

INTRODUCTION INTO THE CIVIL JURISDICTION OF NIGERIA: COURT SYSTEM, JURISDICTION, LEGAL PROCEEDINGS

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A. Abstract

This paper examines the civil jurisdiction of courts in Nigeria. The paper posits that civil jurisdiction is the power that the court has to enforce, redress, and protect the civil right of a private individual or government. The paper articulates the sources of civil jurisdiction in Nigeria and the court system which deals with the hierarchy and powers of the various courts in Nigeria. It notes that before a court can assume jurisdiction, it must be properly constituted with respect to number and qualification of members and the subject matter and cases must be initiated by due process. The paper posits that jurisdiction is fundamental in every case before a Nigerian court as jurisdiction cannot be conferred or waived by the litigants. The paper notes that the Supreme Court is the Apex court and receives appeals exclusively from the Court of Appeal. It also has original jurisdiction in civil cases in addition to its supervisory jurisdiction. The Court of Appeal and High Courts have both original and appellate jurisdiction in civil matters while the Sharia Court of Appeal and Customary Courts of Appeal only have appellate and supervisory jurisdictions in civil matters. The Federal High Court exercises exclusive jurisdiction with respect to some subject matters in exercise of its civil jurisdiction but has concurrent jurisdiction with State High Courts. The paper also notes the processes for commencing civil actions in Nigerian courts. The paper observes and discusses the problems that hinder civil proceedings. In view of the findings, the paper articulates the reforms that are currently being implemented in order to improve the civil jurisdiction and proceedings of courts in Nigeria.

I. Introduction

This paper examines the subject of civil jurisdiction of courts in Nigeria. The paper further examines the court system and jurisdiction of courts with respect to matters or cases brought before it. This is with a view to determine the challenges faced by courts in the administration of justice in Nigeria and be able to proffer solutions to the identified issues. To do this, the paper is divided into five parts. Part I introduces the paper and part II discusses the conceptual foundation and sources of the civil procedure rules. Part III examines the court system and jurisdiction. Here, the hierarchy of courts will be discussed, in addi-

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tion, the laws establishing the courts will be analysed as every court derives its jurisdiction from the law. Part IV examines the challenges and reforms to civil jurisdiction in Nigeria and Part V concludes the paper.

II. Conceptual Foundation and Sources of Civil Procedure

All the courts in Nigeria exercise civil jurisdiction in addition to their criminal jurisdictions. While some courts may have exclusive jurisdiction in respect of some subject matter in civil cases and actions, they share or have concurrent jurisdictions with other courts of the same ranking in other subject matters. This section examines some fundamental concepts in relation to the topic. What then is civil action? The Black's Law Dictionary¹ posits that:

*A civil action is an action brought to enforce, redress or protect a private or civil right; a non criminal litigation. It is called a private action if it is brought by a private person or public action when instituted by government while civil jurisdiction means the power of the court to adjudicate or preside over civil causes and matters brought before it by litigants. It is also the adjudicatory powers exercisable by courts over civil cases.*²

From the above, it is clear that parties to a civil suit/claim can either be a private person or the government and for the court to exercise its civil jurisdiction there must be a civil procedure which encompasses the body of rules that govern the practice and procedure in civil law courts. These rules are applied from the beginning of actions, trials, judgement to the execution of the judgement and appeals.³ It is not only necessary that the proceedings must be followed in bringing an action, the court must of itself have the necessary legal backing (jurisdiction) to preside over such matters. Jurisdiction is a fundamental pre-requisite in all cases. It is a condition precedent that cannot be waived. The Supreme Court in the case of *Zakari v Nigerian Army*⁴ held on the fundamental nature of jurisdiction of a court that:

Jurisdiction is the blood that gives life to the survival of an action in a court of law-without which the action being like an animal drained of its blood, ceases to be alive. Bereft of any blood in it and indeed without life, any effort at resuscitating it remains a futile exercise.

*The Court of Appeal reiterated the position of the Supreme Court in the case of Patil v FRN*⁵ and went further to state that ... "jurisdiction is the authority a court has to

1 *Garner, B.A. Blacks Law Dictionary*, 9th ed., (St Paul, MN: 2004)34.

2 *Ewere-Bright* "Civil Jurisdiction of Courts in Nigeria" <http://www.thelidenensonline.com/2015/07/15/civil-jurisdiction-of-courts-in-nigeria>(Accessed 27th January, 2017).

3 *Imhanobe, S.O.Lawyers Deskbook, Vol. 1, 2nd ed.*, (Abuja: 2010) 1.

4 (2015) 17 NWLR (Pt 1487)p 77 at 88.

5 (2016) 8 NWLR (Pt 1515) P 483 at 487.

decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision”.

The jurisdiction of a court is a question of law as jurisdiction cannot be conferred by any other means. Where a court lacks jurisdiction to hear and determine a case, no matter how well the proceedings were conducted, the efforts of the court is a nullity. It is trite to note that jurisdiction can neither be implied nor conferred on the court by the agreement of the parties to the suit. On this the court held that where a court has no jurisdiction, it cannot acquire same by acquiescence of any party, nor can a party by failure to exercise a right open to him donate jurisdiction to the court. Where jurisdiction is not conferred by statute, it cannot be acquired by or donated to a court.⁶ On the other hand, jurisdiction cannot also be waived or compromised by litigants. Here the court again in *Zakari v Nigerian Army* (supra) held that:

Jurisdiction being a forerunner of judicial process cannot by acquiescence, collusion, compromise or waiver be conferred on a court that lacks it. Parties do not have legal right to donate jurisdiction on a court that lacks it. Non compliance with the rules which affect the very foundation or props of the case cannot be treated by the court as an irregularity but as nullifying the entire proceedings. Once the non-compliance affects the substance of the matter to the extent that the merits of the case are ruined, then it is impossible to salvage the proceedings in favour of the party in blunder, no amount of waiver by the party can be of assistance to the adverse party.⁷

Again, common law principles or statutory provisions cannot be invoked in order to confer jurisdiction on a court that lacks it.⁸ From the above decisions of the court, one could deduce that absence of jurisdiction cannot be remedied and the only option available is to strike out the suit. This was the position reached by the court in *Sylva v I.N.E.C.*⁹ In this case the court held that “generally, where a court has no jurisdiction to hear and determine a case, it has no jurisdiction to dismiss it. It should strike out the matter”.

As earlier noted in the paper, jurisdiction may relate to the parties to the suit or the composition of the court or the subject matter of the action brought before the court. The court in *Zakari v Nigeria Army*¹⁰ held that a court can only be competent when:

- a) It is properly constituted as regards the members and qualifications of the members of the bench, and no member is disqualified for one reason or another;
- b) The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising jurisdiction;

6 *Zakari v Nigerian Army*, supra note 4, p88.

7 *Ibid*, p 81. See also *Mobil Producing Nigeria Unlimited v Monokpo* (2003)18 NWLR (Pt 852) 346, *Patil v FRN* supra note 5.

8 *Ndayako v Dankoro* (2004) 13 NWLR (Pt 889) 187.

9 (2015)16 NWLR (Pt 1468) p 576 at 591.

10 Supra note 4 and 6. See also *Madukolu v Nkemdilim* (1962) 2 SCNLR 341.

- c) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

On the above, it is evident that a court can only exercise jurisdiction when it is properly constituted with respect to number of members and qualification, the subject matter is within the competence of the court and the case is initiated by due process.

On the issue of the subject matter of the case being a condition precedent for the exercise of jurisdiction the court reiterated in the case of *Sylvia v I.N.E.C* (supra) that the subject matter of a case must be within a court's jurisdiction and there must be no feature in the case which prevents the court from exercising its jurisdiction.

Where the subject matter of a case is rightly before a court, then the court will exercise its substantive jurisdiction which is different from territorial or procedural jurisdiction.

The court in distinguishing substantive, territorial and procedural jurisdiction held in *Patil v FRN* that:

Substantive jurisdiction refers to matters over which a court can adjudicate while territorial jurisdiction refers to the geographical area in which matters brought before a court for adjudication arose.

The court further posits in the same case that:

Issue of territorial jurisdiction cannot be equated with procedural jurisdiction. The courts are usually not seized of matters that occur outside their territory. In effect, where the ingredients of an offence occur outside the territorial jurisdiction of the court asked to adjudicate over the matter, the court will not assume jurisdiction over same for an apparent lack of jurisdiction.¹¹

The import of the above is that where a court is competent to adjudicate over the subject matter of the litigation but is not located within the geographical area where the cause of action arose, then the court is incompetent to hear and determine the suit for lack of jurisdiction. Procedural jurisdiction on the other hand would cover issues such as pre-action notice and other conditions like the composition and constitution of a court. Procedural jurisdiction may be waived by the litigants but substantive and territorial jurisdictions are a matter of law and cannot be waived by the parties to the suit.¹²

Again, where a party to the suit lacks the right to bring such an action, the suit will be incompetent and the court cannot hear and determine the rights of parties for lack of jurisdiction. In *Airtel Networks Ltd v George*,¹³ the Court held that:

11 *Patil v F.R.N* (2016) 8 NWLR (Pt 1515) p 483 at 490.

12 Legal Emperors "Courts with Civil Jurisdiction and a Contextualization of the Problem of Jurisdiction, (2016), <http://www.legalempers.com/2016/01/courts-with-civil-jurisdiction-and.html>. (Accessed 27th January, 2017).

13 (2015) 4 NWLR (Pt. 1448) P 60 at 66.

Where a party has no locus standi to bring an action, the suit becomes incompetent and consequently the court lacks jurisdiction to entertain it. This is based on the fact that locus standi and jurisdiction are inter-woven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought.

On who or when jurisdiction can be raised, the position of the law is that any party who has been sued can raise the issue and at any time or stage of the proceedings including during appeal. The court can also on its own raise the issue.¹⁴ The fact is that where a court lacks jurisdiction and it is covered by any means, no matter how well conducted, the trial is a nullity¹⁵

The Supreme Court of Nigeria in the case of *M.P.P.P v INEC* (No.2) reiterated this position when it held that:

*The issue of jurisdiction is over and above any legal manipulation. It has to be neatly observed and acted upon, whether it was raised in any ground of appeal or not. The jurisdiction of court is a question of law which can be mentioned and raised for the first time in the appellate courts or even in the Supreme Court. There is no need for leave of court to be sought and obtained before it can be said to have been properly raised. No matter in what manner it was raised, it can lawfully be raised as a fresh issue on appeal.*¹⁶

Having considered the issue of civil action and jurisdiction one may conclude by saying that a civil action is a dispute arising between persons or persons and government or government agencies. It may result in the award of compensation or damages, declaration of the rights or other equitable remedies as the court may deem fit as equitable remedies are at the discretion of the court.

Sources of Civil Procedure in Nigeria

Civil procedure rules in Nigeria are derived from the following legal instruments:

- a) The Constitution of the Federal Republic of Nigeria 1999 as amended 2011
- b) Statutes creating the Courts e.g. High Court laws or Court of Appeal Act
- c) The Sheriff and Civil Process Act
- d) Rules of Court e.g. Federal High Court (Civil procedure Rules) 2009, Lagos State High Court (Civil procedure Rules) 2004, Edo State High Court (Civil Procedure Rules) 2012
- e) Other Statutes such as section 78 Companies and Allied Matters Act, Cap C20 LFN 2004 which deals with service of processes on Companies

14 *Zakari v Nigerian Army* (2015)17 NWLR (Pt. 1487) p88.

15 *Sylvia v INEC* (2015) NWLR (Pt. 1486) p590.

16 (2015) 18 NWLR (Pt. 1491) p 251 at 255.

f) Judicial Precedents

g) Practice Direction

This section examines the civil jurisdiction of courts in Nigeria.

III. The Court System and Proceedings in Nigeria

In Nigeria, the judiciary is one of the arms of government,¹⁷ while the others are the executive and legislative arms.¹⁸ The courts are an essential element of the judiciary because this is where cases are heard and justice dispensed without fear or favour in accordance with law and the rules of equity. Courts are seen as temples of justice and where there is a breach of the rules of court, the trial will be tainted with irregularity and the proceedings will go to no issue. This implies that rules must be followed at all times i.e. before a matter is brought before a court and during the process of conducting the trial up to the time of judgement and even appeals where necessary.

The Constitution of the Federal Republic of Nigeria vests judicial powers in the court.¹⁹ By this authority, courts established herein exercise both original and appellate jurisdiction and shall be the superior courts of record in Nigeria.²⁰ This implies that there are inferior courts or courts of no record or courts of summary jurisdiction. The jurisdiction of superior courts of record extends to all matters between persons, or between governmental authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of the person.²¹

The courts of record vested with authority to determine any question as to the civil rights and obligation of persons include:

- (a) The Supreme Court; (b) Court of Appeal;
- (c) The Federal High Court; (d) the High Court of the Federal Capital Territory Abuja;
- (e) High court of a State; (f) the Sharia Court of Appeal of the federal capital territory,
- (g) Sharia Court of Appeal of a State (h) The Customary Court of Appeal of the FCT/ Customary Court of Appeal of a State; and such other courts as may be authorised by law to exercise jurisdiction with respect to matters over which the National Assembly may make laws; or to exercise jurisdiction at first instance or on appeal on matters within the legislative competence of a House of Assembly of a State.²² The above implies that the National Assembly and State Houses of Assembly can from time to time

17 Section 6, Constitution of the Federal Republic of Nigeria, 1999 (as amended 2011). Hereinafter CFRN 1999 as amended.

18 Sections 4 and 5 CFRN 1999 as amended 2011.

19 Section 6, CFRN 1999 as amended 2011.

20 Section 6(3) (5) of the CFRN 1999 as amended 2011.

21 Section 6(6) (b) CFRN 1999 as amended 2011.

22 Section 6 (5) (a)-(k) CFRN 1999 as amended 2011.

create courts that will have both civil and criminal jurisdictions as the need arises irrespective of the existence of the courts already created by the Constitution.

Flowing from the foregoing, this paper will now consider the hierarchy of courts and their civil jurisdictions respectively.

1. The Supreme Court

This is the apex court in Nigeria. It was established in 1963 upon the attainment of a Republic and by virtue of the 1960 Constitution which entered into force on 1st of October 1963, and upon the abrogation of the appellate jurisdiction of the judicial committee of the Privy Council which served as the apex court in Nigeria.²³ Section 230²⁴ establishes the Supreme Court of Nigeria and the section provides that the Supreme Court shall consist of the Chief Justice of Nigeria and such number of justices not exceeding twenty-one (21) as may be prescribed by the Act of the National Assembly.²⁵

The Supreme Court exercises both original and appellate jurisdiction on civil matters and causes. Its original jurisdiction in civil matters is guaranteed by section 232 of the Constitution which stipulates 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 relates to the questions of fact or law on which the existence or extent of legal right depends.²⁶ Original jurisdiction can also be conferred on the Supreme Court by an Act of the National Assembly.²⁷ This is in addition to the one already in existence as provided for in the Constitution.²⁸

For the exercise of its original jurisdiction, the following conditions must be met:

- i. There must be a dispute existing between the component units/states which allow them to bring an action before the Supreme Court,²⁹
- ii. The dispute must be on a question of law or fact or both,³⁰
- iii. The dispute must relate to the existence or the extent of a legal right.

23 *Adetifa, A* “Hierarchy of Courts in Nigeria”, <http://www.legalnaija.com/2018/11/hierarchy-of-court-s-in-nigeria-adenke.html>. (Accessed 27th January, 2017.).

24 CFRN 1999 as amended.

25 Section 230 (1)(2) (a) and (b) CFRN 1999 as amended, 2011.

26 Section 232 (1) CFRN 1999.

27 Section 232 (2) CFRN 1999.

28 Section 1 of the Supreme Court (Additional Original Jurisdiction) Act 2002 CAP S16 LFN, 2004 confers additional original exclusive jurisdiction on the Supreme Court with respect to disputes between National Assembly and the President or National Assembly and a State government or between the National Assembly and a state House of Assembly.

29 *AG Federation v AG Imo State* (1982) 12 SC 274.

30 *AG Federation v AG Abia State & 36 Ors* (2002) 6NWLR (Pt 764) 542.

It is trite to note that where the Supreme Court exercises its original jurisdiction with respect to any of the matters or parties aforementioned no appeal can lie before any other court in Nigeria. The Supreme Court also has exclusive jurisdiction to hear and determine appeals from the Court of Appeal.³¹ Finally, the Chief justice of Nigeria, subject to any Act of the National Assembly is empowered to make rules for regulating the practice and procedure of the Supreme Court.³²

In the exercise of its appellate jurisdiction, the Supreme Court will be properly constituted by seven (7) justices but for any other jurisdiction conferred upon it by the Constitution, it shall be properly constituted by not less than five (5) justices.³³

In its appellate jurisdiction, appeals will be on issues such as:

- a. Where it involves a question of law alone, decisions in any civil or criminal proceedings
- b. Interpretation of the Constitution
- c. A question on whether any of the provisions relating to Chapter IV of the Constitution is being or is likely to be contravened; or
- d. Decision in any criminal proceeding in which any person has been sentenced to death or in which a Court of Appeal has affirmed the sentence of death imposed by any other court.
- e. Decisions on any question-
 - i. Whether any person has been validly elected into office as President or Vice President
 - ii. Whether the term of office of the President or Vice President has ceased;
 - iii. Whether the office of President or Vice President has become vacant;
- f. Such other cases as may be prescribed by an Act of the National Assembly.³⁴

Again, appeals will lie to the Supreme Court on whether: any persons have been validly elected to the office of the governor or Deputy Governor; the term of the office of the Governor or Deputy Governor had ceased; the office of the governor or deputy governor has become vacant; and such other cases as may be prescribed by an Act of the National Assembly.³⁵ Appeals shall lie from the decisions of the Court of Appeal to the Supreme Court with leave of the Court of Appeal or the Supreme Court³⁶ and this right of appeal shall be exercisable in civil proceedings at the instance of the parties thereto, or with the leave of the

31 Section 233 CFRN 1999 as amended 2011.

32 Section 236 CFRN 1999 as amended 2011.

33 Section 234 CFRN 1999 as amended 2011.

34 Section 233 (2) (a) – (f) CFRN 1999 as amended 2011.

35 Section 6 CFRN (Second Alteration) Act, 2010.

36 Section 233 (3) CFRN 1999 as amended 2011.

Court of Appeal or the Supreme Court at the instance of any other person having an interest in the matter.³⁷

The Supreme Court can only exercise its supervisory jurisdiction over the court of Appeal by way of appeals.³⁸

One important aspect of ensuring transparency and justice delivery lies in the appointment of the Chief Justice of Nigeria who is the chief legal officer of the nation. By virtue of the Nigerian Constitution, a person shall be appointed to the office of the Chief Justice of Nigeria upon the recommendation made by the National Judicial Council to the President and subject to confirmation by the Senate.³⁹ This is the normal process. The NJC recommends and the President appoints. In November, 2016, upon the expiration of the term of the office of the immediate past CJN, the President inaugurated a new CJN on acting capacity being the most senior judge by virtue of section 231 (4) of the Constitution. Surprisingly, the name of the candidate recommended by the NJC for appointment by the President was not forwarded to the Senate for Confirmation and the Constitution provides that such a candidate will no longer be eligible for appointment to the office of the CJN if his three months acting period elapses.⁴⁰ This generated a lot of controversy as there were speculations that the executive does not want the candidate and was waiting for the three months to elapse so that the candidate will retire and a new CJN who would submit to the whims and caprices of the executive would then be appointed. The civil society groups, political analysts and the legal profession championed the protest as non compliance with the status quo would automatically mean that the independence of the judiciary is compromised.

The Acting President of Nigeria, Prof. Yemi Osibanjo sent the name of the candidate to the upper legislative chambers on the 8th of February for confirmation and the confirmation was successful and Justice Onnoghen the new CJN was sworn in on Tuesday the 7th of March, 2017 as the 17th Chief Justice of Nigeria. The import of the above scenario is that once the appointment procedures are transparent, the executive cannot thwart the process and this safeguards the independence of the judiciary as the Justices are appointed based on merit and not on ethnic or religious inclinations.

2. The Court of Appeal

The Court of Appeal is established by section 237 of the Constitution of Nigeria, 1999. It is the next court in hierarchy after the Supreme Court. The Court of Appeal is divided into judicial divisions and it sits in some designated states in Nigeria.⁴¹ The Court of Appeal

37 Section 233 (5) CFRN as amended 2011.

38 *Olabanji v Odojin* (1996) 2 SCNJ, 242.

39 Section 231 (1) CFRN 1999 as amended 2011.

40 Section 231 (5) CFRN 1999 as amended 2011.

41 There is a Court of Appeal Lagos division, Benin judicial division, Enugu judicial division etc.

shall consist of a President⁴² and such number of justices of the Court of Appeal, not less than forty nine (49) of which not less than three (3) shall be learned in Islamic personal law and not less than three (3) shall be learned in customary law as may be prescribed by an Act of the National Assembly.⁴³

The Court of Appeal exercises both original and appellate jurisdictions in civil matters and causes. In its original jurisdiction, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine whether:

- (a) Any person has been validly elected to the office of President or Vice President under the Constitution;
- (b) The term of office of the President or vice President has ceased; or
- (c) The office of President or Vice President has become vacant.⁴⁴

In the hearing and determination of the above questions, the Court of Appeal will be duly constituted if the panel is made up of not less than three justices of the Court of Appeal.⁴⁵ The Court of Appeal has an exclusive jurisdiction⁴⁶ to hear and determine appeal from the Federal High Court, National Industrial Court, High Court of the Federal Capital Territory, High Court of a State; Sharia Court of Appeal of a State, Sharia Court of Appeal of the FCT, Customary Court of Appeal of the FCT, Customary Court of Appeal of a State, Code Conduct Tribunals and other Tribunals⁴⁷ and the decision of a Court Martial. Appeals to the Court of Appeal shall lie as of rights⁴⁸ or with the leave of court.⁴⁹ The decision of the Court of Appeal in respect of issues bothering on the National and State Houses of Assembly election petition and also appeals arising from any civil jurisdiction of the National Industrial court shall be final.⁵⁰ The Court of Appeal shall be duly constituted in case of appeals from the Sharia Court of Appeals if it consists of three justices of the Court of Appeal learned in Islamic personal law⁵¹ and in the case of appeals from the Customary Court of Appeal, three justices of the Court of Appeal learned in customary law.⁵² The President of the Court of Appeal subject to any act of the National Assembly may make rules for regulating the practice and procedure of the Court of Appeal.⁵³

42 Section 237 (2) (a) CFRN 1999 as amended 2011.

43 Section 237 (2) (b) CFRN 1999 as amended 2011.

44 Section 239 (1) (a) – (c) CFRN 1999 as amended 2011.

45 Section 239 (2) CFRN 1999 as amended 2011.

46 Section 240 CFRN 1999 as amend 2011.

47 Section 246 (1) (2) and (3) CFRN 1999 as amended 2011.

48 Section 241 CFRN 1999 as amended 2011.

49 Section 242 CFRN 1999 as amended 2011.

50 Section 246 (3) CFRN 1999 as amended, 2011.

51 Section 247 (a) CFRN 1999 as amended, 2011.

52 Section 247 (b) CFRN 1999 as amended, 2011.

53 Section 248 CFRN 1999 as amended, 2011.

3. The Federal High Court

The Federal High Court was originally established and known as the Federal Revenue Court.⁵⁴ The name was later changed to Federal High Court by virtue of the 1979 Constitution.⁵⁵ The court is now established in the 1999 Constitution as amended.⁵⁶ The Federal High Court is also divided into divisions for purposes of administrative convenience and it sits in different states of the country. The Federal High Court shall be headed or consist of a Chief judge and such number of judges of the Federal High Court as may be prescribed by an Act of the National Assembly.⁵⁷ The Federal High Court is properly constituted if it consists of at least one judge of that court.⁵⁸

The jurisdiction of the Federal High Court with respect of civil matters is established in the Constitution and other statutes and laws⁵⁹ and most importantly by subject matter and parties. The Federal High Court exercises exclusive civil jurisdiction in relation to the subject matters listed under section 251 of the Constitution of Nigeria as amended. The Court of Appeal in *FRN v Yahaya*⁶⁰ held that the Federal High Court has exclusive jurisdiction to try and determine cases listed under section 251(1) of the Constitution. This is a judicial acknowledgement of the provision of the Constitution. Additionally, section 46 of the Constitution also confers jurisdiction on the Federal High Court to hear and determine issues and questions on the enforcement of fundamental human rights. It is trite to note that jurisdiction here is not exclusive but concurrent with the State High Court or the High Court of the FCT.⁶¹

The exclusive jurisdiction of the Federal High Court has been questioned in relation to bank/customer relationship especially when considered in relation to section 251 (d) of the Constitution, particularly the proviso. The Supreme Court in resolving this issue has held that the proviso exempts banker/customer relationship from the exclusive jurisdiction of the

54 Federal Revenue Court Act, No. 13 of 1973.

55 Section 230 (2) CFRN 1979.

56 Section 249 (1) CFRN 1999 as amended 2011.

57 Section 249 (2) (a) –(b) CFRN 1999 as amended 2011.

58 Section 253 CFRN 1999 as amended 2011.

59 For instance the Admiralty Jurisdiction Act, 19991, Food and Drug Act, Recovery of Public Property9Special Provision) Act 1984, Miscellaneous Offences Act, 1984, National Drug Law Enforcement Agency Act, 1989 and National Agency for Food, Drug Administration and Control. Decree now Act 1993.

60 (2016) 2 NWLR (Pt 1496) p 252 at 262.

61 Order 1 Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and *Grace Jack v University of Agriculture, Makurdi* (2004) 5 NWLR (Pt 865) 208. Here the court held that the Federal High Court and State High Court have concurrent jurisdictions to hear and determine cases bothering on enforcement of fundamental Human rights. See also *UNICAL v Ugochukwu* (No. 1) (2007) 17 NWLR (Pt 1063) 225 where the Supreme Court held that FHC had exclusive jurisdiction as one of the parties is an agent of government even though it is on Fundamental Human Rights section 25(1) (p).

Federal High Court. The implication of this is that both the Federal High Court and State High Court share concurrent jurisdiction⁶² over some subject matters. The Supreme Court reiterated this position more aptly when it held in the case of *NDIC v Okem Enterprises Ltd*,⁶³ that the proviso to section 251(1) (d) of the Constitution does not exclude the jurisdiction of the Federal High Court in banker/customer transactions, but only takes away the exclusive jurisdiction of the court in such matters and therefore it shares concurrent jurisdiction with the State High Court on this subject by virtue of section 272 (1) of the Constitution.

It is important to note at this point that in matters of simple contract, it is the High Court of a state and not the Federal High Court that should exercise jurisdiction. This was the decision of the Supreme Court in the case of *Felix Onurah (Trading under the name and Style of Ikechi Supermarket and Trading Co.) v Kaduna Refining and Petrochemical Company Ltd*.⁶⁴ Here, the Supreme Court held that in simple contracts, the Federal High Court does not have jurisdiction and that it is irrelevant whether one of the parties was the Federal government or any of its agencies. Finally, the Federal High Court is duly constituted if it consists of only one judge of that court.⁶⁵ Please note that the Supreme Court in the case of *FMBN v Lagos State Government* further established the exclusive jurisdiction of FHC.⁶⁶

4. State High Court

The State High Court and the High Court of the Federal Capital Territory will be considered together. Section 255 of the Constitution as amended establishes the High Court of the FCT while the State High Court is established by virtue of section 270 of the same Constitution. Both Courts consists of a Chief Judge⁶⁷ and such number of judges as may be prescribed by the National Assembly⁶⁸ for the High Court of the FCT or State Houses of Assembly for the High Court of the State.⁶⁹ The appointments of the Chief Judge and other judges of the High Court of a state are made by the Governor of the State on the recommendation of the National Judicial Council (NJC) and subject to confirmation by the State House of Assem-

62 *FMB of Nigeria Ltd v NDIC* (1999) 2 NWLR (Pt. 591) 333.

63 (2004) 10 NWLR (Pt. 880) 107.

64 (2005) 6 NWLR (Pt. 921) 393.

65 Section 253 CFRN 1999 as amended 2011.

66 (2010) 5 NWLR (Pt 1188) 570 at 602 where it held that the Federal High Court can assume jurisdiction in certain circumstances where the Federal Government or any of its agencies are parties and when the subject matter is covered by section 251(1) of the Constitution.

67 Section 255 (2) (a) and section 270 (2) of the Constitution of Nigeria 1999 as amended, 2011.

68 Section 255 (2) (b) CFRN 1999 as amended, 2011.

69 Section 270 (2) (b) CFRN1999 as amended, 2011.

bly.⁷⁰ No person shall be qualified to be appointed a judge of the High Court unless he is qualified to practice in Nigeria as a legal practitioner and has been so qualified for ten (10) years.⁷¹

The jurisdiction of the state High Court and the High Court of FCT are very wide. The Constitution provides that:

*Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a state/the High Court of the FCT shall have jurisdiction to hear and determine any civil proceeding in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claims in issue.*⁷²

The import of the foretasted provision is that the High Court lacks jurisdiction to hear and determine any matter or cause of action of which the Federal High Court has exclusive jurisdiction over. It is trite to mention at this point that the jurisdiction of the High Court and the High Court of the FCT covers original, appellate and supervisory jurisdiction.⁷³ The High Court of States and the High Court of the FCT would be duly constituted if it consists of at least one judge of that court.⁷⁴ The Chief Judge of the High Court of a State or the FCT may make rules for regulating the practice and procedure of the courts subject to the provision of any law made by the House of Assembly of a State or any Act of the National Assembly for the FCT.⁷⁵ Every state of the federation of Nigeria has its own High Court Rules.⁷⁶

Having noted that the state High Court and the High Court of the FCT cannot exercise jurisdiction on any matter that falls within the exclusive competence of the Federal High Court, this paper therefore presents the procedural line to be followed where a suit filed before the state High Court is within the exclusive competence of the Federal High Court and *vice versa*.

a) Transfer of Cases from the Federal High Court to State High Court

The transfer of cases from the Federal High Court to the State High Court is governed by section 22(2) of the Federal High Court Act.⁷⁷ The provision of this law is that no cause or action shall be struck out by the court merely on the ground that such cause or matter was taken in the Federal High Court instead of the High Court of a State or of the Federal Capi-

70 Section 271(1) (2) but the appointment shall in this case be made by the President on the recommendation of the NJC and subject to confirmation by the Senate.

71 Section 271(3) and section 256(3) of the CFRN 1999 as amended, 2011.

72 Section 272 (1) and Section 257 (1) CFRN 1999 as amended, 2011.

73 Section 272 (2) and Section 257 (2) CFRN 199 as amended, 2011.

74 Section 273 and Section 258 CFRN 1999 as amended, 2011.

75 Section 274 and Section 259 CFRN 1999 as amended 2011.

76 In Edo State, the applicable rule is the Edo State High Court (Civil Procedure) Rules, 2012.

77 CAP F12 Laws of Federation of Nigeria (LFN) 2004.

tal Territory, Abuja in which it ought to have been brought and the judge before whom such cause or matter is brought shall cause same to be transferred to the appropriate High Court of a State or of the Federal Capital Territory, Abuja in accordance with the rules of court to be made under section 44 of the Act. The implication of the above provision is that the Federal High Court would transfer a matter to the State High Court where it lacks jurisdiction to hear and determine same instead of making an order striking out the suit.

The same cannot be said of the High Court of a state or the FCT. Where a High court lacks jurisdiction to hear and determine a suit, the proper order is to strike out the suit regardless of the fact that section 22(3)⁷⁸ empowers it to transfer same to the Federal High Court. The provision of section 22(3) is not followed because the rules of the Federal High Court cannot regulate the procedures of the state High Court or the High Court of the FCT. So the proper order for a High Court is to strike out the suit in line with the holdings of the court in *Timipriye Sylva v INEC*⁷⁹ that where a court lacks jurisdiction to hear and determine a case, it has no jurisdiction to discuss it. It should strike out the matter.

b) Commencement of Action

Civil actions may be commenced in the High Court (including the Federal High Court) by any of the following ways:

- i. Writ of Summons: this is a document that commands the defendant to the suit to enter appearance in court within a specified number of days after he/she has been served with the court processes. The Writ is issued from the appropriate court registry. The life span of a writ is 12 months and renewable for another six months.
- ii. Originating Summons: This is used where the only issue is one of construction of a written law or instrument made under any written law, or deed, will, contract or other document or other question of law; where it is unlikely to have any substantial dispute of facts; and if the rules of court or statute specifically direct that the action shall be commenced by originating summons, for instance where the action bothers on the enforcement of fundamental human rights rules;
- iii. Originating Motions: This is used where the rules or any other written law provides that proceedings may be commenced by originating motions. This may include actions for mandamus, prohibition, prerogative order of Certiorari, Habeas corpus and some actions under the Companies Proceeding Rules; and
- iv. Petitions: This is used in specific cases as required by statute or the rules. Such actions include election petitions, divorce matters, and company winding up proceedings.

78 Federal High Court Act, CAP F12 LFN 2004.

79 (2015) 16 NWLR (Pt 1468) p 576 at 591. See also *Fasakin Foods (Nig) v Martins Babatunde Shosanya* (2006) NWLR (Pt 987) 126 where the SC held that section 22(3) FHC Act is not in consonance with the practice and procedure of the High Court.

5. Sharia Court of Appeal

Sharia Court of Appeal of the Federal Capital Territory Abuja is established by section 260 of the Constitution. It is not mandatory for a state to have a Sharia Court of Appeal, but where a state requires it; such a state shall establish same by virtue of the provision of section 275(1) of the 1999 Constitution of Nigeria as amended. The Sharia Court of Appeal is headed by the Grand Kadi and such number of Kadis as may be prescribed by an Act of the National Assembly for the FCT, Abuja or prescribed by the House of Assembly of a state for the Sharia Court of Appeal of a state.⁸⁰ The appointment of the Grand Kadi for the Sharia Court of Appeal of the FCT shall be made by the President on the recommendation of the National Judicial Council (NJC) and subject of confirmation by the Senate⁸¹ while that of the state is made by the Governor on the recommendation of the NJC subject to confirmation by the House of Assembly of the State.

A person shall not be qualified to practice as a Grand Kadi or Kadi if he is not a legal practitioner in Nigeria and has been so qualified for a period of not less than ten (10) years. In addition, he must have attended and obtained a recognized qualification in Islamic law from an institution recognized by the NJC and has held such qualification for a period of not less than twelve (12) years for the FCT and ten (10) years for the states.⁸² The jurisdiction of the Sharia Court of Appeal is both appellate and supervisory.⁸³ The court is duly constituted if it consists of at least three Kadis of that court.⁸⁴ The Grand Kadis may make rules for regulating the practice and procedure of Sharia Court of Appeal subject to the provisions of any Act or law.⁸⁵ The Sharia Court of Appeal only considers civil causes and actions bothering on Islamic personal laws and not crimes. Where a crime is committed, the Penal Code will become operational.

The civil jurisdiction of the Sharia Court of Appeal will cover marriages conducted in accordance with Islamic law, a question relating to the validity or dissolution of such marriage or questions relating to family relationship or the guardianship of an infant. It also includes any questions of Islamic personal law regarding a wakf, gift, will or succession where the endower, donor, testator or deceased person is a Muslim, or 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; and finally 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

80 Section 260 (2) (a) – (b) and section 275 (2) (a)-(b) CFRN 1999 as amended 2011.

81 Sections 261 (3) (a) and 276 3(a) CFRN 1999.

82 Sections 261 (3) (a) and section 276 3(a) CFRN 1999.

83 Sections 262 (1) and 277 (1) CFRN 1999 as amended, 2011.

84 Sections 263 and 278 of the CFRN 1999 as amended, 2011.

85 Sections 264 and 279 CFRN 18999 as amended, 2011.

Islamic personal law, or any other question.⁸⁶ As earlier noted, the jurisdiction of the Court is appellate and supervisory. It does not have original civil jurisdiction.

6. Customary Court of Appeal

There are two Customary Courts of Appeal established under the Constitution. The first is for the FCT and it is mandatory while the second if for states and it is optional. The Customary Court of Appeal of the FCT is established by virtue of section 265 of the Constitution of Nigeria while that of a state may be established under section 280 of the Constitution. In line with this provision which makes it optional and not mandatory for states to have a Customary Court of Appeal, the former Edo State Governor, *Comrade Adams Oshiomhole* scrapped the Edo State Customary Court of Appeal. There shall be a President of the Customary Court of Appeal and such number of judges of the Customary Court of Appeal as may be prescribed by an Act of the National Assembly or the House of Assembly of a state.⁸⁷ The President of the court may be appointed by the President or the Governor as the case may be and such an appointee will not be legible unless he is a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years and must have considerable knowledge and experience in the practice of customary law.⁸⁸

A customary Court of Appeal shall exercise appellate and supervisory jurisdictions in civil cases involving questions of customary law,⁸⁹ and shall be duly constituted if it consists of at least three judges of that court.⁹⁰ The President of the court may make rules for regulating practice and procedure of the Customary Court of Appeal.⁹¹

7. The National Industrial Court

This was created by the National Industrial Court Act of 2006. The court was made a superior court by the provision of the Constitution.⁹² Section 254 of the Act provides for the establishment of the Court in Nigeria and it shall consist of the President of the National Industrial Court and such other judges of the National Industrial Court as may be prescribed by an Act of the National Assembly. Detailed information with respect to the jurisdiction of the National Industrial Court is provided for under section 254C of the 2010 Act.

86 Sections 262 (1) (2) (a) – (e) CFRN 1999 as amended, 2011.

87 Sections 265 (2) (a) – (b) and Section 280 (2) (a) – (b) CFRN 1999.

88 Sections 266 (1)(2) (3) (a)-(b) and 281 (1) (2) (3))a) – (b) CFRN 1999.

89 Sections 267 and 2828 (1) 2 CFRN 1999 as amended, 2011.

90 Section 268 and 283 CFRN as amended, 2011.

91 Sections 269 and 284 CFRN 1999 as amended, 2011.

92 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

8. Magistrate and District Courts

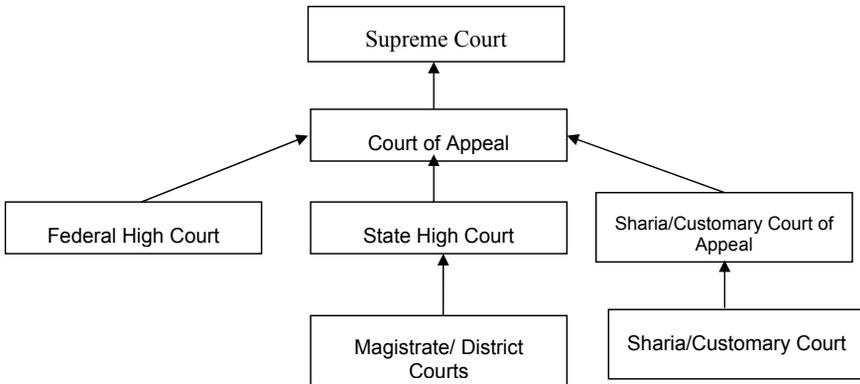
The Constitution of Nigeria by virtue of section 6(5) (k) created an enabling environment for the establishment of Magistrate and District courts in states. The Magistrate court is established by the law of the House of Assembly of a state. The state laws establishing Magistrate Courts also provide for their jurisdiction in respect of civil causes and actions.⁹³ It is trite to note that Magistrate Courts are courts of summary jurisdictions as matters are heard and determined in the absence of pleadings or briefs filed by the parties. These courts are called Magistrate Courts in the South and referred to as District Courts in the Northern part of Nigeria. A civil action in the Magistrate Court will commence when the plaintiff applies for a plaint and the court issues an ordinary summons. This summons contains the particulars of the claim and the plaintiff must plead all essential facts in support of his claim. Ordinary summons may be used in cases involving ordinary debt where the defendant is likely to deny the claim; claims for arrears of rent and recovery of possession; unliquidated damages; money lenders action; and recovery of goods.

Besides the ordinary summons, actions may also be commenced using a default summons. The default summons is different from the ordinary summons because it is used for liquidated sum and application for default summons is supported by affidavit.⁹⁴ Each state has its own Magistrate Court rules and these rules determine the jurisdiction of Magistrates with respect to financial award made by the courts in favour of the litigant.

93 In Edo State, the Edo State Magistrate Courts Laws Increased Jurisdiction of Magistrates in Civil and Criminal Proceedings Order 2011, Laws of Edo State is the extant law governing the proceedings in the Magistrate Court. Every State in Nigeria has its own magistrate court rules.

94 The affidavit must state that the defendant is not an infant nor an insane person nor an outdoor worker; the action is not for recovering money lent by a money lender or to recover an assignment of a debt, that the amount is a liquidated sum and finally that the defendant has no defense to the action. It is also important to note that a default summons cannot be used against disabled persons, infants, insane persons, government and government departments, an outdoor worker, his wife, children and servant; recovery of money secured by a lender or interest thereon; and a person who is not within the jurisdiction of the court.

Graphic Representation of Hierarchy of Courts system in Nigeria



IV. Challenges and Reforms in Civil Procedure in Nigeria

*Imhanobe*⁹⁵ posits that in Nigeria, like other jurisdictions, 75% of litigants/parties in civil cases and actions are not satisfied with the civil justice system and this can be attributed to delays which causes personal stress, anxiety, financial hardship and also frustrates businesses. He further emphasised that most times the weak parties are compelled to accept terms of settlement that they would not have accepted.⁹⁶ Due to these challenges, most states in Nigeria have developed their civil procedure rules in order to inject reforms into the justice systems.⁹⁷ Lagos state was the first to come up with new civil procedure rules and now other states have done so with little modifications. The reforms are forward looking and they are designed to ensure speedy dispensation of justice in all matters.⁹⁸ Some of the reforms introduced by the Civil Procedure Rules are as follows:

1. Front Loading

This represents a unique concept in the new rules. Here, the plaintiff and defendant must ensure at the very early stage that all papers to be relied upon in the case are filed along with the writ of summons. This enables the parties to assess the strength and weaknesses of each other claim and then do the needful. Here, all cards are laid on the table.

95 *Imhanobe, S.O.* supra note 3, p1.

96 *Ibid.*

97 Lagos state enacted the Lagos State (Civil Procedure) Rules in 2004.

98 *Omhanobe, S.O.*, supra note 95, p2.

2. Active Case Management

This allows for pre-trial conference, scheduling and settlement of issues and submission of reports. This is to ensure that non contentious matters are disposed of as quickly as possible and to arrive at directions as to the future course of the case.

3. Strict and Purposeful Cost Regime

Under Lagos Rules, the cost to be awarded should be enough to indemnify the innocent party for his expenditure. The purpose of the cost is not to punish the defaulting party but to compensate the innocent party.

4. Settlement of Disputes

There is a greater incentive for parties to settle their differences. To ensure and promote amicable settlement under the Abuja Rules (Uniform Rules) 2004, parties are required to file every writ of summons with a pre-action counseling certificate. The essence of the certificate is to show that the lawyers have counseled the litigants with respect to the strength and weakness of their cases. Disputes can also be referred to a multi-Door court House.

5. Establishment of Fast Track Courts

The fast track court provides a streamlined procedure for handling of moderately valued case. This has been established in Abuja by the Chief Judge of the High Court of the Federal Capital Territory.

6. Strict Control of the Procedural Time Table

With respect to Lagos Rules, a party can apply for amendment only twice after the pre-trial conference.⁹⁹

V. Conclusion

Civil jurisdiction of courts in Nigeria formed the core of this paper. To establish the jurisdiction of any court in civil cases and action, the subject matter, persons, geographical locations of court are fundamental. The issues of procedural, substantive and geographical jurisdictions were examined. The paper observed that jurisdiction of the court can be likened to the blood of the animal which when drained leaves the animal dead. While some courts have both original and appellate and supervisory jurisdictions in civil matters and cases,

⁹⁹ For more details on these and more, see *Imhanobe, S. O. Lawyers Deskbook*, Vol. 1, 2nd ed., (Abuja: 2010) Pp 1-5.

some others have only appellate and supervisory jurisdictions. Some have exclusive jurisdiction with respect to specified subject matters but share a concurrent jurisdiction with courts of coordinate jurisdiction. The paper observed that the civil jurisdiction of courts in Nigeria have not been satisfactory as cases are unduly delayed by litigants and their legal representatives. The paper finally observed that there are fundamental reforms and these were aptly articulated and it is believed that if these reforms are carefully and properly applied, there will be great improvement in the civil jurisdiction procedure in Nigeria.