

THE COURT SYSTEM IN NIGERIA: JURISDICTION AND APPEALS

Dr. JUSTUS SOKEFUN

Professor of Law

SCHOOL OF LAW

NATIONAL OPEN UNIVERSITY

NIGERIA, LAGOS

Mail: capmai@yahoo.com

NIGERIA

NDUKA C. NJOKU

LECTURER, SCHOOL OF LAW

NATIONAL OPEN UNIVERSITY

NIGERIA, LAGOS

NIGERIA

ABSTRACT:

The legal system of a nation is critical to the maintenance of law and order in that nation. The legal order is the foundation upon which the peace, order, justice and development of the nation depend. The Courts play a pivotal role in the organisation and maintenance of the legal order. This applies to Nigeria. This article examines Nigeria's legal order especially the hierarchy of Courts in Nigeria, the jurisdictional limits of the various courts in Nigerian as well as the appellate system of Nigerian courts.

INTRODUCTION:

Nigerian legal system is essentially a colonial heritage which springs from British colonial rule in Nigeria. Undoubtedly, it is for this reason that Nigeria's legal system is patterned after the British legal system. However, there is a fundamental difference between Britain and Nigeria in relation to political organisation of the state; while Britain adopted the unitary system of government wherein powers of government are legitimately concentrated at the centre, Nigeria adopted federal system of government by which governmental powers are constitutionally shared between the central government and federating entities.

Directly flowing from these differences in the political arrangements of the two countries is the fact that Nigeria's legal system and in particular, its court hierarchy ought to be different from that of Britain. This is not entirely correct as Nigeria's court system retains some essential attributes of a court arrangement suited for unitary systems of government. Despite this seeming anomaly, Nigerian courts are creations of the constitution and it is the constitution that donates the jurisdictional limits of the courts. The same is the case with the appellate system which is also constitutionally and statutorily granted to litigants in Nigeria.

THE NATURE OF A LEGAL SYSTEM:

A system has been defined as the "organized relationship between the component parts of a body"¹. In relation to the cosmos, we speak about the solar system and with regard to law, we speak about the legal system which is a system of normative rules.

The existence of the legal order comprising a set of rules necessarily demands that there is a foundation upon which the legal order is predicated. This source is the validating idea or concept and determines the legitimacy or otherwise of all the rules in the legal system. This source of validity of all normative rules in

¹ J.O. Asein, "Introduction to Nigerian Legal System" 2nd Edition (Lagos, Ababa Press Ltd, 2005) p.5

the legal order is usually referred to as the grundnorm or the ultimate rule of recognition. It is the idea from which all the institutions and prescriptive rules of the legal order derive their legitimacy. The grundnorm establishes and legitimises the political and legal order of the state.

The grundnorm has an extra legal source and continues in existence until displaced by another grundnorm by which the efficacy and validity of the former grundnorm dissipates and extinguishes. A legal system is also “an ordered set of laws sharing unique but common characteristics”².

THE NIGERIAN LEGAL SYSTEM:

The Nigerian legal system is “the totality of the laws or legal rules and the legal machinery which obtain within Nigeria as a sovereign and independent African country”³. During the colonial rule, Nigeria’s grundnorm was derived from the Queen in Parliament. This position dramatically changed when Nigeria became an independent state and the constitution became the basic and fundamental law of Nigeria. As a result of Nigeria’s historical circumstances, Nigeria’s Legal System is part of the common law system. Accordingly, Nigerian legal system has been significantly influenced by the British Commonwealth. As a result, the common law of England, the doctrines of equity as well as statute of general application in force in England as at 1st January 1900 form an essential part of Nigeria’s legal system. Furthermore, certain English statutes that have been received into our laws by local legislation form part and parcel of Nigeria’s Legal System. Beyond these, Nigerian law includes domestic legislation, Nigerian case law and customary law. The principles of judicial precedent and hierarchy of courts are primary and basic parts of our legal system with the Supreme Court of Nigeria at the zenith of the court system. Nigeria runs the adversarial system of court proceedings. In Nigeria, the presiding judge is both a judge of facts and the law.

Directly flowing from the above is that the major characteristics of Nigerian legal system are (a) duality because it acquired principles of the Laws of England and the customary law of the various ethnic nationalities in Nigeria; (b) external influence which is reflective of colonial past and Islamic religion in the Northern part of Nigeria; (c) diverse because the various numerous ethnic nationalities in Nigeria have their customary law coupled with the common law and Islamic law; (d) stare decisis by which courts below are bound by decisions of courts above in the hierarchy; (e) adversarial system by which the judge takes the position of a neutral umpire and the hierarchy of courts⁴.

THE JUDICIARY:

Judiciary means “The branch of government responsible for interpreting the laws and administering justice”⁵. The term ‘judiciary’ denotes the branch of government that is constitutionally responsible for interpreting the laws and administering justice, by the application of the rule of law, through duly constituted courts⁶. Judicial power means:

“the authority vested in courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the law when controversies arise over what has been done or not done under it”

Section 6 (1) of the 1999 Constitution of the Federal Republic of Nigeria vests judicial powers of the Federal and State governments of Nigeria in the Courts established by the constitution. The section provides that the “Judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.” Section 6(2) of the 1999 Constitution provides that “Judicial powers of the

² J.O. Asein, op.cit p.2.

³ C.O. Okonkwo, ed. Introduction to Nigerian Law (London, Sweet & Maxwell, 1980), P. 40 cited by J.O. Asein op.cit

⁴ J.O. Asein op. cit p.5-7

⁵ The Black’s Law Dictionary, 8th edition, 2004

⁶ Anozia v. Attorney General of Lagos State (2010) 15 NWLR (Pt. 1216) 207 at 237

State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for the State”.

By Section 6 (6) of the Section “The judicial powers vested in accordance with the foregoing provisions of this section-

- (a) Shall extend notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law;
- (b) Shall extend to all matters between persons, or between government and authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions to the civil rights and obligations of that person...

The primary role of the judiciary is the interpretation of the Constitution and the laws enacted by the legislature in resolution of justifiable live issues brought before the courts. The judiciary also has the role of administration of justice according to law. In exercise of this role the fundamental values of fairness, impartiality, integrity and incorruptibility are sacrosanct. It is through the instrumentality of administration of justice that law and order are maintained in the state. Law and order are the primary functions of any government. Another role of the judiciary which is not easily discernible is the role of checks and balances. By the power of judicial interpretation, the judiciary can declare activities of the executive and legislature unconstitutional, null and void and of no effect. This is usually undertaken through the processes of judicial review.

The role of the judiciary in the exercise of governmental powers was exemplified in the case of **A.G. Abia State v. A.G Federation**.⁷ In that case, the National Assembly enacted the Monitoring Allocation to Local Government Act 2005. The Act, among other provisions, sought to monitor financial allocation that accrued from the Federal Government Account to the Local Government. The 1st Plaintiff contended that it was the House of Assembly of the State and not the National Assembly that may make such laws. In that case the Supreme Court held as follows:

*“it is also important to bear in mind that the judiciary is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purposes of safe guarding and protecting the constitution and its goals? The judiciary when properly invoked has a fundamental role to play in the structure of governance by checking the activities of the other organs of government and thereby promoting good governance and respect for individual rights and fundamental liberties and also ensuring the achievement of the goals of the constitution and not allow the defeat of such good intendments. It is the duty of the court to keep the government faithful to the goals of democracy, good governance for the benefit of the citizen as demanded by the constitution”*⁸

In **Gadi v. Male**⁹, the court opined as follows that:

*“it is trite, the courts of law in this country an indeed in all the civillised counties of the world, are the primary custodians of the constitution, nay the rule of law. The courts are inherently imbued with sacrosanct and far reaching fundamental powers to preserve, interpret and uphold the constitution. Such far-reaching and fundamental powers as conferred upon the courts are traceable to the constitution and laws as may be enacted by the legislature, Federal and/or state”*¹⁰

⁷.(2007) 2 SC 146.

⁸ (2007)1 CCLR SC p.104 at 131

⁹ (2010) 7 N.W.L.R. (Part 1193) page 225

¹⁰ (2010) 7 N.W.L.R. (Pt. 1193)225 at 266.

THE STRUCTURE AND JURISDICTION OF NIGERIAN COURTS:***Meaning of jurisdiction:***

Jurisdiction is “a court’s power to decide a case or issue a decree”¹¹.

*“Rules of Jurisdiction in a sense speak from a position outside the court system and prescribe the authority of the courts within the system. They are, to a large extent, constitutional rules. The provisions of the U.S. Constitution specify the outer limits of the subject-matter jurisdiction of the federal courts and authorize Congress within those limits, to establish by statute the organization and jurisdiction of the federal courts.”*¹²

Jurisdiction is essentially the authority which a court of law has to determine matters or issues which are litigated before it or to take cognizance of issues presented in a formal way for its resolution. The limits of jurisdiction are prescribed by the constitution or by the enabling statute under which the court is constituted. Jurisdiction may be extended or restricted by statutory enactments.¹³

The basis of jurisdiction of Nigerian courts is the Constitution of the Federal Republic of Nigeria. By virtue of the 1999 Constitution of the Federal Republic of Nigeria, all courts in the Nigerian federation derive their jurisdiction or competence from the constitution¹⁴. Nigerian courts, like other courts in democratic nations, are creatures of statute based on the constitution. Their jurisdictions are based on statutes and as a corollary, no court in Nigeria assumes jurisdiction without its enabling statute. Jurisdiction cannot be implied and as a result where there is no enabling state there cannot be jurisdiction. When a court has no jurisdiction, it is futile exercise for that court to embark on the hearing of a matter¹⁵.

Jurisdiction is so fundamental that it is a condition precedent to any action which calls for determination before the court. Jurisdiction is usually an important issue in matters before the court and therefore goes to the root of the whole action. Once the issue of jurisdiction is raised during a proceedings before the court, it should be decided at the earliest stage of the proceedings in order to save the time and before the merits of the case are considered and determined¹⁶.

The ingredients which must be present before the courts can assume jurisdiction have been decided by the courts.

“A court is only competent when –

- a. It is properly constituted with respect to the members and qualifications of its members;
- b. The subject matter of the action is within its jurisdiction;
- c. The action is initiated by due process of law; and,
- d. Any condition precedent for the exercise of its jurisdiction has been fulfilled.

Non compliance with any of the foregoing matter is a defect in competence which may be fatal to its jurisdiction”¹⁷

The parties to a dispute cannot confer jurisdiction on a court. In any event where the court lacks jurisdiction, the parties cannot confer and vest jurisdiction on the court.¹⁸

¹¹ Bryan Garner, ed., Black’s Law Dictionary, Ninth Edition, (West Publishing, 2009) p.297

¹² Fleming James Jr; Geoffrey C. Hazard & Leubsdorf, “Civil Procedure” s 2.1 and s.5 (5th Edition, 2001) cited by Bryan Garner, op cit. p. 927

¹³ Adams v. Umar (2007) 5 N.W.L.R. pt. 1133, 41 at 97

¹⁴ Osadebay v. A.G. Bendel (1991) 1 N.W.L.R. Pt. 169 525 at pp. 557 – 558; Din v. A.G. Federation (1986) 4 N.W.L.R. (Pt. 87) 147 at 171 .

¹⁵ Osadebay v. A.G. Bendel p.57; A.G. Federation v. Sode (1990) 1 N.W.L.R. (Pt. 128) 500 at 503, 504, and 505.

¹⁶ Abubarkar v. Usman (2009) 6 N.W.L.R. Pt. 1136 69 at pp. 93-94

¹⁷ Shelim v. Gobang (2009) 12 N.W.L.R. Pt. 1156 403 pp. 455-456, Madukolu v. Nkemdilim

¹⁸ Adams v. Umar, (supra) p. 115

The question as to whether a court has jurisdiction can be raised at any stage of the trial, even for the first time on appeal. If a court lacks the requisite jurisdiction to hear and determine an issue before, any step taken in relation to the matter is a nullity and void¹⁹. Lack of jurisdiction emphasizes the want of legal capacity and lack of competence in the court to hear and determine the subject matter before it. Lack of jurisdiction necessarily means that the court does not have the competence to exercise the judicial powers vested in the courts by s.6(6)(b) of the 1999 constitution of the Federal Republic of Nigeria and a decision or judgment made while lacking jurisdiction is null and void²⁰.

There is a clear difference between jurisdiction over subject matter and procedural jurisdiction. While procedural jurisdiction could be waived by the affected party to the proceedings, that cannot be said of jurisdiction relating to subject-matter. For example, where the wrong procedure was adopted in commencing a suit and no objection to the procedure was timorously raised by the opposing party, the procedure based on such wrong procedure is valid and cannot be overturned on the basis of lack of jurisdiction on the part of the court.²¹ Directly following this principle is the fact that non-compliance with the rules of court, as against a statutory provision, may not necessarily result in the judgment given being set aside on the basis of absence of jurisdiction.²²

The importance of jurisdiction in the adjudicatory processes has always been emphasized by the courts. It is of absolute importance in judicial proceedings and the life wire of adjudication. "Where there is no jurisdiction to hear and determine a matter, everything done in such want of jurisdiction is a nullity."²³ 'Power of a court is derived from its enabling stature. It is the statute which creates the court that defines its jurisdiction. In other words, all courts of record are creatures of the constitution, as their jurisdiction is confined, limited and circumscribed by the constitution.'²⁴

The Constitution creates Federal and State Courts as well as Election Tribunals.

The Federal courts are -The Supreme Court, The Court of Appeal, the Federal High Court, the High Court of Federal Capital Territory, Abuja, The Sharia Court of Appeal of the Federal Capital Territory, Abuja, the Customary Court of Appeal of Federal Capital Territory, Abuja. The State Courts are: The High Court of the State, the Sharia Court of Appeal, The Customary Court of Appeal. The Election Tribunals are: the National Assembly Election Tribunals, the Governorship and Legislative Houses Election Tribunals²⁵.

Supreme Court of Nigeria:

Section 230(1) of the 1999 Constitution establishes the Supreme Court of Nigeria. It is the highest court in Nigeria and the court of last resort. It is situated in the Federal Capital Territory, Abuja. The Chief Justice of the Federation who is the head of the judiciary in Nigeria presides over the Supreme Court. The court consists of the Chief Justice of Nigeria and such number of justices not exceeding twenty one as may be prescribed by the National Assembly. Ordinarily, the court is duly constituted with not less than five justices of the court, except where it is exercising its original jurisdiction or a matter which involves a question of interpretation or application of the constitution or whether any provision relating to Fundamental Rights provisions of the constitution has been, or is likely to be contravened. In this regard, the court is duly constituted if it consists of seven Justices of the court.

¹⁹ Adams v. Umar (supra) p. 115. Madukolu v. Nkemdilim (1962) 2 S.C.N.J. 341

²⁰ Adams v. Umar (supra) p.116

²¹ Adams v. Umar (supra) p.116

²² Adams v. Umar (supra)p.116

²³ Shelim v. Gobang (supra) p.452

²⁴ Shelim v. Gobang 452

²⁵ Section 6(5) of the 1999 Constitution (as amended)

The decision of the Supreme Court on any matter is final and it is not subject to an appeal to any other person or body. This is however, without prejudice to the power of the President or Governor of a State's exercise of prerogative of mercy in appropriate cases. The decisions of the Supreme Court are binding on all other courts in Nigeria.

Jurisdiction of the Supreme Court:

Original Jurisdiction of the Supreme Court:

The Supreme Court of Nigeria has both original and appellate jurisdiction. The original jurisdiction of the Supreme Court is contained in Section 232(1) of the Constitution. It provides that "The Supreme Court shall, to the exclusion of any other court, have original jurisdiction 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."

Additionally, the National Assembly also has the power to confer additional original jurisdiction on the Supreme Court. The constitution precludes the Supreme Court from exercising original jurisdiction with respect to criminal matters.²⁶ The National Assembly has enacted the Supreme Court (Additional Original Jurisdiction) Act²⁷ by which additional original jurisdiction was conferred on the Supreme Court. By section 1 (1) of that Act, it is provided that in addition to the jurisdiction conferred upon the Supreme Court by section 232(1)²⁸ of the Constitution, the court shall, to the exclusion of any other court, have original jurisdiction in any dispute (in so far as that dispute involves any question whether of law or fact or in which the existence or extent of a legal right depends) between:

- (a) The National Assembly and the President;
- (b) The National Assembly and any State House of Assembly; and
- (c) The National Assembly and the State of the Federation.

In *Attorney-General of Abia State v. Attorney-General of the Federation*²⁹, the Plaintiff brought the suit at the Supreme Court pursuant to the original jurisdiction of the Supreme Court. The complaint was in respect of the activities of the Economic and Financial Crimes Commission (EFCC) against the plaintiff. The Supreme Court struck out the suit for want of jurisdiction because EFCC is a corporate legal entity which can sue and be sued on its own name and not necessarily an agent of the first defendant. The court was of the opinion that the claim does not qualify as a dispute within the meaning of section 232 of the 1999 Constitution, not being a dispute between the Federation and the State.

In *Attorney General of Anambra State v. Attorney General of the Federation*³⁰, the question for determination was whether the tenure of office of the governor of Anambra State is a dispute of such a nature that could legitimately result in the invocation of the original jurisdiction of the Supreme Court. The court struck out the suit and held that in order for the original jurisdiction of the Supreme Court to be invoked pursuant to Section 232 of the 1999 Constitution, there must exist a legal right on the part of the claimant and the dispute or controversy must be one between the Federation and a State of the Federation. The court went further to hold that while it may be true that the Governor of Anambra State qua Governor might have been short changed on the question of tenure, that fact does not, ipso facto, make such an issue one between Anambra State as an entity and the Federation. The suit therefore remains incompetent and ought to be struck out for want of jurisdiction.³¹

²⁶ Section 232(2) of the Constitution

²⁷ Cap S16, Laws of the Federation of Nigeria, 2004

²⁸ The Act erroneously makes reference to section 323(1)

²⁹ (2007) 2 S.C. 146

³⁰ (2007) 5-6 S.C. 192

³¹ A.G. Anambra v. A.G Federation (supra) at page 193

In **Attorney-General of Kano State v. Attorney-General of the Federation**³², the plaintiff brought a suit at the Supreme Court by invoking the original jurisdiction of the Supreme Court. The plaintiff's case in the main, is a complaint against certain conduct of the Inspector General of the Police. The question arose as to whether the original jurisdiction of the Supreme Court was properly raised in the circumstance where the plaintiff's case is an alleged wrong doing by an officer of the Federation. The Supreme Court unanimously struck out the suit. The court held that in order for the original jurisdiction of the Supreme Court to be invoked pursuant to section 232 of the 1999 Constitution, the following pre-conditions must be met:

1. There must be justiciable dispute involving any question of law or fact;
2. The dispute must be:-
 - (a) between the Federation and a State in its capacity as one of the constituent units of the Federation; or,
 - (b) between the Federation and more States that are in their capacity as members of the constituent units of the Federation; or,
 - (c) between States in their aforesaid capacity and the dispute must be one on which the existence or extent of a legal right in the aforesaid capacity is involved. That the plaintiff's claim did not satisfy these pre conditions and therefore, the invocation of the original jurisdiction of the Supreme Court in that case fails.

In **Attorney General of Lagos State v. Attorney General of the Federation & ors**,³³ the plaintiff brought the suit challenging the competence of the Federal Government to legislate and collect Value Added Tax in Nigeria. The claim was brought under the original jurisdiction of the Supreme Court. However, the Supreme Court struck out the case for want of jurisdiction because the claim related to the revenue of the government of the Federation which ordinarily falls within the jurisdiction of the Federal High Court. Accordingly, the invocation of the original jurisdiction of the Supreme Court for that purpose was misconceived.

Appellate Jurisdiction of the Supreme Court:

The appellate jurisdiction of the Supreme Court of Nigeria is as provided in Section 233(1) of the Constitution. The appellate jurisdiction of the Supreme Court confers on the Supreme Court exclusive jurisdiction to hear and determine appeals from the Court of Appeal. An appeal may either lie to the Supreme Court as of right or with leave of that court or the Court of Appeal. An appeal shall lie as of right from decisions of the Court of Appeal to the Supreme Court in the following cases³⁴:

- (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 or application of the Constitution;
- (c) Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV 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 by any other court;
- (e) Decisions on any question –

³² (2007) 3 S.C., (Part 1) page 59

³³ (2014) LPELR 22

³⁴ Ibid section 232(2)

- (i) Whether any person has been validly elected to the office of President or Vice-President under the 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
 - (iv) Whether any person has been validly elected to the office of the Governor or Deputy Governor under this Constitution;
 - (v) Whether the term of office of a Governor or Deputy Governor has become vacant; and
- (f) Such other cases as may be prescribed by an Act of the National Assembly.

The Supreme Court of Nigeria, like similar institutions in other political systems³⁵, epitomises the Nigerian Judiciary³⁶. It not only plays a significant role in constitutional matters but also fashions out the judicial policies affecting the political environment generally³⁷. In the words of Graham Douglas, 'although many rules and principles of law have survived to this day from decisions of courts of first instance, it is more to the courts at the pinnacle of the judicial system that the glory of the dynamism in law creation must largely go'³⁸. It serves as the overseer of the judicial branch and is the master of the judicial house.³⁹

BASIC PRINCIPLES OF CONSTITUTIONAL INTERPRETATION:

According to Ezejirofor⁴⁰, there are two broad approaches to constitutional interpretation. One is that which regards the constitution as an ordinary statute which must be interpreted by the same method of construction and exposition which the courts apply to other statutes. It must be given a strict and literal construction and the intention of the makers of the constitution must be ascertained from the document itself and from no other source.

The other approach is that a constitution is different from an ordinary statute, even if enacted by a legislature, and so should be more liberally interpreted than an ordinary parliamentary enactment. It is a document within which a polity sets up the machinery of government. A constitution is meant to endure for ages and consequently to be adapted to the various crises of human affairs. Judges should therefore show 'judicial statemanship'⁴¹ in construing its provisions and should give little weight to purely formal and technical arguments. It should not be constructed in any narrow and pedantic sense and should be given not only to its letter but also to its spirit⁴². Aside these two approaches, the courts have evolved other methods to impose restraint on the exercise of the power of constitutional interpretation include:-

(a) The courts will not adjudicate upon the constitutionality of legislation:

- (i) In a friendly, non adversary proceedings⁴³. In other words, they will not write essays on constitutional interpretation for the benefit of private individuals⁴⁴ and unless the constitution expressly so stipulates the courts will not render mere adversary opinion.⁴⁵

³⁵ In the United States, the study of the judiciary as a political institution began with studies on the Supreme Court in the government. See Martin Shapiro, 'Political Jurisprudence' Kentucky Law Journal vol LII 1964 page 294

³⁶ Kuti, A.F.D., 'Law and Polity: The Supreme court Approach.' Benin City Law times Ltd. (1988, page 13

³⁷ Ogundere J.D. "The Nigerian Judge and His Court" Ibadan (1994) page 138s

³⁸ Kasumu A.B "The Supreme Court of Nigeria" 1956 - 1870

³⁹ Mojeed O.A. Alabi "The Supreme Court in the Nigeria Political System" 1963-1997 page 10

⁴⁰ See the Supreme Court of Nigeria 1956-1970 edited by A.B. Kasumu page 69

⁴¹ See Jennings J. Constitutional Interpretation' Harvard L.J. Vol. 51 (1937) page 37. See further the diction of Holiness J. in Bain Peanut Co. of Texas v. Pinson 282 US 499 at page 50

⁴² See Marshall CJ in Mc Culloch v. Maryland 4 Wheaton 316

⁴³ Muskari v. US 219 US 346, Central Bank of India v. Their Workmen AIR (1960) SC 12 page 28

⁴⁴ Sharma S v. The Supreme Court in the India Constitution 1959 dp 50 – 51

- (ii) On the complaint of one who has availed himself of its benefits.⁴⁶
 - (iii) On the complaint of one who fails to show that he is or is about to be injured in its operation. In other words, a litigant must have substantial interest in the case or controversy raised.⁴⁷
- (b) The Courts shy away from deciding upon the constitutionality of a choice.⁴⁸ Therefore, if it is possible to base the decision of a case on other ground they will gladly refuse to pass an opinion on the constitutional question. Similarly, they may decline to pass on the constitutionality of a question on the ground that it is 'political' in nature and so should be settled by the political organs of a state⁴⁹. Again, whenever possible, they readily apply the principle of severability in order not to strike down the whole of the impugned legislation. By that device the portion of it which is intra vires is allowed to operate.⁵⁰
- (c) There is a doctrine according to which every presumption is to be indulged in favour of the validity of the impugned statute.⁵¹ The presumption is rebutted only if the statute is arbitrary or is an unreasonable attempt to exercise authority vested in the stated in the public interest.⁵² The theory is that the legislature represents, and presumably speaks for a majority of the electorate; and the idea of democracy presupposes that such a majority is entitled to have its will enacted into law. The legislature, it is said should be trusted because its members have the experience and knowledge which are not available to the judges. Moreover, if mutual self restraint is maintained, it is necessary for the maintenance of harmony between the judicial, executive and legislative branches of government. And it is on the voluntary acceptance of this doctrine by the branches rather than on any other sanction that the smooth operation of the concept of separation of powers depends.

THE SUPREME COURT OF NIGERIA:

Under the Constitution of the Federal Republic of Nigeria, 1999, the Supreme Court of Nigeria is established by section 230. The appointment of the Chief Justice of Nigeria and Justices of Supreme Court, original jurisdiction, appellate jurisdiction, constitution, finality of determinations and practice and procedure are all provided for in sections 231, 232, 234 235 and 236 respectively.

Nigeria is a developing country and in her period of gradual evolution to nationhood as one of the developed countries of the world the Supreme Court has an important role to play. The main role of the judiciary or the Supreme Court is not to adhere to the out modeled and orthodox view that the duty of the court is merely to interpret the law relying essentially on the rules already existing in the legal system. This method will definitely lead to the law being sterile and totally divorced from its social milieu. The Nigerian Supreme Court can only serve the Nigeria society if it succeeds in promoting economic growth and the social well being of the people, if it contributes towards the elevation of the moral values of Nigerian society, if it attempts to unify the several ethnic communities into a Nigerian society, and above all, if it succeeds in evolving a common law for the country out of the existing bodies of law.

⁴⁵ Liberty Warehouse Co. v. Grannis 273 US 70. In India the Supreme Court has constitutional power to render advisory opinion at the instance of the president. See Article 143.

⁴⁶ Gt Falls Mfg v. Ag. 124 US 581; Main Sukh Das v. State of Up (1953) SCR 1184.

⁴⁷ Massachusetts v. Mellon 262 US 447; Fair Clinld v. Hughes 258 US 126. But in a definite and concrete controversy touching upon the legal rights of parties the court can render a declaratory judgment. See Nashville Railway Co. v. Wallace 288 US 249

⁴⁸ Burton v. United States 196 Us 285

⁴⁹ Coleman v. Miller 307 US 433; Srikisham v. State of A.P. Air 1957 Andih, Pra, 734

⁵⁰ R.M.D. Chairman Bougwalla v. Union of India Air 1957 SSC 628; Presser v. Illinois 116 US 252

⁵¹ Whitney v. California 244 US 357 at 371; See also Gitlow v. New York 268 US 652

⁵² Muglar v. Kansas 123 US 623 page 661; Northern Railway v. Clara City 246 US 434 page 439 (1882) 7 App Cas 829, 839

However, to do this successfully, the Supreme Court can only view the Constitution as a political document embodying the fundamental creed of the people, which therefore cannot be interpreted by the same canons of construction as appropriate to statutes or ordinary Acts of parliament. Any narrow or unilateral interpretation of the provisions of the constitution vital to its proper functioning must be avoided if the constitution itself is to have efficacy; and the political framework and the legal order established within it are to have stability and legitimacy. This will be realized only if those who are called to dispense justice in the society, which must be democratic, are themselves part of the democratic system and are imbued with democratic ideas. Therefore, the Supreme Court and its judicial officers must be insulated from the undercurrents of partisan politics. As human beings, they may have their individual political beliefs, but they must divorce their professional personalities from partisan politics if they would be trusted to dispense justice without fear or favour.⁵³

The Supreme Court of Nigeria, like its counterparts the world over, is the final arbiter in both civil and criminal matters and as such usually employ the best reasoning in reaching final decision in matters before it, because failure to do so will definitely spell doom for the rule of law and the relevant statute in question. In doing so, or in an attempt to reach a final and full non appealable decisions, the Supreme Court, in most cases, adopt the either one or all the various rules of interpretation of statutes whenever it is confronted with such plight and by so doing several constitutional problems had been laid to final rest. Even though these rules of interpretation of statutory provisions are not devoid of lacuna, it is more advisable and reasonable to adopt one where the subject of interpretation, that is, the provision of the statute is capable of more than one interpretation. Attention shall be shifted now to the consideration of these various rules of interpretation of statutes through the cases in order to drive home the subject of discussion.

CANNONS OF INTERPRETATION OF STATUTES:

The general view is that the way the courts exercise the power whenever a statute is challenged as entrenched in the constitution is to lay the article of the constitution which is invoked beside the statute being challenged and to decide whether the latter squared with the former. But surely, constitutional interpretations mean more than this. Matters which usually arise do not lend themselves to such an easy and precise treatment as envisaged by this assertion. A typical example is where an invoked constitutional provision may be capable of more than one interpretation and the impugned statutory may also be susceptible to more than one meaning. The present state of statutory interpretation suggests that there is some error in the judicial approach to the whole exercise. The fact is that statutes are destined to operate over indefinite periods of time, so they should be viewed in a continuum.⁵⁴ Hence, a court is expected to invoke whichever of the rules that produces a result that satisfies its sense of justice in the case before it. However, for ease of reference, the various canons of interpretation of statutes have been divided into the following: -

1. The Referential Approach;
2. The Purposive Approach; and,
3. The Compromise Approach.

THE REFERENTIAL APPROACH:

The Referential approach is further sub-divided into two major heads as follows:

- (a) Literal or Plain Meaning Rule;
- (b) The Golden Rule

⁵³ Asomugha E.M. "The Supreme Court: Rational, Precedent and Policy, And its Role in Legal Interpretation". The Supreme Court of Nigeria, Kasumu A.B (ed.) page 62

⁵⁴ Ibid at page 391

(A) THE LITERAL OR “PLAIN MEANING RULE”:

Judges frequently use the phrase “the true meaning” of words in the pursuit of their tasks. The most widely used cannon of interpretation; the so called ‘Literal or Plain Meaning Rule’ is best summed up in **Abley v. Dale**⁵⁵, in the following words:

“If the precise words used are plain and unambiguous, in our judgment, we (the courts) are bound to construe them in their ordinary sense, even though it leads, to an absurdity or manifest injustice”.⁵⁶ This age long dictum has since been overturned by more cogent and reasonable opinions of different judges all over the world, inclusive of our own Supreme Court Judges. In essence, a rigid adherence to this literal approach will inevitably result to a situation where the constitution cannot be adapted to the current needs of the society and may give rise to decisions completely out of step with the spirit of the constitution. This was the view of the majority of the justices of the Supreme Court in the celebrated case of **Akintola v. Aderemi**⁵⁷. The issue in this case was the interpretation of section 33(10) of the Constitution of the Western Region which provided that the Government ‘shall’ remove the Premier ‘if it appears to him’ that the latter no longer commands the support of a majority of the members of the House of Assembly. The question then was whether, pursuant to this provision, the Governor could remove a Premier on the basis of factors extraneous to the activities on the floor of the House or whether he could only do so only as a result of events in the House. The court held that the Governor could not remove a Premier except in pursuance of an adverse vote on the floor of the House because the Constitution of the Region was framed in the light of the normal English constitutional practice and so should be interpreted in that light. According to that practice, said the court, the Queen could not remove a Prime Minister except as a result of an adverse vote in the House of Commons. It said, “for the interpretation of section 33 (10) of the Constitution of Western Region, no precedent can be found, the meaning of the subsection and the scope of its application must be read in the light of the convention”.

This is, however, interesting because there was no ambiguity and yet the court was prepared to take this step. Over the years, the present Supreme Court of Nigeria has adopted this literal or plain meaning rule in the interpretation of statutes in matters before it. Most recently, this rule was applied by the Supreme Court of Nigeria in the case of **Attorney General Ondo State v. Attorney General of The Federation & 35 Ors**⁵⁸ where the court, in determining whether the court should adopt a narrow or broad interpretation approach in the interpretation of the provisions of the Constitution, Muhammed Lawal Uwais, CJN, while delivering the lead judgment, quoted with approval the dictum of Fatayi Williams, CJN (as he then was) in **Senator Adesanya v. President of Nigeria**⁵⁹ in the following words:

The only true guide and the only course which can produce stability in constitutional law is to read the language of the constitution itself, no doubt generously and not pedantically but as a whole”⁶⁰

There is an avalanche of authorities on the interpretation of certain provisions of the Constitution through the literal or plain meaning rule, by the Supreme Court of Nigeria. Of recent is the judgment of Tobi, JSC in **Federal Republic of Nigeria v. Anache**⁶¹ where the learned justice, on the meaning of ‘State’ in **section 15(5) of the 1999 Constitution**, said:

*“I think this court dealt with the issue in **A.G. of Ondo State v. A.G Federation** (supra) Uwaiifo JSC, appropriately dealt with the issue when he said at page 392 of that report, the Federal Republic of*

⁵⁵ (1851) 11 C.B. 378

⁵⁶ Ibid at page 391

⁵⁷ (1962) 1 All NLR 442

⁵⁸ (2002) 6 S.C. (Pt. 1) 1 180

⁵⁹ (1981) 2 N.C.L.R. 358

⁶⁰ At page 374. S

⁶¹ (1993) 7 N.W.L.R. (Pt 308) 7171

Nigeria shall be a State based on the principles of democracy and social justice. It is clear that it is the Federal Republic of Nigeria, as a State, that is looked upon under the constitution to take steps, or perhaps to spearhead the policy, so I entirely agree with the above constitution. It cannot be otherwise. It can move a bit further. Section 14(1) which defines a State in terms of the Federal Republic of Nigeria is a sub section in Chapter II of the Constitution on Fundamental Objectives and Directive Principles of State Policy. The word 'State' in section 15(5) immediately after section 14 in the same Chapter II of the Constitution on Fundamental Objectives and Direct Principles of State Policy cannot bear any other meaning. The Federal Republic of Nigeria, as a State, is wider in operational scope than the definition of government in section 318 (1) of the Constitution, as it conveys the meaning in section 1 of the Constitution. Words used in proximate sections will be presumed to have the same meaning and will be so construed unless it is clear from the particular section that the word is used in a completely different meaning. This, he said, is a correct canon of statutory interpretation. From whichever side one looks at the coin, the construction placed on section 15(5) by Uwaifo, JSC is correct".⁶²

In the same vein, Uwaifo JSC, in **Awuse v. Odili**⁶³ said, while construing the meaning of 'decision' in section 318 (1) of the 1999 Constitution of State said:

...there was no comparable applicable provision which defined 'decision' in both the 1979 and 1999 Constitution in sections 277(1) and 318(1) respectively which is:

'Decision' means, in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation. That definition does not distinguish between an interlocutory decision and a final decision in an election petition.

Apart from the rule providing that words of a statute must be given its liberal meaning, it was also stated that provisions or sections should not be read in isolation of the other parts of the statute or constitution. In other words, the statute or constitution should be read as a whole in order to determine the intendment of the makers of the statute or constitution. This was the view of Uwais, CJN in **P.D.P. v. I.N.E.C**⁶⁴ quoted with approval by Bulkachuwa JCA in **A.G of The Federation v. All Nigerian Peoples Party**⁶⁵. This view was also supported by the Court of Appeal in **Mwana v. U.B.N.**⁶⁶ Per Mohammed JCA when the respected Jurist said, inter alia:

*"If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expand those words in their natural and ordinary sense, as the words themselves in such case best declare the intention of the legislature"*⁶⁷

What the foregoing simply connotes is that the court should be careful in ascribing another meaning to unambiguous and clear words in the statute because an attempt to do so will frustrate and render useless the primary intendment of the legislature.

In summary, it has been shown that the plain meaning Rule has evolved many explanatory riders, sub rules and a host of presumptions of legislative intent into which it is not proposed to enter here. None of these presumptions is binding for a variety of reasons. Some of these are that:-

⁶² Ibid at page 72-73

⁶³ (2004) 6 W.R.N. 24

⁶⁴ (2001) 27 W.R.N, 62

⁶⁵ (2003) 27 W.R.N. 62

⁶⁶ (2003) 28 W.R.N. 142

⁶⁷ Dias, "Jurisprudence" 173

1. there is no order of precedence between conflicting presumptions;
2. presumptions themselves are often doubtful, being the subject of contradictory judicial pronouncements;
3. in case of conflict with a presumption, a court may adopt an interpretation without referring to the presumption, and,
4. there is no means of resolving a conflict between a presumption and the purpose of a statute.

One could validly state that the Supreme Court of Nigeria as the final arbiter in a conflict situation had through the cases applied the above sub-rules and with regard to the application of the literal rule of interpretation of statute, the Supreme Court of Nigeria is a force to be reckoned with.

In the case of *Dapianlong v. Dariye*⁶⁸, the Supreme Court of Nigeria, while interpreting the 1999 Constitution held that "...mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principle of government enshrined in the constitution. And where the question is whether the constitution has used an expression in the wider or narrow sense, in my view, this court should whenever possible and in response to the demands of justice, lean to the broader interpretation unless there is something in the text or in the rest of the constitution that narrower interpretation will best carry out the objects and purposes of the constitution". See the case of *Rabiu v. The State*.⁶⁹

In interpreting section 232 of the 1999 Constitution, the Supreme Court held that "it is now well settled that the duty of this court and indeed, any other court, is to interpret the words contained in the constitution, and any statute in their ordinary and literal meaning. Certainly, it is not the duty of the court to go outside words used in a statute and import an interpretation which may be or is convenient to it or to the parties or to one of the parties."⁷⁰

Again, the Supreme Court reinstated the principles guiding the interpretation of statutes when it held that: "law should be given their correct and grammatical interpretation. The provision of law should be viewed in its simple form and interpreted within its ambit and no extraneous matters should be introduced into it to give it a meaning different from what the legislature intended it to be. If such happens, then the law will be wrongly construed, and its purpose will fall outside the intendment of the legislature."⁷¹

THE GOLDEN RULE:

The proponents of the literal rule of interpretation of statute argue that as a cardinal rule of interpretation, the meaning of words used in a statute and the intention of the legislature enacting the words can be properly understood after full consideration of the whole statute. This is more so when construing the meaning of words used in any part of a written constitution. Thus, the courts have stressed that while the meaning of words used in a written constitution must be deciphered from the constitution itself, such meaning can best be obtained after reading the constitution as a whole so as not to defeat the intention of the framers of the constitution.

An appreciation of some of the difficulties inherent in the 'Literal Rule' led to a courteous departure styled the "Golden Rule". The corpus of this rule is that the literal sense of words should be adhered to unless this would lead to absurdity, in which case, the literal meaning may be modified. It contradicts the Literal Rule according to which, as explained, the plain meaning has to be adhered to even to the point of absurdity. The difficulty of deciding when words are plain and when they are not has already been mentioned. Presumably, for the purpose of the rule now being considered, the words, though plain, should not be too plain where the

⁶⁸ (2007) 4 S.C. (Part III) 118 at 176 and 177.

⁶⁹ (1980) 8-11 S.C. 130 at 148 - 149

⁷⁰ A.G Kano v. A.G. Federation (supra) at page 79.

⁷¹ A.G. Anambra v A.G. Federation (supra) page 219-220.

apparent plain meaning would lead to a result too unfair to be countenanced.⁷² Lord Reid aptly put it in *Luke v. I.R.C* as follows:

*To apply the words literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words.....the general principle is well settled. It is only when the words are absolutely incapable of a construction which will accord with the apparent intention of the provisions and will avoid a wholly unreasonable result that the words of the enactment must prevail.*⁷³

There exists a paucity of judicial authority on the application of the Golden rule of interpretation under the referential approach. Noteworthy also is the fact that the basis of the employment of this rule is premised on the fact that most of the cases in which the literal rule was applied had at one time or the other had a dose of the application of the Golden Rule of interpretation of statute.

The Nigeria *locus classicus* on the application of the Golden Rule of interpretation of statute was the case of **Chief Obafemi Awolowo v. Alhaji Shehu Shagari and others**.⁷⁴ The two major issues for determination, inter alia, before the Supreme Court were –

- That the Election Tribunal misdirected itself in law in construing two-thirds of 19 states as 12 2/3 instead of 13 states when in law and especially within the context of Section 34 (1) © (ii) of the Electoral Decree 1977 as amended, a State being a corporate body or a legal person cannot be fractionalized;
- That the Election Tribunal misdirected itself when it held that the dominant requirement in the election is the number of votes cast in each of the States, two-third State would be synonymous with two third of the total votes cast in that State and not the physical or territorial area of such State”

The Supreme Court, while enunciating on the canon of interpretation applicable to this situation, stated that *‘it is also relevant to point out that anybody called upon to interpret any kind of statute should not for any reason, attach to its statutory provision, a meaning which the words of the statute cannot reasonably bear. If the words are capable of more than one meaning then the person interpreting the statue can choose between these meanings but beyond that, he must not go....Where there are two possible meanings conveyed by words of a statute, it is the most reasonable one that should be adopted. Where the other meanings lead to absurdity or evinces internal contradiction, that meaning should be dropped for the first as the legislature never intends to be absurd or contradictory. The word “each” in the sub-section (1) (c) of section 34 (a) qualifies a whole state and not a fraction of a State and to interpret it otherwise is to overlook, the disharmony between the word “each” and the fraction “two-thirds” Two-thirds of nineteen, to avoid any disharmony gives thirteen’.*⁷⁵

From the foregoing, it could easily be deduced that if absurdity is considered at all, it is apparently judged as at the time when the statute was passed. It could also be noted that the rule is hardly suited to giving effect to social policies. The paucity of authority reflects the uncertainty of its application. This is to further substantiate the fact that the absence of a coherent set of rules of interpretation is best seen when judges adopt opposing canons in the same case. In a nutshell, the referential approach which encompasses the

⁷² Ibid 173 – 174s

⁷³ (1963) A.C. 557

⁷⁴ (1979) All N.L.R. 120

⁷⁵ Ibid page 122-124

Literal or Plain Meaning Rule and the Golden Rule is usually interchangeably applied but most often, reliance is placed on the Literal Rule of interpretation because of its flexibility, compared with the rigidity and uncertainty of the Golden Rule of interpretation of statute.

(2) THE PURPOSIVE APPROACH:

Statutes are generally of indefinite duration, and consideration of them in this way takes account of their changing functions and functioning. It has also been pointed out that words possess an inner core of agreed application surrounded by a fringe of unsettled applications. This is the corpus of the purposive approach in the arena of rules of interpretation which has the 'Mischief Rule' as its only canon for achieving the end for which the statute was initially enacted.

THE MISCHIEF RULE:

The third main traditional rule of interpretation of statute, which is also the earliest of all canons of statutory interpretation, and which has been pitched under the tent of the purposive approach is the Mischief Rule of Interpretation of Statute.

The corpus of this rule of interpretation was long laid down in the old **Heydon's case** in 1584 where it was unanimously resolved by Sir Roger Manwood that:

For the sure and true interpretation of all statutes in general, be they penal, or beneficial, restrictive enlargement of the common law, four things are to be discerned and considered viz:

- (1) What was the common law before the making of the act;
- (2) What was the mischief and defect for which the common law did not provide;
- (3) What remedy hath parliament resolved and appointed to cure the disease of the commonwealth; and,
- (4) The true reason of the remedy and then the office of all the judge is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle invention and evasions for the continuance of the mischief and 'pro private commode, and to add force and life to the cure and remedy according to the true intent of the maker of the act 'pro bono publico.⁷⁶

The Supreme Court of Nigeria had fully incorporated the foregoing statement of English Court into our Legal system. This approach may pose danger of introducing greater uncertainty into law because the object of the statute is gotten by the perusal of the language of the statute in view of the previous laws and the general knowledge of the social conditions.

The Mischief Rule was restated in the Nigerian case of **I.B.W.A Ltd v. Imano**.⁷⁷ Karibi Whyte JSC while adopting the Mischief Rule of Statutory Interpretation in interpreting the provision of Order 5 Rule 6 of the High Court of Lagos State (Civil Procedure) Rules, 1972 and Order 2 and 5 of the old High Court of Lagos (Civil Procedure) Rules, in **Kolawole v. Alberto**⁷⁸ stated thus:

It is a well known principle of construction that where the legislator uses words different from those originally used, he is to be presumed to have intended a different meaning. Thus, the 1972 rule must be taken as an amelioration of the 1948 Rules, because whereas a Writ of Summons not served within twelve months does not become void under the 1979 rules because the phrase "no writ shall

⁷⁶ 3 Co Rep 7a at 7b

⁷⁷ (1988) 2 N.W.L.R. (Pt 85) 633

⁷⁸ (1989) 1 N.W.L.R. (Pt. 98) 382

*be in force” in order Rule 6 means no more than not to have effect for the purpose of service under the Old Rule, Order 2 Rule 5, a Writ of Summons not served within twelve months becomes void.*⁷⁹

However, in line with the foregoing, Belgore JSC laid the rule more emphatically in *Ugu v. Tabi*⁸⁰ thus: Whenever there is ambiguity and the intention of the legislation is unclear as to the mischief the law is supposed to obviate, the court can look outside the statute for aid of construction. The previous legislation repealed or amended, the mischief in the previous law sought to be cured by the legislature or lawmaker, the history of the social, economic and political changes that the legislature sought to address will come handy as aid to construction.

More recently, Uwai JSC in **Attorney General of Lagos State v. Attorney General of the Federation & 35 Ors**,⁸¹ while commenting on the power of the court to take into account relevant constitutional conference committees discussion, recommendation and resolution in determining the meaning of statutory or constitutional provision stated thus:

This court is entitled to take account of and use such material or information which it considers will help it to determine the true intendment of a statutory or constitutional provision in a purposive interpretive approach; or, which will lead it to assess the correctness of a meaning it has, through the usual canons of interpretation, given to such a provision. This is particularly so of a provision which is either ambiguous or seems to have become controversial.

The overriding effect of all these prominent and landmark judgments of the Supreme Court is that the days when the courts would be hampered by the application of appropriate canon of interpretation to statutory provisions. Nowadays, the courts lean more on the use and employment of the liberal rule of the interpretation where the application of any of the other rules would result in manifest injustice to either of the parties to the suit before it.

This was summarized by Obaseki, JSC in **Attorney-General of Bendel State v. Attorney General of the Federation**⁸² while noting that they are explicitly presented as being principles rather than rules. In fact, if they were to be read as rules. In fact, if they were to be read as rules, important contradictions between several of them would be immediately apparent. Therefore, they should be understood as complementary to each other rather than as rival among which one was chosen. He said :

“In the interpretation and construction of our 1979 Constitution, one must bear the following principles of interpretation in mind:

- 1. Effect should be given to every word;*
- 2. A construction nullifying a specific clause will not be given to the construction unless absolutely required by the context;*
- 3. A constitutional power cannot be used by way of condition to attain unconstitutional result;*
- 4. The language of the constitution where clear and unambiguous must be given its plain evident meaning;*
- 5. The constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety; a particular provision cannot be severed from the rest of the constitution;*
- 6. While the language of the constitution does not change the changing circumstances of a progressive society for which it was designed to yield new and fuller import to its purpose;*

⁷⁹ At page 688

⁸⁰ (1997) N.W.L.R. (Pt. 513) page 368

⁸¹ (2003) 35 W.R.N. 97

⁸² (1981) S.C.1

7. *A constitutional provision should not be construed so as to defeat its evident purpose;*
8. *Words are the common signs that mankind make use of to declare their intention one to another and when the words of a man express his meaning plainly and distinctly and perfectly, there is no occasion to have recourse to any other means of interpretation;*
9. *The principles upon which the constitution was established rather than the direct operation of literal meaning of the words used, measure the purpose and scope of its provisions;*
10. *Words of the constitution are therefore not to be read with stultifying narrowness.*

The above aptly summarizes the current approach to interpretation of statutes where the present crop of Supreme Court Justices draws inspiration.

OTHER AIDS TO INTERPRETATION:

Apart from the three major principles of interpretation hidden under the canopy of the Referential and Purposive Approaches, there are other maxims that aid statutory interpretations. They are hereunder discussed.

(1) THE EJUSDEM GENERIS RULE

This rule is to the effect that where a list of specific items is followed by a general clause, the general clause is deemed to be limited to the things of the same kind as those specified. The relevance and importance of this rule was more expanded by the Supreme Court recently in the case of *Ojukwu v. Obasanjo*⁸³ where Edozie, JSC, quoting from Maxwell on the Interpretation of Statutes,⁸⁴ and also quoting with particular reference to the provisions of section 137 (1) 1999 Constitution of the Federal Republic of Nigeria stated as follows:

*“The ejusdem generis rule is an interpretation rule which the court applies in an appropriate case to confine the scope of general words which follow special words as used in a statutory provision or document within the genius of those special general words. In the construction of statutes, therefore, general terms following from particular ones apply only to such persons or things as are ejusdem generic with those understood from the language of the statute to be confined to the particular terms. In other words, the general words or terms are to be read as comprehending only things of the same kind as that designated by the preceding particular expression unless there is something to show that a wider sense was intended.”*⁸⁵

The use of extraneous factors to determine the meaning of legislative provisions has by the foregoing decision been accepted as a means of determining legislative intentions as may be contained in the relevant provisions of a statute. The major bone of contention in the above case was the interpretation of section 137 (1) of the 1999 Constitution of the Federal Republic of Nigeria who has been so elected on two previous occasions. It further focused on the interpretation of the word “office” and “president” as contained in that section. Succinctly put, it has been noted that the importation of the ejusdem generis rule is often because of draftsmen’s intention to cover a wide range of similar circumstances usually use two or three particular examples, to create a rule followed by a general expression like “or other places” , “or other lawful purpose” etc. They mean to extend the operation of the law to all particular circumstances with the rule created.

2. THE BLUE PENCIL RULE:

The “blue pencil” rule is applied to sever a part of a legislation that is good in the sense that it is valid, from the part that is bad, in that it is invalid. That is, the blue pencil is run over the part that is bad. If what

⁸³ (2004) 7 S.C. (Pt. 1) 117

⁸⁴ 12th Edition, p. 287

⁸⁵ (2002) 5 S.C. (Pt. 1) 63

remains of the impugned legislation, that is that part that is good, can stand, then it is applied. But if what remains cannot stand on its own, the impugned legislation is declared invalid.

Although, this rule is of English jurisprudence origin, it found favour in the Nigerian case of **Balewa v. Doherty**⁸⁶ where Lord Delvin's statement was quoted with approval. In the more recent case of **A.G. Abia State v. A.G. Federation**⁸⁷ Kutigi, JSC while delivering the lead judgment on some aspects of the Electoral Act 2001 which contravenes some provisions of the constitution had the following to say:

*"There is no special provision in the constitution giving to the court any power of interpretation greater than that which flows from the ordinary rule of construction. The question is, therefore, whether the good can be severed from the bad and so survives. Clearly, it cannot here be done under the 'blue pencil' rule. There is no excess which can be struck out...but where there is the slightest doubt about what parliament would have intended, their Lordships cannot speculate. They have themselves no legislative power and they cannot rewrite the Act."*⁸⁸

The corpus of the 'blue pencil' rule speculates that where certain sections of a statute have been impugned and declared null and void and are struck out, the good can be severed from the bad and the Act can survive. In the above case, it was held that it is part of Part II and all of Part IV of the Act that were affected. The remaining Parts on National Register of Voters and Voter's Registration, Political Parties, Electoral Offences, Determination of Election Petitions and Miscellaneous Provisions could stand on their own without the affected parts.

In essence, the purpose of the blue pencil rule is to delete some aspects of a statutory provision which is not in conformity with the intendment of the legislature. But going by the above decisions of the Supreme Court, such attempts would make nonsense of the effects of the legislature who had thought and deemed it fit to include the seemingly offending provisions of the statute. Therefore, the Supreme Court has been very careful in its application of this rule as in most cases, it works injustice to the parties to the suit.

A cursory look into the foregoing methods of interpretation of statutes applied by the Supreme Court of Nigeria so far tilt to the new approach towards statutory interpretation and this is referred to as the plain and ordinary meaning rule of interpretation of statutes. It is however, noteworthy that certain changes have occurred in judicial formulation of the three rules discussed under the two approaches to interpretation earlier mentioned. Presently, there is only one principle or approach; namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intent of the parliament. This approach is essentially an ordinary meaning approach, but ordinary meaning in total context. Words in themselves do not exist in vacuo. They exist along with other words which must all be considered in totality.

More recently, the Supreme Court, in **Okolie v. Legal Practitioners Disciplinary Committee**⁸⁹ while interpreting section 12 (7) of the Legal Practitioners' Act which specifically provides that a person to whom a directive given by the disciplinary committee of the Body of Benchers relates may at any time within 28 days from the date of service on him of the notice of the direction appeal against the direction to the Supreme Court held that :-

The language of the provisions is clear and unequivocal as to which court the aggrieved person should file his notice of appeal. It is at the Supreme Court. Any interpretation to the contrary may

⁸⁶ (1963) 1 All N.L.R. 949

⁸⁷ (2002) 3 S.C. 106

⁸⁸ At page 164

⁸⁹ (2005) 3-4 S.C. 49

*lead to an absurd situation by which the appellant may be deprived of his right of appeal as he may not be able to successfully go to the Court of Appeal.*⁹⁰

In view of the foregoing, it is hereby suggested that the context in which a word is used is an important aid towards its interpretation. Bearing in mind that series of criticisms have been leveled against the search for legislative intent, whilst trying to interpret, such interpretation should be looked at from different angles. What the courts are doing when interpreting contemporary statutes may be different from what they do when interpreting old statutes. As for interpreting contemporary statutes, the Supreme Court usually feel the pulse of the society. The justices themselves are part of the society, and they can bring a more realistic interpretation of the statute when interpreting a contemporary statute.

In the same vein, whether a statute is contemporary or medieval or pre medieval, the interpretation given to it by a judge cannot but be influenced by the personality of the judge which personality will be influenced by the economic, sociological, political, environmental factors affecting the judge. A typical example was the decision in the famous case of *Rylands v. Fletcher* where the backgrounds and past experience of the judge clearly influenced his decision.

All these varying factors can adequately be taken into consideration whilst proposing the plain meaning rule which will definitely meet modern realities and satisfy the end of justice since society itself is not static. The Supreme Court has recently put the position succinctly in the most recent case of *Ojukwu v. Obasanjo*⁹¹. Uthman Mohammed JSC, while reading the lead judgment, commented on the interpretation of section 137 (1) (b) of the 1999 Constitution of the Federal Republic of Nigeria thus:

Section 137 (1) (b) of 1999 Constitution is very clear. Even a layman can understand the intention of the framers of that provision. In interpreting the provision of the constitution, the language of the constitution where clear and unambiguous must be given its plain evident meaning.

He went further to quote Uwais, CJN's statement on the guiding principle for interpreting the provisions of the constitution in *P.D.P. v. I.N.E.C.*⁹² thus:-

It is settled that in interpreting the provision or section of a statute or indeed the constitution, such provisions or section should not be read in isolation of the other parts of the constitution, in other words, the statute or constitution should be read as a whole in order to determine the intendment of the makers of the statute or the constitution.⁹³

In the final analysis, one could safely conclude that the Supreme Court of Nigeria while exercising its constitutional role of interpreting the provision of the Constitution of the Federal Republic of Nigeria, 1999 as conferred on it by section 233 (2) (b) of the 1999 Constitution, has effectively done so through the cases. By the above submission, it could be seen that even the Supreme Court has through the cases directly and indirectly held that the plain meaning rule should be adhered to in as much as it meets modern realities and conforms to the primary law as intended by the legislature or parliament.

The Court of Appeal:

In the hierarchy of courts in Nigeria, the Court of Appeal is next on the line after the Supreme Court of Nigeria. The decision of the Court of Appeal is binding on all other courts below it. The Court of Appeal is

⁹⁰ At page 94

⁹¹ Supra at page 124

⁹² (1999) 7 S.C. (Pt. 11) 30

⁹³ *Ojukwu v. Obasanjo* (Supra) 30

composed of the President of the Court of Appeal and other justices of the Court of Appeal not being less than forty nine.

Jurisdiction of the Court of Appeal:

Like the Supreme Court of Nigeria, the Court of Appeal has both original and appellate jurisdiction. A careful examination of the constitutional provisions conferring jurisdiction on the Court of Appeal will reveal that the Court of Appeal is primarily a court of appellate jurisdiction. The original jurisdiction of the Court of Appeal is essentially limited to election petition matters.

Original Jurisdiction of the Court of Appeal:

Section 239(1) of the Constitution provides for the original jurisdiction of the Court of Appeal. By the provisions of that section the court of Appeal has exclusive original jurisdiction to hear and determine any question as to whether –

- (a) Any person has been validly elected to the office of President or Vice President under the Constitution; or,
- (b) The term of office of the President or Vice-President has ceased; or,
- (c) The office of President or Vice President has become vacant⁹⁴

Appellate Jurisdiction of the Court of Appeal:

Section 240 of the 1999 Constitution provides for the appellate jurisdiction of the Court of Appeal. By that section the Court of Appeal has exclusive jurisdiction to hear and determine appeals from the (1) Federal High Court (2) the High Court of the Federal Capital Territory, Abuja (3) the High Court of a state (4) the Sharia Court of Appeal of the Federal Capital Territory, Abuja (5) the Sharia Court of Appeal of a State (6) the Customary Court of Appeal of the Federal Capital Territory, Abuja (7) the Customary Court of Appeal of a State; and, (8) a court martial or other tribunals as may be prescribed by an Act of the National Assembly.

Appeals as of Right:

Section 241(1) of the 1999 Constitution appeals lie as of right to the Court of Appeal from decisions of the Federal High Court or a High Court in the following cases:

- (a) Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;
- (b) Decisions in any civil or criminal proceedings, where the ground of appeal involves questions of law alone;
- (c) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- (d) 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 been 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;

⁹⁴ Buhari v. Obasanjo (No.3)(2004) 1 W.R.N. 1

- (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 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

By section 241(2) of the 1999 Constitution provides that nothing in the foregoing confers any right of appeal:

- (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 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.

Appeals with leave:

In all other cases and subject to the provisions of section 241 and subject to the provisions of section 241 discussed above, appeals lie from decisions of the Federal High Court or a High Court to the Court of Appeal with leave of either the lower court or the Court of Appeal. In determining an application for leave to appeal 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, the court of Appeal may dispense with oral hearings and base its decision on the records of proceedings, if the Court of Appeal is of the opinion that the interests of justice do not require an oral hearing. Section 243(1) and (2) of the 1999 Constitution provide for the exercise of right of appeal from the Federal High Court, National Industrial Court or a High Court in respect of civil and criminal matters:

- (a) 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;
- (b) 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.
- (2) An appeal shall lie from the decision of the National Industrial court as of right to the Court of Appeal on questions of Fundamental Rights as contained in Chapter 1V of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

By virtue of Section 243(2) the right of appeal is removed with respect to issues to which the National Industrial Court has jurisdiction to determine except when human rights are implicated in the issues before the National Industrial Court. It is rather curious that the National Industrial Court became implicitly the court of last resort in respect of issue and matters for which it has jurisdiction.

Appeals from Sharia Court of Appeal, Customary Court of Appeal and Code of Conduct Tribunal:

By Section 244 (1) of the Constitution appeals lie as of right from decisions of a Sharia Court of Appeal to the Court of Appeal in civil proceedings with respect to any question of Islamic personal law which the Sharia Court of Appeal is competent to decide. This right of appeal is exercisable:

- (a) 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) 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.

Also by section 245 (1) and (2) of the Constitution appeals lie as of right from decisions of a Customary Court of Appeal to the Court of Appeal in civil proceedings with respect to any question of customary law and such other matters as may be prescribed and such other matters as may be prescribed by an Act of the National Assembly. Such right of appeal is exercisable:

- (a) 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 persona having an interest in the matter; and,
- (b) 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.

By section 246(1) of the 1999 constitution appeals lie as of right to the Court of Appeal from decisions of the Code of Conduct Tribunal established in the Fifth Schedule to the Constitution. Similarly appeals lie as of right from decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses 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 has been validly elected to the office of Governor or Deputy Governor; or,
- (iii) The term of office of any person has ceased or the seat of any such person has become vacant

Section 246(2) of the Constitution empowers the National Assembly to confer jurisdiction upon the Court of Appeal to determine appeals from any decision of any other court of law or tribunal established by the National Assembly. By Section 246(1) and (3) of the 1999 Constitution the decisions of the Court of Appeal in respect of appeals arising from election petitions are final.⁹⁵

The Court of Appeal is for administrative purposes divided into judicial divisions each presided over by a Presiding Justice. However, the law recognizes only one Court of Appeal and decisions of any of the judicial divisions are treated as decisions of the court.

For administrative convenience, the court is divided into judicial divisions, which sit in various parts of the country, namely, Abuja, Lagos, Enugu, Kaduna, Ibadan, Benin, Jos, Calabar, Ilorin, Port Harcourt, Owerri, Sokoto, Yola, Ekiti, Akure and Makurdi.

The Federal High Court:

There is a Federal High Court in each state of the Federation and the Federal Capital Territory. Each is made up of a Chief Judge and such other number of judges as the State House of Assembly or the National Assembly (in the case of High Court of the Federal Capital Territory) may prescribe. The High Court of the various states have original jurisdiction over civil and criminal matters except matters in respect of which

⁹⁵ Awuse v. Odili (2004) 6 W.R.N. 1

any court has been vested with exclusive jurisdiction, making them the court with the widest jurisdiction under the constitution. The court is duly constituted with one judge. Each High court is divided into judicial divisions for administrative convenience.

Jurisdiction of the Federal High Court:

Section 251 of the Constitution provides for the jurisdiction of the Federal High Court. It provides that notwithstanding anything to the contrary in the Constitution, and in addition to such other jurisdiction as may be conferred on it by an Act of the National Assembly, the Federal High Court has exclusive jurisdiction in civil cases and matters.

- (a) Relating to the revenue of the Government of the Federation in which the said Government, its organs or a person suing or being sued on its behalf 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;
- (d) Connected with or pertaining to banking, banks, other financial institutions, including any action between on bank and another, any action by or against the Central Bank of Nigeria arising from banking, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures; Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction transactions between the individual customer and the bank.
- (e) Arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act
- (f) Any Federal enactment relating to copyright, patent, designs, trademarks 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 effluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea
- (h) Diplomatic, consular and trade representation;
- (i) Citizenship, naturalization and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration, from Nigeria, passports and visa;
- (j) Bankruptcy and insolvency;
- (k) Aviation and safety of aircraft;
- (l) Arms, ammunition and explosives;

- (m) Drugs and poisons;
- (n) Mines and minerals (including oil fields, oil mining, geological surveys and natural gas);
- (o) Weights and measures;
- (p) The administration or the management and control of the Federal Government or any of its agencies;⁹⁶
- (q) Subject to the provisions of the Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;
- (r) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; 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 ® of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in action for damages; injunction or specific performance where the action is based on any enactment, law or equity.

Section 28 (3) (First Alteration) Act, 2010 grants additional jurisdiction to the Federal High Court. It provides that “Subject to the provisions of section 2541 and other provisions of this Constitution, the Federal High Court shall have jurisdiction to hear and determine the question as to whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant”

It is clear from the wordings of Section 28 (3) (First Alteration) Act, 2010 which grants additional jurisdiction to the Federal High Court that the jurisdiction granted by that section is not exclusive to the Federal High Court. Accordingly, the Federal High Court will share the jurisdiction granted by that section with a State High Court.

The National Industrial Court of Nigeria:

Section 254A of the 1999 Constitution established the National Industrial Court. The National Industrial Court consists of the President and such number of Judges as may be prescribed by an Act of the National Assembly.

Jurisdiction of the National Industrial Court:

S.254C (1) of the Constitution provides for the jurisdiction of the National Industrial Court. It provides that “Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this constitution and in addition to such other jurisdiction to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:-

- (a) Relating to or connected with any labour, employment, trade unions, industrial relations arising from workplace, the conditions of service, including health, safety , welfare, employee, worker and matters incidental thereto or connected therewith;
- (b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Union Act or Law relating to labour, employment, industrial relations, workplace the Acts or any other enactment replacing the Acts or laws.

⁹⁶ University of Abuja v. Ologe (1996) 4 N.W.L.R. 706

- (c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock out or any industrial action, or any action industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out, or any industrial action and matters connected therewith or related thereto;
- (d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;
- (e) relating to or connected with any dispute arising from national minimum wage for the federation or any part thereof and matters therewith or arising therefrom;
- (f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;
- (g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;
- (h) relating to, or connected with or pertaining to the application or interpretation of international labour standards;
- (i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;
- (j) relating to the determination of any question as to the interpretation and application of any:-

I collective agreement;

ii award or order made by an arbitral tribunal in respect of a trade dispute or trade union dispute;

iii. award or judgment of the Court;

iv. terms of settlement of any trade dispute;

iv. trade union dispute or employment dispute as may be recorded in a memorandum of settlement;

v. trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace;

vi. dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any parts thereof;

(k) relating to or connected with disputes arising from paying or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, political or public office holder, judicial officer, or any civil or public servant in any part of the Federation and matters incidental thereto;

(i) relating to

i. appeals from decisions of the Registrar of Trade Unions or matters relating thereto or connected therewith;

ii appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade union or industrial relations; and

- iii. 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'

(m) relating to or connected with the registration of collective agreements (2) Notwithstanding anything to the contrary in this constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith"

It appears that Section 254C of the Constitution which vested the National Industrial Court with jurisdiction has altered the relation between Nigerian municipal law and international law. This is because for an international treaty to become operative in Nigeria such international treaty must be enacted into law by the National Assembly in consonance with the provisions of Section 12(1) of the Constitution. Section 12(1) provides that "No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly." The purport of Section 254C of the Constitution is that international treaties relating to labour has a force of law in Nigeria upon ratification by Nigeria without first been enacted into law by the National Assembly.

The Sharia Court of Appeal:

There is a Sharia Court of Appeal for the Federal Capital Territory and any state that requires it. This court has appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law, which the court is competent to decide in accordance with the constitution. The court comprises of a Grand Khadi and other Khadis as the National Assembly or State Houses of Assembly (as the case may be) may prescribe.

Jurisdiction of the Sharia Court of Appeal:

Section 262(1) of the constitution provides for the jurisdiction of the Sharia Court of Appeal. In addition to such other jurisdiction as May conferred on it by the National Assembly, the Sharia Court of Appeal shall exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law. The Sharia Court of Appeal shall be competent to decide:

- (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 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, 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. "

The Customary Court of Appeal:

There is a customary Court of Appeal for the Federal Capital Territory and any state that requires it. This court has appellate and supervisory jurisdiction in civil proceedings involving questions of customary law and it comprised of a president and such number of judges as the National Assembly or State Houses of Assembly (as the case may be) may prescribe.

Jurisdiction of the Customary Court of Appeal:

Section 267 of the 1999 Constitution provides for the Jurisdiction of the Customary Court of Appeal of the Federal Capital Territory. It provides that “The Customary Court of Appeal of the Federal Capital Territory, Abuja shall, in addition to such other jurisdiction as may be conferred upon it by an Act of The National Assembly exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.”

High Court of a State:

Section 270(1) of the 1999 Constitution established the High Court of a State. By subsection (2)(a) and (b) the High Court of a State shall consists of “a Chief Judge of the State and such number of Judges of the High Court as may be prescribed by a law of the House of Assembly of the State”

Jurisdiction of the High Court of a State:

Section 272(1) of the 1999 Constitution provides for the jurisdiction of the High Court of a State. It provides that “ Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.”

Conclusion:

The Nigerian legal and court system is anchored on the common law system. However, the structure, hierarchy, jurisdiction and appellate system of Nigerian courts reflect Nigeria’s federal political structure. In recent times, there have been considerable efforts in the creation of specialized courts with limited jurisdiction to deal with special and technical issues which require special skills and competencies. This trend is likely to continue as Nigeria continues to develop and the need for specialized courts emerges.