, the research will also look at



the concepts of the rule of law and separation of powers. Also important in this research, is the problems and challenges of courts and tribunals in the administration of justice. To this end, the scope of the research would be limited to the Nigerian courts and tribunal in the administration of justice. Reference may be made to other countries for the purpose of comparison or illustration.

1.4 METHODOLOGY AND LITERATURE REVIEW

The methodology is a combination of documentary and interviews. The study also adopted the descriptive method:

- a. **Sources of Data.** Data were sourced from both primary and secondary sources. Primary data were sourced from relevant individuals who are seasoned practitioners of the legal profession. Secondary data were sourced from published works including books, reports, journals, magazines and newspapers.
- b. **Method of Data Gathering.** Primary data were gathered through unstructured interviews with justice, judges, jurists and legal practitioners, consultations and observations. Secondary data were sourced through the use of the various libraries, and the internet.



- c. **Method of Data Analysis.** The data collected were analyzed qualitatively. Specific cases were cited, isolated, described and their impact on the judiciary critically examined.

Several books, articles and journals have been written on the role of courts in the administration of justice. Few among the literatures digested, were “The independence of the judiciary in a Democratic society, its needs, it’s Positive and Negative aspects,”⁸ “The place of the judiciary in the 1999 constitution”⁹. The role of Nigerian courts in the Dispensation of justice¹⁰.

⁸Oputa, C. “The Independence of the judiciary in a Democratic society-Its Needs, its Positive and Negative Aspects” in Elias T.O and Jegede M.I., Nigerian Essay in Jurisprudence (M.I.J Publishers Ltd, 1993).

⁹ Karibi-White, A.G. “The Place of the Judiciary in the 1999 Constitution” All Nigerian Judges Conference (Spectrum Law Series 2001).

¹⁰ Moses J. “The Role of Nigerian Courts in the Dispensation of Justice” a paper presented at NASMP Zaria, Kaduna on the 8th September 2012.

“The role of the judiciary in National Decision Making in Nigeria”¹¹ and so on.

However, very little or no attempt were made by authors to juxtapose the role of courts and tribunals in the administration of justice.

While considering this area of study, the research will also focus on the contributions of scholars who display their academic exposition, skills and



professionalism in the subject matter of this research and review some contemporary issues on the subject matter with additional exposition.

1.5 ORGANIZATIONAL STRUCTURE OF THE REVIEW

This research work is made up of five chapters. Chapter one which is the general introductory chapter, include an Introduction, Statement and Objectives of the research, Nature and Scope of the research, Methodology and Literature review and Organizational Structure of the review.

Chapter two discusses constitutional concepts of the rule of law, separation of powers, judicial structure and powers.

Chapter three discusses the administration of justice by the courts and tribunals. Under this, the establishment and powers of courts, tribunals, and the power of judicial review were examined.

Chapter four explains the challenges of the courts in the administration of justice. Under this, Technicalities, Appointment and

¹¹Tobi N; The Role of the Judiciary in National Decision making in Nigeria.” a paper delivered at the National War College, Abuja on the 5th October 2004.





Disciplinary Powers of the judges, funding of the courts and tribunals were discussed.

Lastly, chapter five is devoted to Conclusion, Observation and Recommendations.



CHAPTER TWO

2.0 CONSTITUTIONAL CONCEPTS

2.1 RULE OF LAW

The concept of rule of law is pertinent to the administration of justice. Constitutionalism presupposes adherence to the law. The Rule of law is one of the leading principles of constitutional law. Historically, the concept is traceable to ancient period. During the middle ages, the idea of Rule of law was evolved when absolute Monarchies existed and constitutionalism have been revived due to tyranny.¹² The concept has achieved phenomenal development since the time of Aristotle in 2000 B.C to the time of “A.V. Dicey” who is seen as a father of the concept. He expatiated and expanded the nuances of the concept. Although it is not within the purview of this discussion to discuss the phenomenal development of the concept. However, reference may only be made to Dicey’s postulations on the meaning of the concept.

Rule of law has been defined as the supremacy of regular as opposed to arbitrary power or as a doctrine that every person is subject to the ordinary law within the jurisdiction.¹³



According to Dicey, the concept of rule of law connotes or means in the first place, the absolute supremacy of regular Law as opposed to the

¹² Dalhatu, M.B what is constitutional law? ABU Press Limited, Zaria, 2008 P.12

¹³ Blacks law Dictionary, Seventh Edition, page 1332

influence of arbitrariness of prerogative, or even of wide discretionary authority on the part of the government...a man may be punished for a breach of Law, but he can't be punished for nothing else.¹⁴

In other words, the Supremacy of the Law and the Supremacy of legal procedure over and above the arbitrary exercise of governmental power, any one affected by the exercise of governmental power can go to Court. Political power is given by law, therefore no arbitrariness in any governmental action. Every action must be within the law and supported by it. Citizen's rights must be respected by all governments.

Secondly, that all classes of people are to be subjected to ordinary law of the land, administered by ordinary law courts. All men in government or as ordinary Citizens are under same duty to obey same law i.e. equality before the law.



Thirdly, that the Rule of law is based on individual rights, as defined and enforced the constitution and the Courts without fear or favour, and resist any encroachment by government or political parties. The concept should be employed only to safeguard and advance the civil and political rights of individual in a free society but also the establishment of social, economic, educational and cultural conditions which are essential to the full

Development of this personalty.¹⁵

¹⁴ A. V. Dicey, "Introduction to the study of the law of the constitution" (London: Macmillan, 1959) P. 202.

¹⁵ See Chapter IV of the 1999 Constitution of Nigeria

The Rule of Law has been one of the most used, misused and even abused constitutional concepts. It has been pressed to service and a ready tool in the hands of the democrat, the dictator and the tyrant. It is also a nebulous concept whose meaning and content vary from place to place. It has been said that, '...the Rule of Law is based upon One permanent and fundamental factor, as well as others which may be considered more flexible and relative. This permanent factor is the belief that every individual has the right to enjoy the dignity of man. There is another factor which is more flexible and complex, namely that, a country which takes the Rule of Law as its authority is not obliged to adopt only one particular form of legal procedure and institutions...'¹⁶ The Rule of Law is certainly



not a monopoly of any system or tradition of government. It is a universal concept.

This point was clearly put by a former chief- Justice of Nigeria at the African Conference on the Rule of Law held in Lagos when he said,¹⁷

It has been said that the rule of law is mainly an Anglo-American institution: that the concept of 'government under law' and such phrases as the 'supremacy of law' and 'the rule of law' are all purely Western inventions. The Communist analysis maintains that everything is legal which is good for the state and the problem of adjusting the legitimate claims of the individual and his society has no place.

¹⁶ Jean-Flavien Lalive, Secretary-General of the International Commission of Jurists. 1961. held in Lagos when he said,¹⁷

¹⁷ Sir Adetokunbo Ademola in African Conference on the Rule of Law, Lagos 1961, P. 86.

The African, it was suggested, might find a third legal system which is neither 'the rule of law' nor the 'socialist legality' propounded by the communists. But the rule of law is not a Western idea, nor is it linked up with any economic or social system. As soon as you accept that man is governed by law and not by whims of men; it is the rule of law. It may be under different forms from country to country, hut it is based on principles; it is not an abstract notion.

While the idea might not have a stable meaning or content, its one abiding principle is regularity of the law, the idea that man is governed by law and regulations and not by the caprices of the rulers. This factor has always found recognition from time immemorial. As far back as 2000 B.C., the great Greek



philosopher, Aristotle had preached that the Rule of Law is preferable to the rule of man ¹⁸ and the English legal philosopher, Bracton has asserted that Man is governed by either human or divine law and that although the King might not, be subject to Man but he is subject to God and the law because it is the law that made him King.¹⁹

Rule of Law under the Nigerian Constitution (1999)

The provisions relating to the rule of law could be seen in the 1999 Constitution. Such provisions include Section 36(1) of the 1999 Constitution.

Which provides:

¹⁸ Politics. VIII. P.16

¹⁹ De Legibus et Constuetudinibus Angliac, E.5.b

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.²⁰

This section assures fair hearing and it also assures that a person cannot be arbitrarily tried except by a duly constituted court or tribunal.

Section 36(8) is very categorical about a criminal trial. It states:



No person shall be held guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.²¹

Section 36(12) gives credence to the idea of the rule of law when it provides:

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is identified and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a law of a state, any subsidiary legislation or instrument under the provisions of a law.²²

Nigerian Courts and the Rule of Law

The Nigerian courts decided so many cases touching on the rule of law, with particular reference to the provisions of the constitution. Such cases include *Aoko v. Fagbemi*.²³ The applicant was convicted and sentenced

²⁰ Nigeria Constitution (1999) Chapter IV, S. 36(1)

²¹ Ibid S. 36 (8)

²² Ibid S. 36 (12)

²³ (1961) All N.L.R 400

to pay a fine or go to prison for one month by a grade 'D' customary court for an alleged offence of committing adultery by living with another man without judicial separation from her husband. The law applicable to the court in question did not make adultery a written offence.



The application to the High Court on her behalf was for an order to quash the said conviction and set aside all consequential orders based upon it and to refund all the sums of money paid. Her contention was that there was no written law, which she violated, and that her conviction for an offence which was not written was contrary to section 21(10) of the 1960 Constitution which stated that no one shall be convicted for an offence which was not written.²⁴ The court held that the appellant's conviction was in violation of her right as guaranteed by Section 21(10) of the Constitution of the Federation of Nigeria, 1960.²⁵ This case is usually and always cited as a reference point while discussing the rule of law as a constitutional concept. In *Ojukwu v. Governor of Lagos State*, the Supreme Court of Nigeria held as follows:

“The Nigerian Constitution is founded on the rule of law, the primary meaning of which is that, everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers.”²⁶

²⁴ Nigeria Constitution (1960) S. 21(10)

²⁵ Aoko (1961) All N.L.R. 400

²⁶ *Ojukwu v. Governor of Lagos state* (1986) All N.L.R 233, at 246.

Of particular importance is the decision of the High Court of Lagos on the rule of law during a military rule. This was in the case of *In re Mohammed*



Olayori.²⁷ Taylor, C.J., frowned at the unlawful act of some members of the Nigerian Army. He stated as follows:-

I am, as I know is every member of the Bench and every right thinking and honest member of our society, against the prevailing conditions of corruption and embezzlement of Public funds existing in the country today, but we are to live by the rule of law; if we are to have our actions guided and restrained in certain ways for the benefit of society in general and individual members in particular, then whatever status, whatever post we hold we must succumb to the rule of law. The alternative is anarchy and chaos....²⁸

In *Ojukwu v. Governor of Lagos State*,²⁹ Kayode Eso J.S.C. said as follows, “The judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all persons in Nigeria. The law should be even handed between the government and citizen.”³⁰ It is interesting to note that this case was decided during a military rule and the decision was against the Military Government of Lagos State.

Rule of Law concept presents difficulty as a universally acceptable political concept. The application of the concept based on Dicey’s

²⁷ In re Mohammed Olayori, Unreported suit No. N/196/69 (1969)

²⁸ Ibid

²⁹ *Ojukwu* (1986) All N.L.R 233

³⁰ Ibid at 246



stereotyped meaning and the fact of the existence of government particularly in some African countries where we have Military regimes. For instance, the concept does not envisage a situation where all 3 or 2 arms of government, namely: Legislative, Executive and Judicial or Legislative and Executive fused together in one.

The Rule of Law does not envisage Decrees to the ground norms as against “the ordinary laws of the land”. So also a Military regime that rules by Decrees after, suspending the most vital sections of the Constitution that borders on Fundamental Human Rights - Chapter IV of the Constitution and its provisions and the section that provides for supremacy of the constitution and its provisions.³¹

In modern societies and due to complex nature of state such as technology, education, sophisticated crimes, commission and other human needs etc, makes it difficult to give definite contents to the Rule of Law as did Dicey.

The legislature and the other 2 arms of government are fixed and determined by provisions of the constitution or by conventions. The legislatures are to pass laws without discrimination and that such laws are not undermined by race, religion or sex. All laws passed by the legislature must have regard to all the guaranteed rights accorded a person.



³¹ Dalhatu, M.B, what is Constitutional Law? ABU Press Limited, Zaria (2011) P. 24

In relation to the Executive, the concept ensures adequate safeguards are laid to protect the Citizens against the abuse of power by the executive. Even in the event of exercising delegated powers, the legislature gives a guide. And the exercise of that power must not be injurious to person or property of an individual. Otherwise one can sue for breach of his freedom/liberty.

The judiciary must be independent of the other two arms of government. They should be able to perform effectively and freely.

In summary, the Rule of Law envisages a legislature with powers to make laws. An Executive to administer/execute such laws and a Judiciary to interpret and apply those laws.

The Rule of Law is the complete anti thesis and negation of reign of terror or chaos. As Lord Aikin in case of *Liverside V. Ser John Anderson*³², observed:

It has always been one of the pillars of freedom, one of the principles of liberty for which we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachment on his liberty by the Executive, alert to see that any coercive action justified in Law.



Oputa J.S.C in his paper, “The crisis in the Rule of Law” opined at pages 10-11 that there must be certainty in Criminal law/process. In case of Arrest,

³² (1942) AC. At P. 244

one must be told in black and white the reason for his arrest and must be granted bail so as to allow him prepare his defence. The Rule of Law has punishment in the sense of reform measures, wherever possible. Although the basic concept of fundamental rights are formally embodied in most modern Constitutions such as in Nigeria. However, the aspect of the Constitution, i.e. fundamental objectives and Directive principles of state policy do not form part of the Rule of Law because, they are not enforceable by any court of law. In most countries, it is no more absurd to find a citizen being subjected to both ordinary and special laws affecting special situation and enforced by special tribunals so as to accommodate the changing social needs³³. The Armed Forces are subject to the Military laws as well as ordinary laws. Till the advent of civilian regime in Nigeria, of many special tribunals outside the ordinary courts/laws were created by statutes in the case of Nigeria so also in other countries particularly the developing ones. All these changes can be seen within the changing conception of the Rule of Law.



Growing complexities of modern states enjoin the state to do all that is practicable to help attain the preservation of law and order, protection from foreign invasion, and to erect work of public importance for social welfare (and not for profit)³⁴. In line with the state's welfare mission of service

³³ S. 161 of 1979 Constitution of Nigeria

³⁴ Adams Smith, Wealth of Nations, Vol. 2. Chapter 1

necessarily regulates national life in diverse ways. The result is that discretionary authority in every sphere has become inevitable.

To appreciate the position of the Judiciary in regards to the concept of Rule of law, Sidgwick states:

The importance of Judiciary in political construction is rather profound than Prominent... in determining a nation's rank in political civilisation, no test is More decisive than the degree in which justice, as defined by the law is actually realised in its judicial administration, both as between one private citizen and another, and as between private citizens and members of the government.³⁵

2.2 SEPARATION OF POWERS

The phrase separation of power is one of the most confusing terms in the vocabulary of political and constitutional thought³⁶ and it simply connotes that, the three organs of government namely; Legislature, Executive and Judiciary should be well organized and none should interfere with each other.



The whole purpose of the concept of Separation of Powers is to avoid a tyrannical government.

The doctrine is defined as “the division of governmental authority into three branches of government; Legislative, Executive and Judicial, and each with specified duties on which neither of the other branches can encroach” or as “the constitutional doctrine of checks and balances by which the people

³⁵ H. Sidgwick Elements of Politics (London Macmillan, 1897) p. 481

³⁶ Dalhatu, M.B, what is constitutional law? Op. cit P29

are protected against tyranny.”³⁷ The concept or doctrine of separation of powers was more elaborated by Montesquieu. He is a French jurist who wrote in his book (1748) called *Del' Esprit des lois* (The Spirit of Laws). In Montesquieu's times, Monarchs were all in all over the continent. He saw in the absolute powers of the kings a great evil in that it was a negation of liberty of the other people. Therefore, he devised a system of government in which the evil of concentration of power in the hands of one person or organ is avoided. He saw that if the same person who made laws were to execute them, there may be tyranny. Again, if the executive were to decide disputes arising out of his actions, tyranny may be the result. Therefore, Montesquieu thought that the three wings of government, namely; the Legislature, the Executive and the Judiciary should be so organized as



not to interfere with each other. This he termed as separation of powers. And it simply means according to him that:

- (1) There must be no interference into the affairs of one organ by the other;
- (2) No person should discharge more than one function; and
- (3) No organ should exercise the functions of another organ.

Montesquieu elaborated these principles as follows:

The Executive must not interfere with the Legislature or the Judiciary;
the legislature must not interfere into the affairs

³⁷ Black Law Dictionary, Seventh Edition, page 1369-1370

of the Executive or the Judiciary, and similarly, the Judiciary must not interfere into the affairs of the Executive or the Legislature.

That no single individual should exercise more than one function, i.e., a person exercising Executive function, must not exercise either Legislative or Judicial function. In other words, he should exercise only executive function and not legislative or judicial functions. Similarly, if a person is exercising Legislative function, he must not exercise Executive or Judicial functions. A person, who



exercises judicial functions, must not exercise either Legislative or Executive functions.

That no organ should exercise the function of other organ. The difference between the second and third points is that under the second, it is a person who should not exercise the function of another wing, whereas under the third point, it is the wing which is not to exercise any other function except its own. According to Montesquieu, this scheme will keep the three organs which exercise three different kinds of powers within their limits and thus tyranny would be avoided and liberty perpetuated. John Locke, a political philosopher, also advocated the doctrine of separation of powers in his book, *Second Treatise of Civil Government*.

In the 18th century, the doctrine captured the minds of great thinkers so much so that the founding fathers of the Constitution of the United States of America incorporated it in the Constitution. In the United States, Executive power is vested in the President who is elected for a fixed term of four years. Unlike the British Prime Minister, he is not removable by the legislative Congress. His cabinet consists of the heads of the Chief departments who are personally responsible to the President alone for their departments but not to Congress (Senate) and House of Representative. Neither the President nor his cabinet members can sit or vote



in Congress. They have no control over the congress. The President, however, is empowered to veto laws passed by the congress. The Federal Supreme Court has power to declare the actions of the Executive or the legislature as unconstitutional, if these are contrary to the provisions of the Constitution. The decisions of the Supreme Court can be overruled by Congress by amending the Constitution with the consent of at least three-fourths of the states. This system is known as the system of checks and balances. Though the Constitution provides for a rigid demarcation of functions, yet in practice separation tends to break down.

Miller observed:

The culmination of almost 200 years of constitutional history is a swollen presidency, both in the personal sense of the near monarchical character of the Chief Executive and the constitutional sense of the several thousand bureaucrats high and low, who man the executive organ of presidency.³⁸

³⁸ Miller, A.S, Separation of powers-Does it still work, *Political Quarterly*, Vol. 48, No. 1, 1977, p. 54 at 58

The Doctrine of Separation of Powers under the 1999 Nigerian Constitution



Separation of powers being a constitutional concept is recognized under Sections 4, 5 and 6 of the 1999 Constitution of the Federal Republic of Nigeria.

The provisions are as follows:

Section 4(1) “The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives”, Legislative powers in respect of a state are vested in the House of Assembly of the State.

Section 5(1) Subject to the provisions of this Constitution, the executive powers of the Federation:

- (a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and Ministers of the Government of the Federation or officers of the public service of the Federation: and
- (b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.³⁹



³⁹ Ibid s 5(1)

Section 5(2) Subject to the provisions of this Constitution, the executive powers of a State:

- (a) shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and
- (b) shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.

Section 6(1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

From the above provisions of Sections 4, 5, and 6 of the 1999 Constitution, it could be asserted that separation of powers as a constitutional concept is recognized by the Nigerian Constitution.



The Nigeria courts have since given effect to this constitutional concept in their judgments even before the promulgation of the 1999 constitution. In ***Lakanmi v. Attorney General (Western State)***, the Supreme Court held inter alia “In the absence of anything to the contrary it has to be admitted that the structure of our Constitution is based on the separation of powers - the legislature, the Executive and the Judiciary. Our Constitution clearly follows the model of the American Constitution... .”⁴⁰

The court in the above case quoted with approval, the decision of the United States Supreme Court in ***United States v Lovett***:

Those who wrote our Constitution well knew the danger inherent in special legislative (lets which take the life, liberty, or property of particular named persons, because the legislature thinks them guilty of conduct, which deserve punishment.

They intended to safeguard the people of this country from punishment without trial by duly constituted courts.⁴¹

The court in *Lakamni v Attorney General Western State* concluded that “these principles are so fundamental and must be recognised”.⁴² In the same vein, the Court of Appeal summarily discussed the essence of separation of powers in *Honourable Alhaji Abdullahi Maccido Ahmad vs. Sokoto State House of Assembly & Anor.*⁴³ In the words of Salami JCA, he stated:



The organic structure created by Part II of Chapter 1 of both constitution of the Federal Republic of Nigeria, 1979 and 1999 are three organs of powers of the Federal Republic of Nigeria. Of these powers, legislative powers are vested in the

⁴⁰ (1971) 2 U.I.L.R 201 at 218

⁴¹ United States v. Lovett, 328, U.S. 303, 317 (1946)

⁴² Lakanmi Supra at 219

⁴³ (2002) 44 WRN 52.

legislature at both federal and state levels; the executive (i.e.) The President at the Federal and the Governor at the State level. Judicial powers both at the Federal and State levels are

vested in the courts established for the Federation and the States under section 6 of the constitution.

The doctrine of separation of powers has three implications:

- (a) that the same person should not be part of more than one of these three arms or divisions of government;
- (b) that one branch should not dominate or control another arm. This is particularly important in the relationship between the executive and the courts;
- (c) that one branch should not attempt to exercise the function of the other, for example a President however powerful ought not to make laws indeed act except in execution of laws made by the legislature. Nor should a legislature make interpretative legislation if it is in doubt it should head for the court to seek interpretation⁴⁴

The importance of this doctrine (separation of powers) has in recent times been judicially, emphasized in the case of *Liyanaga Vs The Queen*.⁴⁵ where the



Judicial committee of the privy council pointed out that there exist under the Ceylonese Constitution a tripartite division of powers - Legislative, Executive and Judicial - and that it would be unconstitutional if Judicial functions were allowed to be interfered with by the Legislature by means of an Act of Parliament.

⁴⁴ Dalhatu, M.B, what is Constitutional Law? Op. Cit P.69

⁴⁵ (1967) AC259



Again in ***Lakanmi Vs Attorney- General (Western State of Nigeria)***.⁴⁶ The Supreme Court ruled that Decree No. 45 of 1968 was Ultra vires since it was nothing short of legislative judgment, an exercise of Judicial power'. The court pointed out that in Nigeria there existed a division of powers –legislative, executive and judicial.⁴⁷

The Supreme Court stated:

We must here revert again to the Separation of Powers, which the learned Attorney-General himself did not dispute is still the structure of our system of government. In the absence of anything to the contrary it has to be admitted that the structure of our Constitution is based on the Separation of Powers - the Legislature, the Executive and the Judiciary” Our Constitution clearly follows the mode of the American Constitution. In the distribution of powers the Courts are vested with the exclusive right to determine justiciable controversies between citizens and between citizens and the state.⁴⁸

In *Lovell v. United States*,⁴⁹ Hon. Justice Black of the Supreme Court suited:

Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons, because the legislature thinks them guilty of conduct which deserves punishment. They intended to safeguard the people of this country from punishment without trial by duly constituted Courts.

⁴⁶ (1971) UILR 201



⁴⁷ (1971) 1 WLR at page 218

⁴⁸ See Attorney-General Australia v. The Queen (1957) AC 288 at page 311

⁴⁹ (1946) 66 Supreme Court Reports 1073 at 1079

These principles are so fundamental and must be recognized. It is to define the powers of the Legislature that Constitutions are written and the purpose is that such powers that are left with the Legislature be limited; and that the remainder be vested in the Courts.

Some years back, the High Court of Kaduna State in the case of: *the Governor of Kaduna State Vs. The House of Assembly, Kaduna State and Anor*⁵⁰ the court had occasion to consider the provisions of section 4 and 5 of the 1979 constitution, on the issue of the separation of powers between the Executive and the Legislature of a State government. These Sections of the 1999 Constitution is in pari-material with section 4 and 5 of the current constitution 1999.

The doctrine has been criticized by various scholars and constitutional lawyers. Some of the criticisms include:

1. That Montesquieu based his Doctrine of separation of powers on the British Government.
2. That Complete or Rigid Separation of Powers is neither possible nor desirable. This is simply because the Doctrine in its pure form is



incapable of application that is why wherever there could be an absolute separation of organs; that will:

⁵⁰ (1981) 2 NCLR at 444

- (a) Result in lack of coordination between the three organs and if so that will be quite detrimental to the proper function of the government.
 - (b) That may also lead to serious monopoly of power in the sense that each organ will become arbitrary and uncheckable, and that defeat the idea of constitutionalism.
 - (c) That creation of the water tight compartments will lead to dead lock and total paralysis of governmental functions.
3. That Modern governments cannot function properly unless there is some kind of fusion of powers.

According to Montesquieus' view, no individual should exercise more than one function. Strict application of this doctrine is probably impracticable. There are matters which must be dealt with immediately such as in the case of an



emergency. Sometimes the person performing a function is better fitted to discharge other functions as well. For instance, under S.42 (3) of the 1999 Constitution, the Chief Justice of Nigeria has been empowered to make rules with respect to the practice and procedure of a High Court for the purposes of proceedings relating to Fundamental Right in the High Court. The main function of the Chief Justice is judicial but here he is performing legislative (rule-making) function as well. This is justifiable because he is in a better position to lay down a uniform procedure to be applied by all the High Courts in the matter of Fundamental Rights.

Judicial Review, section 6 of the Nigerian Constitution provides for judicial review power which is vested in the courts enumerated therein. The Constitution is supreme and all authorities are bound by it. Section 315 gives power to the courts to review a law made by either the National Assembly or a State House of Assembly and declare it invalid if it is not in conformity with the provisions of the Constitution.

Again it is said that “judicial review of legislation is an obvious encroachment upon the principle of separation of powers.”⁵¹ In the continental countries, the judiciary does not have the power of judicial review of legislative



action, on strict application of the doctrine of separation of powers. But in the Common law countries such as ours the judicial review is accepted as not contrary to the separation of powers doctrine.

In the United States of America, Australia, India, and Sri Lanka, the Supreme Courts have the power to strike down a law which is not in accordance with the Constitution. In a written Constitution particularly in the case of a federal constitution, the judiciary must be given the power to decide whether a legislative or executive measure is ultra vires the Constitution or an ordinary law is valid or not; otherwise no organ will be stopped from over stepping its bounds. Moreover, the judiciary is the least harmful arm of the government.

⁵¹ Kelsen, H. *General Theory of Law and State* (trans. A. Wedberg (1961) p, 269

2.3 JUDICIAL STRUCTURE AND POWERS UNDER THE CONSTITUTION AND THE LAWS

The Nigerian judiciary structure prior to 1954 was centralized. There was a Supreme Court for the whole country together with subordinate courts. The adoption of a Federal constitution in 1954 brought about the regionalization of the judiciary. Today each state has its own hierarchy of courts, however they all



connect at the Federal level to the Court of Appeal and Supreme Court. The hierarchy of courts in each state depending on whether it is the South or North is as follows in ascending order:

- Area/Sharia/Customary courts;
- Magistrate/District courts;
- High court/Sharia Court of Appeal/Customary Court of Appeal;
- Court of Appeal;
- Supreme Court.

There is also a Federal Capital Territory Abuja Court system like that of the states that end up at the Court of Appeal and the Supreme Court.

In addition to the State courts and the courts of the Federal Capital Territory Abuja there is a Federal High Court that has jurisdiction across the whole country on special subject matters. Appeals from the Federal High Court also go the court of Appeal and then to the Supreme Court.

The judicial powers of the **Federation** is vested in the courts established for the Federation by the Constitution and by such laws that the National Assembly may pass. The judicial powers of a **state** is vested in the courts established for a state



by the Constitution and by such laws that the House of Assembly of the State may pass. The courts established by the Constitution for the Federation are:

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. Sharia Court of Appeal of the Federal Capital Territory, Abuja and
6. Customary court of Appeal of the Federal Capital Territory, Abuja.

In addition, the National Assembly is empowered by the constitution to establish any other court with a jurisdiction subordinate to High Court.

The Courts established by the constitution for a State are:

- (i) The High Court of a state
- (ii) The Sharia Court of Appeal of a State; and
- (iii) The Customary Court of Appeal of a State

Similarly, a House of Assembly is empowered by the Constitution to establish any other court to exercise jurisdiction, with respect to any matter on which a House of Assembly may make laws.



The courts specifically listed by name above shall be the only superior courts of record in Nigeria, and exercising all the powers therefore.

The powers vested in the above courts include:

- (i) All inherent powers and sanctions of a court of law
- (ii) All matters between persons, governments and authorities for the determination of any question as to the civil rights and obligations of the parties. However, excepts as otherwise provided by the constitution, any issue or question as to any act or omission by any authority, person, law, or whether a judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of the Constitution are not justiciable in any court of law.⁵²

Courts in Nigeria may be classified in several ways. But the most important forms of classification are first, classification into superior courts and inferior courts and, second, classification into courts of record and courts other than courts of record.

⁵² Malemi, E., *The Nigerian Constitutional law*. Princeton Publishing co. Lagos (2010) p. 134-135



Superior courts are usually described as courts of unlimited jurisdiction. In the strict sense of the term “unlimited jurisdiction,” no court in Nigeria has such jurisdiction. But superior courts are so described because the limits to their jurisdiction are minimal. They have minimal jurisdictional limits with respect to the type of subject-matter but they are not limited in jurisdiction with respect to the mere value of the subject-matter of a case. Thus, the High Court of a State is a superior court for it has unlimited jurisdiction throughout the State with respect to the value of the subject- matter.

On the other hand, inferior courts are courts which have jurisdictional limits with respect to the type and value of subject-matter. Magistrates’ courts are examples of inferior courts. Inferior courts are normally subject to the supervisory jurisdiction of High Courts.



CHAPTER THREE

3.0 ADMINISTRATION OF JUSTICE BY THE COURTS AND TRIBUNALS

It is pertinent to highlight that, it is not within the purview of this research to discuss the administration of courts under the 1963 and 1979 constitution. The establishment and powers of Courts and Tribunal shall be discussed in line with the current situation under the 1999 constitution of the Federal Republic of Nigeria; however, references in respect of the impact of the Courts and Tribunals may be made to previous and current cases.

3.1 ESTABLISHMENT AND POWERS OF COURTS

As noted earlier, the courts established by the 1999 constitution for the federation and state are:-

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. Sharia Court of Appeal of the Federal Capital Territory, Abuja and
6. Customary court of Appeal of the Federal Capital Territory, Abuja



7. The High Court of a state
8. The Sharia Court of Appeal of a State; and
9. The Customary Court of Appeal of a State

For the purposes of clarity, each shall be examined separately:

The Supreme Court of Nigeria.

The Supreme Court of Nigeria was established by the constitution of the Federal Republic of Nigeria.⁵³ It consists of:

- (a) The Chief Justice of Nigeria; and
- (b) Such Number of Justices of the Supreme Court, not exceeding twenty-one, as may be prescribed by an Act of the National Assembly.⁵⁴

The Supreme Court has original Jurisdiction (to the exclusion of any other court) in any dispute between the Federation and a state or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.⁵⁵

Similarly, the Supreme Court also jurisdiction (to the exclusion of any other court of law in Nigeria) to hear and determine appeals from the Court of Appeal.⁵⁶

An appeal lies from decisions of the Court of Appeal to the Supreme



Court as of right in the following cases:-⁵⁷

⁵³ 1999 Constitution of the Federal Republic of Nigeria Section 230 (1)

⁵⁴ Ibid (2)

⁵⁵ Ibid at Section 232 (1)

⁵⁶ Ibid at Section 233 (1)

⁵⁷ Ibid (2)

- (a) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal;
- (b) decisions in any civil or criminal proceedings on questions as to the interpretation of application of this Constitution,
- (c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person,
- (d) decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other court;
- (e) decisions on any question -
 - (i) whether any person has been validly elected to the office of the President or Vice-President under this Constitution.



(ii) whether the term of office of President or Vice-President has ceased,

(iii) whether the office of President or Vice-President has become Vacant; and

(f) such other cases as may be prescribed by an Act of the Assembly.

Subject to the provisions of section 233 subsection (2) of the 1999 constitution, an appeal lie from the decisions of the Court of Appeal to the Supreme Court with the leave of the court of Appeal or the Supreme Court.⁵⁸

Note that, the Supreme Court may dispose of any application for leave to appeal from any decision of the Court of Appeal in respect of any civil or criminal proceedings in which leave to appeal is necessary after consideration of the record of the proceedings if the Supreme Court is of opinion that interests of justice do not require an oral hearing of the application.⁵⁹

Any right of Appeal to the Supreme Court from the decisions of the Court of Appeal conferred by section 233 can be exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Court of Appeal or the Supreme Court at the instance of any other person having an



interest in the matter, and in the case of criminal proceedings at the instance of an accused person, or subject to the provisions of this Constitution and any powers 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 person as may be prescribed.⁶⁰ Any right of appeal to the Supreme Court

from the decisions of the Court of Appeal conferred by section 233 is,

⁵⁸ Ibid (3)

⁵⁹ Ibid (4)

⁶⁰ Ibid (5)

subject to section 236 of the Constitution, be exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Supreme Court.⁶¹

For the purpose of exercising any jurisdiction conferred upon it by the Constitution or any Law, the Supreme Court is duly constituted if it consists of not less than five Justices of the Supreme Court;⁶² provided that where the Supreme Court is sitting to consider an appeal brought under section 233(2) (b) or (c) of the 1999 constitution, or to exercise its original jurisdiction in accordance with section 232 of the Constitution, the Court shall be constituted by seven Justices.⁶³



Without prejudice to the powers of the President or of the Governor of a state with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the supreme Court.⁶⁴

Subject to the provisions of any Act of the National Assembly, the chief Justice of Nigeria may make rules for regulating the practice and procedure of the Supreme Court.⁶⁵

The Impact of the Supreme Court of Nigeria on the Legal System

The Supreme Court of Nigeria as the highest court for Nigeria has contributed in some measure to the development of the Law. Since its

⁶¹ Ibid (6)

⁶² Ibid at Sections 234

⁶³ Ibid

⁶⁴ Ibid at Sections 235

⁶⁵ Ibid at Sections 236

establishment in 1963, the Court has made some efforts to play the role of moulder of the law, notably in the fields of criminal

law and Constitutional Law. Thus, in *Obaji v. State*,⁶⁶ by seemingly creative interpretation, the Supreme Court explained the law of provocation under section 318 of the Criminal Code of Eastern Nigeria.⁶⁷ A similar attitude was adopted by the Court in *Adams v. D.P.P.*⁶⁸ in interpreting section 229 of the Criminal



Procedure Act.⁶⁹ Amending legislation was later made for Lagos in respect of each of the two cases along the line of interpretation given by the Supreme Court.⁷⁰ Other cases in which the court appears to have played the role of law-moulder include *Council of the University of Ibadan v. Adamolekun*,⁷¹ a case involving the validity of an Edict and thus, the interpretation of section 6 of the Constitution (Suspension and Modification) Decree 1966⁷² which provided in clear terms without any exceptions (in the section) that no question as to the validity of an Edict was to be inquired into in a court; *Ereku v. The Military Governor, Midwestern State*⁷³ in which the Supreme Court held that an Edict was void by reason of its inconsistency

⁶⁶ (1965) All N.L.R 269, See, generally, A.B Kasunmu (ed), *The supreme Court of Nigeria 1956-1970 (1977)*

⁶⁷ E.N Laws 1963, Cap. 30 the provision was identical with s. 318 of the Criminal Code of Lagos State (Lagos Laws 1973, Cap. 31)

⁶⁸ (1966) 1 All N.L.R 12

⁶⁹ Fed. And Lagos Laws 1958, Cap 43.

⁷⁰ See Criminal Justice (Miscellaneous Provisions) Decree 1966 (No.84 of 1966). See now Criminal Code (Lagos Laws 1973, Cap ..11), s.229.

⁷¹ (1967) 1 All N.L.R. 213. Compare *Lakanmi v. Attorney-Generakl* (West)(1971) 1 U.I.L.R 201. See p. 47 above.

⁷² No 1 of 1966

⁷³ (1974) 10 S.C.59

with the Constitution of the Federation⁷⁴; *Onubogu v. The State* where the Supreme Court held that a procedure in a criminal trial whereby an accused person adopted as part of his defence the statement made by him to the Police



was irregular, and *Esan v. Oluwa*⁷⁵ where the court held that if the plaintiff adduced evidence constituting the plea of *res judicata* a defendant in the case who did not specially plead that defence could rely on it.

The Court of Appeal

The Court of Appeal was established by Virtue of section 237(1) of the 1999 Constitution of the Federal Republic of Nigeria. It consists of the following:-

- (a) a President of the Court of appeal ; and
- (b) such Number of Justices of the Court of Appeal, 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.⁷⁶

The Court of Appeal has Original Jurisdiction (to the exclusion of any other court of law in Nigeria) to hear and determine any question as to whether:-

⁷⁴ Act No. 20 of 1963. See also *Onjoke v. Eastern States Interim Assets Agency* (1974) 10 S.C. 77

⁷⁵ (1974) 3 S.C. 125

⁷⁶ 1999 Constitution of the Federal republic of Nigeria section 237 (2)



- (a) Any person has been validly elected to the office of President or Vice-President under this Constitution; or
- (b) The term of the President or Vice-President has ceased; or
- (c) The office of President or Vice-President has become vacant.⁷⁷

In the hearing and determination of an election petition under paragraph (a) of subsection (1) of section 239, the Court of Appeal is duly constituted if it consists of at least three Justices of the Court of Appeal.⁷⁸

The court of Appeal has 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 Sharia Court of a State, Customary 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.⁷⁹

An appeal lies from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases.⁸⁰

- (a) Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;



⁷⁷ Ibid at section 239(1)

⁷⁸ Ibid (2)

⁷⁹ Section 240

⁸⁰ Section 241(1)

- (b) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings;
- (c) Decisions in any civil or criminal proceedings on question as to the interpretation or application of the constitution;
- (d) Decisions in any civil or criminal proceedings on question as to whether any of the provisions of chapter IV of the constitution has been, is being or is likely to be, contravened in relation to any person;
- (e) Decisions in any criminal proceedings in which the Federal High court or a High court has imposed a sentence of death;
- (f) Decisions made or given by the Federal High Court or a High court-
 - (i) where the liberty of a person or the custody of an infant is concerned,
 - (ii) where an injunction or the appointment of a receiver is granted or refused.
 - (iii) in the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any



enactment relating to companies in respect of misfeasance or otherwise.

- (iv) in the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability, and
- (v) In such other cases as may be prescribed by any law in force in Nigeria.

Note that nothing in section 241 of the Constitution confer any right of appeal.⁸¹

- (a) from a decision of the Federal High Court or any High Court granting unconditional leave to defend an action;
- (b) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree nisi; and
- (c) without the leave of the Federal High Court or a High Court or of the Court of Appeal, from a decision of the Federal High Court or High Court made with the consent of the parties or as to costs only.



An appeal lies from decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or that of High Court or the Court of Appeal.⁸²

⁸¹ section 241(2)

⁸² Section 242(1)

The Court of Appeal may dispose of any application for leave to appeal from any decision of the Federal High Court or a High Court in respect of any civil or criminal proceedings in which an appeal has been brought to the Federal High Court or a High Court from any other court after consideration of the record of the proceedings, if the Court of Appeal is of the opinion that the interests of justice do not require an oral hearing of the application.⁸³

Any right of appeal to the Court of Appeal from the decisions of the federal Court or a High Court conferred by the Constitution shall be⁸⁴

- (a) 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, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of the



Constitution and any powers 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;

⁸³ Ibid (2)

⁸⁴ Ibid at section 243



- (b) exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

An appeal lies from decisions of a Sharia Court of Appeal to the Court of Appeal as of right in any civil proceedings, before the Sharia Court of Appeal with respect to any question of Islamic personal law which the Sharia Court of Appeal is competent to decide⁸⁵

Any right of appeal to the Court of Appeal from the decision of Sharia Court of Appeal conferred by the section 244(2) of the 1999 Constitution of the Federal Republic of Nigeria shall be-

- (a) exercisable at the instance of a party thereto or, with the leave of the Sharia Court of Appeal or of the Court of Appeal, at the instance of any other person having an interest in the matter; and
- (b) exercised in accordance with an Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

An appeal lies from decisions of a Customary Court of Appeal to the Court of Appeal as of right in any civil proceedings before the Customary Court of



Appeal with respect to any question of customary law and such other matters as may be prescribed by an Act of the National Assembly.

⁸⁵ Ibid at section 244(1)

Any right of appeal to the Court of Appeal from the decisions of a Customary Court of Appeal conferred by section 245(1) of the 1999 Constitution of the Federal Republic of Nigeria shall be

- (a) exercisable at the instance of a party thereto or, with the leave of the Customary Court of Appeal or of the Court of Appeal, at the instance of any other person having an interest in the matter;
- (b) exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.

An appeal to the Court of Appeal lies as of right from⁸⁶

- (a) decisions of the Code of Conduct Tribunal established in the Fifth Schedule to this Constitution;



(b) decisions of the National Assembly Election Tribunals and Governorship and Legislative House Election Tribunals on any question as to whether-

(i) any person has been validly elected as a member of the National Assembly or of a House of Assembly of a State under the Constitution,

(ii) any person been validly elected to the office of Governor or Deputy Governor, or

⁸⁶Ibid at section 246(1)

(iii) the term of office of any person has ceased or the seat of such person has become vacant.

The National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of another court of law or tribunal established by the National Assembly.⁸⁷

The decisions of the Court of Appeal in respect of appeals arising from election petitions is final.⁸⁸



For the purpose of exercising any jurisdiction conferred upon it by the Constitution or any other law the Court of Appeal is duly constituted if it consists of not less than three Justices of the Court of Appeal and in the case of appeals from.⁸⁹

- (a) a Sharia Court of Appeal, if it consists of not less than three Justices of the Court of Appeal learned in Islamic personal law; and
- (b) a Customary Court of Appeal, if it consists of not less than three Justices of the Court of Appeal learned in Customary law.

Subject to the provisions of any Act of the National Assembly, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal.⁹⁰

⁸⁷ Ibid (2)

⁸⁸ Ibid (3)

⁸⁹ Ibid at section 247(1)

⁹⁰ Ibid at section 248

The Federal High Court



The Federal High Court was established by virtue of 249(1) of the 1999 constitution of the Federal Republic of Nigeria. The Federal High court consist of-

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- (a) a Chief Judge of the Federal High Court; and
- (b) such number of Judges of the Federal High Court as may be prescribed by an Act of the National Assembly.

The Federal High court can exercise jurisdiction to the exclusion of any other Court in Civil causes and matters-⁹²

- (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 and export 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;

⁹¹ Ibid (2)

⁹² Ibid at section 251

- (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, letters of credit, promissory notes and other fiscal measures; -

Provided that the above paragraph is not to be applied to any dispute between an individual customer and his bank in respect of transactions between the individual customers.

- (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, designs, trade marks and passing-off, industrial designs and merchandise marks



business names, commercial and industrial monopolies, combines and trusts standards of goods and commodities and industrial standards;

- (g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent 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 port, authorities for Federal ports) and carriage by sea;
- (h) diplomatic, consular and trade representation;
- (i) citizenship, naturalisation and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passports and visas;
- (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;
- (q) subject to the provisions of the constitution, the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies;
- (r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and
- (s) 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 above 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 enactment, law or equity.

The Federal High Court can exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences.⁹³

The Federal High Court can also exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by section 251(1).⁹⁴

For the purpose of exercising any jurisdiction conferred upon it by the constitution or as may be conferred by an Act of the National Assembly, the Federal High Court has all the powers of the High Court of a State.⁹⁵

The National Assembly may by law make provisions conferring upon the Federal High Court powers additional to those conferred by section 252(1) as may appear necessary or desirable for enabling the Court more

⁹³ Ibid (2)

⁹⁴ Ibid (3)

⁹⁵ Ibid at section 252(1)

effectively to exercise its jurisdiction.⁹⁶



The Federal High Court is duly constituted if it consists of at least one Judge of that court.⁹⁷

Subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court.⁹⁸

The High Court of the Federal Capital Territory, Abuja

High Court of the Federal Capital Territory, Abuja was established under the 1999 Constitution of the Federal Republic of Nigeria.⁹⁹ The High Court of the Federal Capital Territory, Abuja consist of-¹⁰⁰

- (a) a Chief Judge of the High Court of the Federal Capital Territory, Abuja; and
- (b) such number of Judges of the High Court as may be prescribed by an Act of the National Assembly.

The High court of the Federal capital Territory, Abuja has 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



⁹⁶ Ibid (2)

⁹⁷ Ibid at section 253

⁹⁸ Ibid at section 254

⁹⁹ Ibid at section 255

¹⁰⁰ Ibid (2)

relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.¹⁰¹

The reference to civil or criminal proceedings in section 257(1) includes a reference to the proceedings which originate in the High court of the Federal capital Territory, Abuja and those which are brought before the High court of the Federal Capital Territory, Abuja to be dealt with by the court of the exercises of its appellate or supervisor jurisdiction.¹⁰² The High court of the Federal Capital Territory, Abuja is constituted if it consists of at least one Judge of that Court.¹⁰³ the Chief Judge of the High Court of the Federal Capital Territory, Abuja may make rules for regulation the practice and procedure of the High Court of the Federal Capital Territory, Abuja.¹⁰⁴

The Sharia Court of Appeal of the Federal Capital Territory, Abuja

The Sharia Court of Appeal of the Federal Capital Territory, Abuja was established by virtue of section 260(1) of the 1999 Constitution of the Federal



Republic of Nigeria. The Sharia Court of Appeal of the Federal capital Territory, Abuja consists of¹⁰⁵

- (a) A Grand Kadi of the Sharia court of Appeal; and
- (b) Such Number of Kadi of the Sharia Court of Appeal as may be prescribed by an Act of the National Assembly.

¹⁰¹ Ibid at section 257(1)

¹⁰² Ibid (2)

¹⁰³ Ibid at section 258

¹⁰⁴ Ibid at section 259

¹⁰⁵ Ibid at section 260(2)

The Sharia Court of Appeal exercises appellate and supervisory jurisdiction in civil proceedings involving question of Islamic personal law.¹⁰⁶ For the purposes of section 262(1) of the Constitution of the Federal Republic of Nigeria, the Sharia Court of Appeal is competent to decide-¹⁰⁷

- (a) any question of Islamic law regarding a marriage concluded in accordance with that law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage an relating to family relationship or the guardianship of an infant;
- (b) where all the parties to the proceedings are Muslims, any question of Islamic personal law regarding a marriage, including the validity or



dissolution of that marriage, or regarding family relationship, a founding

or the guardianship of an infant;

- (c) any question of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
- (d) any question of Islamic personal law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically

¹⁰⁶ Ibid at section 262(1)

¹⁰⁷ Ibid (2)

or mentally infirm; or where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question.

For the purpose of exercising any jurisdiction conferred upon it by the constitution or any Act of the National Assembly, the sharia Court of Appeal is constituted if it consists of at least three Kadis of that Court.¹⁰⁸ subject to the provisions of any Act of the National Assembly the Grand Kadi of the Sharia



court of Appeal of the Federal Capital Territory, Abuja may make rules for regulating the practice and procedure of the Sharia Court of Appeal of the Federal Capital Territory, Abuja.¹⁰⁹

The Customary Court of Appeal of the Capital Territory, Abuja.

The customary Court of Appeal of the Federal Capital Territory, Abuja was established by virtue of section 265(1) of the 1999 Constitution of the Federal Republic of Nigeria. The customary Court of Appeal of the Federal Capital Territory, Abuja consist of-¹¹⁰

- (a) a President of the Customary Court of Appeal; and
- (b) such Number of judges of the customary court of Appeal as may be prescribed by an Act of the National Assembly.

¹⁰⁸ Ibid at section 263

¹⁰⁹ Ibid at section 264

¹¹⁰ Ibid (2)

The customary Court of Appeal of the Capital Territory, Abuja exercises appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law.¹¹¹



For the purpose of exercising any jurisdiction conferred upon it by the Constitution or any Act of the National Assembly, the Customary Court of Appeal is constituted if it consists of at least three Judges of that court.¹¹² Subject to the provisions of any Act of the National Assembly, the President of the Customary Court of Appeal of the Federal Capital Territory, Abuja, may make rules for regulating the practice and procedure of the Customary Court of appeal of the Federal Capital Territory, Abuja.¹³³

State Courts:

High Courts of a State

Each of the High Courts of a state of the Federal was established by virtue of section 270(1) of the 1999 Constitution of the Federal Republic of Nigeria. The High Court of a State consist of¹¹⁴

- (a) a Chief Judge of the State; and
- (b) such Number of Judges of the High Court as may be prescribed by a Law of the House of Assembly of the State.

¹¹¹ Ibid at section 267

¹¹² Ibid at section 268

¹¹³ Ibid at section 269



¹¹⁴ Ibid at section 270(2)

Subject to the provisions of section 251 and other provisions of the 199 constitution, the High Court of a State has jurisdiction or 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 o 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.¹¹⁵

The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High court of a state and those which are brought before the High court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.¹¹⁶

From the purpose of exercising any jurisdiction conferred upon it under the 1999 constitution or any law, a High Court of a State is constituted if it consists of at least one Judge of that Court.¹¹⁷

Subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State.¹⁸⁸



¹¹⁵ Ibid at section 272(1)

¹¹⁶ Ibid (2)

¹¹⁷ Ibid at section 273

¹¹⁸ Ibid at section 274



Sharia Court of Appeal of a State

The establishment of Sharia Court of Appeal by some state is pursuant to section 275(1) of the 1999 Constitution of the Federal Republic of Nigeria. The Sharia Court of Appeal of a State consist of-¹¹⁹

- (a) a Grand Kadi of the Sharia Court of Appeal' and
- (b) such Number of Kadis of the Sharia Court of Appeal as may be prescribed by the House of Assembly of the State.

The Sharia Court of Appeal of a State exercises appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law which the Court is competent to decide in accordance with the following:¹²⁰

- (a) any question of Islamic personal law regarding a marriage concluded in accordance with that law including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
- (b) where all the parties to the proceeding are Muslims, any question of Islamic personal Law regarding a marriage, including the validity or dissolution of that marriage, or



¹¹⁹ Ibid at section 274

¹²⁰ Ibid at section 277(1) and (2)

regarding family relationship, a foundling or the guardianship of an infant;

- (c) any question of Islamic personal Law regarding a wakf gift, will or succession where the endower donor' testator or deceased person is a Muslim;
- (d) any question of Islamic personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
- (e) where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal Law, any other question.

For the purpose of exercising any jurisdiction conferred upon it by the constitution or any law, a Sharia Court of Appeal of a State is constituted if it consists of at least three Kadis of that Court.¹²¹ Subject to provisions of any law made by the House of Assembly of the State, the Grand Kadi of the Sharia Court of Appeal of the State may make rules regulating the practice and procedure of the Sharia Court of Appeal.¹²²



¹²¹ Ibid at section 278

¹²² Ibid at section 279

Customary Court of Appeal of a State

The Establishment of Customary Court of Appeal by some state is pursuant to section 280(1) of 1999 Constitution of the Federal Republic of Nigeria. The customary court of Appeal of a State consists of:¹²³

- (a) a President of the Customary Court of Appeal of the State; and
- (b) such Number of judges of the Customary Court of Appeal as may be prescribed by the House of Assembly of the state.

A Customary Court of Appeal of a state exercises appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law.¹²⁴ For the purpose of section 282(1) of the constitution, a Customary Court of Appeal of a State exercises such jurisdiction and decide such question as may be prescribed by the House of Assembly of the State for which it is established.¹²⁵ For the purpose of exercising any jurisdiction conferred upon it by the Constitution or any law, a Customary Court of Appeal of a State is constituted it if consist of at least three judges of that court.¹²⁶ subject to the provisions of any law made by the House of Assembly of the State, the P resident of the Customary Court of Appeal



of the State may make rules for regulating the practice and procedure of the Customary Court of Appeal of the State.¹²⁷

¹²³ Ibid at section 280 (1)

¹²⁴ Ibid at section 282

¹²⁵ Ibid (2)

¹²⁶ Ibid at section 283

¹²⁷ Ibid at section 284

3.2 ESTABLISHMENT AND POWERS OF TRIBUNALS

A tribunal in the general sense is any person or institution with the authority to judge, adjudicate on, or determines claims or disputes. Fundamentally, many bodies not designated “courts under the law perform judicial or quasi-judicial functions. They are usually designated “tribunals” by the law establishing them. A tribunal performing judicial or quasi-judicial functions may be regarded as a court having special jurisdiction. A body performing such functions may be called “a tribunal” rather than “a court” by the legislature merely because the legislature requires the body to consist of experts in a particular area of the Law or to deal with a particular area of the law, or to deal speedily with certain aspects of the law, or to adopt a procedure different from the usual court procedure, or for any two or more of those reasons.¹²⁸

Tribunals include Robbery and Firearms tribunals established under the Robbery and Firearms (Special Provisions) Decree 1970,¹²⁹ Special tribunals for the



trial of kidnapping and lynching cases established under the Offences against the Person (Special Provisions) Decree 1974,¹³⁰ Currency Offences tribunals established under the Counterfeit Currency (Special Provisions) Decree 1974¹³¹ and Rent tribunals.¹³²

¹²⁸ Obilade, A.O. the Nigerian Legal system, spectrum books limited, Ibadan, (2005) P.222-223

¹²⁹ No. 47 of 1970

¹³⁰ No. 20 of 1974

¹³¹ No. 22 of 1974. See also Exchange control (Anti-Sabotage) Decree 1977 (No. 57 of 1977) under which special tribunals are constituted.

¹³² See e.g Rent control and Recovery of Residential Premises Edict 1976 (no. 9 of 1976) (Lagos state).

Other bodies exercising judicial or quasi-judicial functions include the Joint Tax Board established by section 27(1)of the Income Tax Management Act 1961,¹³³ the Body of Appeal Commissioners established under section 55 of the companies Income Tax Act 1961,¹³⁴ tribunals of inquiry established under the Tribunals of Inquiry Decree (1966),¹³⁵ the Medical and Dental Practitioners Disciplinary Committee established by section 12(1) of the Medical and Dental Practitioners Act 1963,¹³⁶ the Pharmacists Act 1964.¹³⁷ the Architects Disciplinary Tribunal established by section 12 of the Architects (Registration, etc.)

Decree 1969,¹³⁸ arbitration tribunals established under the Trade Disputes Decree 1976,¹³⁹ the Legal Practitioners Disciplinary Committee established under section 9 of the Legal Practitioners Decree 1975¹⁴⁰ and the Appeal Committee of



the Body of Benchers established under section II of the Legal Practitioners Decree 1975.

Basically, tribunals are broadly of two types, namely administrative tribunals or tribunals of inquiry and judicial tribunal.

Administrative tribunals are those tribunals which operate in a context where the use of courts would not be considered of all appropriate. These

¹³³ No. 21 of 1961

¹³⁴ No. 22 of 1961

¹³⁵ No. 41 of 1966

¹³⁶ No. 9 of a963

¹³⁷ No. 22 of 1964

¹³⁹ No. 7 of 1976

¹⁴⁰ No.15 of 1975

tribunals really constitute alternatives to departmental or ministerial decision making rather than court substitute. It is usually a body charged with the responsibility of examining a matter (usually of major public interest) with a view to establishing the true facts. At the end of the inquiry, the tribunal would make recommendations to the appointing authority who would then take appropriate actions.

Judicial tribunals on the other hand are required to look at the fact of the case submitted to it for adjudication, to apply the relevant laws to them and then



deliver its verdicts. They are to that extent and in every respect viewed simply as alternatives within that system to court of law.

Having discussed the types of tribunals, it is pertinent to highlight that there are various forms of tribunal however, in this research work; focus will only be made on the establishment and powers of the following:

- a. Special Military Tribunals
- b. Election Tribunals
- c. The Appellate courts as election Tribunals
- d. Code of Conduct Tribunals
- e. Capital Market and Revenue Tribunals

Special Military Tribunal

The Special Military Tribunal is constituted by the Armed Forces Council to try any person, whether or not a member of the Armed Forces who, in connection with any act of rebellion against the Federal Government, has committed treason, murder or any other offence.¹⁴¹ This means other offences punishable with death could *adjudem generis* be within the jurisdiction of the Special Military Tribunal. It is immaterial whether or not the offence was committed before or after the commencement of the Act.¹⁴² It is submitted that where the offence was



committed before the commencement of the Act, it would not constitute an offence. This power is valid and lawful because it is the jurisdiction of the tribunal that is retrospective, but not the law creating the offence allegedly committed which should have been already in existence at the time the accused is alleged to have committed the offence with which he is accused, be it treason, murder any other offence under any law enforced in Nigeria including appropriate service laws.

Jurisdiction

The tribunal generally has jurisdiction to try all persons charged with any offence under the Act and to impose any punishment specified in the appropriate law including service law.¹⁴³ For this purpose the tribunal has power to try and punish any person service law if it is satisfied that such person acted in concert with any other person subject to service law or knowingly took part, no matter how slight, in the commission of an offence

¹⁴¹ Section 1 of the Treason and other offences (Special Military Tribunal) Act, Cap. 444 L.F.N. (hereinafter under this topic referred to as 'the Act.')

¹⁴² Ibid

¹⁴³ Ibid section 3(1)



under the service law, notwithstanding the fact that the accused so convicted and punished is not subject to service law and anything to the contrary in the service law creating the offence in question.¹⁴⁴

The Special Military Tribunal itself determines the procedure for trial in every case in a preliminary or pre-trial ruling. The procedure could be general or for the purpose of any particular trial.¹⁴⁵ The tribunal, however, has the option to simply adopt the practice and procedure applicable to proceedings before a Court Martial, with such alterations as the tribunal may, in its ruling, consider necessary in the light of the general intendment of the Act.¹⁴⁶

Election Tribunals

Election Tribunals, as the name suggests, are tribunals established purposely to hear and determine election petitions.

“Tribunal” or “Court” in the case of Presidential election means the Court of Appeal and in case of any other election, the election tribunal constituted in respect thereof.”¹⁴⁷ Like regular courts of law, the composition and jurisdiction of each Election Tribunals is regulated by the law establishing it.¹⁴⁸



¹⁴⁴ Ibid section 3(2)

¹⁴⁵ Ibid section 4(1)

¹⁴⁶ Ibid section 4(2)

¹⁴⁷ See Section 140(2) of the Electoral Act, 2006

¹⁴⁸ See the 1999 Constitution and the Electoral Act 2006



These tribunals are not only indispensable under democratic governance but they are also a very crucial force to be reckoned with in the administration of justice in election petition matters. Their establishment in the Constitution emphasizes their critical importance and onerous role as an arbiter in democratic governance. Election tribunals are, in fact, the only tribunals established by Constitutional provision other than the code of Conduct Tribunal.

Apart from the Court of Appeal¹⁴⁹, which operates as an election tribunal and the Supreme Court correspondingly as an election appeal tribunal in respect of Presidential elections, other election tribunals established by the Constitution¹⁵⁰ are the National Assembly elections Tribunal and the Governorship and legislative Houses election Tribunal. The Election Act further establishes Area Council Election Tribunal¹⁵¹ and Area Council election Appeal Tribunal,¹⁵² while Local Government Election Tribunals are established by the various states laws.¹⁵³

The need for speedy trials and timely determination of all election petitions under-scores the very essence of establishing the Election Tribunals. This is expressly provided in the Electoral Act¹⁵⁴ as follows:



¹⁴⁹ Section 239 of the Constitution

¹⁵⁰ Ibid Section 285

¹⁵¹ See Section 142 of the electoral Act

¹⁵² Ibid Section 143

¹⁵³ See the election tribunal and court practice Direction, 2007 Government Notice No. 10

¹⁵⁴ See 148 of the electoral Act, 2006

No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an “election petition”) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.

It is regrettable, however, that many election petitions are delayed for one reason or another notwithstanding the above mandatory accelerated hearing provision and precedence accorded to election petitions over other regular cases or matters by the Practice Direction and enhanced by both the bench and the bar.

In fact hearing of an election petition is supposed to be a daily business for the tribunal until all petitions are disposed of. Article 24 (1) of the first schedule to the Electoral Act, 2006 provides thus: -

No formal adjournment of the Tribunal or Court for the hearing of an election petition shall be necessary, but the hearing shall be deemed



adjourned and may be continued from day to day until the hearing is concluded unless the Tribunal or Court otherwise directs as the circumstances may dictate,

The zeal of the legislature to put in place an enabling law that would ensure a timely disposition of election petitions is glaring enough by the mandatory provision¹⁵⁵ of the Electoral Act, which states as follows: -

¹⁵⁵See article 25(1) and (2) of the schedule to the Electoral Act, 2006

After the hearing of an election petition has begun, if the inquiry cannot be continued on the ensuing day or, if that day is a Sunday or a public holiday, on the day following the same, the hearing shall not be adjourned sine die but to a definite day to be announced before the rising of the Tribunal or Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the Secretary on the notice board. The hearing may be continued on a Sunday or on a public holiday if circumstance dictates.

The law also conferred on the chairman of the election Tribunal an onerous power to hear and dispose of all interlocutory applications singularly like a judge of the Federal High Court.¹⁵⁶ The law states thus:

All interlocutory questions and matters may be heard and disposed of by the Chairman of the Tribunal or the Presiding Justice of the court who shall have control over the proceedings as a Judge in the Federal High Court.



Despite putting in place all these expeditious provisions and more, some election petitions suffer inordinate delays due to some hiccups that derail the “fire brigade” approach in the law, some of which are caused by pendency of litigations in regular courts involving similar issues in the election petition thereby creating compelling circumstance for an election tribunal to halt its proceedings until the pending issue before the regular court is determined. A good example in the case of **Agbi v Ogbe**.¹⁵⁷ in other

¹⁵⁶ Ibid article 26(l)

¹⁵⁷ (2005) 8 N.W.L.R (Pt 926) 40; (2006) 11 N.W.L.R (Pt.990) 65 infra cases delays are caused by other factors like the volume of the processes filed, large number of witnesses called by the parties themselves and exhibits tendered during trial proceedings like in the celebrated case of **Buhari v Obasanjo**.¹⁵⁸

Governorship and Legislative Houses Election Tribunal

This tribunal is established¹⁵⁹ in each state of the Federation to hear and determine election petitions in respect of Governorship, National Assembly and State House of Assembly. It is established by section 285(2) of the 1999 constitution, which provides thus:



There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house.

The National and States Houses of Assembly Election Tribunal

This Tribunal was established by the Constitution¹⁶⁰ to, *inter alia*, exclusively determine the question whether any person has been validly elected as a member of the National Assembly or whether the seat of any such member has become vacant. The Tribunal also has a unique jurisdiction

¹⁵⁸ (2005) 2 NWLR (Pt.910) 241 *Infra* at pp. 99 and 107

¹⁵⁹ *Ibid* Section 285(2)

¹⁶⁰ Section 285 (1) of the 1999 Constitution as amended by section 9 of the Constitution First Alteration Act.

to determine whether the term of office of any person under the Constitution has ceased. The 1999 Constitution provides¹⁶¹ thus: -

There shall be established for the Federation one or more election tribunals to be known as the National and States Houses of Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether-

Any person has been validly elected as a member of the National Assembly;

Any person has been validly elected as a member of the House of Assembly of a State;



Local Government/Area Council Election Tribunals

The Local Government Election Tribunal was hitherto established by the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 7 of 1997. The 1999 Constitution, however, establishes States Independent Electoral Commission¹⁶² for each State of the Federation, which regulates the Local Government or Area Council elections. The elections are regulated by state laws except in the Federal Capital Territory Abuja.¹⁶³

In the Federal Capital the Electoral Act 2006 established an Area Council Election Tribunal and an Area Council Election Appeal Tribunal.¹⁶⁴ It is intended to discuss the composition, function and jurisdiction of this grassroots tribunal:

¹⁶¹ Section 9 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010

¹⁶² Section 197(1) of the 1999 Constitution.

¹⁶³ See part ix of the Electoral Act, 2006

¹⁶⁴ See sections 142 and 143 of the Electoral Act, 2006



Area Council Election Tribunal

The Area Council Election Tribunal is established by section 135 of the Electoral Act 2010, which provides thus:

(1) There shall be established for the Federal Capital Territory one or more Election Tribunals (in this Act referred to as the Area Council Election Tribunal) which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine any question as to whether:

(a) Any person has been validly elected to the office of chairman, Vice Chairman or Councillor

(b) The term of office of any person elected to the office of chairman, Vice Chairman or Councillor has ceased;

(c) The seat of a member of an Area Council has become vacant; and

(d) A question or petition brought before the Area Council Election Tribunal has been properly or improperly brought.

(2) An Area Council Election Tribunal Shall consists of a chairman and two other members.

(3) The chairman shall be a Chief Magistrate and four other members shall be appointed from among Magistrates of the Judiciary of the Federal Capital Territory, Abuja and legal practitioners of at least 10 years post-call experience, non-legal practitioners of unquestionable integrity or other members of the Judiciary of the Federal Capital Territory not below the rank of a Magistrate.



Jurisdiction

The Area Council Election Tribunal has an exclusive jurisdiction to hear and determine election petitions regarding the office of an Area Council Chairman, Vice Chairman or Councillor or whether the term of office of such officials has ceased. It is also within its exclusive jurisdiction to determine if the seat of any council member has become vacant. It can also determine the competence or otherwise of any matter brought before it.

Area Council Election Appeal Tribunal

A right of appeal is available to parties aggrieved or otherwise dissatisfied with the verdict of the Area Council Election Tribunal to the Area Council Appeal Tribunal¹⁶⁵ established by section 135 (1) of the Electoral Act 2010 which provides:-

There shall be established for the Federal Capital Territory (FTC) the Area Council Election Appeal Tribunal which shall to the exclusion of any other court or tribunal hear and determine appeals arising from the decision of the Area Council Election Petition Tribunal.



The right of appeal in an Area Council petition is limited to the Area Council Appeal Tribunal which is the final appellate adjudicator on all Area Council election petitions. The Electoral Act 2006 provides¹⁶⁶:

The decision of the Area Council Election Appeal Tribunal in respect of Area Council elections shall be final.

¹⁶⁵ Hereinafter referred to as 'the Appeal Tribunal'

¹⁶⁶ See section 35(2) of the Electoral Act, 2010

The Appeal Tribunal also has the same composition of a five-man panel but in a stronger composition. Section 135 (3) of the Electoral Act 2010 provides as follows: -

An Area Council Election Appeal Tribunal shall consist of a Chairman and two other members and the Chairman shall be a Judge of the High Court and the two other members shall be appointed from among Judges of the High Court of the federal Capital Territory, Abuja, Kadis of the Sharia Court of Appeal of the Federal capital Territory, Abuja, Judges of the Customary Court of Appeal or other members of the Judiciary of the federal Capital Territory, Abuja not below the rank of a Chief Magistrate.

The Chairman is appointed from amongst serving Judges of the High Court of the Federal Capital Territory, Abuja and the four other members are made up as follows:



- (1) another High Court Judge
- (2) a Kadi of the Sharia Court of Appeal
- (3) a Judge of the Customary Court of Appeal and
- (4) an officer of the Judiciary not below the rank of a Chief Magistrate.

To enhance expeditious hearing and determination of election petitions, an Area council election Tribunal is constituted by the Chairman sitting with two other members.¹⁶⁷

¹⁶⁷ Ibid section 143(4) of the Electoral Act, 2006

The Appellate Courts as Election Tribunals

The Court of Appeal and the Supreme Court, at the highest level of the judicial hierarchy operate as the Presidential Election Tribunal and the Presidential Election Appeal Tribunal respectively. In-depth analysis will be made regarding this special and onerous role of the two appellate courts. The recent amendments of the Constitution setting out timelines for trial of election petitions and appeals will be critically appraised.



The Court of Appeal as the Presidential Election Tribunal

It is intended here to discuss the original jurisdiction of the Court of Appeal is an election tribunal. The 1999 Constitution¹⁶⁸ provides for original jurisdiction of the Court of Appeal as follows:

Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-

- (a) any person has been validly elected to the office of President, Vice-President, Governor or Deputy Governor under the Constitution; or
- (b) the term of office of the President, Vice-President, Governor or Deputy Governor has ceased; or

¹⁶⁸ Section 239 of the 1999 Constitution as amended by sections 25 and 7 of the First and Second Alteration Act 2010 respectively.

- (c) The office of President, Vice-President, Governor or Deputy Governor has become vacant.



This provision clearly confers an exclusive original jurisdiction, on the Court of Appeal, to hear and determine not only election petitions on Presidential election but also whether the tenure in respect of the most exalted offices of the President or Vice President has ceased or the office has otherwise become vacant.¹⁶⁹

Thus, the Court of Appeal is an election petition court or tribunal in respect of presidential election by virtue of section 239 of the 1999 Constitution (as amended). The Supreme Court in the case of **Ojukwu v. Obasanjo**¹⁷⁰ held that by virtue of section 239 of the Constitution of the Federal Republic of Nigeria, 1999, the Court of Appeal is the Election Petition Court in respect of Presidential election.

Jurisdiction

As seen above, the Court of Appeal has an exclusive original jurisdiction to hear and determine election petitions in respect of presidential election. The question whether a petition on Presidential election is competent depends on whether it is based on any of the grounds specified in section 239 (1) of the 1999 Constitution or section 145 (1) of the Electoral Act 2006. The Court of Appeal has so observed in **Buhari v Obasanjo** per



¹⁶⁹ See section 145 (1) of the Electoral Act 2006 (Section 134 (1) of the Electoral Act 2007)

¹⁷⁰ (2004) 12 NWLR (pt. 886) 169 at 213 paras. A-

Mahmud Mohammed, JCA (as he then was) thus:-

The jurisdiction conferred on the Court of Appeal to hear and determine petitions on the conduct of the Presidential election is limited by law to the determination of such petitions based on the grounds specified in section 239 (1) (a) of the 1999 Constitution and section 134 (1) of the Electoral Act, 2002. In other words, the jurisdiction of the Court of Appeal as a court and not as a tribunal does not cover matters, which constitute infractions of the 1999 Constitution or any act committed in the course of the conduct of the election, which have not been made specific grounds in the election petition. In the instant case, the petitioners complained of discrimination by the respondent against them, and bias by the 3rd respondent's resident Electoral Commissioners. These complaints are not cognizable as grounds for challenging a Presidential election under the 1999 Constitution or of the Electoral Act, 2002. In the circumstance, the Court of Appeal had no jurisdiction to entertain the complaints in course of determining the petition.



The corresponding section 138(1) of the Electoral Act 2010 which is identical *impari material* the same with section 145(1) of the Electoral Act 2006 provides:

An election may be questioned on any of the following grounds;

- (a) That a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
- (c) That the respondent was not duly elected by majority of lawful votes cast at the election; or
- (d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

The Supreme Court as an Election Appeal Tribunal

Having discussed the capacity of the Court of Appeal sitting as the only court or tribunal with original jurisdiction to hear and determine petitions regarding Presidential elections in Nigeria, the Supreme Court being the highest court of the land, and the only court having exclusive jurisdiction to hear and determine appeals from the Court of Appeal, will now be focused. The 1999 Constitution provides¹⁷¹ as follows:

The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal.



For the purpose of exercising its jurisdiction to hear and determine appeals from the Court of Appeal, the Supreme Court is duly constituted by a panel of five Justices.¹⁷² However, in practice the Supreme Court is composed by a panel of seven Justices when hearing appeals on Presidential election. This is due to the fact that interpretation of the Constitution is inevitable in Presidential election petitions and that automatically requires

¹⁷¹ Ibid Section 233(1)

¹⁷² Ibid section 234



the Supreme Court to sit in panel of seven Justices.¹⁷³

Code of Conduct Tribunal

The Code of Conduct Tribunal is established by the Constitution¹⁷⁴ to try offences relating to contravention of any provision of the code of conduct for public officers. It functions side by side with the Code of Conduct Bureau both of which are affiliated to and absolutely controlled by the Presidency. It operates as watch dog to try and punish public officers who contravene the Code of Conduct for Public Officers.

The need for Code of conduct for public officers in developing polity such as Nigeria cannot be over-emphasised. This is particularly so when viewed against the backdrop of large scale fraud and corruption which has become prevalent in the civil/public service.

It is therefore envisaged that a set of ethics and rules of behaviour for public officers will go a long way in curtailing this malaise.

Establishment and Composition

The establishment of the tribunal as an adjudicative organ is spelt out in the 1999 Constitution¹⁷⁵ (as amended) thus:



There shall be established a tribunal to be known as Code of Conduct Tribunal.

¹⁷³ Ibid provision to section 234 of the 1999 constitution

¹⁷⁴ See article 15 the 5th schedule to the 1999 Constitution

¹⁷⁵ Ibid 5th schedule part I

The code of conduct set out in part 1 in the 5th schedule to the 1999 Constitution (as amended) governs all public office holders' behaviourism while in office. The code unequivocally requires a public officer to abide by certain standards of behaviour.

The tribunal is established to try public officers who have been accused of violating or contravening any of the provisions of the code of conduct. The 1999 Constitution (as amended) therefore provides¹⁷⁶ thus:

There shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons.



The Chairman of the Tribunal must be a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria¹⁷⁷. Both the chairman and members are appointed by the President on the recommendation of the National Judicial Council.¹⁷⁸

This Tribunal is unique in the sense that it has, apart from its judicial powers, an executive power to function as a service commission in respect of appointments, promotion and disciplinary control over its supporting staff. For the avoidance of doubt, the Constitution provides¹⁷⁹ thus:

The power to appoint the staff of the Code of Conduct Tribunal and to exercise disciplinary control over them shall vest in the members of the Code of Conduct Tribunal.

¹⁷⁶ See article 15 (1) of part 1 of the 5th schedule

¹⁷⁷ Ibid article 15(2), see also section 6 (3) and (5) of the 1999 Constitution

¹⁷⁸ Ibid article 15 (3)

¹⁷⁹ Ibid article 16(2)

The chairman and other members of the Tribunal are appointed by the President on the recommendation of the National Judicial Council just like Judges of superior Courts. The Constitution provides as follows:



The Chairman and members of the Code of Conduct Tribunal shall be appointed by the President in accordance with the recommendation of the National Judicial Council.

One then wonders why the staff of the tribunal cannot be appointed and disciplined by the Federal Judicial Service Commission¹⁸⁰. After all the Code of Conduct Tribunal, it is submitted, ought to be an institution under the judicial arm of the Federal Government and not under the Executive. In practice the tribunal staffs are usually seconded from the Judiciary, and the chairman is appointed from retired judicial officers. Moreover the functions of the tribunal are purely judicial in nature. These reasons are compelling enough to place the appointment, promoting and discipline of the tribunal's supporting staff under the FJSC and the tribunal of function as a judicial institution under the judiciary apart from the Court of Appeal¹⁸¹, which operates as an election tribunal and the Supreme Court correspondingly as an election appeal tribunal in respect of Presidential elections, other election tribunals established by the constitution¹⁸² are the National Assembly

¹⁸⁰ Hereinafter referred to as "the FJSC

¹⁸¹ Section 239 of the 1999 constitution



¹⁸² Ibid Section 285

Elections Tribunal and the Governorship and Legislative Houses Election Tribunal.

The Electoral Act further establishes Area Council election Tribunal¹⁸³ and Area Council Election Appeal.

Capital Market and Revenue Tribunals

Under this topic, the two tribunals that administer justice on capital market and revenue based matters will be analysed. These are:

- (1) The Investments and Securities Tribunal (IST) and
- (2) The Value Added Tax Tribunal.

Under (1) above, it is intended to appraise the establishment, jurisdiction and administration of justice by the Investment and Securities Tribunal¹⁸⁴. The erstwhile Investments and Securities Act 1999¹⁸⁵ regulating the capital market in Nigeria was repealed¹⁸⁶ by the Investment and Securities Act 2007¹⁸⁷. The Act was promulgated on the 25th June 2007 and it took effect on that date. It was one of the first bills passed by the National Assembly under the regime of President Umaru Musa Yar'Adua. Discussions will be made under both laws, side by side especially in distinctive areas, for the following two reasons:

- (1) Most of the judicial authorities on the subject matter were decided under the provisions of the 15A1999, and



(2) The Act is virtually a replica of the ISA 1999.

¹⁸³ See Section 142 of the Electoral Act

¹⁸⁴ Hereinafter referred to as the “1ST”

¹⁸⁵ Hereinafter referred to as the ‘ISA 1999’

¹⁸⁶ Ibid section 314 (1) of the Act

¹⁸⁷ Act No 29 of 2007 (hereinafter referred to as “the Act”)

Thus all references to the ISA 1999 equally remain valid as references to the Act, the peculiarities of which will be appropriately highlighted. In contrast with the ISA 1999 which had 16 parts and 265 sections, the Act has 18 parts and 316 sections with several innovative provisions strengthening the regulatory powers of the Securities and Exchange Commission.¹⁸⁸ It introduced corporate responsibility measures for public companies and conferred exclusive jurisdiction on the IST in respect of certain capital market matters.

Discussion on the Value Added Tax Tribunal will follow subsequently.

Investment and Securities Tribunal (IST)

The investments and Securities Tribunal (IST) was established by section 274 of the Act, which provides thus:

There is hereby 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.

It was constituted and inaugurated by the Minister of Finance¹⁸⁹ on the 19th December 2002 with the approval of the President. The IST is a specialised fast-track tribunal for the resolution of disputes arising from investments and securities transactions and appeals relating to pensions

¹⁸⁸ Hereinafter referred as "SEC"

¹⁸⁹ See section 224 of the ISA 1999

matters. The IST focuses on not only timeous and cost effective dispensation of justice but also a specialized and harmonious adjudication in order to retain and maintain the good business or commercial relationships between the adverse parties.

Fortunately the absurd position under the ISA 1999 whereby the Minister of Finance was, to all intents and purpose, the alpha and omega in respect of, not only the establishment, but also the operation of IST has been removed under the Act.

The Minister of Finance had exclusive statutory¹⁹⁰ power to specify the matters and places in relation to which the IST may exercise its jurisdiction. One may



simply say that the IST was fully controlled by the Minister of Finance not only regarding the exercise of its jurisdiction but the Minister has also the onerous power to hire and fire¹⁹¹ both the Chairman and members of the IST hitherto known as Capital Market Assessors¹⁹² who constituted the IST. Section 225 (1) of the I.S.A. 1999¹⁹³ provides thus:

The tribunal shall consist of nine persons (hereafter referred to as “Capital Market Assessors”) to be appointed by the Minister, one of whom shall be the chairman.

Fortunately section 224(2) of the ISA 1999, that gave the Minister of Finance a singular power to specify the matters and places in relation to

¹⁹⁰ Section 224(1) of the ISA 1999

¹⁹¹ Ibid compare sections 225 (1) and 228 (2) of the ISA 1999 and sections 275(1), 279 and 281 of the Act.

¹⁹² Compare sections 225 of the ISA 1999 and 275 of the Act

¹⁹³ (hereinafter referred to as the ISA 1999)

which the IST may exercise its jurisdiction, was repealed by the Act,¹⁹⁴ while section 225 thereof has been substantially up surged by incorporating positive measures and reducing but not completely removing ambiguities in the erstwhile law. Section 275 of the Act provides thus:



- (1) The Tribunal shall consist of ten (10) persons to be appointed by the Minister as follows:

A full time chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters;

Four other full time members, three of whom shall be legal practitioners of not less than 10 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;

Five other part time members who shall be persons of proven ability and expertise in corporate and capital market matters.

Jurisdiction

The IST jurisdiction under the ISA 1999 was limited to disputes arising under the provisions of that Act including the rules and regulations made there under,¹⁹⁵ and appeals from the National Pensions commission,¹⁹⁶ apart from this blanket cover jurisdiction, the IST was specifically

¹⁹⁴ See Section 274 of the Act

¹⁹⁵ Ibid sections 234 (1) of the ISA 1999

¹⁹⁶ Hereinafter referred to as "PenCom"



empowered to adjudicate on the following matters.¹⁹⁷ on matters relating to the interpretation of any law, enactment or regulations to which the Act applies as follows:

- (1) Disputes between the Commission and a Securities Exchange or Capital Trade Point;
- (2) Disputes between Capital Market Operators and the Securities Exchanges or Capital Trade Point;
- (3) Disputes between Capital Market Operators;
- (4) Disputes between Capital Market Operators and their clients; and
- (5) Disputes between quoted companies and the regulators or the Securities Exchanges.

The jurisdiction of the IST has been strengthened and enhanced by the Act¹⁹⁸ and this is perhaps one of its most significant landmarks. Section 234 of the ISA 1999, which specified the jurisdiction of the IST, did not signify an element of exclusiveness. The Act has, however, now made the jurisdiction of IST exclusive by the provision of Section 284(1) thereof which states thus:

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

¹⁹⁷ Ibid section 234(2) of the ISA 1999

¹⁹⁸ See Section 284 of the Act

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) an 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. In addition to the aforesaid exclusive jurisdiction, the ISA also is competent to exercise jurisdiction in relation to any other matter as may be prescribed by an Act of National Assembly.¹⁹⁹ The IST also has power to interpret any law, rules or regulations as may be

¹⁹⁹ Ibid Subsection (2)

applicable in due exercise of its jurisdiction.²⁰⁰

The powers of the IST have been expressly adumbrated under Section 290 of the Act which provides that the tribunal shall have, for the purpose of discharging its functions under the 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 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 by it ex-party; and
- (h) do anything which in the opinion of the tribunal is incidental or ancillary to its functions under this Act.

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. Proceedings of the Tribunal may be held in camera as and when deemed appropriate in the interest of the public. In **Osigwe VS B. P. E.**²⁰¹

the IST relied on the provision of section 234 (1) of the ISA 1999 and

²⁰⁰ Ibid Subsection (3)

²⁰¹ (supra) at p. 5

guided by the parameters of its jurisdiction in the notorious case of **Madukolu vs Nkemdilim**²⁰² and held thus:

We find that based on the facts and circumstances of this case ... and the totality of all authorities cited, the Tribunal has power and also



competence to examine complains of this nature and to decide one way or the other.

Jurisdiction over Matters Relating to the Companies and Allied Matters Act (CAMA)

The IST has a restricted jurisdiction over matters relating to the Companies and Allied matters Act.²⁰³ By its powers to adjudicate on Capital Market matters,²⁰⁴ the IST is competent to deal with matters under the provisions of C.A.M.A dealing with quoted companies securities, merger acquisitions, etc. In **F.I.S. Securities Ltd v S.E.C.**²⁰⁵ the IST held thus:

The Tribunal and the APC have jurisdiction in capital market matters, so empowered to adjudicate on the matters in issue considering the provisions of sections 234 (2), and section 255 (2) of the I.S.A. 1999. The Tribunal has jurisdiction to deal with matters specified in CAMA in so far as it deals with quoted companies, securities, transactions in those securities, merger, acquisitions etc. So there is no conflict at all between the I.S.A 1999 and the Constitution since capital market is an item under the exclusive Legislative list of the 1999 Constitution.

²⁰² (1962)2 All NLR 581

²⁰³ hereinafter referred to as "CAMA"



²⁰⁴ See sections 234 (2) and 255 (2) of the LS.A, 1999

²⁰⁵ Supra



Appellate Jurisdiction of the Tribunal (I.S.T.)

The Investments and Securities Tribunal apart from its original jurisdiction as discussed above also exercises an appellate jurisdiction over the decisions of the Administrative Proceeding Committee²⁰⁶ of the SEC pursuant to section 236 of the ISA 1999. The ST also has both original and appellate jurisdiction on pension disputes,²⁰⁷ which include but not limited to the following:

- (1) Misappropriation of client's money by Pension Funds Administrator (PFA) and/or Pension Funds Custodian (PFC);
- (2) Non-payment of pension as at when due by a PFA;
- (3) Non-crediting or wrong crediting of a beneficiary's contribution (s) or benefits arising from investments of his/her fund by a PFA/PFC;
- (4) Disputes over pensions between the beneficiaries/pensioners and the PFA/PFC, and PenCom;
- (5) Disputes between PEA and PFC;
- (6) Disputes arising from the rules, regulations and such other guidelines made by PenCom;



- (7) Disputes arising from any decision, notice and/or decision issued by PenCom;

²⁰⁶ Hereinafter referred to as “the APC”

²⁰⁷ See section 93 the Pensions Reform Act No 2, 2004

- (8) Appeals against disciplinary measures by PenCom such as suspension and/or barring of any participant from the market;
- (9) Appeal against dc-licensing of any PFA/PFC by the PenCom; and
- (10) Disputes/claims arising from misrepresentation or false statements in PFA reports/documents or in pensions investments.

The Two Fold Jurisdiction

One could see from the foregoing that the IST is empowered to hear all civil disputes in both the Capital Market and Pensions administration. Such disputes may be between participants, investors, regulatory organizations and operators as well as the SEC which is the apex regulator in the capital market and also between the National Pensions Commission and other parties involved in any pension dispute. The jurisdiction of the IST is therefore two fold covering both



capital) market and appeals in respect of pension matters. A certified true copy of the decision of the tribunal shall be supplied to the parties upon request.

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 Chief Registrar of the Federal High Court by the Tribunal.

Value Added Tax Tribunal

The value Added Tax Tribunal²⁰⁸ is a revenue tribunal that the Minister of Finance²⁰⁹ has the singular power or authority to establish in each zone of the Federal Inland Revenue Service.²¹⁰ The VAT Tribunal in each zone consists of a Chairman and not more than seven members who are appointed by the Minister.²¹¹

The chairman must be a legal practitioner of not less than fifteen years' experience and he is the head and presiding officer of the Zonal VAT Tribunal²¹² The members of the tribunal are appointed from among persons not necessarily who have, but who appear to the minister to have, wide and adequate practical experience, professional knowledge, skills and integrity in the profession of law,



accountancy or taxation as well as persons who have shown capacity in the management of trade, business and retired senior public servant in tax administration.²¹³

Jurisdiction

The VAT tribunal established for each zone of the Federal Inland Revenue²¹⁴ hears and determines appeals emanating from that zone and brought before it either

²⁰⁸ Hereinafter referred to as the “Vat Tribunal”

²⁰⁹ Hereinafter referred to as “the Minister”

²¹⁰ See Article 1 of the 2nd schedule to the Value Added Tax Act, Cap VI L.F.N. 2004 (hereinafter, referred to as the “Vat Act”)

²¹¹ Ibid articles 2 and 4

²¹² Ibid article 3

²¹³ Ibid see article 4 (a)

²¹⁴ Hereinafter referred to as “Zonal VAT Tribunal”

- (a) by any taxable person aggrieved by the assessment or demand notice made upon him by the Federal Board of Inland Revenue²¹⁵ against such assessment or demand notice by giving written notice to that effect to the Board through the Secretary to the VAT Tribunal. Such notice of appeal must be filed written 15 days after the date of



service of the assessment or demand notice which is appealed against,²¹⁶ or

- (b) by the Board, if aggrieved by the noncompliance of a taxable person to any provision of the Act.²¹⁷ The Board must file its appeal in the zone where the taxable person is resident by filing the notice of appeal at the office of the Secretary to the VAT Tribunal.²¹⁸

3.3 POWER OF JUDICIAL REVIEW IN THE ADMINISTRATION OF JUSTICE

As discussed earlier, the constitution has specifically established the judicial arm of the government and gives it an overriding checks on the two other organs of the government to the extent that anything done by any of these two other organs which is inconsistent with the constitution shall be declared void and of no effect by the judicial organs of the government,

²¹⁵ Hereinafter referred to as “the Board”

²¹⁶ See article 9 of the 2nd schedule to the Act

²¹⁷ Ibid article 10

²¹⁸ Ibid article 11

being exercised through the courts. This overriding power of checks exercisable by the court on the other organs is further protected by the same constitution by



empowering the court to ignore any law made by the legislature to oust this power.

Judicial review is the powers of a court to examine the acts of the other branches of government, lower courts, public or administrative authorities and uphold or invalidate them as may be necessary.²¹⁹ To this extent, judicial review covers a wide range of action of tribunals and public authorities. Its remedies may equally be granted against public corporations where their constitutions and functions are unsuitable²²⁰. The control or means of judicial review by courts over administrative bodies is by the use of prerogative orders.

The 1999 Nigerian Constitution vests judicial power in the court under Section 6 which provides that the judicial powers of the Federation shall be vested in the courts established for the Federation, while that of states shall be vested in the courts to be established by states as provided by the constitution. Furthermore, the same Constitution gives the court powers to review legislative actions and prohibit the National Assembly or State House of Assembly to enact any law that ousts or purports to oust the jurisdiction of the court of law in this regard.²²¹

²¹⁹ Malemi. E. *Administrative Law*, third Edition, Princeton Educational Service Lagos (2008) p.290



²²⁰ Wade, H.W.R & Forsyth, *Administrative Law*. Ninth edition Oxford University Press (2004) p.632

²²¹ See Generally the Provisions of Section 4(8) of the 1999 Constitution

In addition to this, the provisions of Section 1 of the 1999 Constitution make the Constitution a supreme law over and above any law and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria and further make any law inconsistent with the provisions of the Constitution void.²²² The combined effect of these provisions gives Superior Courts in Nigeria power to review any administrative action be it from the executive or the legislature, and also any law made by the legislature that is inconsistent with the constitution shall be declared void by the court.

It is necessary at this juncture to take sample of some cases to view how courts in Nigeria reviewed these administrative actions from both the executive and legislative point of view. For example, *in Abdulkarim v. incar Nigeria Ltd*,²²³ the issue of judicial review was examined by the Supreme Court of Nigeria, and Nnaemeka-Agu JSC, explained the role of Nigerian courts in judicial review of administrative action in the following terms:

In Nigeria, which has a written Presidential Constitution, judicial review entails three different processing; namely:

- (1) The courts, particularly the Supreme Court, ensuring that every



arm of government play its role in the true spirit of the principle

²²² Section 1(1) and (3) Ibid

²²³ (1992) 7 NWLR (Pt 251) 1 SC



of separation of powers as provided for in the constitution; -

- (2) That every public functionary performs his functions according to law, including the constitution and
- (3) For the Supreme Court, that it reviews court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions.

In Adeniyi v. Governing Council, Yaba College Technology,²²⁴ the Plaintiff was retired by the defendant (Governing Council). The Plaintiff brought an action that he was not given an opportunity to explain himself and that his retirement was contrary to the rules of natural justice. The Supreme Court held that, there was lack of fair hearing and accordingly the purported retirement of the plaintiff was declared null and void.

In Oruobu v. Anekwe,²²⁵ the Court of Appeal held that the right of access to (approach) the courts for redress against any legislative act or law is guaranteed by Section 4(8) of the 1979 Constitution. Thus, the courts have a supervisory jurisdiction over the exercise of legislative powers by the legislature. However, this power does not affect the ouster clause preserved under Section 6(6) (d) of



the said Constitution in respect of law made between 15th January, 1966 and 30th September, 1979.

²²⁴ (1993)6 NVLR (pt 300) 426 SC.

²²⁵ (1997) 5 NWLR (pt. 506) 618 CA

In National Assembly v. President,²²⁶ the National Assembly attempted to amend the Electoral Act, 2002. The proposed amendment was duly passed by each Chamber and the Bill was presented to the President for his assent. The President however declined assent to the Bill, so that after 30 days the House convened to reconsider the Bill as required by the Constitution. Instead of allowing the Bill to go through another process in two Chambers sitting separately, the Senate President convened a joint session which purported to Override the President's veto by 2/3 majority of its members present. A dispute arose between the Presidency and the pro amendment group. This resulted in litigation and the matter came before the Federal High Court, which declared the purported amendment unconstitutional, in that due process subsequent to the President's veto was not followed. It ought to have been reconsidered by each House Separately and not in joint session.



In Attorney-General of Lagos State v. Attorney- General of the Federation,²²⁷ the Supreme Court declared as unconstitutional the Urban and Regional Planning Decree 1992, because ‘Urban and Regional Planning’ is not an item in any of the two legislative lists. Since the constitution was otherwise generally silent on the subject matter, it could not but be regarded as a residual item which is the exclusive preserved of a State

²²⁶ (2003) 41 WRN 94

²²⁷ (2003) FWLR (Pt. 168) 909.



House of Assembly to legislate on.

Similarly, in ***Atiku Abubakar v. Attorney—General of the Federation***,²²⁸ the attempts by President Obasanjo to forcibly remove the Vice-President Atiku Abubakar from office in a manner that was inconsistent with the raid down procedure under the 1999 constitution was declared void and of no effect.

An x-ray of the cases will show that the courts in Nigeria had reviewed the action of both the legislature in enacting laws, and the executive actions by administrative agencies.



²²⁸ (2007)13 WRN 78



CHAPTER FOUR

4.0 CHALLENGES OF THE COURTS IN THE ADMINISTRATION OF JUSTICE

The challenges facing the Nigerian courts in the administration of Justice are multifaceted and interrelated however, only few of these challenges will be discussed on this chapter. Discussion in this regard shall be on some technical issues in the administration of justice, appointment and Disciplinary powers of the judges and finally, funding of the courts and tribunals.

4.1 TECHNICAL ISSUES IN THE ADMINISTRATION OF JUSTICE

Administration of justice is the whole plenitude of adjudication. Justice in the context of our discourse, is the whole gamut of what is just, equitable and conscionable. There are as many factors responsible for injustice in Nigeria. Some of these factors may be attributed to the problems associated with adversarial system, coupled with rancorous nature of proceedings, including long delay and high cost in terms of both time and money expended. All these are in addition to relationships or business, being destroyed in the process of seeking justice through the adversarial process.²²⁹



²²⁹ Dele Peters: Alternatives to Litigation: The Multi-Door Court House Concept in Issues in Justice Administration in Nigeria (ed) Fassy Adetokunboh O. Yusuf, Published by VDG. International Ltd. 2008. p. 438



This adversary system is in contradistinction to the continental view in which once the parties have invoked the jurisdiction of the court it is the duty of the court to investigate the facts and the law and give a decision according to its view of the justice of the case with regard to any public interest that may be involved.²³⁰

The system is not perfect and has some problems. Some of these are: legal justice becomes formalistic and technical. It tends to elevate form over substance: no matter how many the judges insist in rhetoric “that justice is not a fencing game in which the parties engage in whirligig of technicalities”. These complexities became more chronic and costly as litigation went up the judicial pinnacle, thereby making judicial proceedings both mysterious and daunting for most people. This adversely affects the confidence of the ordinary people. Secondly, many people consider the entire legal system as having too much root in English concepts and as, therefore, being basically a colonial relic. Many of these legal concepts have not been part of the African experience and therefore could not cover our existential realities. This tends to exclude the traditional community role of law in our indigenous societies which focused on better management of human relations through conciliation or



²³⁰ Epiphany Azinge, “The Adversarial System of Adjudication: Problems and Prospects, being paper delivered at the 22nd Advanced Course in Practice and Procedure held at NIALS, Unilag Campus, Lagos from 8th – 26th July, 2002



compromise of disputes.²³¹

Beyond this however, a litigant's success in the court again is dependent on series of variables and factors. For instance, the concept of legal justice may, to a very great extent, depend on the caliber of attorney whose services a litigant can afford to pay for and hence the monetization of justice and the aphorism that justice is for the highest bidder.²³² Consequently, there is loss of confidence in the whole adversary system.

Delay as a Factor Militating Against Fast Tracking of civil Proceedings

The problems besetting procurement of justice through the adjudicatory process in Nigeria are multifarious and multi-dimensional. They range from too many cases in the courts to trial delays and denial of justice, inadequacy of judicial personnel, archaic system of court adjudication, corruption, lack of modern management technology and the absence of case management techniques.²³³

As stated earlier, the problem of delays suffered by litigants appears to be the most persistent of them all. Accordingly, like an unattended cancer, it tended to grow bigger and bigger.²³⁴ According to Professor Osinbajo, the situation in Lagos is very daunting and perplexing. According to him, as of May



2000, pending cases at the Lagos High Court

²³¹ I. A. Ayua, "Nigerian Legal Profession: Problems and Prospects" in Ayua (ed) *Law, Justice and the Nigeria Society*, NIALS Commemorative Series 1, Nigerian Institute of Advanced Legal Studies, Lagos, 1995 at p. 6..

²³² *Ibid* and see further, Dele Peters *Op.cit* at p. 436.

²³³ Dele Peters, *Op. cit.*

²³⁴ Yemi Osinbajo, *SAN Op.cit* at p. 2.

were in the order of 40,000.²³⁵ He gave a further comparative breakdown of the work load in both Lagos and Rivers States thus:

Table A

Year	Court	Fresh Cases Filed	Pending Cases
1999	Lagos	10,226	20,169
	Rivers	2,409	8,398
2000	Lagos	9,969	23,197
	Rivers	3,399	10,699

A 1997 study conducted on the duration of trials in the Lagos High Court

indicated the following results.

Table B



Types of Case	Trial Time
Land Matters	7 – 8 years
Personal Matters	3 – 4 years
Commercial Cases	3 – 5 years
Family Cases	2 – 5 years

Going by this table, the overall average for cases was 4.25 years. These figures of course assumed that there would be no interlocutory appeals which could drag the process on for an additional 50% - 75% of the average expected duration. Another study conducted by the Lagos State

²³⁵ *Ibid.*

Ministry of Justice in August, 2001 showed that it took an average of 5.9 years for a contested case to move from filing to judgment. Other random studies show that few lawyers who practiced regularly in the Lagos High Court were able to conclude 10 contested cases in 10 years.²³⁶

The Table below shows the length of trial time in civil cases in Lagos State.²³⁷



Table C

General civil cases (2001-2006) National average	
Court	Years
High Court	3.4
Court of Appeal	2.5
Supreme Court	4.5
Total	10.4

The situation in the apex court does not fare better either. The position was painted gloomily by the Honourable Justice Dahiru Musdapher, C.J.N, when he stated that during the 2010-2011 Legal Year alone, the Supreme Court disposed of 163 cases, consisting of 78 judgments and 85 motions. However, 1,149 civil appeals, 58 criminal appeals and 177 motions are still pending before the Supreme Court. He

²³⁶ Yemi Osinbajo, *Op.cit* at pp. 2 – 3.

²³⁷ Yemi Osinbajo, *The Retreat of the Legal Process*, Nigerian Institute of Advanced Legal Studies, Lagos, 2011,p.3.



continued that even if there were a full constitutional complement of 21 Justices of the Supreme Court, it would certainly take several years before the backlog would be cleared.²³⁸

Writing on the theme, 'The Nigerian Legal Profession: Towards 2010, Professor Auwalu Hamisu Yadudu stated that without attributing the cause to any single actor or factor, there is, in contemporary Nigeria, an unacceptable, perhaps indecent, level of dilation and delay in the judicial process which tends to erode confidence in the system and encourage resort to some form of self-help out of desperation²³⁹. On the indeterminable delays in the judicial process, the learned author further gave examples of those who suffered delays: a very high judicial officer recently complained loudly that a suit before one of his courts suffered well over (80) eighty adjournments. A European victim of 419 fraudsters has been telling her own tale of adjournment woes, which she portrays, and says so very loudly in Nigeria and abroad, as unabashedly travesty of justice that can only help in further denting of our image.²⁴⁰ These, and many more, the author suggested that they may well lie in some archaic rules of procedure, the inadequacy or non-availability of the facilities which augur for speedy trials, the unwholesome attitude of some counsel who take undue advantage of loop-



²³⁸ D. Musdapher, *The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy*, Fellows' Lectures Series, Nigerian Institute of Advanced Legal Studies, Lagos, 2011.

²³⁹ Auwalu H.Yadudu, *The Nigerian Legal Profession: Towards 2010*, NIALS Annual Lecture Series, 1997 and Reprinted in 2007 by the Nigerian Institute of Advanced Legal Studies, Lagos, p. 6.

²⁴⁰ *Ibid.*

holes in the system and rules and complacency in the society which is not repulsed by some of these shocking revelations and discoveries.²⁴¹

4.2 APPOINTMENT AND DISCIPLINARY POWERS OF THE JUDGES

The appointment of judges (Judicial officers) is a fundamental aspect in the administration of justice. Judges are expected to be men of proven integrity and impeccable character. According to lord Denning, Judges should be beyond reproach and scorn and should not be persons who can be questioned by the people with scorn: "who made them a ruler and a judge over us"²⁴². By this position, the consideration in the appointment of judges should be devoid of politics and any alliance with government or the government agencies.

Under the 1999 Constitution of the Federal Republic of Nigeria, both the appointments and promotion of the judicial officers are centralized. The chief Justice and Justices of the Supreme Court, President and Justices of Court of Appeal, chief Judges of Federal and State High courts and Grand Kadis of Sharia



Courts of Appeal and Presidents of Customary Courts of Appeal are all appointed by the President or state Governors as the case may be, on recommendation of the National Judicial Council. These appointments are subject to the confirmation of the Senate or state

²⁴¹ *Ibid*, pp. 6-7.

²⁴² Denning, A. *The Road to Justice*, (London: Stevens & Sons Ltd 1995, Pp 30-32

House of Assembly as the case may be. However, politics is often deployed in the confirmation process of these appointments in deference to the recommendations of the National Judicial Council or the ratification of the President or Governor as the case may be.²⁴³ The basic qualification for appointment as judicial officers to the Supreme Court, Court of Appeal and high Courts are 15 years, 12 years and 10 years post-call respectively, but the constitution was silent on the character, due diligence checks and relevant experience of appointee from date of qualification. Though these have created some lapses and given room to nominations of misfits by some Governors. Thereby contravening the Constitutional channels of nomination through the State Judicial Commissions and then National Judicial Council.

By the provision of Section 291 of 1999 Constitution of the Federal Republic



of Nigeria, after appointment, judicial officers are entitled to remain in office under the stipulated retirement age of 65 and 70 years for judges of high and appellate courts respectively. This guarantees their tenure while serving despite their pronouncements, except, for offences contemplate by the Constitution in Section 292 which specifies conditions that would require their severance from the bench, such as inability to discharge the functions of the office, misconduct or contravention of the code of conduct. It is the responsibility of the Federal and State judicial

²⁴³ Response to an interview with Hon Justice ML Uwais (CJN) and Justice S Bage (JHC Abuja) held on 8 April, 2005 commissions to recommend to National Judicial council the disciplinary actions to be taken against judicial officers and it becomes the duty of the latter to recommend to the President or Governor, as the case may be for such removal.

However, the implementation of the procedure in section 292(1) of the 1999 Constitution of the Federal Republic of Nigeria poses challenges to the judiciary as some Governors find it convenient to remove a sitting chief Judge or Grand Kadi who rules against them. Suffice it to say, an address supported by two-thirds majority of the State house of Assembly confers right on the Governors to sack the Chief judge or grand Kadi even without recommendations as in Ebonyi



and Sokoto States in 2004. Unfortunately, the Constitution does not give any role or power to National Judicial Council to checkmate the excesses of Governors who remove Judges on the basis of ruling against the Government. Similarly, Judges whose disciplinary actions were recommended by the National Judicial Council may not be disciplined simply because the Governor or the President does not desire him to be discipline asuch.

Hence, the disciplinary procedure as stipulated in section 292(1) of the 1999 Constitution of the Federal Republic of Nigeria need to be amended to improve the administration of justice in Nigeria. The Judicial and not, the legislature or Executive should be allowed to decide finally on the removal of Judges.

Critical Examination on the Disciplinary Powers of the National Judicial Council under 1999 Constitution.

The National Judicial Council (NJC) is one of the executive bodies established for the Federation via section 153 of the 1999 Constitution (as amended). The functions and powers of the National Judicial Council are as prescribed and circumscribed in section 21, Part 1 of the Third Schedule to the 1999 Constitution (as amended).



The National Judicial Council derived its disciplinary power from the following Constitutional provisions. Section 21

(b), Part 1 of the Third Schedule of the 1999 Constitution (as amended) states:

recommend to the President the removal from office of the judicial officers specified in sub-paragraph (a) of this paragraph, and to exercise disciplinary control over such officers.

Section 21 (b)(d), Part 1 of the Third Schedule of the 999 Constitution (as amended) states:

recommend to the Governors the removal from office of the judicial officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers.

In view of the above provisions, one can rightly conclude that the National Judicial Council is not conferred directly with the power to suspend Judges. The NJC's power to exercise disciplinary control in section 21 (b) (d) of the Third Schedule of the 1999 Constitution (as amended) is not a specific power, however broadly construed. The measures and procedure of this 'disciplinary control' are not spelt out in section 21(b)(d) of the Third Schedule of the 1999 Constitution (as amended) or in any (known) Rules or Protocol. It is important to note, here, that



apart from section 153(1) of the 1999 Constitution (as amended) which established the National Judicial Council, there is no Act of the National Assembly underpinning it. That means that there is no Act which gives the National Judicial Council the power to make Rules for disciplinary control of Judges, wherein it may incorporate 'suspension' as a punitive measure. It is noteworthy, that under section 160 of the 1999 Constitution (as amended), the National Judicial Council, in exercise of its powers, cannot confer powers and impose duties on any officer or authority of the Federation or of a State, except with the approval of the President or the Governor of a State, as the case maybe.

In the above light, 'disciplinary control' in the context of section 21 (b)(d) of the Third Schedule of the 1999 Constitution (as amended) may simply refers to the National Judicial Council's power to investigate or inquire into complaints on the conduct of Judges in order to determine their suitability to continue as judicial officers and recommend their removal from office (if necessary) to the President or the Governor, as the case may be. In exercising disciplinary control in the wise of section 21 (b)(d), the National Judicial Council performs a mere investigative role and cannot be construed as giving the National Judicial Council the power to suspend or sanction Judges, see generally, In Re Disciplinary Action Against



Graham, 453 N. W. 2d 313 (1990) (Supreme Court of Minnesota); In Re Application for Discipline of Peterson, 260 Minn. 39,344 110 N.W. (2d) (1961).

Disciplinary control involves (1) receiving complaint; (2) conducting investigation into the complaint; (3) asking the Judge to respond to the complaint; (4) hearing from the person who made the complaint; and (5) taking decision either exonerating the Judge or in serious cases, recommending that the Judge be sanctioned.

Conversely, it is pertinent to highlight that the examination above was appraised by the Nigerian House of Representatives in 2003.

Realizing that section 21 (d) (d) of the third schedule of the 1999 Constitution (as amended) does not empower the National Judicial Council to suspend or sanction Judges, the House of Representatives introduced a Bill in 2013 to give the National Judicial Council the power to suspend Judges without seeking the approval of the President or the Governor of a State, as the case may be. The Bill is seeking to increase the power of the National Judicial Council to suspend, punish, reinstate and discipline judicial officers. The Bill also seeks for an Act to further amend the 1999 Constitution (as amended) with a view to giving the National Judicial Council to suspend Judges.



4.3 FUNDING OF THE COURTS & TRIBUNALS

Nigeria practices constitutional democracy. The three arms of government – the Legislature, the Executive and the Judiciary- are creatures of the Constitution. Powers are constitutionally assigned to them with checks and balances on one another. Theoretically, the three arms are equal partners, but in practice, the Judiciary appears to be the weakest as it neither controls sword nor purse. The Legislature controls the sword while the Executive controls the purse. The Judiciary, more often than not, is treated as a government agency or parastatals and not an independent co–equal branch of government.

This paragraph will examine the challenges of funding of the Courts under the 1999 constitution, the different sources of funding various courts as provided for under the Constitution, the role of the National Judicial Council (NJC) in that regard and the present position of funding as recently ordered by the court.

Funding of courts in Nigeria is, essentially, a constitutional matter. The 1999 Constitution of Nigeria is designed in a way to secure fiscal autonomy for the Judiciary.²⁴⁴ Without stating it directly; it is obvious that the framers of the



Constitution intended that the Judiciary be fiscally autonomous. The provisions of the Constitution on fiscal autonomy of the

²⁴⁴ See Generally sections 81(2) (3) and 84 (2) (7) of the 1999 Constitution of the Federal Republic of Nigeria.

Judiciary are clear, plain, simple and straight-forward. They need no interpretation but application. For

purposes of funding, courts in Nigeria can, in broad terms, be categorised into two:

(a) Superior Courts of record and

(b) Other Courts. This

categorisation is simply in accordance with the provisions of Section Six of the Constitution, but it is relevant for a proper appreciation of this subject. Superior courts of record, as specified by the Constitution, consist of the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, a High Court of a State, the Sharia Court of the Federal Capital Territory, Abuja, the Sharia Court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, Abuja and the Customary Court of Appeal of a State.

In the category of "other courts" are courts established by the National



Assembly or any House of Assembly not listed under Section 6 (5) of the Constitution, with subordinate jurisdiction to the High Court. Until the recent amendment of the 1999 Constitution, the National Industrial Court belonged to the category of "other courts". Others in this category include, Magistrate Courts, Sharia Courts, Customary Courts, Upper Area Courts e.t.c.

Sources of Funding

The

Constitution prescribes three sources by which the Judiciary shall be funded. They are, through:

- (a) The Consolidated Revenue Fund of the Federation.
- (b) The Consolidated Revenue Fund of the State and
- (c) The Federation Account.

The Consolidated Revenue Fund of the Federation

Section (80) (1) of the Constitution establishes the Consolidated Fund of the Federation, where all revenues or other moneys raised and received by the Federation shall be paid into. Revenues or other moneys payable into any other public fund under the Constitution or any Act of the National Assembly are excluded from being paid into the fund. In specific terms, Section 80 (2) of the



Constitution directs that no moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet the expenditure that is charged upon the fund by the Constitution.

It is significant to note here that, by virtue of the provisions of Section 84 (2) and (4) of the Constitution, the remuneration, salaries and allowances payable to the following judicial officers are charged on the Consolidated Revenue Fund of the Federation: Chief Justice of Nigeria, Justices of the Supreme Court, President of Court of Appeal, Justices of the Court of Appeal, Chief Judge and Judges of the Federal High Court, President and Judges of the National Industrial Court, Chief Judge and Judges of the High Court of the Federal Capital Territory, Abuja. Chief Judge and judges of the High Court of a State, Grand Kadi and Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, Grand Kadi and Kadis of the Sharia Court of Appeal of a state, President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja, President, and Judges of the Customary Court of Appeal of a state.

This position received an authoritative pronouncement of the Supreme Court in *A.G. Federation v. A.G. Abia State & Ors* 9, where the court held: "It is the Consolidated Revenue Fund of the Federation and not the Federation Account that is charged with the salaries of Judicial Officers in the Federation."



It is pertinent to draw attention to a very salient point here; the Constitution, in addition to remuneration, salaries and allowances of judicial officers, makes provisions for the recurrent expenditure of their offices. This can be found in Section 84 (7) of the Constitution which provides:

"The recurrent expenditure of judicial offices in the Federation (in addition to salaries and allowances of judicial officers mentioned in subsection (4) of this section) shall be a charge upon the Consolidated Revenue Fund of the Federation."

In spite of the above, it is pertinent to highlight that the challenges of funding which has been bedeviling the financial autonomy of Courts in Nigeria has been recently remedied by an Abuja Federal High Court on the 26 May 2014.²⁴⁵ The Court declared as unconstitutional, null and void, the control and disbursement of funds meant for the judiciary by the executive arm of government.

Justice Ahmed Mohammed ordered that money belonging to the judiciary in the consolidated revenue of the federation must be fully paid directly to the National Judicial Council (NJC).

Mohammed was delivering judgment in the case brought against the executive by Mr Olisa Agbakoba (SAN). The



News Agency of Nigeria (NAN) recalls that Agbakoba, a constitutional lawyer, had sued the Federal Government over the practice of passing judiciary funds through the executive. Agbakoba had argued that the practice was in breach of Sections 81 (2) (3) (c) and 84 (2) (7) of the 1999 Constitution of the Federal Republic of Nigeria.

²⁴⁵ the News Agency of Nigeria (NAN) dated May 26, 2014.



The Attorney-General of the Federation, the National Judicial Council and the National Assembly were joined in the suit as co-defendants. In the Judgment, Mohammed said, "the NJC shall prepare the judiciary's budget as charged upon the Consolidated Revenue and submit it to the Accountant-General of the Federation to transfer to NJC. A consequential order restraining the 1st defendant (FG) and 3rd defendant (National Assembly) from appropriating the funds for the judiciary in the Annual Appropriation Act, was granted. The present practice of judiciary funding by the defendants, which makes the judiciary dependent on the Executive Arm in budgeting and release of funds, violates Sections 81 (2) (3) (c) and 84 (2) (7) of the Constitution. The Judge further declared that Section 81 of the constitution guarantees financial autonomy of the judiciary. The National Judicial Council, as declared, ought not to send its annual budget to the budget office of the executive arm of government or any other executive authority as was practiced. He ordered National Judicial Council to instead send its budget directly to the National Assembly for appropriation. Mohammed also declared that the dependence of the judiciary on the executive arm for its budgeting and funding by warrants was



directly responsible for the under-funding of the judiciary.

He further declared that “this is also responsible for the poor and inadequate judicial infrastructure, low morale among judicial personnel, alleged corruption in the judiciary, delays in administration of justice and judicial services”.

Funding of Tribunals

As discussed earlier, there are in existence various type of tribunals established for different purposes. The funding of almost all of these tribunals are from the administrative bodies establishing them. There is no constitutional provision which specifically guarantee the financial autonomy of tribunals. As a result of this, most of the tribunals were faced with the challenges of under-funding and this has been the factors militating against the effective performance of tribunals. For instance, the chairman of the code of conduct tribunals, (Danladi Yakubu Umar (Justice)) while receiving a consultant from the united Nations office on Drugs and Crime, on Wednesday March 19, 2014 reported to have identified under-funding and the Constitutional status of the code of conduct tribunals as major constraints hampering its proper adjudication duties. Similarly, Ngozi Chianakwalam, chairman, Investments and Securities Tribunals (IST), while speaking at the opening session of the capital market stakeholders forum in Abuja, on Thursday, 20 March 2014 said, funding and poor



legal backing had remained thorny issues in the tribunal's quest to deliver on its statutory mandate.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 FINDINGS:

The thrust of this research was the examination of the role of Courts and tribunals in the administration of Justice. The following findings were made during the research:

The concepts of the rule of Law and Separation of powers played important role in the administration of Justice. The concept of separation of power provides checks and balances on the activities of the executives and legislature. It also questions the legitimacy of such activities and declares it unconstitutional, where necessary. However, prior to 26 May 2014 when a Federal High Court in Abuja upheld the Financial autonomy of Judiciary, Judges in Courts were not Practically free and equipt to exercise their powers as vested under section 6 of the 1999 Constitution of the Federal Republic of Nigeria and this negate the intend and purposes of the concept of separation of powers. The concept of the Rule of Law



on its part, subject all classes of people to the ordinary Law courts. However, the Nigerian experience of the existence of IMMUNITY CLAUSE in the 1999 Constitution of the Federal Republic of Nigeria which shield the Governors and the President while in power appears to limit the practicability of the concept of Rule of Law.

Other findings made in Nigeria Courts relates to the Judicial proceedings and system of the Court. The system is adversarial in nature. The procedures were too formalistic and technical. This adversely affects the confidence of the ordinary people. Other technical factors found in this regard are delay in court proceedings, lack of modern management technology and so on.

In relation to the tribunals, it as found that most of the instruments establishing tribunals in Nigeria usually provide or stipulates time frame for which the tribunals can sit for the entertainment of cases. This invariably connotes that, where an evidence of a particular case is to be gotten or received ahead of the time limit of the tribunal, such case cannot be entertained. This procedure is not in consonant with fair hearing principles as enshrined under the 1999 constitution of the Federal Republic of Nigeria.



Similarly, under the appointment and disciplinary powers of Judges, it was found that the 1999 Constitution of the Federal Republic of Nigeria was silent on the character of a person to be appointed as a Judge and the relevant experience of a Judge to be appointed. These have given room to nominations of misfits by some governors notwithstanding the laid down procedures of recommendation by the National Judicial Council. The implementation of the procedure in section 292(1) of the 1999 Constitution of the Federal Republic of Nigeria poses serious challenges to the Judiciary as some Governors find it convenient to remove a sitting Chief Judge or Grand Khadi who rules against them. This was the situation in Ebonyi and Sokoto states in 2004. Again, the Constitution does not give any role or power to National Judicial Council to checkmate the excess of governors who remove Judges on the basis of ruling against the government. In the same vein, powers were not also given to the National Judicial Council to dismiss a Judge whose recommendation for removal was forwarded but that the president or the Governor ignore to remove the alleged Judge for his personal reasons.

5.2 SUMMARY:

The research was carried out in a logical structure. Conversely, in spite of chapter one which is the General Introduction of the study, chapter two mainly



examines some key Constitutional concepts relevant to administration of Justice. These are basically the concepts of separation of powers and rule of Law. These concepts played important role in the administration of justice. It is glaring that the spirit of separation of powers provides checks and balances on the activities of the executive and the legislature, and questions the legitimacy of such activities and declares them unconstitutional, null and void; while the rule of Law, presupposes (among other things) that all classes of people are to be subjected to ordinary Law Courts. All men in government or as ordinary citizens are under same duty to obey same Law i.e equality before the Law. These two “elements” which foster the administration of Justice, were recognized under the 1999 Constitution. Specially, section 4, 5 and 6 therein, dealt with the concept of separation of powers while sections 36(1) (8) & (12) incorporated the element of the rule of Law. The Nigeria courts have decided in so many cases touching on the Rule of Law. Notably among others, are: *Aoko v. Fagbemi* (1961) All NLR 400, *Ojukwu v. Governor of Lagos State* (1986) All NLR 233 at 246.

Chapter three, examine the establishment and powers of Courts and tribunals vis-à-vis the power of Judicial review in the administration of Justice. Various Courts and tribunals with their powers or jurisdictions were seen, as



established by the 1999 Constitution of the Federal republic of Nigeria. By section 6 of the Constitution, judicial powers is vested on the Courts therefore, judicial review is the powers of a court to examine the acts of other branches of government, lower courts, public or administrative authorities and uphold or invalidate them as may be necessary. It is pertinent to note that, the courts in Nigeria have exercised these powers in various cases. Notably among the cases are; *Abdulkarim v. Incar Nigeria Ltd* (1992) 7 NWLR (pt 251)1SC; *Adeniyi v. Governing council Yaba College of technology* (1993) 6 NWLR (pt 300) SC; *Oruobu v. Anekwe* (1997) 5 NWLR (pt. 506) 618 CA and so on.

Chapter four examines the challenges of the Courts in the administration of justice. In this heading, only few important challenges were discussed. These are; the technical issues in the administration of Justice, appointment and disciplinary powers of the Judges and funding of the Courts and tribunals. In the course of discussion under the technical issues affecting the administration of justice, it was revealed that adversarial system of our courts in Nigeria has caused our legal system to become formalistic and technical. The system elevate form over substance: no matter how much the Judges insist in rhetoric “that Justice is not a fencing game in which the parties engage in whirligigs of technicalities”. These



complexities became more chronic and costly as litigation went up the judicial pinnacle, thereby making judicial proceedings both mysterious and daunting for most people. This adversely affects the confidence of the ordinary people. Similarly, apart from the believe that the legal system is having too much root in English concepts; litigant's success in the court is dependent on series of variables and factors. For instance, it may depend on the caliber of attorney whose services a litigant can afford to pay for and therefore monetization of Justice and the aphorism that Justice is for the highest bidder. Other technical factors identified in this regard are delay in court proceedings, lack of modern management technology, corruption and so on.

It was also seen in this chapter that, Judges are appointed by the president or state governors as the case may be, on recommendation of the National Judicial council and that the appointment are subject to the confirmation of Senate or States House of Assembly as the case may be.

It was also seen that it is the responsibility of the Federal and State Judicial Commissions to recommend to National Judicial Council for the disciplinary actions to be taken against judicial officers and it becomes the duty of the National Judicial Council to recommend to the president or Governor as the case



may be for any disciplinary action.

It was equally seen

in this chapter that, the 1999 Constitution of the Federal Republic of Nigeria was designed to secure fiscal autonomy for the judiciary by virtue of sections 81(2) (3) and 84 (2) (7) therein. The provisions are clear and straight forward. They need no interpretation but application. Prior to 26 may 2014, the application was hinged by the administrative arms of the Nigeria government, until now, the situation was remedied by the Federal High court in Abuja. The Court declared as unconstitutional, null and void, the control and disbursement of funds meant for the judiciary by the executive arm of government. Unfortunately, tribunals are yet to be considered in that regard as the Constitutional provisions are silent on the issue of the financial autonomy of tribunals.

Most of the challenges discussed under the technical issues affecting the administration of Justice were traceable to adversarial system of legalism. Many people consider the entire legal system as having too much root in English concepts which is basically a colonial relic. Many of these legal concepts have not been part of the African experience and therefore could not cover our existential realities. It exclude the traditional role of Law in our indigenous societies which focused on better management of human relations through conciliation or



compromise of disputes. However, the recent reforms in the practice of ADR mechanisms is a welcome development. It is hope that this will gradually replace the formalistic system of our courts.

5.3 RECOMMENDATIONS:

Administration of Justice has been said to be the whole plenitude of adjudication; and Justice, being the gamut of what is just and equitable suffered several challenges in the Nigerian context. So many of these were adumbrated in the previous chapters. Few among the challenges were identified to be the formalistic technicalities that cause delay in Courts proceedings and the English concept of legal proceedings that rooted from colonial relic. The better idea of Justice should have been resolving disputes expeditiously through the instrumentality of traditional concepts which could be better appreciated by litigants or through conciliations, arbitration, and so on. It is therefore recommended that the practice of ADR mechanism presently enhanced and adopted by some courts in Nigeria to reduce the backload of cases and improve the speedy disposal of cases should be implemented by all Courts in Nigeria.

Other challenges identified in the administration of Justice are in appointment and disciplinary powers of Judges vis-à-vis the power of the National



Judicial Council. It has been pointed out that the constitution is silent on the character of a person to be appointed as a Judge and this fundamental lapses was the factor giving room to the nominations of misfits by some Governors. It is recommended that such lapses should be captured by any subsequent amendment of the Constitution to enable the appointment of only persons who have track records of good characters.

In a nutshell, the Constitution does not give any role or power to the National Judicial Council to checkmate the excesses of Governors who remove Judges on the basis of ruling against the government. This power was not equally incorporated in the Act establishing the National Judicial Council. It is submitted that such power be subsequently incorporated in any amendments, to help in checking the excesses of Governors or the President as the case may be.

Finally, the Act establishing the National Judicial Council is inadequate as it failed to equip the council with the powers to take appropriate actions where a recommendation for removal of a Judge on disciplinary ground was forwarded to a governor or President who consciously ignored or disapproved such recommendation on personal reasons. The Governor's or the President's personal reasons may not augur well in the administration of Justice particularly where the



allegations against the Judge so recommended relates to corruption and other atrocities. In this regard, it is submitted that such powers should be incorporated in any subsequent amendments.

5.4 CONCLUSION:

It is pertinent to conclude that, unlike the era before 1999 when Nigerian Courts and tribunals are not suitable for expeditious matters, recent amendments to the Constitution have introduced more fast-tracking provisions that guarantee a timeous disposition of election petitions by Election Tribunals including appeals. The innovation introduced by the Constitution of the Federal Republic of Nigeria (Second Alteration) Act 2010 includes the establishment of a stand-alone Governorship Election Tribunal for each State of the Federation with exclusive original jurisdiction to hear and determine election petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State. Section 9 thereof sets out a time table for presentation and determination of election petitions and appeals. It stipulates that election petitions be presented to the relevant election tribunal within 21 days from the date of announcing the election result. The tribunal has 180 days to determine the petition. If there is an appeal, the Court of Appeal must determine the appeal within 60 days from the



date the judgment appealed against was delivered. Ironically this provision does not only allow for computation of time in advance from a moment when the appeal is non-existent but it also fails to consider the built-in periods for filing necessary processes, including extensions, before the appeal becomes matured for hearing. Experience has shown that time extensions were sought for and obtained within as short as 48 to 72 hours before the expiry of 60 days in governorship appeal in which the Court of Appeal is not the final appeal court. Yet decisions of Court of Appeal including full reasons thereof must be rendered within the stipulated time frame of 60 days otherwise it will be null and void, notwithstanding the clear provision of section 294(5) of the Constitution (as amended) which saves decisions of courts delivered outside the time limit set by the Constitution. Such decision shall not be set aside or treated as a nullity solely on the ground of pronouncement after the expiry of the time frame for so doing unless the court exercising jurisdiction by way of appeal from that decision is satisfied that the party complaining has suffered a miscarriage of Justice by reason of the delay.

It is submitted that the intention of the law makers must be ascertained from within the law and not outside it. Section 294(5) is the only singular



provision that deals with late delivery of Judgment. It therefore ought to apply in ascertaining the validity or otherwise of the similar provision in section 285 of the Constitution as amended by section 9 of the Constitution (Second Alteration) Act 2010.



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