NIGERIAN BAR ASSOCIATION PORT HARCOURT JOURNAL

(NBAPH JOURNAL)

Maiden Edition

A publication of the Editorial Board, Nigerian Bar Association Port Harcourt Branch

Maiden Edition

Published in Nigeria by:

The Editorial Board of the Nigerian Bar Association,
Port Harcourt Branch

Printed in 2025 by
Pearl Publishers International Ltd.
12-14 Njemanze Street, (Off Silverbird Cinemas)
Port Harcourt, Nigeria.
Tel: 08033123493, 08136087638
Email: pearlpublishers2000@gmail.com

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Signed:
Prof. C. E. Halliday
Editor-in-Chief/Chairman
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EDITORIAL NOTE

It is with immense pleasure and heartfelt gratitude that I welcome you to the maiden edition of the Nigerian Bar Association Port Harcourt Journal.

The journey to this historic publication has been one of vision, dedication, and collective commitment. I am truly delighted that what was once an ambitious idea has now come to life in the form of this scholarly and practical contribution to the legal profession. This Journal marks a significant milestone in the intellectual growth and professional development of our Branch, and I am excited about the promise it holds for the legal community—locally and nationally.

This first edition reflects the rich diversity of legal thought and expertise within our fold. It is my hope that it becomes a veritable platform for legal scholarship, critical discourse, and policy influence, especially in shaping the future of legal practice in Nigeria. We have endeavoured to maintain academic integrity, relevance, and quality throughout the publication process.

I wish to express my deepest appreciation to the Editorial Board and Editorial advisory Board whose tireless efforts, rigorous reviews, and unwavering commitment made this publication possible. I am equally grateful to all our contributors, whose scholarly papers give this journal its life and purpose.

I remain thankful to the Nigerian Bar Association, Port Harcourt Branch, and the Chairman, Mrs Cordelia Uwuma Eke, for the opportunity to serve as Chairman of the Editorial Committee. It has been a great honour and a deeply fulfilling responsibility.

As you turn the pages of this Journal, may you find enlightenment, inspiration, and a renewed passion for the pursuit of justice and legal excellence.

Thank you.

Prof. Chidi E. Halliday
Editor-in-Chief
NBA Port Harcourt Journal

FROM THE DESK OF THE BRANCH CHAIRMAN

Dear Colleagues,

It is with immense joy and deep pride that I present to you, the maiden edition of the Nigerian Bar Association Port Harcourt Branch Law Journal —a long-nurtured vision that has now blossomed into reality.

This journal stands as a testament to the vision, diligence, and intellectual strength of our members. For years, we have dreamt of a platform that would capture and project the legal scholarship within and beyond our Branch. Today, that dream has been realized. This publication is not just a collection of legal articles—it is a bold expression of our commitment to the advancement of jurisprudence, critical legal thought, and continuing legal education in Nigeria.

I wholeheartedly commend the Editorial Board for their meticulous work in bringing this journal to life, and I thank all our contributors whose insights and perspectives form the backbone of this first edition.

To our esteemed colleagues in the Bar, the Bench, the academia, and the wider legal community: I invite you to engage with this journal—not just as readers, but as contributors and partners in shaping the legal discourse of our time. Let us support this intellectual venture by reading it, referencing it, and recommending it. More importantly, let us write, research, and submit articles that reflect our diverse experiences, expertise, and aspirations for justice and reform.

The NBA Port Harcourt Branch Law Journal is here to stay, and with your continued support, it will become a leading voice in Nigerian legal literature.

Congratulations to us all!

Cordelia Uwuma Eke LLM (Kent) LLB(RSUST), B.L(Lagos)
FICMC, ACIArb(UK)
Chairman, NBA Port Harcourt Branch (2024-2026)

TABLE OF CONTENTS

JUSTIFYING THE NEED FOR THE JUSTICIABILITY OF SOCIO-ECONOMIC RIGHTS IN NIGERIA

By

Charles Chizitere Ajagba, Esq.*

Abstract

The germane nature of socio-economic rights is one that has always been overlooked in legal discourse. The socio-economic rights are vital due to its tie to human dignity and the role it plays in maintaining the social wellbeing of the people. However, such rights form non-justiciable rights within Chapter II of the Nigerian Constitution, which render them legally non-enforceable through the courts in Nigeria. Such a restriction undermines the functional realization of socio-economic rights and institutionalizes poverty at a systemic level. This paper set out the rationale of the necessity for socio-economic rights to be justiciable in Nigeria by clearly drawing the nexus between socio-economic rights and the justiciable civil and political rights such as right to dignity of human person as well as right to life, amongst other things. The article noted the ramification of judicial enforcement in advancing development and providing Nigeria's constitutional guarantees. The paper clearly illustrated that the issue of the non-justiciability of socioeconomic rights in Nigeria stems from section 6 (6) (c) of the Nigerian Constitution, upon which the courts were constrained but to declare socioeconomic rights non-justiciable in Nigeria. On this basis, the paper recommended constitutional amendment and judicial activism as an imperative means of transforming socio-economic rights into binding legal rights for all in Nigeria.

Keywords: Human rights, Socio-economic rights, Justiciability

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1. Introduction

The constitutional order in Nigeria is based on a discriminatory model of human rights, one that privileges civil and political rights ahead of socio-economic rights in the context of non-justiciable directive principles of state policy.[1] Such a constitutional order has subverted the advancement of human dignity in the abstract and reinforced structural inequalities. The Nigerian Constitution, in which the socioeconomic rights are placed in Chapter II as directive principles and retained only reserved justiciable fundamental rights in Chapter IV,[2] is a quintessential example of the anomalous divide. It constructs an artificial hierarchy that is opposite to the universality and indivisibility of human rights accepted by international law.

The justiciability of the socio-economic rights in Nigeria has accumulated significantly in the past decades as the country experiences overall poverty, substandard health centers, illiteracy, and housing shortages that affect millions of its people.[3] These have turned out to be the shortcomings of a constitutional system that is treating socioeconomic rights as things hoped for rather than exercisable rights. The constitutional guarantees of social justice and human dignity are undermined by the lack of justiciable status of such rights and by denying marginalized peoples a legal redress in the event the state fails to fulfill its obligations towards necessities of life.[4]

This paper attempts to make a strong case for constitutional and legal reform so as to accord full justiciable status to socio-economic

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[1] Obiajulu Nnamuchi, 'Justiciability of Socioeconomic Rights in Nigeria and its Critics: Does International Law Provide any Guidance?' (2022) 19 The Age of Human Rights Journal 137.

[2] Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[3] Anthony Dornubari Enwin, 'Social Wealth and Quality of Life in Nigeria: Benchmarking Against Global Best Practices' (2025) 6(2) International Journal of Research Publication and Reviews 2590.

[4] ibid; Colleen Sheppard, "Bread and Roses": Economic Justice and Constitutional Rights' (2015) 5(1) Oñati Socio-legal Series 225.

rights under Nigerian law. Its main purpose is to demonstrate that Nigeria's existing non-justiciable approach to the said rights is operationally incompatible with the rule of law and with the attainment of human dignity. It also aims to expose the flaws in the current constitutional arrangement and propose the remedies that would remedy the flaws.

2. Human Rights and Socio-Economic Rights in Nigeria

Human rights are those privileges and entitlements which are in civil, political, social, economic or other forms that are immutable to humans, and which the state through its government have given recognition and are keen and eager to enforce.[5] These are rights that acknowledge the innate worth of all individuals irrespective of any qualifications.[6] They involve integrity, communal respect, fairness, and civility.[7] All individuals are entitled to human rights.[8] These human rights exist to protect people from suffering, oppression, and abuse.[9] Human rights also involve justice, ethics and dignity.[10] Due to the essence of human rights, they are divided into social and economic rights, civil and political rights and collective-developmental rights.[11] Protection by law is the lifeline and beauty

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[5] Iheanyi Anyamele, *Recent Trends in Fundamental Rights Applications in Nigeria* (Panache International Publications 2010) 4.

[6] 'What are human rights?' (Australian Human Rights Commission, 18 March 2013) <https://humanrights.gov.au/about/what-are-human-rights> 14 May 2025.

[7] What are human rights?' (Australian Human Rights Commission, 18 March 2013) <https://humanrights.gov.au/about/what-are-human-rights> 14 May 2025.

[8] Burns H. Weston, 'Human Rights' (*Britannica*) https://www.britannica.com/topic/human-rights accessed 14 May 2025.

[9] ibid.

[10] Henry Campbell Black, *Black's Law Dictionary* (6 edn. St. Paul, Minn. West Publishing Co. 1990) 1323.

[11] '3 Generations of Human Rights' (Raptim, 21 November 2018) <https://www.raptim.org/3-generations-of-human-rights/> accessed 14 May 2025.

of human rights all over the world.[12]. Human rights ensure that no one is subject to any form of misuse of powers without room for redress.[13]The weight of human rights is so much that it holds the fabric of society together with the aim of maintaining law and order.[14]

Every country has a stipulation mandating the government to take care of the welfare of its citizens which form obligations owed by the government to the citizens, and which become rights or entitlement to be gotten by the citizens from the government.[15] A major point of link between human rights with poverty and development is in the part of economic development needed to enable an individual provide for his or her welfare.[16] In terms of development, heath is another aspect that is faced with recognition-dilemma as to whether it is a human right and has been faced with constant neglect by some governments.[17] It has been posited that linking poverty and development is simply an academic exercise, but over time its recognition continues to gain more light.[18] Overtime, the push for the recognition and enforcement of the right to development and legal empowerment of the poor have been

[12]'Definitions and Classifications' (Icelandic Human Rights Centre) <https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/definitions-and-classifications> accessed 14 May 2025.

[13] Definitions and Classifications' (Icelandic Human Rights Centre)

[14] Poppy Livingstone, 'Human Rights Essay' (Hemper Human Rights Education Foundation, 14 December 2017) <https://khref.org/human-rights-essay/> accessed 14 May 2025.

[15] Arjun Senguta, 'Human Rights and Extreme Poverty' (2010) 45(17) Economic and Political Weekly 87.

[16] Stephen P Marks, 'Human Rights in Development: Claims and Controversies' (2010) 33(1) Bangladesh Institute of Development Studies 3.

[17] Therese Murphy, 'Health and Human Rights' Past Patinating Law's Contribution' (2019) 21(2) Health and Human Rights 205.

[18] Emma Mawdsley, 'Human Rights and South-South Development Cooperation: Reflections on the "Rising Powers" as International Development Actors' (2014) 36(3) Human Rights Quarterly 630.

made.[19] The recognition and enforcement of this right will significantly eradicate poverty in a country.[20]

Regarding socioeconomic rights, they are the second generation of human rights which exist to elevate the social and economic lives of citizens in every country. They were streamlined so that every citizen would have access to the economic and social resources in a country. It is not enough to protect the citizens from being physically harmed in the state but the citizens should be protected against the state usurping the commonwealth of the people for private use instead of public use. These are so important that they have international protection and recognition as seen under the International Covenant on Economic, Social and Cultural rights, African charter, etc. Such are those claims that are attributed to the security of the least provision of life necessities to every person such that the sustained survival of human beings will definitely be threatened in their absence.[21] An instance is the right to food. Imagine a situation where an individual barely affords one meal per day and sometimes none at all, life usually becomes unbearable for such a person. This sometimes breeds suicidal thoughts in the mind of such individual while many others turn to a life of crime in other to stay alive.

In the Nigerian Constitution, it has provisions which the government are to adhere to in order to generally improve the welfare of the citizens. This is seen under section 16 of the Constitution termed the economic objectives.[22] Section 16 (1) and (2) jointly provide that Nigeria shall utilize the country's resources to establish a stable and buoyant economy, regulate the economy in such a way that will

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[19] Bard A. Andreassen, 'The Right to Development and Legal Empowerment of the Poor' (2010) 33(1) The Bangladesh Development Studies 311.

[20] ibid.

[21] CD Ogbe, *Enforcement of Fundamental Rights in Nigerian Courts* (Chudanog Publishers Limited 2014) 4.

[22] Constitution of the Federal Republic of Nigeria, 1999 (as amended).

benefit the welfare of all citizens equally,[23] play a lead role in regulating major sectors of the economy,[24] make policies to maintain a stable economic development and expunge any form of wealth concentration on few individuals in the country,[25] and provide sufficient housing, food, sufficient work pay, pension payment and welfare of disabled people.[26] Irrespective of these clear provisions, the economic situation and welfare of citizens maintain a backward drop. With the provisions of section 16 (economic objectives) of the Constitution,[27] it is clear that the socioeconomic rights flow from this section. It is unfortunate that the present dire situation would be the case in Nigeria. The economic objectives remain unfulfilled due to corruption and bad leadership.[28] The failure of the government to fulfill these objectives is seen in the periodic economic crisis that Nigeria faces.[29] In the name of harnessing the resources of under country provided under section 16, Nigeria Delta has been a top spot by the Federal due to oil reserve there and the fact that Oil is the major source of revenue for the country.[30] Irrespective of the fact that Niger Delta has a major sources of the country's income, people living there continue to wallop in poverty.[31]

Unfortunately, the economic objectives fall under chapter two of the constitution which has been declared non-justiciable in Nigeria.[32] Irrespective of section 13 which compels the governmental arms to

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[23] Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[24] ibid.
[25] ibid.
[26] ibid.
[27] ibid.
[28] Ajagbe Toriola Oyewo, 'The Nigeria 1999 Economic Policy and Objective: An Unfulfilled Mission of Expectation' (2014) (3) AGORA International Journal of Juridical Sciences 33.
[29] ibid 36.
[30] ibid 38.
[31] ibid 39.
[32] Fatai Omotosho, 'Fundamental Objectives and Directive Principles of State Policy of Nigeria' (2019) 40 Journal of Philosophy, Culture and Religion 16.

upholds provisions of chapter two, section 6 (6) (c) has been upheld severally by the courts stating that the government has no legal right obligation under the provisions to fulfil chapter two of the constitution.[33]

3. Socio-Economic Rights and the Right to Human Dignity

The right to human dignity is the central point of all human rights with no exception.[34] Human rights belong to all human beings for the reason that we have value, which is the recognition of that dignity in people.[35] Article one of the Universal Declaration of Human Rights provides that every individual is '…born free and equal in dignity and rights'.[36] The essence of this right to dignity has been affirmed by various legal instruments.[37] The significance of human dignity is evident in the right being embedded into the United Nations' charter and the Universal Declaration of Human Rights.[38] It has been said that socioeconomic rights are clear specifications of human dignity and in other to realize the human dignity, people need access to essential social and economic resources.[39]

The nexus between socioeconomic rights and the right to human dignity began due to the struggle of the poor or less privileged being recognized as human beings with value, and who lack the social and

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[33] Fatai Omotosho, 'Fundamental Objectives and Directive Principles of State Policy of Nigeria' (2019) 40 Journal of Philosophy, Culture and Religion 17.

[34] Yinka Olomojobi, *Human Rights and Civil Liberties in Nigeria* (Princeton & Associate Publishing Co Ltd 2016) 47.

[35] Yinka Olomojobi, *Human Rights and Civil Liberties in Nigeria* (Princeton & Associate Publishing Co Ltd 2016) 47.

[36] Universal Declaration on Human Rights (Adopted by General Assembly Resolution 217 A (III) 10th December 1948).

[37] Mashele Rapatsa, 'Human Dignity as a Foundational Norm in the Understanding of Human Rights' (2015) 12(2) Bangladesh e-Journal of Sociology 42.

[38] Salvador Santino F Regilme and Elif Nisa Polat, 'Right to Economic Dignity', *The Palgrave Encyclopedia of Global Security Studies* (Living edn, 2019) <https://link.springer.com/referenceworkentry/10.1007%2F978-3-319-74336-3_326-1#howtocite> 16 May 2025.

[39] ibid.

economic resources to actualize the value.[40] The rate at which the poor are neglected and treated with contempt in the society deprives them of their right to dignity. Noting this and the fact that the absence of socioeconomic rights makes matters worse, countries like South Africa have taken the bold step of legalizing the aforementioned rights through their constitution.[41] This is a line of action many countries have failed to take. Socio-economic rights help guarantee the right to human dignity for persons who are unable to provide the basic necessities for themselves.[42] The link between human dignity and socioeconomic rights is made due to the reality we live in, a reality where only those with financial resources or high societal status are granted apex respect as against those that are in grave want.[43] Though the need for socioeconomic rights cannot be overemphasized, human dignity ensures the respect of every individual irrespective of social or economic/financial status.[44]

4. The Need for the Justiciability for Socio-Economic Rights in Nigeria

Having described what socioeconomic rights are, justiciability will be discussed first. Justiciability is gotten from the word justiciable which means apt for court evaluation.[45] Justiciability can be said to mean an instance where a court can exercise its judicial powers over a case. It refers to matters that are suitable for court deliberation.[46] All courts get their justiciability from the law as no court has the

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[40] Izabela Bratiloveanu, 'Human Dignity and Socio-Economic Rights' (2013) 4 AGORA International Journal of Juridical Sciences 1.

[41] Evadne Grant, 'Human Dignity and Socio-Economic Rights' (2012) 33 Liverpool Law Review 235.

[42] Inga T Winkler and Claudia Mahler, 'Interpreting the Right to a Dignified Minimum Existence: A New Era in German Socio-Economic Rights Jurisprudence?' (2013) 13(2) Human Rights Law Review 390.

[43] Livia Ivascu, 'Human Dignity – An Economic Approach' (2016) 1(1) International Journal of Multidisciplinary Research 46.

[44] ibid 44.

[45] Henry Campbell Black, *Black's Law Dictionary* (6 edn. St. Paul, Minn. West Publishing Co. 1990) 865.

[46] Johnathon D Varat, 'Justiciability' (*Encyclopedia*, 16 August 2020) <https://www.encyclopedia.com/politics/encyclopedias-almanacs-transcripts-and-maps/justiciability> accessed 16 May 2025.

power to confer justiciability unilaterally. It brings up the issue of jurisdiction. The assumption here is that once a case is justiciable, that court automatically has jurisdiction to decide on that case. Jurisdiction simply means the power granted to the court either by the constitution or the enabling statute to entertain and make decisions on different issues.[47]

In as much as the socioeconomic rights which are likened to chapter 2 of the constitution are non-justiciable, their importance in enhancing the living conditions of the citizens cannot be softened.[48] It should be made known that some arguments have been made supporting the non-justiciability of these rights and they are that the Nigerian constitution does not expressly contain socioeconomic rights as they are merely inferred from it, the rights are not rights' strictosensu but are merely a guide for governmental policies, and the rights are too ambiguous to confer responsibility owed by the government to the people.[49]

This work regards the above reasons as simply excuses as to why the rights should not be enforced. There are many reasons why the socioeconomic right should be justiciable in Nigeria:

One of them is the connection they have to civil and political rights. These social and economic rights have a direct connection or link with the civil and political rights.[50] For instance, the right to life is connected to the right to suitable standard of living together with

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[47] Henry Campbell Black, *Black's Law Dictionary* (6 edn. St. Paul, Minn. West Publishing Co. 1990) 853.

[48] LO Nwauzi, 'How Fundamental are the Fundamental Objectives and Directive Principles Under Chapter II of the Constitution of Nigeria 1999' (2017) 3(3) Donnish Journal of Law and Conflict Resolution 33.

[49] IyabodeOgunniran, 'Enforceability of socio-economic rights: Seeing Nigeria through the eyes of other jurisdictions' (2010) 1 Nnamdi Azikiwe University Journal of International Law and Jurisprudence.

[50] Nwauzi Linus, 'Justiciability of Fundamental Objectives and Directive Principles of State Policy: Under the 1999 Nigerian Constitution' (2017) 3(5) International Journal of Law 31

housing, food, and clothing.[51] The basic necessities of life are food, clothing and shelter which are meant to be provided by the government in addition to others.[52] Where a human being is alive but has no access to food, looks unkept due to lack of cloths and are vulnerable to constant attack due to lack of shelter, what is there to live for. Life becomes unbearable. Such should not be so in a civilized society especially when the government has the ability to prevent this.

Another example is the link between the right to movement and the right to education. This calls for the betterment of the educational sector of the country by providing school with good quality administration, teachers and in secured environments in different parts of Nigeria. This would ensure that citizens would have access to good quality education in any part of the country he or she decides to more to or finds him or herself in.

Another connection is the right to life and the right to good health. Every individual should have access to adequate health services at affordable rates. Another connection is the right to movement and right to gainful employment. Citizens of the country should be able to find stable employment in any part of the country he or she resides in.

Making these economic and social rights justiciable and enforceable would go a long way in reducing poverty rate emanating from unemployment and lack of meaningful employment.[53] Imagine

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[51] Thomas M. Antkowiak, 'A "Dignified Life" and the Resurgence of Social Rights' (2020) 18(1) Northwestern Journal of Human Rights 1

[52] Mike Turber, 'The 4 Basic Necessities for Living "Off" The Grid' (*Off Grid World*, 20 August 2017) <https://offgridworld.com/4-basic-necessities-living-off-grid/> accessed 16 May 2025.

[53] Rotem Litinski, 'Economic Rights: Are They Justiciable, and Should They Be?' (ABA, 30 November 2019) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/economic-rights-are-they-justiciable-and-should-they-be-/> accessed 17 May 2025.

providing new job opportunities, adequately funding the agricultural sector of the Nigerian economy which will lead to abundance of food in the country, opening and maintaining the public water resources, etc. All these are responsibilities of an accountable government who has the welfare and security of the citizens as priority. This will be a major relief to citizens in the country.[54]

One of the arguments against the justiciability of these rights provides that they only serve as a guide for policy making by the government. Expressly having constitutional provisions on socioeconomic rights in Nigeria will keep the government officials pro-active. Imagine a situation where the civil and political rights had no constitutional backing as it does now, human life and dignity would have no regard. That is the same way these economic and social rights will have no regard from the government for having no constitutional backing. This having no regards extend to any other fact that has no constitutional provision. Even with the constitutional provisions backing the civil and political rights, there are still series of cases and stories of their abuse on a daily basis. What then is the fate of rights without express constitutional stipulation? Generally, the fortunate part of constitutionalizing socio and economic rights is that by the power of section one subsection one and three of the Nigerian Constitution as amended,[55] the rights being part of the constitution will become part of the supreme law of Nigeria and any other law that has a contrary provision will be declared inconsistent to the extent of its inconsistency. It will form the basis of other laws from the legislative houses in Nigeria.

Over the years in Nigeria, different administrations have made laws and policies enabling the enforcement of these socioeconomic rights. An example is the Universal Basic Education Act which was promulgated during Olusegun Obasanjo's tenure as the Nigerian

[54]Nwauzi Linus, 'Justiciability of Fundamental Objectives and Directive Principles of State Policy: Under the 1999 Nigerian Constitution' (2017) 3(5) International Journal of Law 32.

[55] Constitution of the Federal Republic of Nigeria, 1999 (as amended).

president which allowed for free education at least at the primary level.[56] Many other laws exist where certain parts of the rights were legislated upon. This shows that the government is away of the need for the enforcement of these rights. The aforementioned is premised on the question, what else could be the driving force behind legislating on these socioeconomic rights if not the recognition of its need and importance in the country? These rights should be made justiciable as some of them are being legislated upon. When the rights are made justiciable, rather than legislate on them individually, the National Assembly in Nigeria would now have the opportunity to make an exhaustive and comprehensive act to include the rights into the constitution. The State Houses of Assembly would now have the opportunity to make laws on how these rights will be applied and enforced in their various states.

The reality of life is that in addition to the civil and political rights, these socioeconomic rights are exactly what the average Nigerian needs to survive; it has what the poor man needs to survive. For instance, food, clothing, shelter, education, social security, etc. Things that fall under this point includes establishing good quality schools in Nigeria, either free education or affordable education, making available scholarship programs, providing and maintaining public water boreholes, providing and maintaining good roads for ease of transportation, providing job opportunities to curb employment and establishing and maintaining health centers. The list is unending. Refusal to make these rights justiciable for flimsy excuses automatically means refusal in providing the aforementioned list. The enforceability of these rights will give the poor man hope for the brighter day.

In as much as the Constitution supersedes the application of the African charter in Nigeria, this should not be enough reason to

[56] Iyabode Ogunniran, 'Enforceability of socio-economic rights: Seeing Nigeria through the eyes of other jurisdictions' (2010) 1 Nnamdi Azikiwe University Journal of International Law and Jurisprudence.

neglect or downplay the importance of the socioeconomic rights. The rights are so important that they are protected under the International Covenant on economic, social and cultural rights. Nigeria should learn from other countries who have taken the bold step of including these rights into their constitution.

One of the reasons why Nigerians leave the country to relocate to another country is in search for 'greener pastures'. Due to the unavailability of the basic amenities in the country, people either save up or borrow money and flee the country to other countries where these amenities will be duly provided. Individuals migrate to countries like United States of America (which is the most common country people relocate to), United Kingdom, Australia, Canada, etc. Some who cannot afford the money go in illegally in search of amenities that the country would have provided. These amenities are mainly contained and provided for under the socioeconomic rights. If the rights are not made justiciable, more citizens will leave the country and this will lead to a brain-drain in the country which should not be so. Some people even lose their lives when seeking relief outside when they could have made positive contributions within the country.

5. Recommendations

The recommendations to this work are:

The primary issue regarding the non-justiciability of socio-economic rights is section 6(6)(c) of the Nigerian Constitution, which expressly prohibits judicial recognition and enforcement of the provisions of Chapter II of the Nigerian Constitution. This has allowed the courts to consistently overlook socioeconomic right claims. This paper recommends that the National Assembly should place priority on repealing this restrictive provision so that judicial enforcement of the socio-economic rights can be achieved. By converting these rights into binding constitutional provisions as opposed to mere directive principles, this type of amendment would

make the citizens capable of availing legal recourse against defaults on the part of the government regarding housing, healthcare, and education.

This paper recommends that governments at all levels provide citizens with basic amenities and services through comprehensive welfare programs. These would include job creation programs, poverty reduction programs, and prioritized education for children. Governments must also hire qualified and trustworthy officials to oversee citizen welfare projects for effective management and implementation. It is crucial that individuals of proven integrity are appointed, rather than those who would misallocate public funds intended for the development of communities to individual use. Such tactical appointments will insulate the welfare programs from corruption and allow them to fully perform their role in promoting the quality of life for citizens and sustainable development for the entire segments of society.

Judicial activism could make socio-economic rights justiciability possible in Nigeria by enabling the courts to read the existing constitutional provisions more imaginatively and liberally. Nigerian courts are encouraged to adopt progressive jurisprudence with lessons from South Africa and India, where the courts have determined implied socio-economic rights under civil and political rights. The courts themselves have always the option of using the right to life and dignity in Chapter IV to encompass fundamental healthcare, education, and shelter needs. Judicial activism is fraught with the issue of remedial orders asking the government to act, imposing time frames for implementation, and monitoring implementation by continuous tracking. Strategic litigation by nongovernmental organizations can generate test cases in which activist judges can craft precedent-setting jurisprudence, incrementally expanding constitutional interpretation to include enforceable socio-economic commitments in the absence of any such provisions in Chapter II.

This paper recommends that human rights lawyers can aid in advancing the legal recognition and enforcement of socio-economic rights. This can be done via coming up with legal arguments that connects socioeconomic necessities to established basic rights in cases they file against government or any defaulting body. In order to provide access to justice for those who cannot afford lawyers, professionals need to offer pro bono legal services to poor groups of people. To strengthen socioeconomic rights systems, they ought to advocate for policies and pass new laws and constitutional revisions.

6. Conclusion

Even with the rising poverty level and low development in the country, cost of living is still on the rise while standard of living remains low. There is little or no infrastructure. Even the ones in existence are left to rot. Prices of goods and services keep rising but a good number of people in the country can barely afford their daily meal. The actions of the government have shown lack of interest towards a developmental plan to assist those living in extreme poverty. When this is usually done, it is for election purposes. Poverty gets higher while development reduces due to bad governmental leadership. This is a problem in many developing countries. The matter how much the government tries to deny it, making non-justiciable chapter two of the Nigerian constitution is a cover to their refusal to better the welfare of citizens. In several literatures, all arguments made supporting the non-justiciability of chapter have all been rebutted. In as much as the court intends to uphold the law, judicial activism is needed in this case to shift the country away from this spot. Nigeria remains a country that can attain great heights only if the government officials perform their obligations to the people and country.

SUSTAINABLE AND DEVELOPED INTER-BOUNDARY RELATIONSHIP: AN APPRAISAL OF NIGERIA'S EXTRADITION ACT

By

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Abstract

Globalisation and the increasing volume of international interactions has led to a rise in cross-border crimes. When a Nigerian commits a crime in another country and absconds to Nigeria or commits such a crime from Nigeria, the foreign country must request Nigeria's assistance in surrendering the suspect for trial. This process, known as extradition, is governed by the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004, as amended by the Extradition (Amendment) Act, 2018. Extradition is an important mechanism for promoting international collaboration in criminal justice and maintaining the integrity of the global legal framework. This study examined the issues surrounding extradition of fugitive criminals in Nigeria, with a focus on section 3(3) of the Extradition Act. Employing a desktop study approach and secondary data, the research reveals that certain conditions for restricting the surrender of fugitives from Nigeria are discretionary. The study argued that the grounds for refusing to surrender a fugitive should be clear, precise, and ascertainable for Nigeria to maintain a sustainable and developed inter-boundary relations. Therefore, this paper

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called for a review of the Extradition Act to ensure that Nigeria's extradition agreements with other countries are aligned with international best practices.

Keywords: *Extradition, Fugitive, Geographical/territorial jurisdiction, Inter-boundary relationship, Sovereignty*

1. Introduction

Migrations, inter border relations, cross border movements and crime have been part of life from time immemorial. The Holy Bible records the migration of Patriarch Abraham from Haran into the land of Canaan,[1] the migration of children of Israel to purchase food in Egypt during famine and their eventual settlement in Egypt.[2] Likewise, the *Hijra* of the Prophet Mohammed (SAW) and his companions from Mecca to Medina is narrated in Islamic traditions.[3] A primary factor that contributes to migrations is harsh conditions in the country of origin. People migrate from a situation they perceive as unbearable to increase their chance for a better life in a new country.[4]

The first case of crime after creation of man as recorded by the Holy Bible was the wilful killing of Abel by Cain,[5] there was the

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[1] Holy Bible. King James Version. Genesis 12; 5-6.

[2] Holy Bible. King James Version. Genesis 46.

[3] The Hijra is the migration of Muhammad and his followers from Mecca to Medina, (320 kilometres north) in 622 CE. See Surah Al-Anfal 'And [remember] when those who disbelieved plotted against you to restrain you or kill you or evict you [from Makkah]. But they plan, and Allah plans. And Allah is the best of planners.' (Quran 8:30); Aminuddin Hassan, 'The Impact of Prophetic Hijrah on the Societies of Makkah and Madinah' (2019) 3 (1) Al-Ilm 24.

[4] International Scientific and Professional Advisory Council, 'Migration and Crime: A Framework for Discussion' <https://www.ojp.gov/ncjrs/virtual-library/abstracts/migration-and-crime-framework-discussion> accessed 6 January 2025.

[5] Holy Bible. King James Version. Genesis 4:8; also narrated in the Qur'an Surah Al Maidah Q5:27-30.

trafficking of Joseph into slavery by his brothers,[6] the rape of Dinah by Schecem.[7] Likewise there are instances in the Holy Quran.[8] These Holy Books apart from detailed records of migrations therein, instances of wilful commission of crimes, all prescribe penalties for commission of crimes. The Holy Bible states emphatically that no sinner must go unpunished[9], it states penalty for stealing,[10] penalty for murder,[11] and other known crimes.[12] In every jurisdiction, there are laws which identify crimes, state the ingredients of each offence and penalties for same.[13] Particular legislations create offences and penalty for commission of offences.

In recent time, migrations, inter border activities and crime have been on the increase, globally. It is important to note that Nigerians have high level of interactions with foreign countries, for instance Nigeria which has been termed "a consumer country" conducts a high volume of across border trade, equally, the rate of migration of Nigerian to other countries is presently higher than what used to obtain.[14] Those who attempt to leave and enter countries illegally are at risk for a number of hazards. In terms of the logistics of entering a country illegally, migrants may be enticed by criminal organisations that promise to get them safely into a new country.

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[6] Holy Bible. King James Version. Genesis 37:28

[7] Holy Bible, King James Version. Genesis 34:2.

[8] The Qur'an gave account of the flight of Moses after he killed a man. See Qur'an Surah Al-Qasas Q28:15-21.

[9] Holy Bible, King James Version. Proverbs 11:21.

[10] Holy Bible, King James Version Proverbs 6: 30-31 Exodus 22: 1-15.

[11] Holy Bible, King James Version. Numbers 35:30.

[12] There are sanctions for various crimes under the Shari'ah legal system which is made up of injunctions from the Qur'an and Hadith's of Prophet Mohammed (SAW).

[13] For instance, the Nigerian Criminal Code Cap C38 Laws of the Federation of Nigeria (LFN) 2004; the Penal Code Cap 53 LFN 2004.

[14] Samuel Kehinde Okunade and Oladotun E. Awosusi, 'The *Japa syndrome* and the migration of Nigerians to the United Kingdom: an empirical analysis'. (2023) 27 Comparative Migration Studies https://doi.org/10.1186/s40878-023-00351-2 accessed 23 February 2024.

This involves a heavy price, including risks for physical safety in the transit process and being in financial debt to brutal crime groups. After entering a country, whether legally or illegally, migrants are at risk of being enticed into crime if they do not become integrated into the legitimate socioeconomic network.[15] Some of these Nigerians become illegal immigrants while some may get themselves involved in crime and escape back to Nigeria.

Increase in crime rate on the other hand has been alluded to poverty, get rich quick syndrome, laziness, unemployment, failure of parents to train their wards, peer pressure, drug, rejection, fall out of civilization.[16] While Oyelade identified high unemployment rate as a cause for high crime rate, Kunnuji successfully traced the relationship between crime rate and population density.[17] Though Ezeajughu seemed to be of opinion that crime is higher in urban cities, she however agreed that there are factors causing increase in crime rate. She submitted further:

> Crime situation in Nigeria is more intense in urban centres than rural areas due to high level of urban poverty, congestion, unemployment, cost of living, disorganization and moral decadence confronting urban system. The preponderance of urban crimes in Nigeria is a reflection of deprivation, marginalization and breakdown in infrastructure and amenities that

[15]International Scientific and Professional Advisory Council, 'Migration and Crime: A Framework for Discussion' <https://www.ojp.gov/ncjrs/virtual-library/abstracts/migration-and-crime-framework-discussion> accessed 6 January 2025.

[16] Michael O.N. Kunnuji, 'Population Density and Armed Robbery in Nigeria: an Analysis of Variation across States' (2016) 9 (1) African Journal of Criminology and Justice Studies 62.

[17] Michael O.N. Kunnuji, 'Population Density and Armed Robbery in Nigeria: an Analysis of Variation across States' (2016) 9 (1) African Journal of Criminology and Justice Studies 62.

> are supposed to manage or control crime among urban residents.[18]

Abdullahi and Ukasha however submitted that Nigeria generally is witnessing "exponential increase in crimes and insecurity in rural communities, villages and towns have become vulnerable and favourable arena of operations of criminals and insurgents.'[19] The truth however is that no part of the country has been spared, generally crime rate has continued to soar. According to Oguntunde *et al* notable crimes being committed in Nigeria are kidnapping, rape, burglary, murder, terrorism, fraud, robbery, bribery, cyber-crimes, money laundering and corruption among others. [20]

Commission of crimes is not restricted or limited within the country, the fact is that crimes committed across borders has also been on the increase. For instance Malechi and Mathias in a paper that discussed patterns of cross-border crimes in Idiroko border community of Ogun State, Nigeria, confirmed that such crimes as smuggling of contraband food items, smuggling of natural resources, drug trafficking, car crimes, female trafficking, and smuggling of illegal migrants, smuggling of human parts, child trafficking take place across the Idiroko border of Nigeria.[21] Malechi and Mathias further noted that States in West Africa are confronted with issues on ways and manner of resolving criminal activities outside their jurisdictions, investigation of cross border crimes and locating and

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[18] Mary C. Ezeajughu, 'High Rate of Unemployment and Crime Increase in Nigeria' (2021) 3(1) Sapientia Foundation Journal of Education, Sciences and Gender Studies (SFJESGS), 51.

[19] Ahmad Salisu Abdullahi and Ukasha Ismail, 'Crimes and Insecurity in Rural Nigeria' (2021) 6 (1) Dutse International Journal of Social and Economic Research (DIJSER) 203.

[20] Pelumi E. Oguntunde, Oluwadare O. Ojo, Hilary I. Okagbue and Omoleye A. Oguntunde, 'Analysis of Selected Crime Data in Nigeria' (2018) 19 Data in Brief 1242-1249. Doi: 10.1016/j.dib.2018.05.143.

[21] Anthony Soni Malechi and Bentina Alawari Mathias, 'Patterns of Cross-border Crimes in Idiroko Border Community of Ogun State, Nigeria' (2021) 7 (1) International Journal of Health and Social Inquiry 27.

recovery of proceeds of such crime which have been transferred from the place of crime to outside jurisdiction.[22]

The era of internet has further heightened the crime rate by bringing in its wake crimes across Continents. E crime otherwise referred to as internet fraud is on the increase. This goes to show that crime can be committed without the perpetrator being physically present within the jurisdiction where such crime is committed. Where crime has been committed (either physical crime or e crime) and the host country makes a request, the only resort is to secure the presence of the suspect to face his trial where the crime has been committed. These and many more are reasons why there should be a perfect extradition law between Nigeria and all countries.

Extradition becomes necessary when a criminal fugitive flees from one country to another to avoid facing trial or punishment and persons who may be extradited include those who have been tried and convicted but escaped custody by fleeing the country, and those convicted in absentia.[23] The law on extradition in Nigeria is the Extradition Act, Cap. E26, Laws of the Federation of Nigeria, 2004 as amended by the Extradition (Amendment) Act, 2018 herein after referred to as 'the Act'.

2. Definition of Terms

2.1 Extradition

Extradition is defined as a process, under relevant treaties, provisions of law or on the basis of reciprocity, where one country requests another country to surrender a suspect in its country who is accused of having committed a crime or convicted of a criminal

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[22] Anthony Soni Malechi and Bentina Alawari Mathias, 'Patterns of Cross-border Crimes in Idiroko Border Community of Ogun State, Nigeria' (2021) 7 (1) International Journal of Health and Social Inquiry 27.

[23] *Attorney General of the Federation v Princewill Ugonna Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211 at 240, Ratio 46 and 48 Per Helen Moronkeji Ogunwumiju JSC.

offence against the law of the requesting country having jurisdiction over the suspect to be extradited.[24]

For instance *the Nation*, a Nigerian based newspaper reported on 15/8/202325 that the Federal Government of Nigeria extradited two citizens of Nigeria, one Samuel Ogoshi and his brother Samson Ogoshi to the United States of America to stand trial on charges of alleged sexual extortion of young men and teenage boys in Michigan and across the United States of America.[26] They were also to face prosecution for 'exploitation of minors, resulting in death, conspiracy to sexually exploit minors by causing the minors to produce child pornographic images that the defendants used to blackmail them,'[27] among others, while Samuel Ogoshi was also to face charge of causing the death of Jordan DeMay of Marquette, in the State of Michigan of the United States of America.[28] Sometimes in November, 2019, a Nigerian named Adeniran was extradited from Nigeria to Northern District of Florida, the United States of

[24] Emmanuel Ekpenyong, 'Nigeria: Extradition of Foreign Nationals to Nigeria to Face Criminal Prosecution' 20 April 2022 <https://www.mondaq.com/nigeria/crime/1184814/extradition-of-foreign-nationals-to-nigeria-to-face-criminal-prosecution.> accessed 27 April 2024.

[25] Robert Egbe and Vincent Ikuomola, 'Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, *The Nation* (15 August 2023) <https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/> accessed 27 April 2024.

[26] Robert Egbe and Vincent Ikuomola, 'Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, The Nation (15 August 2023) <https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/> accessed 27 April 2024.

[27] Robert Egbe and Vincent Ikuomola, 'Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, The Nation (15 August 2023) <https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/> accessed 27 April 2024.

[28] Robert Egbe and Vincent Ikuomola, 'Nigeria Extradites Two Brothers to U.S. over Child Exploitation, S3xtortion, The Nation (15 August 2023) <https://thenationonlineng.net/nigeria-extradites-two-brothers-to-u-s-over-child-exploitation-sextortion/> accessed 27 April 2024.

America,[29] Adeniran was alleged to be the ring leader of a group who specialize in on line fraud. [30] Adeniran was alleged to have tried to escape justice by escaping to Nigeria in 2005, upon extradition request by the United States of America to Nigeria, Adeniran was extradited and was arraigned in the Federal Court United States of America on November. 4, 2019.[31]

According to Mowoe, section 41(2)(b) of the 1999 Constitution of Federal Republic of Nigeria (As Amended) justifies the removal of a criminal or a person suspected of being a criminal to the country where the alleged crime has been committed.[32]

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[29] U.S. Attorney's office, Northern District of Florida, 'Nigerian National Extradited to United States to Face Federal Charges for Leading International Fraud Scheme that Victimized Dozens of Financial Institutions' *Press Release* (8 November 2019) <https://www.justice.gov/usao-ndfl/pr/nigerian-national-extradited-united-states-face-federal-charges-leading-international> accessed 27 April 2024.

[30] U.S. Attorney's office, Northern District of Florida, 'Nigerian National Extradited to United States to Face Federal Charges for Leading International Fraud Scheme that Victimized Dozens of Financial Institutions' Press Release (8 November 2019) <https://www.justice.gov/usao-ndfl/pr/nigerian-national-extradited-united-states-face-federal-charges-leading-international> accessed 27 April 2024.

[31] U.S. Attorney's office, Northern District of Florida, 'Nigerian National Extradited to United States to Face Federal Charges for Leading International Fraud Scheme that Victimized Dozens of Financial Institutions' Press Release (8 November 2019) <https://www.justice.gov/usao-ndfl/pr/nigerian-national-extradited-united-states-face-federal-charges-leading-international> accessed 27 April 2024.

[32] Kehinde M. Mowoe, *Constitutional Law in Nigeria* (North Line Press 2021) 525. The section provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and that no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom and however, the foregoing does not invalidate any law that is reasonably justifiable in a democratic society for the purpose of providing for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence, or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty. Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Extradition is further defined as "the formal process of one state surrendering an individual to another state for prosecution or punishment for crimes committed in the requesting country's jurisdiction,"[33] While Mowoe described it as "a process whereby, under a treaty, or on basis of reciprocity, a state surrenders to another, on its request, an accused person or convict for crimes committed against its laws, for trial."[34] However their Lordships of Supreme Court of Nigeria in *Attorney General of the Federation v Princewill Ugonna Anuebunwa* held that extradition is "a cooperative legal process of one state called the surrendering state or authority which surrenders an individual to another state called the requesting state for prosecution or punishment for crimes committed within the requesting country's jurisdiction."[35]

On the other hand, an extradition agreement is defined as a treaty or other arrangement made by Nigeria with any other country for the surrender, by each country to the other, of persons wanted for prosecution or punishment.[36] Extradition treaties that are directly relevant to the territory of Nigeria fall into two distinct periods in time viz:

(a) Pre-independence treaties entered into by the British colonial administration.

(b) Post-independence treaties entered into by Nigeria as a sovereign State.[37]

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[33]Jonathan Masters, 'What is Extradition.' <https://www.cfr.org/backgrounder/what-extradition> accessed 27 April 2024.

[34]Kehinde M. Mowoe, *Constitutional Law in Nigeria* (North Line Press 2021) 526.

[35][2022] 14 NWLR (Pt. 1850) 211 Ratio 46 per Helen Moronkeji Ogunwumiju JSC.

[36] Section 1(a) Extradition Act, 2004.

[37] *Attorney General of the Federation v Princewill Ugonna Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211 at 240. Ratio 46 and 48. Per Helen Moronkeji Ogunwumiju JSC.

Nigeria's Extradition Act refers to that individual who has been suspected of having committed a crime in another country and for whose surrender that other country has made a request for surrender as a 'fugitive criminal" or "fugitive" and further defined a 'fugitive criminal" or "fugitive" as

> any person accused of an extradition offence committed within the jurisdiction of a country other than Nigeria; or any person, who, having been convicted of an extradition offence in a country other than Nigeria, is unlawfully at large before the expiration of a sentence imposed on him for that offence, being in either case a person who is, or is suspected of being, in Nigeria.'[38]

The main purpose of the Act is to bring an accused to the jurisdiction of the commission of crime to face his trial or In the case of a fugitive criminal alleged to be unlawfully at large after conviction of an offence claimed to be an extradition offence, to ensure the extradition of the fugitive criminal to the country of the commission of the conviction to serve his sentence. In *Attorney General of the Federation v Princewill Ugonna Anuebunwa*, extradition is distinguished from other methods of forcibly removing undesirable persons from a country, such as exile, expulsion and deportation.[39]

2.2 Geographical / Territorial Jurisdiction

The Constitution provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and that no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom and however, the forgoing does not invalidate any law that is reasonably justifiable in a

[38] Section 21(1) (a) (b) of the Act. The definition is without prejudice to provision of the Act in Section 8(2) of the Act.

[39] [2022] 14 NWLR (Pt. 1850) 211 at 240. Ratio 50 per Helen Moronkeji Ogunwumiju JSC.

democratic society for the purpose of providing for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence, or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty.[40] This is to ensure that the trial of the suspect takes place in the jurisdiction where the offence was committed with the suspect in attendance.

Jurisdiction is the authority a court has to entertain and decide a matter brought before it. It is the power of the court to decide the matter in controversy and it presupposes the existence of a duly constituted court with control over the subject matter and the parties.[41] Jurisdiction is of fundamental nature in adjudication. It goes to the competence of the court or the tribunal sitting on a matter. Jurisdiction is further described as the heart of any matter and any proceeding conducted without jurisdiction is void and a nullity *ab initio*.[42] Jurisdiction is in different forms. Mainly, there is substantive jurisdiction which means the matters which a court has power to adjudicate upon by virtue of having been deliberately conferred with powers to so do by a statute, on the other hand is territorial jurisdiction which refers to the 'geographical area in which the matters brought before the court for adjudication arose….'[43] Courts of law do not adjudicate over matters which arise outside their legally defined geographical territory, hence the need for the Act which shall make provision for the surrender of a person suspected of having committed a crime in a foreign country to country of the venue of commission

[40] Section 41(1) (2) (b) (i) (ii) of the 1999 Constitution.

[41] *Prof Abubakar Sulaiman v Federal Republic of Nigeria and 1 Or* [2020] 18 NWLR (Pt. 1755) 180 at 188. Ratio12.

[42] Per Akomolafe-Wilson in *Buba Enoch Wulangs v Central Bank of Nigeria* [2021] 16 NWLR (Pt. 1802) 195 at 205. Ratio1.

[43] *Prof Abubakar Sulaimon v Federal Republic of Nigeria and 1 or*. [2020] 18 NWLR (Pt. 1755) 180 at 188 and 189 Ratio13.

the crime which is the appropriate place where judicial authority may be exercised. The implication of this for sustainable and developed relationship among nations cannot be over emphasized.

2.3 Sovereignty

According to Johnson-Odusanya, the principle of territorial sovereignty dictates that States have exclusive right within their geographical boundaries.[44] The implication of this, is that a suspect can only be prosecuted by courts within the geographical jurisdiction where the crime was committed. Sovereignty also confers upon a country the express power of full authority on every incident within its territory which includes the power and duty to protect its citizens. By virtue of section 2(1) of the 1999 Constitution, Nigeria is sovereign State. Chapter four of the said Constitution parades an array of rights**.** One of the core right of every citizen of Nigeria is the freedom of movement throughout Nigeria and the freedom to reside in any part thereof. [45] Further to the foregoing is the fact that Nigerians cannot be expelled from Nigeria nor can any citizen of Nigeria be refused entry into or exit from Nigeria. However one of the exceptions to this general provision provides for the validation of any law that is reasonably justifiable in a democratic society for the removal of any person from Nigeria to any other country to be tried outside Nigeria for any criminal offence, or to undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty where there is reciprocal agreement between Nigeria and such other country in relation to such matter.

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[44]Adekunbi O. Johnson-Odusanya, 'An Analysis of the Foreign Judgments (Reciprocal Enforcement) Act, Cap F35, LFN 2004: A Call for Review' (2014) 1 (1) Umaru Musa Yar' Adua University Law Journal 11-31.

[45] 1999 Nigerian Constitution as Amended Section 44(1).

3. Overview of the Extradition Act Cap E25 LFN 2004

The law on extradition in Nigeria is the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004 as amended by the Extradition (Amendment) Act, 2018.[46] The Extradition Act E25, LFN 2004, is an Act to repeal the former Extradition Laws made by or applicable to Nigeria and to make more comprehensive provisions for extradition of fugitive offenders for Nigeria. The Act applies to any country with which Nigeria has a treaty or an extradition agreement for the surrender of persons wanted for prosecution or punishment by Nigeria to the said country and vice versa.[47] The Act also applies to every separate country within the commonwealth.[48] The Extradition Act E25, LFN 2004 herein after referred to as 'the Act' is arranged into 7 parts of 23 sections.

Part one contains 2 sections. Section one which is titled 'Power to Apply Act by Order' empowers the President by order published in the Federal *Gazette* to apply the Act to a country who has a treaty or agreement with Nigeria for purpose of releasing to it any Nigerian who has escaped to Nigeria after committing an offence in that country or after being convicted of an offence in that country. Section two applies the Act to Commonwealth countries delimited areas as separate countries within the Commonwealth**.** Section 3 of the Act lists situations under which Nigeria shall refuse to surrender a fugitive criminal to go and face trial in a requesting country. Section 4 of the Act allows the surrender of fugitive criminal notwithstanding the fact that the offence in respect for which his surrender is sought is an offence only under military law or a law relating only to military obligations. Section

[46] The Extradition (Amendment) Act, 2018 Amends the Extradition Act, Cap. E26, Laws of the Federation of Nigeria, when it vested the Federal High Court with the jurisdiction in extradition proceedings. By this, the Magistrate Courts ceased to have the power in extradition proceedings. This is the main highlight of the amendment among others.

[47] The Extradition Act Cap E25, LFN 2004 Section 1(1).

[48] The Extradition Act Cap E25, LFN 2004 Section 2(1).

5 of the Act made provisions for the arrest and surrender of every fugitive criminal of a country to which the Act applies whether the offence in respect of which his surrender is sought was committed before or after the commencement of the Act or the application of the Act to that country, and whether or not there is concurrent jurisdiction in any court in Nigeria over that offence. Section 6 of the Act deals with powers of Attorney-General whenever requests for surrender is made to him and the procedure for making such a request.[49] Though the Act empowers the Attorney-General to make an order to signify to the Court that such a request has been made and require the court to deal with the case in accordance with the provisions of the Act, he is to decline to make such an order if he decides on the basis of information then available to him that the surrender of the fugitive is precluded by any of the provisions of subsection (1) to (7) of section 3 of the Act. The Attorney-General may equally refuse to make an order in respect of any fugitive criminal who is a citizen of Nigeria except there is an extradition agreement in force between Nigeria and the requesting country. In a case where more than one country have requested for the surrender of a fugitive criminal, whether for the same offence or different offences, the Attorney-General is to determine which

[49] The request for the surrender of a fugitive criminal of any country is to be made in writing to the Attorney-General by a diplomatic representative or consular officer of that country and shall be accompanied by a duly authenticated warrant of arrest or certificate of conviction issued in that country.

ORDER V, EXTRADITION APPLICATION 1. An application for extradition shall be in line with the Schedule to these Rules containing— (a) the particulars of the fugitive whose extradition is requested; (b) a request for the surrender of the fugitive by the requesting country; (c) a duly authenticated warrant of arrest or certificate of conviction issued in the requesting country; (d) the particulars of the offence specified in the extradition request; (e) the particulars of the corresponding offence in Nigeria; and (f) a supporting affidavit. 2. Where the fugitive does not consent to extradition after being served with the application mentioned in rule 1, he shall file a counter affidavit and any other application within 5 days or such further time as the Court may permit.

request is to be accorded priority, and accordingly may refuse the other request or requests; and in determining which request is to be accorded priority, the Attorney-General shall have regard to all circumstances of the case.[50] Sections 7, 8 and 9 of the Act are on the procedure to be adopted by the court in respect of surrender of a fugitive criminal.

It is important to note that The Extradition Act (Modification) Order, 2014 modified the Extradition Act, Cap E25, Laws of the Federation of Nigeria, 2004 as follows— (a) in section 3(9), 4(2), 6(2), 7, 8 and 9, substitute the word "magistrate" with the word "judge"; (b) in section 12, substitute the phrase "… the High Court of the territory in which he is …" with the word "court"; (c) in section 21(1), substitute the definition of the word "court" with the phrase "means the Federal High Court"; (d) in section 21(1)(b), substitute the word "magistrate" and its definition with the phrase "judge" means a judge of the Federal High Court"; (e) in sections 6, 7, 8, 9 and second schedule of the Act, substitute the word "order" in relation to powers of the Attorney-General of the Federation with the word "apply" "apply for" or "application" as the context so requires; and (f) in the second schedule to the Act, substitute the word "magistrate" wherever it appears with the "judge". The Order modified the Act to bring the provisions of the Act in conformity with Section 251 of the Constitution of the Federal Republic of Nigeria 1999. Hence all references to 'magistrate' in the Act now means 'judge of the Federal High Court'. All powers which resided in the magistrate court in the Act now reside in the Federal High Court by virtue of the Federal High Court (Extradition Proceedings) Rules, 2015 which apply to

[50] In this regard, the Attorney- General is to consider particular-

(a) the relative seriousness of the offences, if different;
(b) the relative dates on which the requests were made; and
(c) the nationality of the fugitive and the place where he is ordinarily resident.

all extradition proceedings under the Extradition Act,[51] save to the extent and as may otherwise be directed by the Chief Judge.[52] These Rules provide that upon receipt of information that a fugitive is in Nigeria, suspected to be in or on his way into Nigeria, a Judge may issue a provisional arrest warrant under section 8 of the Act, to bring the fugitive before the Court. However, before issuing a provisional warrant of arrest upon information, a Judge shall consider whether — (a) the alleged offence is an extraditable offence; and (b) there is sufficient evidence or information to justify the issuance of a warrant of arrest. The provisional warrant of arrest shall direct that the fugitive shall be brought before the issuing Judge within 48 hours of effecting the arrest or such longer period as the Court may deem reasonable.

Section 10 discusses surrender of fugitive in due course after committal, section 11 on the Act states situations which would warrant postponement of surrender of fugitives section 12 is on discharge of fugitive if not removed from Nigeria within limited time. The provision of the Act on seizure and surrender of property is as stated in section 13 while section 14 empowers the Attorney-General to order release of fugitive Section 15 provides that fugitive surrendered to Nigeria is no triable for previous crime, while section 16 provides for transit of surrendered fugitives through Nigeria. Sections 17 to 23 made provisions for taking of evidence in Nigeria for use abroad,[53] forms,[54] returnable offences,[55] and interpretation.[56]

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[51] CAP E25, Laws of the Federation of Nigeria 2004

[52] The objectives of these Rules are to – (a) ensure clarity of extradition proceedings; (b) set out in detail the requirements for specific Orders; and (c) minimize the time spent during extradition proceedings as a result of interlocutory applications, undue adjournments and other causes of delay.

[53] Section 17 of the Act.

[54] Section 18 of the Act.

[55] Section 19 of the Act.

[56] Section 20 of the Act.

3.1 Situations Under Which Nigeria May Refuse to Surrender a Fugitive Criminal

The focus of this paper is on situations under which Nigeria may refuse to surrender a fugitive criminal.[57] This is important in view of the fact that the Act empowers the Attorney General to decline to make such an order for extradition if he decides on the basis of information then available to him that the surrender of the fugitive is precluded by any of the provisions of subsection (1) to (7) of section 3 of the Act.

Under Section 3 of the Act titled 'Restrictions on Surrender of Fugitives', the following are the grounds upon which Nigeria may rely to refuse to surrender a fugitive criminal to a requesting country.

(a) If the Attorney-General or a court dealing with the case is satisfied that the offence in respect of which his surrender is sought is an offence of a political character.[58]

(b) If it appears to the Attorney-General or a court dealing with the case that the request for his surrender; although purporting to be made in respect of an extradition crime, was in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions or was otherwise not made in good faith or in the interest of justice.[59]

(c) If it appears to the Attorney-General or a court dealing with the case that, if surrendered, he is likely to be prejudiced at his trial, or to be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.[60]

(d) If the Attorney-General or a court dealing with the case is

[58] Section 3(1) of the Act.
[59] Section 3(2) (a) of the Act.
[60] Section 3(2) (b) of the Act.

satisfied that, by reason of the trivial nature of the offence for which his surrender is sought, or the passage of time since the commission of the offence, it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive, or be too severe a punishment, to surrender the offender.[61]

(d) If the Attorney-General or a court dealing with the case is satisfied that, whether in Nigeria or elsewhere, he-

(a) has been convicted of the offence for which his surrender is sought; or

(b) Has been acquitted thereof, and that, in a case falling within paragraph (a) of this subsection, he is not unlawfully at large.

(c) If criminal proceedings are pending against him in Nigeria for the offence for which his surrender is sought.

(d) A fugitive criminal-

(a) who has been charged with an offence under the law of Nigeria or any part thereof, not being the offence for which his surrender is sought; or

(b) who is serving a sentence imposed in respect of any such offence by a court in Nigeria,

Shall not be surrendered until such a time as he has been discharged whether by acquittal or on the expiration of his sentence, or otherwise.

(g) A fugitive criminal shall not be surrendered to any country unless the Attorney- General is satisfied that provision is made by the law of that country, or that special arrangements have been made, such that, so long as the fugitive has not had a reasonable opportunity of returning to Nigeria, he will not be detained or tried

[61] Section 3(3)(a) (b) of the Act

in that country for any offence committed before his surrender other than the extradition offence which may be proved by the facts on which the surrender is granted.

Another reason as held in *Attorney General of the Federation v Princewill Ugonna Anuebunwa* is where an extradition treaty has not been proclaimed by way of an order published in the Federal Gazette, the treaty will not be justiciable in Nigerian Courts and Nigeria might refuse to surrender a fugitive based on an extradition request on such a treaty.[62]

Further, section 3(3)(a)(b) of the Act empowers the Attorney-General or a court dealing with the case to decline to surrender the fugitive criminal is satisfied that, by reason of the trivial nature of the offence for which his surrender is sought, or the passage of time since the commission of the offence ,it would, having regard to all the circumstances in which the offence was committed, be unjust or oppressive, or be too severe a punishment, to surrender the offender.[63] This provision has thrown up some issues which will be discussed here under.

The issues involved are discussed as follows:

i. **That the Offence for Which the Surrender of the Fugitive Criminal is Sought is of Trivial Nature and Having Regard to all the Circumstances in Which the Offence was Committed, it Would be Unjust or Oppressive, or be too Severe a Punishment, to Surrender the Offender**[64]

The word 'trivial' could be interpreted to mean 'insignificant', 'inconsequential', 'trifling', 'negligible.' The categorization of an

[62] *Attorney General of the Federation v Princewill Ugonna Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211.
[63] Section 3(3) (a) (b) of the Act.
[64] Section 3(3) (a) of the Act.

offence as trivial is strange to Nigerian Law.[65] It is startling that the Act can categorize any offence as trivial and also leaves the standard for determination of whether or not an offence is trivial to discretion. Howbeit, under the Nigerian Law, no crime is without penalty attached to same. The Act failed to state the next line of action where the offence is 'trivial'. Whether the implication is that the fugitive /criminal will be allowed to go free because the offence is 'trivial' or whether the fugitive /criminal will be prosecuted under Nigerian law. The Act did not also state what happens where the country where the crime was committed considers the offence as 'weighty'. It is apt to state that this particular provision should be re addressed and corrected as such cannot facilitate and sustain relationship between and among nations.

ii. That by Reason of the Passage of Time Since the Commission of the Offence, it would, Having Regard to all the Circumstances in Which the Offence was Committed, be Unjust or Oppressive, or be too Severe a Punishment, to Surrender the Offender[66]

Section 3(3) (b) of the Act provides that Nigeria shall refuse to surrender a fugitive criminal if by reason of passage of time since the commission of the offence, it would be unjust or oppressive, or be too severe a punishment, to surrender the offender. In this section, the determination of how long the passage of time would be to warrant the refusal to surrender an offender is again left to discretion and is not in any way certain.

The position of law in Nigeria, is that there is no time limit in respect of when criminal proceedings may be commenced against a suspect. This is a general position to the effect that prosecution of a suspect can commence at any time. This is because it may take some space

[65] The Nigerian law categorised crimes into felonies, misdemeanours, simple offences. Criminal Code, Part 1, Chapter1 S.1.

[66] Section 3(3) (b) of the Act.

of time to put together the evidence of crime, a suspect may take to his heels after commission of crime and may take ample time before he is physically apprehended, the law does not set limit for commencement of prosecution.

On whether or not prosecution of crime can become statute barred or whether time runs against the State in respect of criminal offences, Peter Chudi Obiorah, JCA held:

> Let me state that there is no rule that prescribes a time limit for the report of a crime. In the same vein, there is no time limit for the prosecution of crime. In other words, time does not run against the report, investigation and prosecution of crime. In effect, the statute of limitation has no application in criminal proceedings. Accordingly, the time lapse between the commission of an offence and report by the victim to the police is of no moment, since whether reported timeously or belatedly, the prosecution still has the burden to prove the alleged offence beyond reasonable doubt.[67]

There are however few but specific statutory exceptions to this general rule for instance section 52(1)n of the Criminal Code states that proceedings in respect of sedition must be commenced within 6 months of the commission of the offence, prosecution of a suspect for offence of having carnal knowledge of a girl under the age of 16 must commence within two months of the commission of the crime,[68] section 43 of the criminal code stipulates that prosecution of offence of treasonable felony must be commenced with 2 years .[69] In all these cases, the time limit is specified.

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[67] *Thompson v State, (*2023) LPELR-61413, 12 - 13 Paras E - A)

[68] Section 218 and Sections 221 of the Criminal Code

[69] By virtue of section 176(3) of Customs and Excise Management Act, offences committed under the Act must be prosecuted within 7 years

4. Observations, Conclusion and Proposed Reforms

In view of rising crime across international borders including crimes perpetrated via the internet, this paper undertook in detail the task of analysing the Act which aims at making more comprehensive provisions for extradition of fugitive offenders for Nigeria. The paper identified the lapses in section 3 (1-8) of the Extradition Act, Cap. E25 Laws of the Federation of Nigeria, 2004 as amended by the Extradition (Amendment) Act, 2018 on restriction on surrender of fugitives.

A successful inter boundary and international relationship depends on the confidence that all areas of interaction between nations are safeguarded by laws that are certain and precise.

The uncertainty which surrounds this core section of the Act is starling, as the provisions in section 3(3) is left to discretion. The courts are usually wary of discretions. Court condemns discretion in strong terms and state thus "discretion is defined as a power or right conferred upon public functionaries by law of acting officially in certain circumstances according to the dictates of their own judgement or conscience of others." [70] "It is also the act or liberty of deciding according to justice and propriety, and one's idea of what is right and proper under the circumstances without wilfulness or favour." [71] To this end a complete removal of the said provision is hereby suggested, the aim is to minimize the areas of uncertainty.

[70] *Mr Livinus Achi v Mr Peter Ebenighe and 2 Ors* [2014] 4 NWLR (Pt. 1397) 380 at 383. Ratio1.

[71] Per Oyebisi Folayemi Omoleye in *Mr Livinus Achi v Mr Peter Ebenighe and 2 Ors* [2014] 4 NWLR (Pt. 1397) 380 at 383. Ratio 2.

A LEGAL APPRAISAL OF THE PETROLEUM LICENCING REGIME UNDER THE NIGERIAN PETROLEUM INDUSTRY ACT, 2021

By Chika Mgbokwere Mba*

Abstract

In the Pre-PIA era, licensing regime was largely regulated by the Petroleum Act, 1969, which vested excessive power on the minister in the grant, suspension and revocation of licenses with significant emphasis on oil license as the fulcrum of its licensing regime. However, the PIA, while reaffirming power of licensing changed the narrative by overhauling the entire facets of petroleum licensing regime with diverse plausible reformations. The author relied on doctrinal research methodology to appraise the extant petroleum licensing regime in Nigeria within the framework of the PIA, with a view to ascertaining its viability towards promoting a fair, orderly and competitive commercial environment within the petroleum industry, and found that the PIA introduced several innovations as distinct from the provisions of the Petroleum Act, 1969, such as the significant change in license type nomenclature and categorizing the petroleum sector into three main value chains of the Upstream, Midstream and Downstream sectors, decentralizing the absolute discretion vested on the minister into a shared responsibility with the commission or authority, and streamlining the conduct of license bidding rounds in accordance with the principles of good governance, transparency and sustainable development. The author concludes that the PIA presents a very attractive licensing regime which is tailored towards the optimal achievement of increasing its revenue generation capacity while strengthening its sovereign status in dealings with companies operational in the sector. The author recommended that the

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intertwined role of the minister and commission should be clearly defined to avoid administrative conflicts, hierarchical uncertainties and contests in decision making process of granting petroleum licenses.

Key words: *Petroleum, Licences, Lease, Permits, Bidding Rounds*

1. Introduction

The establishment of Nigeria's licensing regime can be traced to the frontier time frame, when the British pilgrim organization gave two statutes- the Petroleum Ordinance of 1889, and the Mineral Regulation (Oil) Ordinance of 1907. Though it was specified by 1907 Ordinance that gave exclusive oil investigation rights to the British subjects and British-controlled organizations, the primary concession understanding was conceded to the German Organization in 1908.[1] Investigation was brought to an abrupt halt in 1914 when the World War started in 1914, and further investigation ceased in Nigeria until Shell D'Acry Petroleum Development Company (the principal archetype of the cutting edge Shell Petroleum Development Company of Nigeria) was granted concession award in 1938.[2] Being the sole concessionaire under the Colonial Government arrangement, the Mineral Oil Ordinance of 1914, vested in Shell Petroleum Development Company Nigeria Limited (SPDC) the right to prospect for petroleum over the entire Nigeria. Similarly, profits were assessed based on realizable proceeds and there was not equity participation by Nigerians.[3] As a result, Shell made the first Nigeria's business oil and gas revelation in 1956 which was discovered in commercial quantity at Oloibiri Bayelsa State, Nigeria. Before long after this revelation, other oil organizations, including Mobil and Texaco/Chevron, were

[1] Y Omorogbe, *Oil and Gas Law in Nigeria* (Lagos: Malthouse 2003)38-54
[2] Ibid,274
[3] S Dike, *Energy Security: A Case of Nigeria and Lessons from Brazil, Norway and The UK* (2015 Pearl Publishers)66

conceded **licenses** to direct inland and seaward investigations,[4] and shortly afterwards, Nigeria became one of the major oil producing countries in the world. As a result, these International Oil Companies (IOC's) who acquired almost full ownership right over the petroleum in Nigeria started acting like lords and locked up their acreages as the deemed fit and evaded payment of their taxes as concessionaires at will.

Hence, the emergence of the Organization of Petroleum Exporting Countries (OPEC) in 1960 with the main objective of promoting the sovereignty of its members over their active participation and in all department of the petroleum Industry led to the General Assembly Resolution 1803(XVII) of 14 December 1962 on Permanent Sovereignty over Natural Resources. This resolution recognized that the right of nations over their natural resources must be exercised in the interest of their national development.[5] Following this development, Nigeria promulgated its first 'home grown" Petroleum law[6] with the significant achievement of vesting petroleum ownership in the Federal Government and giving the Minister of Petroleum the right to grant licenses and leases to companies interested in engaging in petroleum operations in Nigeria.

2. Definition of License

A license is a revocable permission to commit some act that would otherwise be unlawful.[7] In corroboration of the above parlance it can be defined as an authorization given by a constituted authority, in the case of petroleum industry, for carrying out any act which could otherwise be unlawful based on certain obligations and conditions mutually agreed or imposed by the license.[8] Therefore,

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[4] Y Omorogbe, *Oil and Gas Law in Nigeria* (Lagos: Malthouse 2003)275
[5] S Dike, *Energy Security: A Case of Nigeria and Lessons from Brazil, Norway and The UK* (2015 Pearl Publishers) 67
[6] Petroleum Act, 1969
[7] A Garner, *Black's Law Dictionary* (7th edn, West Group,1999) 931
[8] (n5)86

to operate and invest in the oil and gas sector, the investor or company operating in the oil and gas sector is statutorily required to own a license issued by the appropriate issuing authority. In a broader view, a petroleum exploration license encapsulates the express consent granted by a competent authority to execute specific undertakings within delineated geographical area. Thus, in this wise, a license as opposed to ownership vests limited or qualified legal interest, coupled with the fact it is also revocable subject to contract duly signed, sealed and delivered by the respective parties.[9]

In other words, Petroleum licenses can simply be defined as an official authorization or permission issued to a prospective oil and gas operator by a statutorily constituted issuing authority, which qualifies an operator to lawfully and legally engage in a specified petroleum operation within the value chain of the industry comprising of three categories: upstream, midstream and downstream. However, under the Petroleum Industry Act (PIA), license is statutorily defined as the license issued by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) pursuant to the provisions of the PIA.[10]

3. Petroleum Licensing Under the PIA 2021

The Petroleum Industry Act, 2021 upon its enactment became the principal legislation regulating the oil and gas industry in Nigeria. The Act aims at "providing legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and for related matters*".* It therefore contains the statutory and regulatory rules that constitute the licensing regime applicable to companies operating in the varying streams of the

[9] Olusola and Olabode, 'Annulment of Licences in Nigeria's Upstream Petroleum Sector: A Legal Critique of The Cost and Benefits'(2017) *International Journal of Energy Economics and Policy,* 365

[10] Petroleum Industry Act, 2021, s 318

petroleum industry in Nigeria.[11] Thus, it is commendably a bespoke legislation that plays an overarching role in the grant, renewal and revocation of petroleum licenses in Nigeria. It is therefore the primary source from which the relevant regulatory bodies derive the impetus to exercise any of the powers associated with petroleum licensing.

4. Grant of Licenses and Leases in Nigeria

Prior to the enactment of the PIA, the Minister of Petroleum Resources had the exclusive powers to issue licenses and/or leases in the oil and gas sector.[12] There were three major types of licenses issued by the minister of petroleum resources prior to the current licensing regime; the licenses were, Oil Prospecting License (OPL), Oil Exploration License (OEL), and Oil Mining Lease (OML).[13]

Currently, the PIA vide its recent innovative provisions as a key feature introduced a significant change in license type nomenclature by replacing the word 'Oil' with 'Petroleum' and categorizes the Petroleum sector into three main value chains of the Upstream, Midstream and Downstream sectors with a mandate that such licenses may only be granted to company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act[14], and notably requires companies intending to engage in any of the streams of operations to register and use separate company(s) for each stream.

However, notwithstanding these three (3) streams of petroleum operations, PIA created only two main types of licenses based on these categories of petroleum operations. These are: the upstream petroleum licenses, which deals with the exploration, development and production of petroleum, and the midstream and downstream

[11] Petroleum Industry Act, 2021, s 70-203
[12] Petroleum Act, 1969, ss 2 (1) & 4 (1)
[13] Ibid, s 2(1)(a), (b) & (c)
[14] PIA 2021, s 70(2)

petroleum licenses, which deals with the construction of pipelines, plants, storage facilities, transportation networks and natural gas supplies.

5. Upstream Petroleum Licenses and Leases Under the PIA 2021

Section 70 of the PIA provides that licenses to be granted under the Act related to upstream petroleum operations are: (i) Petroleum Exploration License (PEL) (ii) Petroleum Prospecting License (PPL), and (iii) Petroleum Mining Lease (PML). According to the PIA, such license may be granted under this Act only to a company incorporated and validly existing in Nigeria under the Companies and Allied Matters Act.[15]

6. Petroleum Exploration License (PEL)

With respect to issuance of upstream licenses, Section 71[16] gives the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) "The Commission" the powers to grant PEL to qualified applicants to carry out petroleum exploration operation on a non-exclusive basis for a period of three (3) years which may be renewable for an additional period of three (3) years subject to the fulfilment of prescribed conditions.[17]

In qualification of its capacity, the PIA provides that the licensee's rights under PEL shall not include the right to win, extract, work, store, carry away, transport, export or other treat petroleum discovered in or under the license area. However, PEL can be granted in respect of frontier acreages and may cover an area that includes a Petroleum Prospecting License (PPL) and Petroleum Mining Lease (PML); and while the holders of such licenses are under no obligation to purchase the result of the survey conducted

[15] PIA 2021, s 70(2)
[16] PIA 2021
[17] Ibid, s 71(3)

under the PEL, the sole right and title over any acquired raw and interpreted data obtained by a licensee pursuant to PEL is vested in the Commission, although the licensee may license such data for use of a third party subject to the Commission's written authorization.[18] While the nature of non-exclusivity of the exploration license remains the same, there is therefore a clear departure from the provision of the Petroleum Act (PA)[19] in respect of the duration of "Oil Exploration Licenses" (OEL) now Petroleum Exploration License. Under the PA, the duration of OEL was for a period of one year in non-exclusive basis.[20]

7. Petroleum Prospecting License

The Act[21] gives the Minister of Petroleum the power to grant Petroleum Prospecting License (PPL) to a qualified applicant subject to the recommendation of the commission. By this, the Act therefore makes the Commission an integral part of the decision making process of the grant or refusal of this license and qualifies its recommendation as a mandatory precursor to the grant of a PPL.[22] To address the issue of uncertainty and delays in securing the ministerial consent for assignment of PPL, the Act has introduced mandatory timelines to act, such that consent of the Minister is deemed after 90 days, following his failure to act on the recommendation of the Commission.[23]

Also, under the PIA, the right of a PPL holder is delineated into the following:

(i) Exclusive rights to drill exploration and appraisal wells and,

[18] PIA, ss 71(4) (5) & (6)
[19] (n11)
[20] (n12) 1st Schedule
[21] PIA
[22] Ibid, s 72(5)
[23] Ibid, ss 73 (3) & (4)

(ii) Non-exclusive right to carry out petroleum prospecting operations within the area provided for in the license.

However, unlike the PEL, A PPL licensee shall have the right to carry away and dispose of crude oil or natural gas won during the drilling of the exploration and appraisal wells, as result of production tests, subject to the fulfillment of conditions prescribed by the Act.[24]

Interestingly, in a bid to ensure transparency and foster a fair, orderly and competitive commercial environment, the PIA makes it mandatory for the grant of a PPL to be based on a fair, transparent and competitive bidding process, in compliance with the provisions as set out by the Act, regulations made under the Act and licensing round guidelines issued by the Commission for each licensing round.[25] By tersely vesting the power to issue guidelines for licensing rounds on the Commission the PIA once more makes the role of the commission an indispensable factor in the grant of a PPL.

In effect, the term of a PPL is delineated into two:

(i) a period of not more than six (6) years for onshore and shallow water acreages, comprising of an initial exploration period of three (3) years and optional extension period of three (3) years.

(ii) a period of not more than 10 years for deep offshore and frontier acreages, comprising of an initial exploration period of five years and optional extension period of five years.[26]

Notably, at the expiration of any of the respective terms, a holder of PPL shall not be granted an extension except as prescribed under Sections 78(4), (9) and 79(6) of the Act, in relation to requisite

[24] PIA, ss 72(1) (a) & (b)
[25] Ibid, ss 73,74, 75
[26] Ibid, s 77(1) & (2)

compliance to the submission of an appraisal programme and field development plan (FDP) to the commission in other to obtain permission to declare commercial discovery of crude oil and gas respectively.[27]

Also, the requirement for the extension of the term of a PPL includes the entitlement of a licensee to retain the area of any significant gas discovery for a retention period of not more than 10 years. In addition, the term of the PPL may be toiled for not more than 3 years, to take into consideration delays in the fulfilment of any term or condition on account of *force majeure.*[28]

Therefore, it is instructive to note that following the new introductions in the PIA, a PPL holder is now required to commit to a work programme as well as other terms and conditions as determined by the Commission, supported by a bank guarantee, letter of credit or performance bond issued by the bank and in amount acceptable by the Commission.[29] The requirement that a licensee commit to a work programme is to ensure that prospecting in the licensed area is going on vigorously and in line with the international best industry practices.

In addition, a licensee shall, during the initial exploration period provided for in a PPL, commit to drill at least one exploration well to a minimum depth specified in the licence for each period, except for frontier acreages, where the work program during the initial exploration period may only consist of geophysical work.[30] Thus, where a licensee makes a discovery during the initial exploration period or the optional extension period provided for in the applicable PPL, the licensee shall inform the Commission within 90 days of the discovery if he considers that the discovery merits appraisal or is of

[27] PIA, s 72 (2)
[28] Ibid, s 72(4)
[29] Ibid, s 78
[30] Ibid, s 78(2)

no interest to him.[31] Where the a licensee considers that a discovery merits appraisal, the licensee shall within 180 days submit to the Commission for approval; a commitment to an appraisal programme of not more than 2 years with a scope and nature permitting the licensee to declare a commercial discovery;[32] and also the appraisal area, which shall not be larger than the outer boundary of the discovery and does not extend beyond the area provided for in the applicable PPL.

8. Appraisal Programme

An appraisal programme is to provide cost effective information that will be used during the field development stage with the aim of reducing the range of uncertainty in the quantity of oil and gas *in situ*, defining the size and configuration of the oil and gas reservoir; and to collect valuable data to ensure an accurate prediction of the reservoir's performance[33].

Therefore, upon the approval of the appraisal programme and appraisal area by the Commission, a licensee is required to promptly carry out the committed appraisal programme which shall be subject to the approval or refusal of the Commission within 60 days after its submission.[34] Where the Commission fails to act on the appraisal programme within the prescribed 60 days, the appraisal shall be deemed approved.[35] A licensee who has completed the appraisal programme can declare a commercial discovery, declare a significant gas discovery; or inform the Commission that the discovery is of no interest to the licensee.

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[31] PIA, s 78(3)
[32] Ibid, s 78(4)
[33] L Atsegbua, *Oil and Gas Law in Nigeria* (*Theory & Practice*) (4th edn, Four Pillars Publishers 2021) 75
[34] Ibid, s 78(5)
[35] Ibid, s 78(6)

Notably, a significant gas or crude oil discovery is a discovery of natural gas or crude oil that is substantial in terms of reserves and is potentially commercial, but cannot be declared commercial for one or more of the reasons provided in the Act[36]. Accordingly, the declaration of a significant gas discovery entitles the licensee to retain the area of discovery for a period of not more than 10 years from the day the declaration was made,[37] and where the licensee does not declare commercial discovery at the expiration of the retention period, the area shall be immediately relinquished by the licensee to the Government and the applicable PPL shall expire.[38] This provision of the Act demonstrates the Governments committed interest in reaping investments from its business operation and the attendant need for licensee to conduct its operations in a business manner.

9. Commercial Discovery and Field Development Plan

A commercial discovery under the Act is a discovery of crude oil, natural gas or condensates within a PPL or PML which can be economically developed in the opinion of the licensee or lessee after consideration of all the relevant factors normally applied for the evaluation and development of crude oil, natural gas or condensate[39]. Therefore, where a PPL license holder declares a commercial discovery, the licensee shall within 2 years of the declaration, submit to the Commission a field development plan (FDP) with regard to the commercial discovery together with the commitment to carry out the work described in the field development plan. By operation, a field development plan takes place after the completion of the appraisal programme and provides the best technical solution and guide for optimizing the development of the field. Accordingly, it must amongst others

[36] PIA, s 318
[37] n(28)
[38] Ibid, s 78(14)
[39] n(36)

provide for, a local content plan, an environmental management plan, a decommissioning and abandonment plan and a decommissioning and abandonment fund, a scheme for the recruitment and training of Nigerians, a provision for scholarship schemes. The essence of a good field development plan is to enable a licensee maximize the production from the field. It is however subject to the approval or disapproval of the Commission within 180 days.[40] If the Commission approves the field development plan it shall grant a lease and in the event of the Commission's failure to act on the FDP within the prescribed period of 180 days, it shall be deemed approved. This provision of the Act essentially curbs dereliction of duty on the part of the Commission and engenders commitment to a fair, transparent orderly and competitive commercial environment in the petroleum licensing process.

10. Petroleum Mining Lease

A Petroleum Mining Lease (PML) shall be granted by the Minister, subject to the recommendation of the Commission,[41] for each commercial discovery of crude oil and natural gas or both, to a licensee of PPL who has satisfied the conditions imposed on the licensee or license under the Act and has received approval for the applicable field development plan (FDP) from the Commission.[42] In other words, a PML for conducting upstream petroleum operations shall only be granted on the basis of a commitment from the applicable lessee to, develop and produce the commercial discovery of the crude oil or natural gas in the area which the lease relates in accordance with the applicable development plan; or restart or continue petroleum production in the area to which such lease relates.[43]

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[40] PIA, s 79 (9)
[41] Ibid, s 73 (3)
[42] Ibid, s 81 (1)
[43] Ibid, s 82 (3)

A PML can also be granted to a previously appraised area of PPL or a surrendered, relinquished or revoked PML in, under or upon the territory of Nigeria. In such cases, the Act requires the Commission to conduct open, transparent, competitive and non-discriminatory process for applicants before making the requisite recommendation to the Minister.[44]

The condition for grant of PML has therefore been expanded under the PIA to include where commercial discovery of gas is made, and obtaining the approval of the field development plan (FDP) from the Commission. In other words, the concept of "discovery of oil in commercial quantity" as contained in the 1969 Act, is now replaced by "commercial discovery" and expanded to include natural gas or condensates which can be economically developed in the opinion of the licensee after consideration of all relevant economic factors, more so, the threshold of 10,000 barrels contained in the 1969 Act is also deleted.

However, subject to the approval of the Commission, a PML is granted to each commercial discovery within a PPL, such that the entire PPL is not extinguished but remains valid as it relates to the area (where there are no commercial discoveries) until expiration. [45] A PML shall be granted for a maximum period of 20 years, which term shall include the development period sufficient to construct any required infrastructure and development of the field.[46] Thus, where a holder of PML does not initiate regular commercial production within the development period, the lease may be revoked by the Commission at the end of the development period.[47] Where a PML is revoked, the applicable acreage shall vest in the Government and be controlled and administered by the Commission, which may be

[44] PIA, s 72 (2)
[45] Ibid, ss 81 (4) – (7)
[46] Ibid, ss 86 (1) & (4)
[47] Ibid, s 86 (2)

subject to a new PML granted in accordance with section 81 of the Act.[48]

In this context, it is noteworthy that the development period for a PML shall be the period established in the FDP and where the development period is not stipulated, the development period shall be:

(a) 5 years for an onshore lease, and

(b) 7 years for a lease in shallow water or deep offshore or a lease in frontier acreage.

Generally, a PML holder who intends to renew the lease is required to apply in writing to the Commission for a renewal, not less than 12 months before the expiration of the lease. The criteria for renewal includes the lessee's fulfilment of any obligation or condition relating to the lease and lease development area and meeting all the payment obligations under the Act or any other enactment in respect of royalties, rent, taxes and fees relating to PML which shall be on the terms and conditions determined by the Commission, thus retaining a measure of discretion to the Commission.[49] By these provisions, the PIA therefore makes the verification of a lessee's fulfilment of his fiscal obligations a prerequisite for the renewal of his lease.

Importantly, holders of subsisting Oil Mining Leases (OMLs) or Oil Prospecting Licenses (OPLs), issued prior to the enactment of the PIA may convert to a PML or PPL by executing a voluntary conversion contract with the Commission.[50] Interestingly, the conversion contract is required to embody a clause terminating all outstanding litigation related to the respective OPL or OML.[51] It will also nullify any stability provisions or guarantees provided by

[48] PIA, s 86 (3)
[49] Ibid, s 87
[50] Ibid, s 92(1)
[51] PIA, s 92 (3)

NNPC in respect of the respective OPLs or OMLs to be converted and the incentive provisions contained in Section 11 and 12 of the Petroleum Profit Tax Act shall not apply. Hence, where a licensee or lease under a conversion contract complies with the provisions of the Act, such licensee or lease shall benefit from the fiscal incentives provided under the Act.[52]

The Act therefore requires the conversion to be done not later than 18 months from the effective day of the Act and the expiration date of the OML or date of conversion of the OPL to OML,[53]however, where an OPL is converted, the term of years included in such license shall apply to the converted petroleum prospecting license (PPL). Conversely, where a holder of a subsisting OPL or OML does not subscribe to the voluntary conversion contract prior to the conversion date, the terms and conditions applicable to the OPL or OML prior to the effective date of the Act shall continue to apply to the OPL or OML[54].

11. Midstream and Downstream Petroleum Licenses and Permits

In relation to the midstream and downstream petroleum licenses, the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA) "the Authority" is responsible for the grant, renewal, modification or extension of licenses or permits for operations in the midstream and downstream sectors.[55]

However, for the establishment of refineries, the license shall be issued by the Minister of Petroleum subject to the recommendation of the Authority. In performing this function, the Authority is required to publish a notification of any application for the grant or renewal of a license in a manner prescribed by a regulation under

[52] PIA, s 92 (2)
[53] Ibid, s 92 (4)
[54] Ibid, s 92 (6)
[55] Ibid, s 111 (1)

the Act.[56] Upon such publication, interested parties may comment or make representations to the Authority in respect of the application.

The Authority is required to consider such third-party information and representations in the granting or renewing of any of these licenses and to forestall delay is required to make its decision within 90 days of the application for the license.[57] Third parties may now also have greater access to facilities and pipelines for midstream and downstream petroleum operations.[58]

Where the Authority has decided to grant a license or permit, it shall publish a notice of its decision in the form and manner prescribed in the regulation issued by the Authority and where it declines an application, it shall inform the applicant of its refusal of the application and reasons for the refusal.[59] Thus, an applicant that is not satisfied by the reason given by the Authority for refusal of an application may apply to the Federal High Court for judicial review.[60]

In other words, to foster a seamless discharge of its duties, the Act empowers the Authority to make regulations and guidelines for grant or renewal of license for midstream and downstream petroleum operations.[61] The duration of a license or permit is to be specified by such regulations made by the Authority pursuant to the Act, and a revocation of a license or permit may be revoked by the Authority on the grounds set out in Section 120 of the Act and in the manner prescribed in Section 121 of the Act.

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[56] PIA, s 112 (1)
[57] Ibid, s 111 (7)
[58] PIA, s 113 (3) & (4)
[59] Ibid, s 111 (8) & (9)
[60] Ibid, s 111 (12)
[61] Ibid, s 113 (1)

12. Powers And Categories of Licenses and Permits issued by the Authority

In the midstream and downstream petroleum operations, the Authority's power to issue licenses and permits is delineated into two categories, namely:

(i) Midstream and Downstream Gas Operations

(ii) Midstream and Downstream Petroleum Liquids Operations

i. Midstream and Downstream Gas Operations

In the administration of the midstream and downstream gas operations, the Act provides for the issuance of the different licenses[62] by the Authority with its attendant powers to enforce the prescribed penalties where a person engages in any of the activities without license or permit.[63] Thus, the Authority may issue the following licenses to a qualified applicant:

(i) Gas Processing License[64]

(ii) Bulk gas storage license[65]

(iii) Gas Transportation Pipeline License[66]

(iv) Gas Transportation Network Operator License[67]

(v) Wholesale Gas Supply License[68]

(vi) Retail Gas Supply License[69]

(vii) Gas Distribution License[70]

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[62] PIA, ss 125(1)-(3)
[63] Ibid, ss 125 (4) & (5)
[64] Ibid, s 129
[65] Ibid, s 132
[66] PIA, s 135
[67] Ibid, s 138
[68] Ibid, s 142
[69] Ibid, s 146
[70] Ibid, s 148

(viii) Domestic Gas Aggregation License.[71]

ii. Midstream and Downstream Petroleum Liquids Operations

In the midstream and downstream petroleum liquids operations, except the crude oil refining license which is issued by the Minister on the recommendation of the Authority,[72] the Authority is empowered by the Act to issue the following licenses:

(i) Bulk Petroleum Liquids Storage License[73]

(ii) Petroleum Liquid Transportation Pipeline License[74]

(iii) Petroleum Liquid Transportation Network Operator License[75]

(iv) Wholesale Petroleum Liquids Supply License[76]

(v) License for Distribution of Petroleum Products[77] and,

(vi) License to Construct and Operate a Facility for Retail Supply and Distribution of Petroleum Products.[78]

Essentially, the PIA provides clear parameters for the general duties and rights of the holders of these midstream and downstream petroleum operations and the conditions applicable to each category of licensed activity. A non-discrimination clause restraining licensed activities to be conducted in a discriminating manner is equally introduced by the PIA.[79] However, unlike what is applicable in the upstream petroleum sector, where there is an option for conversion of subsisting licenses or leases, holders of subsisting

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[71] PIA, s 153
[72] *PIA*, s 183
[73] *PIA*, s 187
[74] Ibid, s 190
[75] Ibid, s 193
[76] Ibid, s 197
[77] Ibid, s 201
[78] Ibid, s 203
[79] Ibid, s 116

licenses or permits in the midstream and downstream sectors issued prior to the enactment of the PIA are required to get new licenses from the Authority within 18 months from the effective date of the Act.[80] Therefore the optional voluntary conversion provision is not applicable to the midstream and downstream petroleum operations which therefore rendered all subsisting licenses and permits in these streams ineffective at the expiration of 15th February, 2023.

13. Revocation of Petroleum License or Lease Under the PIA 2021

A Petroleum Exploration License, Petroleum Prospecting License and Petroleum Mining Lease may be revoked by the Minister upon the recommendation of the Commission subject to the grounds prescribed by the Act;[81] which includes, where a licensee or lease fails to comply with good international petroleum industry practices, the Act or any law;[82] interrupts production for a period of over 180 consecutive days without justification or as provided for in the applicable license, lease or approved development plan, provided that in an event of *force majeure* it shall be an acceptable justification for interruption;[83] fails to fulfill the terms and condition of the applicable license or lease or development plan;[84] fails to pay the Government the due royalties, taxes , rents or other payments or production shares under the Act.[85]

In addition to these grounds are failure to furnish any report or data on operations as required by law;[86] assigns, novates and otherwise transfers any interest in the applicable license or lease other than in

[80] PIA, s 125 (6)
[81] Ibid, s 96(1)
[82] Ibid, s 96(1)(a)
[83] Ibid, s 96(1)(b)
[84] Ibid, s 96(1)(c)
[85] Ibid, s 96(1)(d)
[86] Ibid, s 96(1)(e)

accordance with section 95 of the Act;[87] has obtained an interest in the applicable license or lease by false representation or contrary to corrupt practices and money laundering laws;[88] is declared to be insolvent or bankrupt by a court of competent jurisdiction or is liquidated in each case, except as part of a solvent plan or scheme of re-organisation, amalgamation or arrangement.[89] Finally, where the licensee or lease fails to comply with environmental obligations under the law

Notably, the failure of a holder of PML to commence commercial production within the period stipulated in the FDP (or where none is stipulated, 5 years for onshore and 7 years for shallow waters, deep offshore or a frontier acreage) could lead to revocation of the PML, but where a licensee provides a valid reason to the Commission which is substantial in the Commission's opinion, the Minister can extend the development period on the recommendation of the Commission.[90]

Also, a PML which ceases to produce in paying quantities for a period of not less than 180 days, may except for *force majeure* or any other reason acceptable to the Commission be revoked by the Commission.

However, where a shut-in plan and the commitment to restart production in accordance with the shut-in plan has been submitted to the Commission by a licensee who intends to suspend production for more than 180 days and resume production on a later date; non-production within the period covered by the plan shall not attract any form of revocation from the Commission.[91]

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[87]PIA, s 96(1)(f)
[88] Ibid, s 96(1)(g)
[89] Ibid, s 96(1)(h)
[90] Ibid, s 86 (2)
[91] Ibid, s 86 (7) & (8)

For the revocation of the PPL or PML under Section 96(1), the Commission is under obligation to serve a notice of default on the affected licensee or lease stating the grounds for such recommendation to the Minister. The Commission shall equally provide the licensee or lease with a remediation period of not less than 60days within which to remedy such default, hence, where a satisfactory remedy is received, the revocation process shall be terminated,[92] otherwise it shall be revoked and the revocation decision shall be published in the Federal Government Gazette.[93] Where the license or lease to be revoked is shared by two or more persons, a defaulting holder and non-defaulting holder, and the revocation affects a defaulting holder, only the interest of a defaulting holder shall be revoked and the interest of the non-defaulting holder shall not be revoked.

14. Bidding Process for Grant of PPL or PML

The Act specifically stipulates that a PPL or PML shall only be granted based on a fair, transparent and competitive bidding process; and in compliance with the provisions of the Act, regulations made under the Act and licensing round guidelines issued by the Commission for each licensing round.[94] Similarly, the award process for the grant of a PPL or PML on a previously appraised area of a PPL or PML surrendered, relinquished or revoked PML shall be by an open, transparent, competitive and non-discriminatory bidding process conducted by the Commission.[95]

In effect, the Minister may on the recommendation of the Commission grant a PPL or PML to a winning bidder who has complied with the requirements of the bid invitation.[96] However, the Minister is required to convey his decision of an approval or

[92] PIA, s 97 (1) & (2)
[93] Ibid, s 97 (6)
[94] Ibid, s 73(1)
[95] PIA, s 74(1)
[96] Ibid, s73(3)

disapproval of the grant of the requite license or lease to the Commission within 90 days, failure of which the license or lease shall be deemed granted.

Apparently, the foregoing demonstrates that the bidding process introduced by the Act for the grant of a PPL or OML is a complete departure from the position under the Petroleum Act 1969, where the grant of licenses or leases is at the discretion of the Minister of Petroleum Resources. Although the bidding process was adopted in some cases, it was not a legal requirement under the law. Thus, by the provision of a clear rules on license or lease allocation, the Act seeks to promote that elimination of corruption through transparency and accountability is pivotal to its petroleum licensing system, with its achievement being contingent to acquainting and strict adherence to the legal and regulatory framework that applies to the petroleum industry, which in turn, will attract laudable investments to the petroleum industry.

15. Conclusion

This paper confirms that the petroleum licensing regime in Nigeria has tersely undergone commendable innovations vide the provisions of the PIA. The paper demonstrates that PIA has introduced a holistic reformation of the powers to grant petroleum licenses and by so doing expanded the scope of the petroleum value chains to accommodate the newly introduced licenses. There is a tacit decentralization of the powers to grant petroleum licenses with provisions for shared responsibilities between the minister and the commission and/or authority. While the minister has retained his power to grant petroleum licenses in the PIA, the absolute discretion conferred on it in the 1969 Act, is now qualified under the PIA, with exercise of same mostly contingent on the recommendation of commission or authority (as the case may be), in a bid to create the desired institutional synergy and coordination aimed at ensuring that petroleum licenses (unlike prior to the

enactment of the PIA) are granted to the appropriate and qualified licensees and not at the whims and caprices of the minister. In effect, by placing the commission's role on almost the same pedestal of decision making capacity in petroleum licensing grants with the minister, accountability and transparency will be fostered.

More so, the paper also identified that PIA introduced plethora of midstream and downstream petroleum licenses as a result of the expansion of the value chain of the petroleum industry. Hence, the significant change in license type nomenclature by replacing the word 'Oil' with 'Petroleum' and categorizes the Petroleum sector into three main value chains of the Upstream, Midstream and Downstream sectors, is contributory to a more expanded focus on not only crude oil licenses but also on gas licenses which is evident in the proliferation of midstream and downstream gas operations licenses and permits, granted on the basis varying categories of gas operations introduced by the PIA. The researcher views this as marking a significant step forward in the progressive realisation of a cleaner environment for all, in pursuit of the country's alignment to its pledge to rely on gas as its transition fuel, in that gas is a much cleaner source of energy than crude oil. In effect, the paper strives to show the advancements or upward progression in the legal sophistry of our petroleum law, particularly the impact of its legal framework towards creating licenses to foster evinced massive increase in the deployment of domestic gas derivatives to meet the increasing energy demand in the country and global energy transition agenda. It is the researcher's view that while the PIA is apparently a well thought out legislation given the specific areas of reform, the legal appraisal of the current petroleum licensing regime undoubtedly unveils that the PIA presents a very attractive licensing regime which is tailored towards the optimal achievement of increasing its revenue generation capacity in the sector while strengthening its sovereign status in dealings with companies operational in the sector. Particularly, the expansion of the petroleum value chain with the introduction of a more streamlined

upstream licenses and decentralization of the midstream and downstream licenses and/or permits to accommodate newly introduced gas operations licenses, will go a long way in promoting domestic gas utilization and thereby boost the overall investment base of gas as an alternative energy through increased private sector involvement.

16. Recommendations

The following recommendations are proffered;

1. The intertwined role of the Minister and Commission should be clearly defined to avoid administrative conflicts, hierarchical uncertainties and contests in decision making process of granting petroleum licenses.

2. There need for committed monitoring, implementation and enforcement of the compliance provisions of the PIA essentially related to petroleum license bidding process and licensing round guidelines issued by the Commission, in other to achieve the desired objective of ensuring a fair, open, transparent, competitive and non-discriminatory license bidding process.

3. The need to continuously monitor and ensure the implementation of measures aimed at increasing investments in midstream and downstream gas operations such as the operational tax and fiscal policies aimed at incentivizing investments and implementation of Gas projects in Nigeria as prescribed by the PIA, thereby prompting interest in requisite gas operation permits by prospective applicants.

REPOSITIONING THE LOCAL GOVERNMENTS FOR EFFECTIVE GRASSROOT PARTICIPATION IN DEMOCRATIC GOVERNMENT AND DEVELOPMENT IN NIGERIA: *ATTORNEY GENERAL OF THE FEDERATION v ATTORNEY GENERAL OF ABIA STATE & 35 ORS* (2024) AND THE UNMET NEEDS

By

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Abstract

Despite the Constitutional framework guaranteeing the existence of democratically elected Local Government Councils, and the Local Governments as an independent and autonomous third-tier government of the Nigerian federalism, the independence and autonomy of the Local Government Councils have remained an issue. It is to resolve this issue and guarantee the independence and autonomy of the Local Government Councils that the Attorney General of the Federation filed the suit, AG Federation v AG Abia State & 35 Ors. In this case, the Supreme Court in its majority judgements made some far-reaching declarations and granted some reliefs reaffirming the democratic status and financial autonomy of the Local Government Councils. This work examined the extent to which the Supreme Court judgement restores the independence and autonomy of the Local Governments for effective grassroots participation in democratic governance and development. The research design is purely descriptive. The information from these sources is analysed, adopting a content analysis

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approach where necessary. The work, while commending the Supreme Court's efforts to erk a constitutional status and autonomy for the local governments, found that the judgment has not fully resolved the constitutional issues about the independence and financial autonomy of the Local Government Councils. The need for clear constitutional alterations remains inevitable. The work, therefore, advocated for constitutional alterations to enshrine in unambiguous terms democratic decentralisation of sovereign powers, establishing the Local Governments as an independent and autonomous third-tier of the government of the federation.

Keywords*: Nigerian federalism, 1999 Constitution, States/Local Governments' relationship, Local Governments' independence and autonomy, the Supreme Court judgement.*

1. Introduction

Nigeria is a federation. The Nigerian federalism covers the Federal, State and Local Governments.[1] Local Government is intended to be the third tier of the government of the federation.[2] Like in every democratic system, the local government in Nigeria is the foundation or base of governance, intended to link the grassroot, rural communities and the other two tiers of governments, the

[1] Constitution of the Federal Republic of Nigeria (as amended) 1999 (CFRN), ss 1,2, 3(6), 7(1) & 162(3); *Attorney General of the Federation v Attorney General of Abia State & 35 Ors.* (2024) Suit No SC/CV/343/2024 judgement delivered 11th July 2024 where the Court re-emphasized that Nigeria is federation with three tiers of government, Federal, States and the Local Governments which must be respected and treated accordingly; TO Elias, *Nigeria The Development of its Laws and Constitution* (London, Stevens and Sons, 1967) 41-50; JA Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1979* (Sweet & Maxwell London, 1982) General Introduction*;* TA Aguda, *Constitutional Development in The Challenges of Nigeria Nation: An Examination of its Legal Development 1960 to 1985* (Heinemann Educational Books (Nigeria) Limited Ibadan, 1985) 3.

[2] Suit No, SC/CV/343/2024, Judgement delivered on the 11th July 2024.

Federal and State Governments.[3] However, the quagmire in the inter-governmental relationship between the State governments and Local Governments for effective grassroot participation in governance and development under the Nigerian federal system has remained a challenge.[4] This anchors on the issue of the status and the autonomy of the Local governments. To the State governors, the local governments are appendages of the States and exist at the whims and caprices of the State governments. This has remained so despite the repeated judicial declarations on the constitutional status of the local governments, in particular, that the local government is the third-tier of the government of the federation; and that no State government shall dissolve a democratically elected local government authority and replace same with a Caretaker Committee or any other form of leadership.[5]

It is in reaction to the continued disregard of the constitutional status of the Local Governments that the Attorney General of the Federation instituted this originating action, the *AG Federation v AG. Abia State & 35 Ors*[6] at the Supreme Court. The Supreme Court

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[3] OE Uya, 'Local Government as the Cornerstone of People-Centered Democracy: Welcome Address' in Okon E Uya and James Okoro (eds), *Local Government as the Cornerstone of People-Centred Democracy: A Welcome Address in Local Government Administration and Grassroots Democracy in Nigeria* (Calabar: University of Calabar Press, Calabar, 2002) 8; JA Egonmwan, 'Structure of the Local Government in Nigeria' in Uya and Okoro, (eds) (n4) 10-34.

[4] Uya (n3), 4-10; Egonmwan (n3) 10-34; AA Akinanya, 'Auonomy, Subordination and Local Government System' in Uya and Okoro (eds) (n3) 35-53; Adadeji, Adebayo & Bamidele, People *Centred Democracy in Nigeria: Alternative Systems of Grassroot Government at the Grassroot* (Heinemann Educational Books (Nigeria) Limited, 2000); Dauda Adeyemi Ayiroosu, 'Constitutionalism: The States/Local Government Relations: Ways towards effectiveness' [2022] (5)(6) *NILDS Journal of Law Review*, 1-19.

[5] *Friday v Gov. of Ondo State* (2022) 16 NWLR (Pt 1857) 585 at 648 SC; *Ajuwon v Gov. of Oyo* (2021) LPELR-55339 (SC); *Gov. of Ekiti State v Olubunmo* (2017)13 NWLR (Pt. 1551 7; *Eze v. Gov of Abia State &Ors* (2014) NWLR (Pt.1426) 192.

[6] Suit No. SC/CV/343/2024 unreported.

in its judgement in this case reaffirmed its earlier declaration that the local government is the third-tier of the government of the federation; and that no State Government shall dissolve a democratically elected Local Government Council and replace same with a Caretaker Committee or Administrator. It further declared that the Federal Government allocations to the Local Governments should be paid directly to Local Governments as opposed to the existing practice of payments through the State Governments and that Local Governments under Caretaker Committees or other forms of Leadership outside a democratically elected leadership should be denied the allocations from the Federation Accounts meant for the Local Government Councils. However, it is the extent to which these judicial declarations and reliefs have strengthened the Local Governments and restored the vision and mission of the Local Government Councils as a third-tier of government for effective grassroot participation in governance and development for sustainable democracy and development that has remained the issue.

It is within this context that this work explores the extent to which the local government system is guaranteed under the 1999 Constitution as a viable third- tier of government for effective grassroot participation in governance and development; the distortions in the State Governments and Local Governments relations and the extent to which the Supreme Court declarations and reliefs in *AG Federation v AG Abia State* guarantees the independence and autonomy of the Local Governments for effective democratic grassroot participation in governance and development in the Fourth Republic. The aim is to tinker with other constitutional, policy and implementation measures that would adapt the Local Governments as a third-tier of government for effective grassroot participation in democratic governance and development under Nigeria's federalism. This has become necessary because of the role and importance of grassroot participation in government in any democratic system. Nigeria cannot be an exception.

Apart from this introduction, the work starts by exploring the concept of the local government system generally, the local government system in Nigeria and in particular under the 1999 Constitution; and the Supreme Court declarations and reliefs in *AG Federation v AG Abia State* (2024). The last part of the work is the conclusion and recommendations to position the Local Governments for effective grassroot participation in democratic governance and development under Nigeria's federalism.

The work maintains that the Supreme Court declarations and reliefs in AGF v AG Abia State & 35 ors, as they are, have not repositioned the Local Governments for democratic grassroot participation in governance and development nor changed the Local Governments and State relations in the inter-governmental relations as envisaged under the 1999 Constitution. The need remains for unambiguous constitutional alterations if the independence and fiscal autonomy of the Local Governments under the 1999 Constitution must be guaranteed and achieved. The repositioning of the Local Governments for effective grassroot participation in democratic governance and development is important because sovereignty belongs to the people, hence it must be a government of the people, by the people, for the people.[7] A democratic government without grassroot participation cannot be a government of the people. Scholars have re-emphasised this fact that:[8]

> No democracy can become dynamic and sustainable if the systems of government at the grassroots level are not solidly people-centred, participatory and accountable.

It is, therefore, all about an inter-governmental relations system that will accommodate the grassroots participation in democratic governance through the local government system, and imbibe the

[7] CFRN, s14(2) (a) & (c).
[8] OE Uya (n3) 8.

indices of good governance and sustainable democracy and development for the people.[9]

2. Local Government System

Local self-governance is as old as society itself and is the oldest form of public rule in human history.[10] It is of note that village dwellers and settlers organised themselves or their communities in several forms to achieve some community objectives. The community organisation for community lives remained a form of government of the people, by the people, for the people or a grassroot method of self-rule or governance, as the case may be. Their main concern and focus were on how to meet the immediate needs of the people without any intermediary or other body between the body and the people.[11] This ultimately crystallised into modern-day local governments in their various communities or areas, with different styles of leadership and functions.

Thus, the local government system of government has become a permanent and integral part of government in modern government, though with varying structures and styles of leadership, because of the role and services they render in their various areas and governance generally.[12]In effect, the local government system of government is acclaimed as the cornerstone or bedrock of people-oriented-centred democracy globally.[13]It is that level of government that is in constant touch and serves as the barometer of government success or failure for the grassroot population, particularly in an environment like Nigeria, where the majority of the population lives

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[9] CFRN, s14 - the Marginal Note.

[10] Horst Risse, C. Andrew, D. Singh, S. Kesuwani, Caroline Andrew and others, 'Local Government in Federal Systems' (2008) 3-18 at <www/forumfed.org/libdoc/intConfFed07/vol.4> accessed 15 June, 2024.

[11] Ibid; Uya (n3) 6.

[12] JU Ata-Agboni and others, 'Federalism and Local Government System in Nigeria: A Critical Assessment' [2023] (7)(4) *Journal of Good Governance Sustainable Development in Africa (JGGSDA)*, 15-27.

[13] Uya (n4) 1,6.

in the rural areas outside the direct immediate influence of either the State or Federal governments.[14]

It has been emphasised that no democracy can become dynamic and sustainable if there is no solidly people-centred participatory and accountable local government system at the grassroot level. One would not be oblivious of the fact that even when the modern institution of government fails, it is usually at the local government levels that a semblance of government is sustained through the local or traditional institutions, such as traditional rulership and other community associations.[15] In effect, the role and importance of local government in a governmental system, whether under a unitary or federal system, cannot be overemphasised. It is the key interface between the grassroot people and the State, which must be integrated into the general governmental structure for sustainable democracy and development. The mission is to bring the government closer to the grassroot, increasing the people's understanding and support for socio-economic activities that will foster the socio-economic well-being of the people. Thus, Local Governments generally perform some specific and area-related functions in their areas of operations to meet certain needs concerning their locality for rural development and transformation.[16]

It must, however, be emphasised that the autonomy of the Local Governments for the effective performance or discharge of their

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[14] Ibid, 6. For other definitions and conceptual clarifications see WJN Mackenzie, *Theories of Local Government in Explorations in Government* (Palgrave Macmillan London, 1975) 68-88; GO Orewa, *Principles of Local Government* (Administrative Staff College of Nigeria (ASCON) 1991) 22; KM Mowoe, *Constitutional Law in Nigeria* (Malthouse Law Books Lagos, 2008) 239 citing the 1976 Local Government Reforms Report defining Local Government; Ayiroosu (n4) 1-19.

[15] Uya (n4) 6.

[16] Egonmwan (n4)13; Risse (n10) 3-18; Ata-Agboni (n12)15-27; MA Olong and UE Okolocha, 'Finance and Functions of Local Government' [2016] (6) *University of Ibadan Law Journal*, 77-96

roles and functions will depend on the powers granted or allocated to the Local Governments by the Constitution and the law. This will also depend on the quantum of revenue allocated to the Local Governments, the extent to which they are allowed to generate revenues, including manpower and the sources of revenue to discharge the functions, supervision of expenditure and inspection, linkages and relationships with stakeholders in the various areas. Hence, the independence and autonomy of the Local Governments cannot be compromised.

Even the United Nations recognises the existence of the local government system as a political sub-division of a nation or, in a federal system, a state which is constituted by law and has substantial control of local affairs, including the power to impose taxes or exact labour for prescribed purposes.[17] The differences in the local government systems, as noted, depend on the structure, leadership and the inter-governmental relations generally.[18]It is within this context that this work in this part explores the local government system in Nigeria and the inter-governmental relations between the local governments and the State governments generally.

3. Local Government System in Nigeria

(a) The Local Government under the Colonial Era

The local government system of government has been part of the governmental system in Nigeria since the colonial era to the present day. However, the name, nature and administrative forms in which it existed and operated changed from time to time, depending on the governmental system and administration.[19] The local government

[17] Mowoe (n14) 239.

[18] Osita Adah, 'Local Government Systems in United States of America and Britain: A Comparative Analysis and Lessons for Nigeria' [2022] (2)(3) *AKSU Journal of Administration and Corporate Governance*, 37-47.

[19] To Elias, *Nigeria The Development of its Laws and Constitution* (1967) 73-93; Egonmwan (n4) 14-22; KE Ina 'The Evolution of Local Government in Nigeria' in Local Government Administration and Grassroots Democracy in

system was primarily designed to accommodate the heterogeneous nature of the people and the environments with diverse ethnic nationalities, languages, cultures and religions in governance and to ensure stable service delivery at the grassroot levels for sustainable democracy and development, hence it operated under the control of the regional governments.[20]The local governments provided stable local administration, which formed a base for the colonial government for the maintenance of law and order. It also provided other social services such as the network of feeder roads and maintenance, health services and general sanitation, primary education, policing, native courts and prisons in some cases, as well as agricultural services and other rural services.[21]

The Local Government Councils under the colonial era and parliamentary system enjoyed a great deal of autonomy in financial matters, personnel and general administration, irrespective of the fact that they were under the control of the regional governments. The Councils had adequate resources to carry out their functions. They had block grants and special vote revenue mainly from the regional governments and wide powers of rates and taxation to meet the costs of services provided by them in most cases. However, for transparency and accountability, the Councils were restricted in the award of contracts and supplementary allocations of funds to certain heads of the Councils' expenditure budget.[22]

Nigeria' in Uya and Okoro (n4), 137-156. The names included, the sole Native authorities, federated Native authorities, County Councils, Local Government Authorities, Divisional, District and Local Councils etc in Uya (n3) 7.

[20] Joy U Ata-Agboni, `Federalism and Local Government System in Nigeria: A Critical Assessment' [2023] (7) (4) *Journal of Good Governance and Sustainable Development in Africa (JGGSDA)*, 15-27.

[21] Egonmwan, 'Re-inventing Local Government in Nigeria: A Keynote Address'. In *Local Government Administration & Grassroots Democracy in Nigeria*, Uya and Okoro (eds) (University of Calabar Press, Calabar, 2002) 15.

[22] Egonmwan, 'Re-inventing Local Government in Nigeria: A Keynote Address'. In *Local Government Administration & Grassroots Democracy in Nigeria*, Uya and Okoro (eds) (University of Calabar Press, Calabar, 2002) 16.

(b) Local Government under the Post-Colonial (Independence) and the Military Era

The local government system and administration were retained after independence. It continued to operate and functioned under the control and supervision of the regional governments, though still with varying governmental structure and administration. This was the status of the local governments until the military intervention in democratic governance.[23]The military government created the States and stopped the regional system of governments in Nigerian federalism. The military intervention and creation of states affected the functionality of the Local Government Councils. The State governments took over most of the functions and sources of revenue of the Local Government Councils. This made the Local Government Councils redundant and irrelevant in the development processes generally.[24]

The military government later realised the need for the local governments for grassroots participation in governance and administration, hence the need to revive and reinvent the local governments. This need led to the 1976 local government reforms.[25]The reforms, however, introduced a uniform single-tier system of local government with defined functions between the States and the Local Governments. This brought to an end the varying governmental structures of local governments and the Divisional Systems of administration in existence under the independence Parliamentary system at the time.

However, the local governments, though under the supervision of the States, operated like a third-tier of government and a legal entity, even though under a Military Government. The Local Governments share from the Federation Account with the Federal and State

[23] The 1st military intervention was in 1966.
[24] Egonmwan (n4)16.
[25] Ibid.

governments. It also had other independent sources of revenue. In fact, the local governments were seen as viable instruments in governance and development, particularly the grassroots development in particular.[26] The strategic plan and projection of the local government system for effective grassroot participation in government and development, as set out in the Guidelines for Local Government Reforms 1976, is emphatic in its preamble that:

> Government at the local level is exercised through representative councils established by law to exercise specific powers defined in areas. These powers should give the council substantial control over local affairs as well as the staff and institutional financial power to initiate and direct the provisions of services and to determine and implement projects so as to complement the activities of the state and federal government in their areas, and to ensure through devolution of functions to those councils and through the active participation of the people and their traditional institutions, that local initiative and responses to local need and conditions are maximised.

This was the strategic plan and projection of the local government system for effective grassroot participation in government and development.

Subsequent reforms were made to strengthen the autonomy of Local Governments. In particular, the Autonomy of Local Government Decree No.50 of 1991 stripped the State Governments of their supervisory roles in the administration of the Local Governments. The federal government became directly involved in local government administration. The Federal Local Government Service Commission was established. The functions and responsibilities of the Local Governments were clearly defined with financial

[26] KE Ina 'The Evolution of Local Government in Nigeria' In *Local Government Administration & Grassroots Democracy in Nigeria*, Uya and Okoro (eds) (University of Calabar Press, Calabar, 2002) 147-151.

autonomy. This was the situation until the return to democratic governance in 1979 under a Presidential federal system as enacted under the 1979 Constitution.

(c) Local Governments under the 1979 Constitution Democratic Era

The 1979 Constitution guaranteed the existence of democratically elected Local Government Councils in the federation but empowered the States to provide under the law for the establishment, structure, composition, finance and functions of the Councils.[27]The Governments of the States are to ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted for at an election to a local government council.[28]

The Local governments had statutory allocations of public revenue from the Federal and state governments[29] and shared in the Federation Account.[30] However, section 149 (2) of the Constitution, in particular, provided that:

> 1. The amount standing to the credit of local government councils in the Federation's Account shall be allocated to the States for the benefits of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.

It is also further provided in section 149 sub-sections (5), (6) & (7) that;

> (5) Each State shall maintain a special account to be called the **State Joint Local Government Account,**

[27] CFRN, s7(1) of the 1979.
[28] Ibid, s7(4)
[29] Ibid, s7(6).
[30] Ibid, s149(2).

into which shall be paid all allocations to the local government councils of the state from the federation's account and from the government account.

(6) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in a manner as may be prescribed by the National Assembly.

(7) The amount standing to the credit of the local government councils of a state shall be distributed among the local government councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the State.

These Constitutional provisions greatly departed from the visions and missions of the Local Governments as envisaged under the 1976 Local Government Reforms.[31]These provisions tacitly made the Local Governments appendages and agents of the State governments. Consequently, the State Governors capitalised on these provisions to treat the Local Governments as such. Thus, the envisaged independence and autonomy of the Local Governments under the 1976 Local Government Reforms became a mission of unfulfilled hope. The Local Government Councils again began to function and operate under the control and superintendence of the Ministry for Local Government and Chieftaincy Affairs and the Local Government Service Commissions of the States.

The operation of the Local governments became one of misallocations and misappropriation of funds. The Local

[31] V Ayeni, 'The illusion of three-tier Federalism: Rethinking the Nigerian Local Government System' [1994] (7) (5) *International Journal of Public Sector Management*, 52-65; DO Adeyemo, 'Local Government Autonomy in Nigeria: A historical perspective' [2005] (10)(2) *Journal of Social Science*, 77-87; OM Ikeanyibe, 'Model and Determinants of State-Local Government's Relations in Nigeria' [2019] (53)(6) *Journal of Public Administration*, 1040-1065.

Governments became self-serving entities, spending their available funds on themselves, the administrators, the politicians and their thugs in the areas at the expense of the Local Government Areas and democratic decentralisation and the area developments. In effect, the Local Governments remained moribund under the Third Republic. This was the fate of the local governments until the subsequent military intervention in democratic government in 1983. Unfortunately, the military intervention did not revive the Local Governments. The Local Governments remained in that precatory state, waiting for a renewed hope. This was the fate of the local government when Nigeria returned to democratic government in 1999 under the 1999 Constitution of the Federal Republic of Nigeria.

4. The Local Government System Under the Constitution of the Federal Republic of Nigeria 1999 (As amended)

(a) Existence, Powers and Functions of the Local Government

The 1999 Constitution, like the 1979 Constitution, recognises and insists on the democratic existence of the local government as a third-tier level of government for effective grassroot democratic governance and development. Section 3(6) of the 1999 Constitution, in particular, specified the number of existing Local government Areas in the various States of the Federation and the six Area Councils in the FCT. Section 7(1) of the 1999 Constitution emphasised that "the system of local government by democratically elected Local Government Council is under this Constitution guaranteed..." The Section further empowers the State Governments to ensure the establishment, structure, composition, finance and functions of the Local governments in the States under the Constitutional process.[32] The State Governments are also to ensure that elections are conducted through the state electoral bodies for the

[32] CFRN, s7(1).

election of the local government officers, the chairperson and the councillors.[33]But the Constitution did not provide for the tenure of the Local Government Councils. This is left for the States to decide. This has remained a bane to the independence and administration of the local government councils. Section 7(3) of the Constitution further provides that:

> It shall be the duty of a local government council within the State to participate in economic planning and development of the area… and to this end, an Economic Planning Board shall be established by law enacted by the House of Assembly of the State.

It is submitted that this provision has also remained a clog or fetter on the independence and autonomy of the Local Government Councils, as the Councils cannot embark on the performance of their constitutional functions without a law made by the House of Assembly of the State. This is particularly so as the Local Governments have no primary legislative powers under the Constitution. Even though it can operate through bye-laws, the bye-laws must be based on laws enacted by the Houses of Assembly of the States. Even the establishment of the Economic Planning Board, through which the Local Government Councils will participate in economic planning and development of the areas, has remained a mission of unfulfilled hope in many States.

Though section 7(5) of the Constitution provides that the specific functions for the Local Government Councils are as contained in the Fourth Schedule to the Constitution. This is intended to restore the local governments as a functional and viable third-tier of government in the new Nigerian presidential democratic dispensation under the Fourth Republic. It is also for this purpose that the Local Governments are to share in the Federation Account[34]and are also entitled to allocations from the State

[33] CFRN, s7(4), 197(b), 198.
[34] Ibid, s162(3).

revenues, as the case may be.[35] These sources of funds are independent of internally generated revenues (IGRs) by the Local Governments, as the case may be.

But the extent to which the State governments allow the Local Governments to perform their constitutional functions and the availability of funds for the effective discharge of the functions or any other function have remained a major issue under the Fourth Republic.[36]This brings to focus the issues of the independence and financial autonomy of the Local Government Councils under the 1999 Constitution.

(b) Independence and Financial Autonomy of the Local Governments

One of the fundamental principles of a federal system is the independence and autonomy of the federating constituents under the Constitution of the federation.[37] This is also intended to extend to the Local Governments. Thus, for the Local Governments to be a viable and functional third-tier of government, their independence and autonomy must be guaranteed and manifest in the powers and functions allocated to them under the Constitution, including the quantum of funds available to them for the discharge of their constitutional functions, the extent to which they are also allowed to generate revenues internally (IGR) and the sources of their internally generated revenue generally.[38]

There is no doubt that the Local Governments are the third tier of government and are saddled with some functions and responsibilities under the Constitution.[39]Thus, for the effective

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[35] CFRN, s162(5)(7)(8).

[36] *Attorney General of the Federation v. Attorney General of Abia State* [2024] (Unreported).

[37] Mowoe (14) 49-92; Elliot Bulmer, *Federalism* (International IDEA Constitution-Building Primer 12, 2017)1-38.

[38] Egonmwan (n4) 24.

[39] CFRN, Fourth Schedule, s7(3)(5).

discharge of the functions allocated to the Local Governments under the Constitution, the revenues and the sources of some of the revenues are also guaranteed and secured under the Constitution. Specifically, section 7(6) of the 1999 Constitution provides:

> a. The National Assembly shall make provisions for statutory allocations for public revenue to local government councils in the federation.
>
> b. The House of Assembly of a state shall make provisions for statutory allocations for public revenue to local government councils within the state.

In the same vein, section 162(3) is emphatic that any amount standing in credit of the Federation Account shall be distributed among the federal and the state governments and the local government councils in each State accordingly.

Furthermore, section 162(5) of the Constitution provides that:

> The amount standing to the credit of Local government councils in the Federation Account shall also be allocated to the States for the benefit of the Local government councils on such terms and in such manner as may be prescribed by the National Assembly.

In the same vein, sections 162(6) 162(7) and 162(8) of the Constitution provide as follows:

> 162(6) Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the Local government councils of the State from the Federation Account and from the Government of the State.
>
> 162(7) Each State shall pay to Local government councils in its area of jurisdiction such

> proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.
>
> 162(8) The amount standing to the credit of Local government councils of a State shall be distributed among the Local government councils of the State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

By these provisions, it is not in doubt that the primary sources of revenues for the Local Governments for the discharge of their Constitutional functions are from the federal and State governments. The States are the conduits through which the Local Governments can access these funds, from the Federation Account and Statutory allocations from States, for their developmental programmes.[40] But the accessibility of these funds by the Local governments from the State governments has remained a challenge, raising the issues of the independence and financial autonomy of the Local governments.

It is a known fact that the States' governments do not make the constitutional allocations to Local Government Councils. Even the allocations from the Federation Account to the States for the benefit of the Local Government Councils are retained and centrally managed by the State governments.[41] The sources of internally generated revenue (IGR) for the Local Government Councils can only be stimulated by the indulgence of the state governments through the State Houses of Assembly.[42] These are clear inhibitions on the functionality of Local governments as an independent and autonomous third-tier of government for effective grassroot

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[40] CFRN, s7(5).
[41] *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors* (2024) (unreported).
[42] CFRN, s7(5).

participation in democratic governance and development under the 1999 Constitution.

Curiously, as noted, Section 2(2) of the Constitution is clear that Nigeria shall be a federation consisting of the Federal, States and the Federal Capital Territory (FCT). The Local Governments are not expressly included. Though section 7(1) of the Constitution guarantees the existence of democratically elected Local Government Councils. But the existence of democratically elected Local Government Councils, as envisaged under the Constitution, can only be simulated by the State governments.[43] Curiously, also, the tenure of the Local Government Councils is to be determined by the State Governments. It is also within the powers of State governments to create new Local governments following the conditions specified under the Constitution.[44] It is also the State Governments that have the powers concerning matters connected with the election of the Local Government officers.[45] These powers of the States over the Local Governments have remained an inhibition on the independence and autonomy of the Local Governments. The incursion of the independence and autonomy of the Local Governments arising from the exercise of these powers by the States is fresh in our memories. Unfortunately, judicial declarations and reliefs to curtail the political rascality and irresponsibility of the political class and their agents in dealing with the issues of the independence and autonomy of the Local Governments as the third-tier of the government under the 1999 Constitution have yet to make any progressive impact.[46]

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[43] CFRN, s197(b), 198.

[44] Ibid, s8(3).

[45] Ibid, s7(4), 197(b), 198; *Attorney General of Abia State & 35 ors v. AG Federation* (2002) 3 SCNJ 158.

[46] *Ajuwon v. Governor of Oyo State* (2021) LPELR-55339 (SC), *Governor of Ekiti State v. Olubunmo* (1917) 13 NWLR (Pt.1551)1; *Eze v. Governor of Abia State & Ors* (2014) 14 NWLR (pt.1426)192, *APC & Ors v. Enugu State Independent Electoral Commission & Ors* (2021) LPELR-55337 (SC); *Friday v. Governor*

Still more, section 128 of the Constitution empowers State Houses of Assemblies to direct or cause to be directed an inquiry or investigation into governmental activities in the States, including Local Government Councils, to expose corruption, inefficiency and waste in spending of public funds and administration in the State generally. No arm or office in the local government structure can perform this function. It is the business of the States' House of Assemblies, or as the State Governors may deem fit, unfortunately.

One must also not be oblivious of the fact that the Constitution is silent on the executive, legislative, and judicial powers of the Local Governments as the third-tier of the government generally. These are limited to the federal and State governments as defined under the Constitution.[47] This also raises the issue of the Local Governments as a functional third-tier of government under the Nigerian federalism.

The lack of independence and financial autonomy of the Local Government Councils are part of the reasons, among others, for the call for the alteration of the 1999 Constitution to make the Local Government Councils an effective independence and financial autonomy third-tier government for effective grassroots participation in government and development under the Nigerian federalism in the Fourth Republic. But this, among others, has remained a mission of unfilled hope.[48]

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of Ondo State (2022) 16 NWLR (pt.1857) 585 at 648 SC; *The Attorney General of the Federation v. Attorney General of Abia State* (2024) (unreported). It is, however, of note that the National Assembly is trying to enact a law empowering INEC to conduct Local Governments elections following the ridiculous outcome of the local governments elections throughout all the States this year, 2024.

[47] CFRN, ss 4, 5 & 6 of the 1999 Constitution respectively.

[48] A Adedeji, & Bamidele Ayo, 'People-Centered Democracy in Nigeria: *The search for Alternative systems of government at the Grassroots'* (Heinemann Educational books, 2000); PO Oviasuyi and others, Constraints of Local Government Administration in Nigeria' [2010] (24)(2) *Journal of Social*

It is also the crisis of the independence and autonomy of the Local Governments that compelled the Attorney-General of the Federation to institute an action through an Originating Summons against the thirty-six (36) States of the federation in 2024, the Attorney General of the Federation v the Attorney General of Abia State & 35 Ors.[49] It is the outcome of this suit and how it impacts the independence and the autonomy of the Local governments that is the focus in this part. The issue is, to what extent has the Supreme Court judgement repositioned the Local Governments as an independent and autonomous third-tier government for effective grassroots participation in governance and development in the Nigerian federalism? It is within this context that the Supreme Court judgement is highlighted and discussed in this part of this work.

4.1. *Attorney General of the Federation v Attorney General of Abia State & 35 Ors*

The dispute is over the failure or refusal of the States to pay to the Local Governments the allocations from the Federation Account as enquired under the Constitution and the continued administration of Local Government Areas by some States through Caretaker Committees or Administrators or Interim Councils, contrary to S.1.(2) and S.7(1) of the 1999 Constitution, despite the Supreme

Sciences, 81-86; J Asaju, 'Local Government Autonomy in Nigeria: Politics and Challenges of the 1999 Constitution' [2010] (1)(1) *International Journal of Advanced Legal Studies and Governance*, 98-113; AA Anyebe, 'Federalism as a panacea for cultural diversity in Nigeria' [2015] (15)(3) `*Global Journal of Human Social Science: Sociology & Culture*, 15-24; V Ayeni, `The illusion of three-tier federalism: Rethinking the Nigerian local government system' [1994] (7)(5) *International Journal of Public Sector Management*, 52-65; Oyedele, S.O and others' 'Local government administration and National Development in Nigeria: Challenges and Prospects' [2017](1)(1) *Ilorin Journal of Human Resource Management*,142-154; Ikeanyibe, O.M, 'Model and determinants of state-local governments' relations in Nigeria' [2019] (53)(6) *Journal of Public Administration* 1040-1066; Ayiroosu (n6).

[49] *Attorney General of the Federation v. Attorney General of Abia State ors* (2024) suit SE/CV/343/2024 Judgement delivered on the 11th day of July 2024. (unreported).

Court declaration of the unconstitutionality of the State Governors running the Local Governments through non elected officers.[50]

The case of the plaintiff is that since the states have for decades persistently refused to pay to Local Government Councils the money standing to the credit of their Local Governments in the Federation Account in violation of S.162(4), (5) and (6) of the 1999 Constitution, the Federation can validly pay the said money directly to their owners (the Local Governments) to protect the intention or objective of the Constitution from being defeated, that the governance of Local Government Areas by States using appointees or officers of States such as Local Government Caretaker Committees, Interim Councils and Administrators amounts to governing or taking control of the government of a Local Government Area, a part of Nigeria, contrary to S.7(1) of the 1999 Constitution and therefore in violation of S.1(2) of the 1999 Constitution and that the above mentioned acts of the States in violation of S.162(4), (5) and (6), S.1(2) and S.7(1) of the 1999 Constitution have endangered the continued existence of the Local Government as a third tier of the Federal Governance structure, as most of them are now virtually extinct.[51]

The case of the defendants taken together is essentially that the Federation cannot validly pay the money standing to the credit of the Local Governments in the Federation Account directly to Local Government Councils as to do so would be in violation of S.162(5) and (6) of the 1999 Constitution that require that it be paid directly to the States for the benefit of their Local Government Council and that each State pay same into a State Joint Local Government Account maintained by the State, that the States are entitled to retain the said allocation and use it for the benefit of Local Government Councils, that the failure of some of the States to organize the conduct of democratic elections of local government councils is not

[50] The facts are extracted from the lead Judgement of Agim, JSC.
[51] Ibid.

deliberate as there are subsisting orders of courts in pending suits restraining them from holding democratic elections of Local Government Council in their States.[52]

The Supreme Court, in a majority judgement, among other declarations,

(a) reaffirmed the existence of the local governments as the third-tier of government in Nigeria and not the agents of the State Governments, hence their independence and autonomy must be respected in the spirit of the federal system under the 1999 Constitution.

(b) It further re-declared that the leadership of the Local Government Councils must be democratically elected in compliance with section 7(1) of the Constitution and the unconstitutionality of States' Governors creating Caretaker Committees or Administrators to run Local Government Councils in place of a democratically elected leadership contrary to the Constitution.

(c) Declared that the continued retention of Local Governments' funds and the use of the funds allocated to the Local Governments from the Federation Accounts by States is unconstitutional, illegal and contrary to the democratic principles intended to ensure that these funds are used for the benefit of the local communities.

(d) And thus, the revenues due to the Local Governments from the Federation Account should be allocated to the Local Governments directly, unless where the States are to fully and

[52] The facts are extracted from the lead Judgement of Agim, JSC.

> promptly transfer the funds to the Local Governments.

This order is particularly necessary to revamp the grassroot participation in governance through democratically elected Local Government Councils in the spirit of Nigeria's federalism and make it clear that the Local Governments under the Caretaker Committees or other administrative arrangements should not share in the Federation Accounts.

According to the Court, in reaching these conclusions and to sustain the declarations, it adopted a benevolent, broad, liberal, objective and purposive principles of constitutional interpretation as opposed to a narrow, strict, technical and legalistic interpretation which would not promote its underlying policy and purpose. Thus, relying on a plethora of judicial authorities, Adim, JSC, maintained that:

> This mischief rule of interpretation approach is particularly important in interpreting any part of a Constitution providing for governance in a constitutionally established democratic culture, in order to give the provision a meaning that promotes that values that underlie and are inherent characteristics of an open democratic society and to justify (the) hope and aspirations of those who made strenuous efforts to provide us with a constitution to ensure good governance, but also to protect the rights of Nigerians who are the beneficiaries of the provisions of the Constitution, particularly to ensure… durable democratic institutions.[53]

Agim, JSC, relying on the dictum of Nweze, JSC, in Saraki v FRN, summed it all up where he emphasised that:[54]

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[53] These are extracted from the lead Judgement of Agim, JSC.
[54] (2016) 3 NWLR (pt.1500) 531 at 631-632.

> … the rationale of all binding authorities is that a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus, where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which the Constitution, read as a whole, has set out to regulate, is to be preferred…This approach is consistent with the 'living tree' doctrine of constitutional interpretation enunciated in *Edward v Canada* (1932) AC 124 which postulates that the Constitution "must be capable of growth to meet the future.

Based on these principles, Agim, JSC, in the lead judgement, maintained that the approach of a direct payment to the Local Government Councils would achieve the intention and purpose of the Constitution and accord with the smooth running of the system of paying Local Government Councils their allocations from the Federation Account. To the Court, there is no doubt that a literal and narrow construction of the word "shall" in S.162 (5) of the Constitution as imposing a mandatory duty on the Federation to pay Local Government Councils allocation from the Federation Account, only through the States, would mean that the Federation must pay it to the States only. According to the Court:

> As the facts of this case have shown, such a literal application would work against the intention and purpose of the Constitution and create an unconstitutional status quo, unworkable and oppressive situations. To apply the word "shall" as making it mandatory for the Federation to pay Local Government allocations from the Federation Account through the States would make a constitutional provision prescribing the procedure to facilitate the enjoyment of a right created by the same constitution to override and even extinguish

> the very right created by the Constitution, whose enjoyment it is meant to facilitate.[55]

His Lordship, referring to the repressive attitude of the State Governors in their relationships with the Local Government Councils, maintained that:[56]

> In our present case, the person or body saddled with the constitutional responsibility to implement a method or procedure for the enjoyment of a right created by the Constitution is using that role to destroy that right. In a situation such as this, the constitution should not be applied in a manner as to support the destruction of the said right.

Relying on these judicial views, declarations and reliefs, it is now generally acclaimed that the Supreme Court majority judgement has cleared the doubts that existed about the independence and autonomy of the Local Government Councils as a third-tier government of Nigerian federalism. It is now also clear that the Local Governments are not subordinate to the State Governments, hence not under the control and superintendence of the State Governments. Furthermore, that the financial autonomy of the Local Governments as re-affirmed by the Supreme Court will reinforce government policies at the local communities as the Local Governments Councils can based on the judgement, boast of resources to carry-out their constitutional and statutory functions and duties effectively for the benefit of the grassroots and development of the rural communities.

However, the constitutionality and practicability of the Supreme Court declarations have remained a burning issue in the socio-political environment in Nigeria. Moreover, the dissenting opinion

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[55] *Attorney General of the Federation v. Attorney General of Abia State ors* (2024) suit SE/CV/343/2024 Judgement delivered on the 11th day of July 2024. (unreported) 41-42.

[56] Ibid, 40-41.

of Abiru, JSC, in respect of the financial autonomy of the Local Government Councils and the Federal Government's direct payment to the Local Government Councils cannot easily be forgotten. Abiru, JSC, maintained that the resort to the mischief rule of statutory interpretation, the adoption of the broad, liberal and purposive principles of constitutional interpretation, in reaching the conclusions, is a misdirection. The approach adopted in the majority judgement does not align with the intention of the Constitution, as shown in the wording of section 162 of the Constitution. To him, constitutional alteration would have been a surer and sustainable way to deal issue of the independence and financial autonomy of the local governments. The answer does not lie within the purview of judicial intervention; hence, the declarations and reliefs by the majority judgement are unwarranted. According to His Lordship:[57]

> The prayer of the Plaintiff that this Court should order direct payments of the funds due to the Local Government Areas from the Federation Account to the Local Government Councils by the Federal Government, and thus bypassing the States, is in, my view, an invitation to this Court to engage in judicial legislation and to interpret the provisions of the Constitution in a manner that will undermine the very foundation of the nature of the federalism upon which the provisions of the Constitution were constructed.

One must also not be oblivious that the sources of funds of the Local Government Councils are not limited to the allocations from the Federation Account and grants from the Federal government. Allocations and grants from the State Governments remain major sources of Local Governments' funds. Even the drive for the internally generated revenues by the Local Governments is to be

[57] *Attorney General of the Federation v. Attorney General of Abia State ors* (2024) suit SE/CV/343/2024 Judgement delivered on the 11th day of July 2024. (unreported) 40-41.

simulated through laws made by the State Houses of Assembly. It is, therefore, not clear to what extent the Supreme Court declaration vesting financial autonomy on allocations and grants from the Federal Government to Local Governments will extend to the State Governments' control of funds from other sources outside the Federal Government funds.

Even though the Federal Government has set up a Committee on the implementation of the Supreme Court judgement, it is also doubtful how the recommendations of the Committee will be binding and implemented by the State Governments, as to guarantee the full financial autonomy to the Local Governments without a clear and unambiguous constitutional alterations of the sections of the Constitution as identified in this work that inhibit the functional independence and autonomy of the Local Governments as a third-tier of government for effective grassroots participation in democratic governance and development under the Nigerian federalism in the Fourth Republic.

5. Conclusion And Recommendations

The work concludes that the Supreme Court declarations and reliefs in the case under consideration are only a palliative to the challenges of the independence and autonomy of the Local Government Councils under the 1999 Constitution. Moreover, the practicality of the judgment in terms of enforcement and implementation has remained precatory. Thus, the thirst to bring the Local Governments out of the moribund state and to secure their independence and autonomy for effective discharge of their constitutional functions and duties cannot be doused by the Supreme Court judgement. The need for constitutional alterations to guarantee the independence and autonomy of the Local Governments as a functional third-tier of the government for effective grassroot participation in governance and

development under Nigerian federalism yearns for legislative intervention.

The work, therefore, calls for constitutional alterations to guarantee the independence and autonomy of the Local Governments for a sustainable local government system for effective grassroot participation in democratic governance and development under Nigerian federalism. The constitutional alterations must be directed to sufficiently accommodate the principle of democratic decentralisation, empowering and evolving responsibilities and autonomy to the Local Governments for effective grassroot participation in governance as a third-tier of government.[58] This, therefore, will require, among others, the alteration of the provisions of sections 2(2), 4,5, 6, 7, and 162, 197 (b) and 198 of the Constitution, in particular.

It is certain that the wordings and phraseology in the Constitution relating to the independence and autonomy of the Local Government Councils as they are, are beclouded with ambiguities. Even the Supreme Court noted the ambiguities, hence the resort to the mischief rule of interpretation as it did in this case. The alteration of these sections of the Constitution is imminently necessary to reflect in clear literary terms the aim and intention of the Constitution to establish the Local Governments as an independent and autonomous third-tier government under the 1999 Constitution.

The work further recommends that the constitutional alterations should accommodate a statutory linkage and relationship between the Local Governments and the area stakeholders, like the traditional rulers, chieftains, and other community groups, for an effective interface between the grassroots and the governments for

[58] The Guidelines for Local Government Reform in Nigeria, 1976 which emphasized this model for an independent and autonomous effective local government system for grassroot relevance and participation in governance in Nigeria.

sustainable development. The linkage and relationship, to a great extent, will also guarantee inclusiveness, mutual cooperation, transparency and accountability in some cases to reposition the Local governments for the effective discharge of their functions and responsibilities to the grassroots and the people. The guarantee of transparency and accountability measures will be one of the surest ways for dealing with the corruption, misappropriation and misapplication of the funds, which has become cancerous in the local government administration under the States' control and supervision as presently constituted.

It is submitted that the implementation of these constitutional alterations and measures, beyond the Supreme Court judgment under consideration, will, to a great extent, reposition the Local Governments for an effective local government system for grassroot participation in governance and development under Nigeria's federalism in the Fourth Republic.

ELECTRONIC CASE MANAGEMENT SYSTEM AND ADMINISTRATION OF JUSTICE: EXPANDING THE FRONTIERS OF CASE MANAGEMENT TO MEET 21ST CENTURY JUSTICE NEEDS IN NIGERIA

By

Dr. C. O. Oba*

Abstract

The 21st Century is a technology driven age and for the Nigerian judiciary to overcome the myriads of problems bedeviling its case management system ranging from delay in administration of justice to lack of transparency and public confidence, it must embrace technology. This paper found that although the need to overhaul Nigeria's judicial architecture had been obvious and several steps which had not achieved the level of results needed had been taken in the past, the Covid-19 pandemic acted as a catalyst to awaken stakeholders in the sector to the stark reality that the Nigerian judiciary was fast nose diving into irrelevance and public odium. It changed the narratives from adherence to stereotypes and rigid approaches to the challenges to possibilities of embracing innovative and effective electronic case manage-ment systems and virtual court hearings capable of putting Nigeria in the map of global relevance in justice delivery. The work posited that adopting and implementing an electronic case management system that integrates the operations of relevant institutions in the justice delivery sector and virtual court hearings in suitable cases will reposition the judiciary and put it on a prime pedestal where it can compete favourably with other judiciaries in the world.

Keywords: *Electronic Case Management System, Virtual Court Proceedings, Nigeria, Justice Sector, ICT.*

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1. Introduction

The Covid -19 pandemic, which took the whole world by surprise, brought about a situation where nations of the world had to lockdown various components of their social-economic life and the justice sector was not spared. With the passage of time, it became evident that the situation was not likely to change within a short period. The need to continue rendering services in the midst of the pandemic came to the front burner. One of such sectors where there was need to continue to deliver services to the public was the justice sector. The need to dispense justice cannot be put on hold. The enforcement of fundamental rights of citizens, the right to personal liberty of persons held in detention for one alleged crime or the other, prison inmates awaiting trial and conclusion of their trials or appeals, litigants waiting for the determination of their dispute to enable them know the next step to take, the list is endless. These cannot be put on hold indefinitely. There has to be a way for the justice sector to run even in a pandemic. For some nations of the world, this did not pose much of a challenge. This was because the structures needed to continue to deliver justice despite the pandemic were already in existence. Many of these countries had leveraged on the use of technology to enhance justice delivery. The areas where the judicial sectors of some countries have used technology for more effective justice delivery germane to this work are electronic case management and virtual court proceedings. Electronic case management is a technology enhanced case management system while virtual court proceeding is the conduct of a court proceeding in electronic media platforms like Zoom, Google Meet, Microsoft Team, Skype and other audio or visual platforms.

The judicial sectors in some countries of the world are yet to embrace technology enhanced case management system and virtual court proceedings and were caught unprepared to deliver justice in the wake of the pandemic. Emergency responses had to be taken to salvage the situation and save the judiciary from a situation of total

failure to deliver on its mandate. Nigeria is one of the countries that were caught napping by the pandemic situation.

This paper set out to examine the prospects and challenges of adopting and implementing in Nigeria an electronic case management system and virtual court hearings that synergizes the operation of all segment of justice delivery in Nigeria ranging from the police, the court, the correctional centers, etc. The paper is divided into six parts. Part two discusses the current prevailing method of case management in Nigeria ranging from filing of cases down to execution of court judgments. This part also discusses the current prevailing ways court proceedings are conducted. It further discusses the challenges bedevilling these current systems. Part three examines attempts before the coronavirus pandemic at introducing an electronic case management system in some courts in Nigeria. Part Four examines the prospects of using an electronic case management system and virtual court proceedings to enhance justice delivery in Nigeria. Part five discusses the likely challenges to the effective implementation of an electronic case management system and virtual court proceedings in Nigeria. The author concludes the paper and makes recommendations on how to effectively deploy electronic case management and virtual court proceedings methodology in the Nigerian judicial system in part six. The posture of this work is that when these recommendations are carried out, it will properly position the Nigerian judiciary to meet the justice needs of the nation in the 21st Century.

2. Case Management and Conduct of Court Proceedings Before Covid-19 Pandemic in Nigeria

In most courts in Nigeria prior to the coronavirus pandemic, case management was generally manually done. A party files court processes by taking the documents physically to the registry of the court where the matter is to be filed. The procedure from accessing of the documents for appropriate filing fees to the service of the

documents on all relevant parties by the designated court officials are manually done.

Where a party wants information on the position of a case filed at this stage, the party would have to go to the registry to make enquiries. The next stage is for the case to be assigned to a specific judge. The head of the court[1] or the administrative Judge in a particular judicial division is in charge of assigning cases. At this point, the parties get information about the case from the Registrar of the Judge to whom the case is assigned by either going physically to the registry or placing a call through. Sending of hearing notices are done physically. After judgment is given in a case, the parties apply to obtain hard copies. This also applies to records of proceedings to prosecute any intended appeal.

Specifically, for criminal matters, from the arrest of the suspect by the police, filing of the charge/information by the prosecutorial authorities, arraignment and subsequent incarceration in the correctional center in the case of a person convicted, there is no central data-sharing platform for the different institutions involved. Where the court needs to have an accurate data of inmates serving time and those awaiting trial at the various correctional centers, it will have to depend on the authorities at the Correctional Centers to provide such information which may take months to obtain. The situation is the same at the various police cells where information about the number of suspects detained and the length of time they had spent is not compiled in a coordinated and transparent manner. To try and put some semblance of normalcy to the chaotic situation that can only be the end product of the situation in the correctional centers, the Chief Judges of States in Nigeria and the FCT, Abuja

[1] The Chief Judge of the Federal High Court, the Chief Judge of the High Court of the Federal Capital Territory, the Chief Judge of High Courts in the various states in Nigeria, etc.

are empowered to conduct prison visits. [2]At such visits, inmates who are awaiting trial and have spent close to or more than the time they would have spent if they were convicted of the offence alleged against them are released and set free, those incarcerated for a long time without any charge brought against them are also released pending when charges are brought. As helpful as this procedure is, its impact is infinitesimal in the sea of the problem of prison decongestion occasioned by the poor case management technique deployed by the justice sector.

With regards to conduct of court proceedings, the Constitution of the Federal Republic of Nigeria requires that the proceedings of any court or tribunal in Nigeria including the announcement of the decisions of courts or tribunal be held in public. [3]Although, the term public is not defined by the constitution, it has been held that a court proceeding is held in public when members of the public are allowed unhindered access to the courtroom.[4] This presupposes the existence of a courtroom in a physical building. As a result, the conduct of court proceedings is done in a physical building wherever the court decides to sit. Parties, their legal representations, witnesses and the court officials must all be physically present in the courtroom to satisfy the constitutional requirement. It must be noted that the Nigerian Constitution makes provision for exceptions to proceedings being held in public in certain criminal proceedings which includes where the interest of defence, public safety, public order, public morality will be served or the welfare of persons who have not attained the age of 18 years is in issue, or the protection of private lives of the parties is concerned.

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[2] Criminal Justice (Release from Custody) (Special Provision) Act Cap C40 Laws of the Federation of Nigeria (LFN) 2004, Section 1.

[3] Constitution of the Federal Republic of Nigeria 1999 (As amended), Section 36(3)(4).

[4] Oviasu v Oviasu (1973) 11 SC 315, Edibo v State (2007) AFWLR (Pt 384) 192.

The foregoing case management procedure and conduct of court proceedings in Nigeria have its associated challenges. These have bedeviled the Nigerian judiciary for a long time and contributed greatly to the disillusion of consumers of justice delivery in the country. Chief amongst the challenges is that it occasions undue delay in the administration of justice. Parties have to travel long distances and spend enormous amount of time to file court processes. A lot of time is also wasted in the process of assigning the cases to judges who will hear them. There is delay in communications between litigants and the registry of the court and impede the time for necessary action to be taken. It can take months between when a matter is filed and when the case file is assigned to a judge. This can be quite frustrating for litigants. Court proceedings are adjourned severally to enable witnesses who are public servants including prosecutors who have been transferred from jurisdictions where the case is heard to other jurisdictions to attend court hearings. Simple applications such as applications for order of substituted served that could have been heard and granted with a telephone call put to the Judge can take months to be heard and granted because the court had not been able to physically sit for one reason or the other. Service of court processes can also drag on for months as the process server may have difficulties reaching the party to be served.

There is the issue of corrupt practices in the physical filing of court processes. This ranges from allegations of inserting earlier dates on processes, tampering with case files, proof of service without actual service, etc. This has created a lot of distrust for the system. This is because well managed records serve as control mechanisms that reinforces auditing processes and invariably provide a track record to identify any irregularities that could undermine the credibility of a system.[5]There are also issues with accountability in the revenue from payments of filing fees. Some courts tried to solve the issue of

[5] M. Palmer "Records Management and Accountability Versus Corruption, Fraud and Maladministration Records Management Journal 2000,Vol 10 No 2, 61-72.

accountability with payments of filing fees by directing that payments be made in designated banks and the payment tellers produced as evidence of payment.

As earlier stated, there were attempts at addressing some of these challenges in some courts. For example, the Lagos State judiciary made efforts to introduce e filing but this did not appear to have been fully implemented before the coronavirus pandemic. The Supreme Court of Nigeria has also made efforts in this regard. These will now be discussed in the next segment.

3. Attempts to Introduce Electronic Case Management in Nigeria Before Covid-19 Pandemic

In Nigeria there have been attempts at introducing some form of electronic case management system in the justice sector. In 2013, Lagos State in the South Western part of Nigeria and the legal hobnob in the country launched the electronic case filing system. The E filing system introduced by Lagos State in 2013 set the ball rolling for electronic filing of court processes in Nigeria. Under this system, a lawyer takes his prepared processes to the appropriate section of the High Court registry. There the processes are assessed and the appropriate filing fees are paid after the processes have bee stamped by the registrar and the Commissioner for Oaths where it is necessary. The processes are then taken to the E filing section where they are scanned and uploaded electronically. The first time a lawyer is uploading processes electronically, a username and password is provided for the lawyer or the law firm the lawyer represents. The lawyer with this information can through the portal of the website of the Lagos State judiciary monitor the progress of his case from start to the end. Under this system, the court communicates with the litigants and their legal representatives through emails and text messages. This system in my view appears to be a hybrid of both manual system of filing court processes and an electronic filing system. This is because, the litigants still have to take the processes

physically to the courts registry and file them before they are scanned and uploaded on the courts portal. Like every new innovation, this system encountered several challenges. There was no capacity building of the judicial staff and legal practitioners that are required to drive the process and most persons in this category were not IT savvy. The process was unduly slow before many of the stages where is still manually driven. Stages such as payment of filing fees, assessment of court processes by the designated officers, and assignment of cases to judges were manually done. Internet connectivity in Nigeria is still at the budding stage and this invariably slows down the process. Moreover, stable power supply is still a mirage in Nigeria and this affects negatively any electronic process.

The Supreme Court of Nigeria on its part on the 2nd of February 2018 launched an electronic mailing system called the Supreme Court E-mail Communication System (SECS) and gave a deadline of July 18, 2018 for physical filing of court processes at the Supreme Court. This mailing system allows litigants and their counsel file and serves their processes online without the necessity of a physical visit to the registry of the Supreme Court. Despite the deadline given for the take of this initiative, for a long time afterwards, processes at the Supreme Court of Nigeria are still being filed manually. The closest to electronic case management at the supreme court of Nigeria is that counsel filing matters before the court are required to supply their legal email address on the process submitted for filing for the purpose of service of hearing notice.[6]

In addition, there are provisions in the recent civil procedure rules of some court that enhances electronic case management in certain respect. The High Court Civil Procedure Rules of the Federal

[6] C Unini 'Supreme Court notice on legal email system registration to lawyers having cases with the apex court' (16 August 2018) the Nigeria lawyers available at < https://www.nigerialawyer.com> accessed on 28 September 2020.

Capital Territory, Abuja 2025 allows for service of processes other than originating processes to be served by email where the parties are represented by counsel.[7] It also allows for substituted service of court processes by email or any other electronic means that the court may consider appropriate.[8] In addition, the High Court Civil Procedure Rules of the Federal Capital Territory, Abuja provides that hearing notices may be served on parties by email, Telegram, WhatsApp, SMS and/ or any electronic means that the judge approves.[9] On its part, the Lagos High Court Civil Procedure Rules 2019 make provision for substituted service by way of electronic mails and hearing notices to be served by mail or SMS.[10] The courts have also given judicial backing to service of processes through text messages. In *C.M. & E.S. Ltd v Pazan Services Nig. Ltd*[11] the Supreme Court of Nigeria held that based on the technological age we are in, it will be foolhardy for parties in an action to insist on receiving hard copies of hearing notices before they can be said to have been served with such notice. The Supreme Court of Nigeria went further to hold that once the parties receive the notice through the phone numbers submitted by them to the court, it is sufficient service of such notice.

In the administration of criminal justice, recent procedural legislations have introduced some form of case management procedure. For example, the Administration of Criminal Justice Act (ACJA) 2015 which is an Act of the National Assembly of the Federal Republic of Nigeria applicable to all federal courts there are specific case management provisions. Section15 (1) ACJA provides that where a suspect is arrested whether with or without a warrant and taken to the police station or other arresting agency, specific information of the suspect shall be recorded in a prescribed form.

[7] The High Court Civil Procedure Rules Abuja, 2025, Order 9 Rule 16.
[8] The High Court Civil Procedure Rules Abuja 2025, Order 9 Rule 11 (2)(d).
[9] The High Court Civil Procedure Rules Abuja 2025, Order 9 Rule 17.
[10] The High Court Civil Procedure Rules Lagos 2019, Order 9 Rule 5(1).
[11] (2020) 1 NWLR (Pt 1704) 70 SC.

These information include, the offence the suspect is alleged to have committed, the date and circumstances of the arrest, the full name, occupation and residential address of the suspect, his height, photograph, full fingerprints impressions or any other means of identification. The information must be recorded within 48 hours of the arrest of the suspect.[12] Any further action in respect of the suspect is entered in the record of arrest.[13] ACJA also established at the Nigerian Police a Central Criminal Records Registry and at every state police command a Criminal Records Registry, which shall keep and transmit all such records to the Central Criminal Records Registry. [14]A duty is placed on State police commands or that of the Federal Capital Territory (FCT), Abuja as the case may be to ensure that the decisions of courts in criminal trials are transmitted to the Central Criminal Records Registry within thirty days of such decisions.[15] An officer in charge of a police station or agency authorized to arrest is under obligation to make a report to the nearest Magistrate of all cases of suspects arrested without a warrant stating whether the suspects have been admitted to bail or not. This report is to be made every last working day of every month.[16] On receipts of this report the Magistrate forwards them to the Criminal Justice Monitoring Committee who upon analysing the reports shall advise the Attorney General of the Federation as to the trends of arrest and issues associated with it. This report shall be available upon request to bodies like the National Human Rights Commission, the Legal Aid Council or non –governmental bodies. Where there is failure on the part of an officer in charge of a police station to make this report, the Magistrate shall forward a report to the Chief Judge of the State or FCT, Abuja and the Attorney General

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[12] ACJA 2015, s 15(2).

[13] Ibid 15(3).

[14] Ibid 16 (1)(2). This provision has been replicated in the Nigeria Police Force (Establishment) Act 2020, Section 67(1)(2).

[15] ACJA 2015, s 16.

[16] ACJA 2015, Section 33. This provision has been replicated in the Nigeria Police Force (Establishment) Act 2020, Section 69.

of the State or Federation as the case may be. The law also requires the Chief Magistrate or any Magistrate designated by the Chief Judge for the purpose within a police division to at least every month conduct an inspection of police stations or other places of detention within the Magistrate's territorial jurisdiction other than the correctional center.[17] The Magistrate conducting this inspection is empowered to call for and inspect the record of arrests, direct the arraignment of the suspect, where bail had been refused by the police grant bail where appropriate. The officer in charge of the police station been inspected is under obligation to make available to the inspecting Magistrate the full record of arrest and bail, applications and decisions on bail made within the period and any other facility that the inspecting Magistrate may require. Where the arresting body was an agency of the Federal government other than the police, the inspection shall be undertaken by a Judge of the High Court. Failure of an officer in charge of a police station or arresting agency to make available the required information is treated as misconduct, and such officer shall face disciplinary action.[18]

Despite these attempts at case management in Nigeria, not much of the desired effects appear to have been made. The prosecution of cases still take a long time to conclude, urgent applications are not dispensed with the speed needed, the correctional and detention centers are still overcrowded, there is no synergy between the various institutions in the justice sector, collection of data is done manually and this take a lot of time to achieve and is not done transparently as it should and there is a general dissatisfaction with the justice sector. There is an obvious need to rejig the system for better efficiency and result. The disillusion and frustration of consumers of the justice delivery system is palpable. The popular cliché 'that the judiciary is the last hope of the common man' was

[17] ACJA 2015, Section 34. This provision is replicated in the Nigeria Police Force (Establishment) Act 2020, Section 70 (1)-(4).

[18] ACJA 2015, [18] Sec 34 (5). This provision is replicated in the Nigeria Police Force (Establishment) Act 2020, Section 70 (5).

being replaced with new ones such as 'the common man is the last hope of the judiciary'. However, despite this obvious need, there appears to be apathy on the part of the drivers of the sector to take deliberate and concrete steps to address these issues. The coronavirus pandemic served as the needed thunderbolt to wake them up from the seeming slumber. Some emergency steps had been taken to address some of the issues during the long down period and in the next part these steps will be discussed with a view to x-raying their impact and the need for a more comprehensive and futurist approach.

4. Prospects of Electronic Case Management and Virtual Court Proceedings in Nigeria

The dynamism of the world we live in has brought about changes that make for faster, easier and more efficient ways of doing things. Information technology in the 21st century has changed the way things are done in practically all spheres of life all around the world, Nigeria inclusive. The need to improve the effectiveness and efficiency of the judicial system has necessitated the use of modern information and communication technology (ICT). As earlier mentioned the conventional method of justice delivery in Nigeria is marred with avoidable delays in the dispensation of justice, corruption, forgery, tampering with case files, lack of accessibility of court records and general lack of transparency. It is the position of this work that embracing and integrating ICT into the justice delivery system in Nigeria can to a great extent solve these problems.

It must be noted that the concept of electronic case management and virtual court proceedings is not novel to the world. Long before the coronavirus pandemic, some countries have incorporated electronic case management systems and virtual court proceedings into their mainstream administration of justice systems. Countries like the USA, Australia, South Korea, Rwanda, Tanzania, Kenya, etc. have

all adopted these in many areas of their judicial systems though the procedure in these jurisdictions is still evolving.[19]

In Rwanda, an integrated electronic management system was put in place in 2015. The system records all information on cases from the point of filing to when judgment is delivered (with respect to civil matters) or from the time of when a defendant is arrested to when the sentence of a court against the defendant is executed.[20] This system in Rwanda allows efficient sharing of information among all relevant sector institutions. This is achieved by the system automating the existing work flow processes in the justice sector and providing the relevant institution with a configured interface with which such institutions can perform their individual functions with access to the platform restricted based on the user's roles, permission and case status.[21]

The advantages of this introduction are numerous. The various players in the judicial sector in Rwanda could see with the press of a button a comprehensive overview of cases currently in the courts and the case backlog aggregate. With this type of information readily accessible, the various authorities in the relevant institution can generate a strategic plan for such institutions and resources can be distributed to address identified areas of needs. As such in

[19] A S Asonibari & H T.Akaje "e –path to effective justice delivery: the Nigerian courts in perspective' Available at <http://eprints.covenantuniversity.edu.ng > accessed on 8 August 2020.

[20] Adam Watson, Regis Rukundakuvuga, Khachatur Matevosyan, 'Integrated Justice: an Information Systems Approach to Justice Sector Case Management and Information Sharing-Case Study of the Integrated Electronic Case Management System for the Ministry of Justice in Rwanda" International Journal for Court Administration, Special Issue, Vol 8, No3, July 2017 available at <http://www.iacejournal.org > accessed on 21 September 2020.

[21] Adam Watson, Regis Rukundakuvuga, Khachatur Matevosyan, 'Integrated Justice: an Information Systems Approach to Justice Sector Case Management and Information Sharing-Case Study of the Integrated Electronic Case Management System for the Ministry of Justice in Rwanda" International Journal for Court Administration, Special Issue, Vol 8, No3, July 2017 available at <http://www.iacejournal.org > accessed on 21 September 2020.

Rwanda, institutions that make up the justice sector such as the police, the courts, the public prosecutors and the correctional institution have resources allocated to them based on the strategic plan, which was generated from the information gathered through the integrated electronic case management system. This system speeds up proceedings of court as the delays occasioned by person-to-person communication are cut off. The system has also been known to eliminate duplication of functions amongst the different agencies in the justice sector. As a result of this, less time is spent in transmitting document from one agency to the other. Due to the fact that lapses by any agency in performing their function can be easily deciphered, the integrated electronic case management system in Rwanda helps to ensure compliance with procedure across the various institutions that make up the justice sector. Consumers of legal services access the platform on equal footing, as nepotism and favouritism cannot be accommodated in the integrated electronic case management platform. They also benefit from the provision of electronic filing of court processes, easy payments of filing fees through the online platform, automated reminders of hearing dates and free access to summons and judgments of courts.

The benefits of an electronic case management system enunciated above are urgently needed in the Nigerian judicial sector and as such electronic case management should be adopted in Nigerian courts. Modern realities require that e case management be incorporated into the mainstream administration of justice system. If Nigerian courts must meet the justice need of the country and measure up with the rest of the world in the era of the fourth industrial revolution, incorporating ICT into the administration of justice machinery cannot be overemphasized. The role of the judiciary in a developing economy like Nigeria is far reaching. A vibrant judicial sector where justice is dispensed timeously is a major factor in attracting foreign investment to a country. This position is buttressed by the World Bank report citing the international recognition of the justice sector in Rwanda, which was catalysed by the effective implementation of

automated case management system in the country as the primary factor in the country's high ranking in the enforcing contract section of the Doing Business Report.[22] The state of the justice delivery system in Nigeria has been far from satisfactory for a very long time without deliberate and purposeful steps taken to reposition it to deliver on its mandate. It has been said, "the Nigerian judiciary was on a swift downward spiral to ceremonial irrelevance".[23] In the wake of the Covid 19 pandemic and the consequential lockdown it occasioned, courts in Nigeria were shut down. It became obvious as the days went by that the justice delivery sector couldn't afford to be shut down indefinitely. It became obvious that there was an urgent need for the courts to put in place measures to guarantee continued access to justice and expeditious disposal of cases while minimizing the risk of transmission of the coronavirus.

The heads of various courts through the use of Practice Directions made provisions titling towards electronic case management and adoption of virtual court hearings during the pandemic. There is need at this point to look at some of them.

To ensure that the business of dispensing justice continues during the coronavirus pandemic, the Chief Judge of Lagos Stat issued the Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020. The Practice Direction amongst other things allows for e filing and service of court processes and virtual hearing in specific matters. This will be discussed shortly.

The National Judicial Council which is the body saddled with the responsibility amongst others of regulating the Nigerian judiciary on its part at its 91st Meeting held on the 22nd day of April 2020 constituted a committee whose mandate was to devise guidelines

[22] World Bank Group 'Economy profile Rwanda doing business 2020' available at <https://www.doingbusiness.org> accessed on 29 September 2020.

[23] C A Candide-Johnson, 'law and justice in Nigeria after Covid 19' available at <https://www.dnllegalandstyle.com> accessed on 7 May 2020.

and measures to enable safe court sittings during the Coronavirus Pandemic and areas of necessary cooperation with the Office of the Attorney-General of the Federation and others in meeting the challenges. This gave rise to the National Judicial Council Covid-19 Policy Report: Guidelines for Court Sittings and Related Matters in the Covid-19 period. Several heads of court following this guideline have followed the footsteps of Lagos State and released their own practice directions.[24]

For the purpose of convenience, the discussion shall be centered on the e filing system in Lagos State as provided for under the Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020 and reference will only be made to similar Practice Directions of the Federal High Court of Nigeria, the High Court of the FCT, Abuja, the National Industrial Court, and the Court of Appeal. This is more so that the e filing system as provided for in the Practice Directions of other courts and jurisdictions are similar to that of Lagos in form and content.

It has earlier been pointed out that in the year 2013, Lagos State had introduced e filing system for court processes although it was still at the budding stage. In the wake of the coronavirus pandemic this system was upgraded in June 2020 by adding an e-payment platform that permits payment of relevant filing fees to be made electronically. Support help lines and emails were provided for the various judicial divisions to provide guidance for lawyers and litigants to navigate the process seamlessly.

The Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020 (Covid- 19 Practice Direction) made clear provisions as to how e filing of processes is to be done.

[24] This includes the National Industrial Court of Nigeria Practice Directions and Guidelines for Court Sitting 2020, The Federal High Court of Nigeria Practice Direction 2020 for the Covid 19 Period, the High Court of the Federal Capital Territory, Abuja Covid 19 Practice Direction 2020, etc.

It is my humble view that this is an improvement on the existing structure. By Paragraph 5 of the Covid-19 Practice Direction, the parties or counsel in an action have a duty to ensure every document filed electronically has the email address and mobile telephone number of the counsel or contact person where parties are not represented by counsel. The Registry will receive documents for filing electronically. All documents to be filed must be scanned or converted to an appropriate PDF format and forwarded to the Registry through a designated email address or WhatsApp. [25]Where counsel files documents, each process shall be signed and sealed by such counsel.[26] The Chief Registrar of the High Court of Lagos State shall designate appropriate officials who shall assess the fees payable by parties and communicate same to them by email, WhatsApp or text message. The Parties can then pay the assessed fees by electronic transfer into the bank account of the Court. After payment is made a copy of the electronic receipt issued shall be scanned and sent for verification. When the Court verifies the payment, the processes are deemed filed. The Practice Direction however provides that during the Covid-19 period, where it is impracticable to make e-payment, payment can be made at the Registry of the court. The email address and contact telephone number of the Registry is mandatorily made available on the Judicial Information System (JIS) and the Judiciary Website. The practice direction also makes provision for electronic service of the processes filed by providing that service of court processes may be effected by email, WhatsApp or as otherwise directed by the Court. Such electronic service when made is regarded as good and sufficient service.[27] Service of processes shall be proved by filing an affidavit exhibiting a printout from the electronic device used in sending the process and showing the date and time of receipt of the

[25] The Lagos State Judiciary (Remote Hearing of Cases COVID 19 Pandemic) Practice Direction 2020, Paragraph 6.
[26] Ibid.
[27] The Lagos State Judiciary (Remote Hearing of Cases COVID 19 Pandemic) Practice Direction 2020, Paragraph 11.

processes by the opposing party. Where an electronic mode of service is employed, time shall prima facie begin to run from the date the process was sent. Similar provisions are provided in the Practice Directions of other court earlier referred to. Except for Lagos State which already had the platform for monitoring of the progress of cases through the judicial portal, all the Practice Direction were silence on the possibility of stakeholders monitoring the progress of cases electronically. The reason for the obvious gap may be that since the Practice Direction was meant to cover just the Covid-19 period, its provisions were ad hoc and only addressed immediate needs. They do not address the need for an efficient electronic case management system that will integrate the various institutions involved in the justice sector for more efficient justice delivery in Nigeria. It is conceded that these Practice Directions could serve as the enzymes that will snowball into a full-scale electronic case management system in all courts in Nigeria. The Nigerian justice sector cannot go back to the position it were before the pandemic but rather must use the temporary structure of electronic filing of cases put in place during the pandemic as a spring board to launch an e case management system in all court such as will integrate the operations of all the institutions involved in justice delivery in Nigeria.

More recently, the High Court of the Federal Capital Territory Civil Procedure Rules 2025 has made provision for e filing.[28] By these Rules, all processes to be filed in the court can now be filed and served on parties by electronic means. This is however, consequent upon the Chief Judge of the Court establishing an E-filing Unit which shall be responsible for the maintaining of a designated online site for electronic filing of processes and documents. It is hoped that the establishment of the unit will take place quickly and that this will not remain a provision on paper only.

[28] High court Civil Procedure Rules 2025, Order 3 Part 1 rules 1-11.

4.1 Virtual Proceedings in Nigeria

It can be stated without fear of contradiction that there had been no virtual court proceedings in any court in Nigeria prior to the coronavirus pandemic. The first virtual court proceedings in Nigeria was held in Lagos on May 4, 2020. This was at the Ikeja High Court, Lagos in the case of the State of Lagos v Olalekan Hameed. In line with the Lagos State Judiciary Remote Hearing of Cases Covid-19 Pandemic Period Practice Direction, the court session was held online via Zoom app, between the hours of 11am and 2pm. The Judge, the defendant, his legal team, the prosecution counsel, and all witnesses participated in the session remotely from different locations via the Zoom app. At the conclusion of the session, the judge gave the following verdict "The sentence of this court upon you, Olalekan Hameed, is that you be hanged by the neck until you are pronounced dead and may the Lord have mercy upon your soul. This is the virtual judgment of the court".[29]

After this maiden virtual court proceeding, there have been several others in several courts including the Supreme Court. Recently, a judge of the High Court of the Federal Capital Territory, Abuja granted an application for two of the prosecution witnesses who were in the United Kingdom to testify virtually in the case of FRN v Godwin Emefiele.[30] The various Practice Directions earlier referred to made provisions for the conduct of a virtual proceeding in the various courts. Again for the purpose of convenience I shall be referring only to the Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020. The Practice Direction restricts virtual proceedings to new cases where there is urgency and in pending cases involving urgent or time bound interlocutory applications such as fundamental rights matters where the applicant is in custody. It also applies to adoption of written addresses, delivery

[29]Adebusoye, O. LegalTech: Nigerian Supreme Court Says Virtual Court Judgments are Binding, <https://technext.ng > Accessed on 8 August 2020.
[30] Suit No: FCT/HC/CR/577/2023

of rulings and judgment and any other matter as the Chief Judge may approve.[31] How a remote hearing is conducted is provided for in Paragraph 18 -24 of the Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020.

By these provisions, parties and Counsel are required to liaise with the Court's Registry for the purpose of scheduling a virtual hearing of their case. The Practice Direction makes hearing of a matter virtually to be with the consent of the Parties. Parties or their Counsel may indicate voluntary participation in the Remote Hearing through the official email of the Court. It provides for remote hearings to be done by Zoom, Skype for business or any other video communication method that may be approved by the Court. Before ordering a remote hearing, the Registry will liaise with all counsel on record to ensure that suitable facilities are available. The Court shall thereafter direct an appropriate remote communication method for the hearing or where this is not possible make an order of adjournment of the matter. Notice of a remote hearing shall be stated on the cause list and the judiciary website and shall be communicated to the counsel and/ or parties by e-mail, WhatsApp or any other electronic means as the court may direct. During the virtual proceedings, the court gives directions to the parties on the use of video and audio during the proceedings. Counsel appearing before a virtual court is required to dress appropriately and the parties are also to be properly dressed for court proceedings.

The Practice Direction empowers that the court shall record the proceedings of the remote hearing but recording of the proceedings by counsel and/or the parties shall only be with the leave of the court.[32] Certified True Copy of proceedings of the remote hearing

[31] See the preamble to the Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020.

[32] The Lagos State Judiciary (Remote Hearing of Cases Covid 19 Pandemic) Practice Direction 2020, [32] Paragraph 21 & 22.

shall be made available upon request. Adoption of Written Addresses in a virtual hearing shall be in compliance with the provisions of the Rules of Court, provided that oral argument thereof may be dispensed with by agreement of parties. With regard to delivery of ruling or judgment, the court shall, through the Registry notify counsel and/ or parties by email or WhatsApp of the date reserved for the delivery of Judgment and/ or Ruling.

As great has these provisions are, they are at best temporary and makeshifts provisions to cater for the immediate and urgent need of getting the courts to work and render service even in the pandemic period. There is need for a holistic legal framework providing for all issues pertaining to E filing and virtual court proceedings to meet the justice need of the nation. The High Court of the Capital Territory Abuja Civil Procedure Rules 2025 has incorporated virtual court proceedings in the High Court Rules. Court proceedings can be held virtually upon application of a party or by the direction of the court.[33] The Chief Judge by the rules is empowered to make Practice Direction for the conduct of virtual proceedings. The issue however, is whether providing for virtual court proceedings in the High Court Civil Procedure Rules would allay the fears that the practice is unconstitutional. I will be discussing the constitutionality of virtual court procedures in the next segment.

4.2 The Constitutionality of Virtual/Remote Hearings in Nigeria

Court proceedings are required by the 1999 Nigerian Constitution to be conducted in public. [34] The question then is does remote hearings satisfy this requirement? Is the cyber space a public place to satisfy the constitutional requirement? The Practice Directions requires that notice of a remote hearing shall be stated on the cause list and the

[33] High Court of the Federal Capital Territory Abuja, Civil Procedure Rules 2025, Order 3 Part11 rules 1-2.

[34] The 1999 Constitution of the Federal Republic of Nigeria as amended, Section 36 (3).

judiciary website.[35] What this means is that members of the public are free to join and witness the online proceedings. However, there are argument raising questions like many Nigerians are internet savvy? How many Nigerians can afford to pay for the data required to be part of such remote hearings? These arguments are neither here nor there as not all Nigerian can access the physical court building even if they want to for reason of limitation of space, convenience and hygiene. The Supreme Court of Nigeria in the cases of Attorney General of Lagos State v Attorney General of the Federation[36] and Attorney General of Ekiti State v Attorney General of the Federation[37] has held that virtual court sittings is not unconstitutional although the cases were struck out as been speculative. The Attorneys General of Lagos and Ekiti State had approached the apex court on the issue of the constitutionality of virtual court proceedings. Although the decision of the Supreme Court of Nigeria was not given after hearing the cases on the merit for one to authoritatively state that it forms the stare decisis on the issue, it can safely be state that it has for now laid to rest the issue of the constitutionality of virtual court hearing as even the apex court has conducted many proceedings virtually since the outbreak of the coronavirus pandemic.

4.3 Effect of an Electronic Case Management System and Virtual Court Proceedings on the Administration of Justice in Nigeria

It is the position of this work that the effect of deploying ICT in justice delivery in Nigeria will be far reaching and is the bedrock for driving a judiciary that is efficient, available, transparent and accessible and can occupy a prime place globally in this digital age. It holds the potential of easing the communication system between

[35] The Lagos State Judiciary (Remote Hearing of Cases COVID 19 Pandemic) Practice Direction 2020, Paragraph 18.
[36] (2020) 12 NWLR (Pt 1738) 345.
[37] 2020) 12 NWLR (Pt 1738) 349.

the bar and the bench. An electronic case management system, which begins with e filing of court processes, will reduce paperwork and its incidental cost for lawyers and litigants. An e-case management system that integrates the operations of all relevant institutions in the justice sector will speed up justice delivery and therefore improve the administration of justice. With proper documentation now done over the Internet online legal databases become readily accessible and legal research would be faster and more effective. It will also curb the issue of corruption in the payment of filing and other fees in court as all such payments are now made electronically. It will eradicate corruption in the filing system of courts in Nigeria and make issues of missing files, doctoring of processes in case files a thing of the past. It will simplify and fast track case management. The compilation and transmission of records of proceedings and other vital documents for purposes of appeal will be done faster and more efficiently. A Judge from a computer with the click of a button can find out if new processes have been filed in a case before him and give appropriate directions on it.

Virtual court sittings can also eliminate huge transportation costs of moving witnesses from one part of the country to another to testify in court and this will help bring down the cost of litigation and eradicate delays in hearing of cases. It can also help to decongest the court case docket as urgent applications such as exparte applications can be taking through a virtual hearing.

5. Challenges to Effective Implementation of Electronic Case Management and Virtual Court Proceedings in Nigeria

Challenges in implementing an e-case management system in any sector anywhere in the world are rife. The success story of the implementation of an integrated e case management system in Rwanda was not without challenges. Some of these challenges will

be encountered in implementing similar system in Nigeria. The challenges are however not insurmountable.

These challenges include technical manpower constraints, hardship on self- represented litigants who may not have the resources to fully participate in such proceeding especially so if they are not IT savvy and infrastructural constraints. There is also the limitation on virtual court hearings to matters proceeded upon on affidavit evidence because of the constraints of taking oral evidence in a virtual proceeding. How do you conduct examination of witnesses virtually? A lot is involved when a witness is testifying. The court needs to have a clear view of the demeanour of the witness, which may not be feasible in a virtual hearing. How do you rule out interferences with the witness testimony when the opposing counsel and the court are not physically present where the witness is testifying? However, there is a practice by the courts in South Korea where the witness to testify goes to a court in the district where the witness resides and a video conference device is set up and connected to the court where the case in which the witness is to testify is being heard. The officials of the court where the witness is testifying from put the witness on oath and the witness is then examined through the virtual platform. This takes away the fears of witnesses being tutored as to what to say in his testimony since the witness is testifying from a courtroom with court officials present.

There is also the challenge of cyber computing. There is need to ensure that the person who is appearing before a virtual court hearing is who the person claims to be. This is necessary to remove issues of fake identities that may undermine a witness testimony in a case or the appearance of a defendant in a criminal trial. This also extends to documents filed electronically. There will be the challenge of ensuring that the cyber space of the judiciary website is not hacked and the processes filed tampered with.

6. Conclusion and Recommendations

In the light of the findings and challenges identified in this work on deployment of electronic case management and virtual court proceeding in Nigeria, it is recommended that a comprehensive legal frameworks for electronic case management in Nigeria which should integrate the operations of all relevant institutions in the justice sector such that there will be an effective synergy in the operations of these institution for the overall good of justice delivery in Nigeria.

Secondly, the deployment of electronic case management systems in Nigerian courts being a very capital -intensive project; it is recommended that it be embarked upon in phases. For example, it can be implemented incrementally by starting with simpler modules like basic case tracking such as the one initiated in Lagos in 2013. This can be done from one stratum of court and progressively to other courts until all courts are covered. Then gradually more complex case management features are added to the different courts and ultimately the integration of other justice sector institutions in the case management system.

Furthermore, A legislative backing for virtual proceedings in Nigeria is imperative as the current use of Practice Directions to regulate it is problematic as practice directions has no force of law.

There is also need to put in place structures that can cater for a wider range of cases including cases where oral evidence is taken be heard through a virtual hearing. The Korean example earlier mentioned is recommended.

Capacity building of members of the judiciary, bar and officials in other relevant institutions in the justice sector is a necessity for effective electronic case management system.

There is need to upgrade the ICT infrastructural architecture of courts, registries of the Nigeria Police, Correctional Services and the Ministries of Justice in Nigeria

To safeguard the integrity of information and documents, the generation of a uniform and effective identification database system in Nigeria to check issues of identity theft and remove incidence of fake identities that can undermine taking oral evidence in a virtual proceedings is imperative and therefore recommended.

It is my considered view that an electronic case management system that can synergize the operations of all the relevant institutions in the justice sector in Nigeria is possible and such will go a long way to change the current narrative about the Nigerian justice delivery system to a justice system that is relevant and effective in dispensing justice in the 21st Century.

CONTAINERIZATION: A MODERN TOOL FOR EASY SEA TRANSPORTATION AND THE CHALLENGES IN NIGERIA

By

Dr. Fabian C. Ikeh*

Abstract

Containerization simply means the use of a container to pack goods either for export or import. It could be used for any type of goods whether wet, dry and even for liquid ones, as there are modern containers specifically built to transport liquid products like petroleum and gas. Also, it can be used for any means of transportation as in vehicles for road, airplanes for air, rail tracks for trains, and ships for the seas, which is our focus. Though containers are in different sizes, they generally contain large quantities of goods and so are very good for transportation of commodities that are plenteous and going to long distance places. Their purpose is to evacuate such commodities on time with less stress by not running a long distance several times as in where a container is not used. Despite the above, containerization has its own challenges, which might appear to outweigh its benefits. From our findings, reports have it that containers are being used for human trafficking, drug smuggling, amongst other illegal activities, which have resulted in several lives being lost. The essence of this research was to show that though very useful in modern day sea transportation, containerization has several challenges that arise if it is not used properly. Therefore, it is recommended that containerization should be used for the purpose they are meant for and not otherwise. Again, the laws and regulations applicable to containerization in this country, should be strictly enforced and made to be complied with and punishment met out to offenders

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accordingly where there is any breach of the laws and regulations.

Keywords: *Container, Containerization, Sea, Ship, Maritime Transportation*

1. Introduction

The word transportation can be used in different ways and topics to mean different things. It is used in various ways to designate the process, means or systems by which objects of social importance move through space.[1] Transportation includes moving these objects, through an energy consuming medium, through an environmental medium. Thus, transportation involves moving products from an origin, such as a factory, plant, or workshop, to a destination, such as a warehouse, customer, or retail store. In a supply chain or logistics business, transportation is moving everything that leaves one place to another. This could mean moving something from the manufacturer to the distributor or from the distributor to the customer.[2] Transportation can be by air, water, rail, highway, pipeline, or cable route, using aircraft, ships, trains, trucks, and telecommunication equipment as the mode of transportation.[3]

However, for the purpose of this article, the term is limited to the transportation or movement of people or goods in particular. Accordingly, transportation has been defined as the movement of goods and people from one place to another and the various means by which this movement is accomplished.[4] Transportation means the act, process, or state of moving or transporting. It is the activity of moving goods or people from one place to another. Again,

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[1] J. Smith, Social Aspects of Transport <https://www.encyclopedia.com-transport > accessed 24 March 2025.

[2] R. O'Byrne, what is transfer? <https://www.logisticsbureau.com > accessed 24 March 2025.

[3] Ibid.

[4] Encyclopedia Britannica, Transport <https://www.britannica.com-transport > accessed 24 March 2025.

transportation is defined as a carrier's movement of people, goods, or products from one place to another. It is a means to move from one place to another.[5]

There are many means and modes of transportation. Means of transportation is any of the different types of transportation that are used to move goods and people from one place to another while the mode of transportation is the path used for the movement. However, both terms are often used interchangeably because they go together. Means of transportation include automobile, bus, train, airplane, ship, and so on, while mode of transportation refers to road, air, sea, rail or ocean. There are five main modes of transportation, namely road, rail, sea, air, and multimodal or intermodal transportation. Multimodal or intermodal transportation simply means a combination of other modes of transport to move goods or people.[6] Each of these modes of transportation has its own advantages and disadvantages. The importance of transportation is that it facilitates trade, commerce, and communication that enhance civilization through the interaction of different peoples. Maritime transport is the basis of this article, of which it is necessary to emphasize its various characteristics.

i. Intermodal Transport

Intermodal transportation is also known as multimodal transportation, shipping, or carriage. This means the carriage of goods by at least two different modes of transport, one of which is sea transport on the basis of a single contract of carriage from a place in a country where the intermodal transport operator transports the goods to a place designated for delivery in a different country.[7] It also means the transportation of goods using more than one mode of

[5] R. Beard, Transportation <https://www.yourdictionary.com-transport > accessed 24 March 2025.
[6] M. Philpott, what are the different methods of transportation in logistics? <https://www.philburn.com > accessed 24 March 2025.
[7] African Charter of Maritime Transport Amended, Article 1.

transportation, usually more than one carrier. For example, goods may first be transported by air or sea, and then by rail or truck to their destination.[8] Global freight movement is a critical component of the global freight transportation system that includes ocean, coastal, river, rail, land, and air freight.[9] In some cases, the freight transportation network connects cities in multiple ways, acting as modular substitutes. The prime example is containerized short sea freight, where the carrier or logistics provider has some degree of choice in how to move freight between locations. However, international shipping is often a complement to other modes of transport. This is especially true for intercontinental container shipments and liquid and dry bulk cargo such as oil and grains. Here, international shipping connects highways, railways, inland waterways, sea and coastal routes.[10]

Mode selection, particularly for the movement of containerized goods, involves balancing trade-offs in facilitating trade between global companies and nations. In today's global economy, the competing factors have been time, cost, and reliability of delivery. Low cost modes may be less preferable than faster modes if the payload is very time sensitive. However, the slower, lower-cost modes often carry much larger loads, and with proper planning, these modes can reliably deliver larger quantities to meet just-in-time inventory needs. Just like in a relay race, all modes are needed to deliver containerized cargo from the start line to the finish line.[11]

There are many advantages to multimodal transportation, making it the backbone of the global supply chain and logistics industry. However, some problems and situations are unavoidable due to the

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[8] B.A. Garner, *Black's Law Dictionary* (11th edn. Thomas Reuters, 2019) 1112.
[9] J.J Corbett and J. Winebrake, Effects of Globalization on International Shipping Activity, Paper presented to the Global Forum on Transport and Environment in a Globalizing World, November 10-12, 2008, Guadalajara, Mexico.
[10] (n6)
[11] (n9)

long distance involved. There are some advantages and disadvantages to using multimodal transportation.

These are some of the advantages of multimodal transport:[12]

a. Reduced Costs: Less handling means lower costs. Intermodal fares are generally more predictable. Choosing to transport freight by rail as part of intermodal transport is a particularly good way to reduce costs, as it consumes less fuel when traveling long distances.

b. Fast Service: Intermodal transportation is an excellent way to reduce cargo transit times. The use of intermodal containers also allows for the efficient transfer of goods from one mode of transport to another. Reducing loading and unloading times also makes delivery faster.

c. Maximum Security: Intermodal shipping is a safe method since the merchandise is stored in the same container throughout the journey. Less handling reduces the risk of damage, while the added security provided at stations, rail tracks and ramps prevents theft.

d. Eco-friendly Solution: Reducing the carbon footprint of shipping reduces the environmental damage it causes. When goods are transported using rail transport, the emission of carbon dioxide and carbon monoxide is significantly reduced. Therefore, combining the transportation of goods by rail with other modes of transport through intermodal transport could be a good way to reduce the overall carbon footprint.

e. Available capacity: Since most industries use intermodal transmission, it is a very flexible source of capacity. Companies can also use reverse logistics to fill large containers.

[12] C. de Barra, What is Intermodal Freight | Meaning and benefits < https://www.eurosender.com/blog/en/author/claire > accessed 2 April 2025.

Some of the disadvantages of multimodal transportation are as follows:[13]

a. Infrastructure costs: Heavy cranes are needed to lift containers in different ports when the mode of transport changes. For example, when a container arrives at a seaport, it must be transported onto a flatbed, train, or truck. In addition, seaports need rail and road connections so that goods can be transported to and from the port.

b. Delays: The shipping process may take longer if the selected mode of transportation is slower or if there is no direct route to the destination. In addition, the interruption of one stage of the transport can greatly affect or even stop the rest of the cargo journey.

c. Risk Increase: Multimodal freight relies on more than one mode of transportation, and different carriers may manage each mode. This requires greater logistical coordination and also increases risk. Unforeseen delays due to weather conditions and equipment/technical malfunction are also possible.

ii. **Maritime Transportation**

Maritime Transportation can be referred to as water, sea, river, or ocean transportation. It can also be called maritime or cargo transport. It includes waterways and ports that carry goods and people. It also includes passenger transportation, military, defense, fisheries, or marine resource applications, and maritime support such as navigation and maintenance.[14] Maritime or ocean transportation is any transportation aboard a vessel, ship, boat, barge, or ferry across international waters.[15] It is the movement of

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[13]C. de Barra, What is Intermodal Freight | Meaning and benefits < https://www.eurosender.com/blog/en/author/claire > accessed 2 April 2025.

[14]REJ Schnurr & TR Walker, Shipping and Energy Use <https://www.sciencedirect.com-topics > accessed 2 April 2025.

[15] A. Springer, Marine Transportation <https://www.lawinsider.com-marine > accessed 29 August 2022.

passengers and goods over bodies of water from oceans to rivers.[16] Maritime transport refers to the movement of goods and passengers by waterways. They include sailing ships or barges that pass through or over oceans and lakes, through canals, or along rivers.[17] The Organization for Economic Co-operation and Development (OECD) defines maritime transport as any movement of goods and/or passengers using maritime vessels on voyages made wholly or partly at sea. Therefore,[18] maritime transport involves the transport of passengers and/or goods by sea, which is often referred to as maritime cargo trade, which can be both passenger and cargo transport. Cargo shipping is a very broad term that assumes different ways of chartering cargo ships and there are some types such as tramp, liner, and special cargo. Each type of maritime cargo transport operates according to its operational processes and control procedures, which are managed and controlled by the quality management of the shipping companies and supervised by the relevant state institutions and international maritime control organizations.[19]

Maritime transport comprises the physical transport of goods from the supply zone to the demand zone of certain types of goods, together with all the activities necessary to support and facilitate the said transport. The shipping system has three basic components important for the movement of goods, which are the following:

a. Fixed infrastructure such as ports or terminals

b. Means of transportation such as ships and barges

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[16] J.P. Rodrigue & T. Notteboom, Geography of Transportation Systems <https://www.transportgeography.org-maritime > accessed 2 April 2025.

[17] N.N. Nizaruddin, Introduction to Shipping <https://prezi.com > accessed 2 April 2025.

[18] OECD, Glossary of Statistical Terms <https://stats.oecd.org-detail > accessed 2 August 2025.

[19] S. Šamija , Shipping Management for the Purpose of Efficiency and Safety of Shipping Services <https://www.semanticsscholar.org > accessed 2 April 2025.

c. The regulatory regime necessary to ensure the effective and efficient use of vessels and fixed infrastructure.

However, carrying out cargo services involves a number of business activities, the presence of appropriate infrastructure, procedures for cargo operations, and organizational management systems, such as enterprise resource planning or an information system that integrates all processes and applications within a transportation company or organization. The efficiency of cargo services is determined by the relationship between supply and demand in the cargo market, and the management of maritime transport uses market mechanisms in regulating the relationship of supply and demand.[20] Maritime transportation is an integral part of the global economy, although it is less visible to the general public. The shipping system is a network of specialized vessels, the ports they visit, and the transportation infrastructure from factories to terminals, distribution centers, and markets. Maritime transport is a necessary complement and an occasional alternative to other means of transporting goods at the international level. For many goods and trade routes, there is no direct alternative to maritime trade. On other routes, such as some coastal or short sea shipping or within inland river systems, shipping can offer an alternative to road and rail, depending on cost, time, and infrastructure constraints. Other important maritime transport activities include passenger transport ferries and cruise ships, national defense i.e. maritime vessels, fishing and resource extraction, and navigation services i.e. auxiliary ship tugs, port maintenance vessels, and so on.[21] From the foregoing, maritime transport refers to a means or mode of transport through which goods or cargoes and passengers are transported or carried by sea.

[20] S. Šamija , Shipping Management for the Purpose of Efficiency and Safety of Shipping Services <https://www.semanticsscholar.org > accessed 2 April 2025.

[21] (n9).

Maritime transport is characterized by the need for activity and reliability, the impact on the world economic system, the very high value of property and possible damage to the transport of people and or goods. Ships are also exposed to the risks of maritime accidents caused by human factors, technical failures, cargo damage, and so on. This means that there is a need to provide a certain degree of prevention and protection against the risks of maritime accidents. Thus, since maritime transport is a service industry, it must be capable of providing a quality service to passengers and cargo, among other advantages for a shipping company. Therefore, quality, efficiency and safety are among the most important factors in shipping.[22]

Freight transportation dominates shipping because there is no other way to transport large amounts of goods over long distances at low cost. There are two main types of shipping cargo, namely:

a. Bulk Cargo: Unpackaged cargo, such as minerals e.g. oil, coal, iron ore, bauxite and grain. They are dry or liquid bulk products that rely on the use of specialized vessels such as oil tankers or crude ships and specialized ports and storage facilities. Bulk products usually contain a single origin and destination, with services subject to seasonal changes, with the exception of power transmission. It supports heavy manufacturing; which sector is the cornerstone of any economy.

b. Break-Bulk Cargo: General cargo that has been packed in sacks, boxes, drums, especially containers, which now represents the use of bulk shipping. Bulk products often have multiple origins and destinations. They support manufacturing and retail. However, technical improvements have blurred the distinction between bulk cargo and break-bulk cargo, as both can now be consolidated onto pallets and also loaded into containers.

[22] (n9).

> Shipping grain and coal, which are bulk cargoes, in containers is becoming more common.[23]

Maritime transport is a derivative order that sustains commercial relations. These commercial relationships are also affected by the current maritime cargo capacity. Thus, there is a level of reciprocity between trade and shipping where supply i.e. shipping and demand and trade interact. Shipping is adapting to a number of business trends. The traditional trend is the growing demand for fossil fuels, raw materials and grains, a process associated with regional economic development. However, with outsourced and offshore manufacturing, the growth of trade in spare parts and finished goods was the most common driver of change in shipping. The result was far from uniform in shipping geography, with some sites better connected than others. Not all places are directly linked to shipping, as landlocked countries, like Switzerland, face the challenge of accessing global trade. The development of transnational infrastructure, such as highways and rail corridors that give access to a port, is essential to face this challenge. Being a landlocked country does not necessarily mean that it is excluded from international trade, but in many cases, it means very high transportation costs, which can affect economic development. These costs vary according to the level of economic integration. For example, landlocked European countries have supportive trade agreements with their neighbours, while agreements between landlocked African countries are much less effective.[24]

Maritime transport has traditionally had two disadvantages compared to other modes of transport such as road and rail, even if this comparison could be seen as wrong because they serve different markets. The first is that maritime transport has slow speeds, with

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[23] J-P, Rodriguez, Geography of Shipping <https://www.researchgate.net/publication/315398501 > accessed 10 April 2025.

[24] Ibid.

an average of 15 knots for bulk carriers (26 km/h) and more than 20 knots (37 km/h) for container ships. The second drawback is related to delays and execution time, particularly at ports where loading and unloading takes place. This can involve several days of handling, especially when moving bulk cargo. Therefore, shipping is not attractive to shippers who need fast and reliable deliveries. Despite this, the fate of globalization and shipping remain closely intertwined. This is because global shipping supports trade flows, and more efficient shipping also helps improve domestic and international trade across seas and inland waterways.[25] To alleviate the previous problems, containerization for maritime transport has been developed.

iii. Container Transport

Despite the use of shipping, the shipping industry was still not very profitable as trade costs and shipping costs were high.[26] Therefore, before intermodal containers were used, the question was whether it made economic sense to trade using ships. The most expensive part of the operation was the process of hauling the merchandise. Goods had to be picked up by truck, each good loaded separately from the warehouse and then brought to the port where it was unloaded separately and towed to the dock. Each piece of cargo had to be stacked one on top of the other in the strangely cramped dimensions of the separate bulk ships. Goods are lost, stolen or simply left at the docks mistakenly. Loading and unloading was complicated and took time. Two-thirds of a ship's productive time was spent in port, resulting in lower levels of ship utilization.[27] The fact that the process was inefficient, unreliable and slow meant that shipping costs were very high.

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[25] (n13).

[26] M. Levinson, *The Box: How the Shipping Container Made the World Smaller and the Global Economy Bigger* (Princeton University Press, USA, 2008).

[27] DM Bernhofen *et al.*, "Estimating the impacts of the container revolution on world trade," *Journal of International Economics* 98 (2016) 36-50.

Once again, the industry was as labour-intensive as it was capital-intensive, with millions of workers providing services in and around the port. The dockers were organized into gangs and had strong union support.[28] Since strikes occurred so frequently, higher shipping costs were incurred and the industry's ability to provide reliable service was often called into question.

Therefore, in the 1950s, a businessman Malcolm MacLean thought of the concept of the intermodal container. Concerned about cutting costs, McLean noted that road congestion was increasing and that moving goods by water could be faster with containers. As a result, he developed containers for use in sea or ocean transportation. The benefits of the container were not immediately felt because adoption was a slow process and countless changes were made to the industry. However, because the containers have been used for a long period of time, huge cost reductions and quality improvements have been seen in the shipping industry.

The use of shipping containers is governed by law in Nigeria. The Nigerian Shippers Council (NSC) Act[29] and its subsidiary legislations, regulates amongst others, container deposits, the use of inland container depots and container freight stations. The Shippers' Council regulates the establishment of the Inland Container Depots (ICDs) and Container Freight Stations (CFSs) in the country. The operations of these facilities are essential for the handling and storing of containers inland. Under the Act, there are penalties for offenses for non-compliance with the provisions in the Act and subsidiary legislation relating to the use and management of shipping containers, amongst others. These penalties include fines and imprisonment. This Act also addresses issues of container deposits, which are refundable upon the safe return of the container. Understandably, this arose because shipping companies are at liberty to charge deposits for the safe return of their containers and

[28] (n21).
[29] NSC Act, N133, LFN 2004

the deposits are refundable upon the return of the containers in good condition. The Nigerian Maritime Administration and Safety Agency also plays a role with respect to the use of shipping containers[30]. The Agency enforces safety standards and regulations relating to the use and management of shipping containers. It also ensures compliance with international conventions like Safety of Life at Sea (SOLAS) with respect to the use of containers at sea. The Customs and Excise Management Act (CEMA)[31] governs customs procedures, including the handling of containers at the ports. Under the Act, the Nigerian Customs Service ensures that proper documentation and clearance procedures are complied with during customs clearance for both imports and exports involving shipping containers. The Merchant Shipping Act (MSA)[32] has a bearing to shipping containers as well as it relates to safety and security at sea of a merchant shipping vessel. Also, it deals with handling of dangerous goods and the ship master's responsibility in ship operations.[33] While the above laws do not make specific provisions in any of their sections dedicated to the usage of containers, they deal with issues of handling dangerous goods, written notice and master's or ship owner's responsibility, which are necessarily incidental with dealings in containerization. At the international level, there are two main legislations dealing with containerization. These are Convention on Safe Containers 1972, which was established and implemented by International Maritime Organization. The purpose of this Convention is to maintain a high level of safety in the transport and handling of containers by providing generally accepted test procedures and strength requirements of containers. The other international legislation on containerization is Customs Convention on Containers 1972, which is implemented by the World Customs Organization. The purpose

[30] NIMASA Act 2007 ss. 22, 23 & 323
[31] CEMA No. 35, 2023
[32] MSA Cap. M11, 2007
[33] ibid Ss. 323 & 326

of this Convention is to facilitate the international carriage of goods by containers especially as it relates to customs requirements and treatment. The above Conventions are mainly to ensure safety standards for containers and facilitate their international movement respectively in the transportation of goods. The other ancillary international legislation affecting containerization are International Convention for the Safety of Life at Sea (SOLAS) 1974, which is relevant for the overall safety of maritime transport, including container ships. There is also International Convention for the Prevention of Pollution from Ships (MARPOL) 1973/78, which addresses prevention of pollution from ships, which is equally relevant to container shipping.

The container, which is the main means of transporting the cargo used in the transport of maritime cargo, is used practically all over the world for the transport of goods. The container is the core of a highly automated system for moving goods globally, with the least cost and complexity along the way to create a new economic geography. Poor countries can benefit from this; for example, by getting rid of cheap infrastructure and taxes, for the players of freight shipping, an opportunity is created to increase the profits of this transport system. However, the location of the country is also one of the most important factors in attracting business. A good location means saving time on transportation.[34] The international standardization of containers occurred in 1965. The global adoption of containers has led to dramatic reductions in ocean freight costs.

The containerization was very impressive. This has resulted in shipping companies and ports being less labour intensive because a container ship can be loaded in much less time than a traditional breaking ship would require and uses much less manpower.[35] The world's first container crane was forty times more productive than the average productivity of the entire longshore crew or

[34] (n26) Chapter 1 - The World Made Box 2006.
[35] (n23).

stevedores.[36] Thus, containerization, an intermodal freight transportation system using intermodal containers, eventually displaced the many thousands of workers who were involved in unloading, loading, and sorting goods in the pre-bulk era. This lowered overall costs in the industry as less labour was needed. The development and use of advanced and highly specialized capital machinery further reduced costs.

With the advent of containerization, port operations are becoming faster and more profitable. The mega terminals accommodate huge container ships, each of which is capable of transporting thousands of containers. In addition, the handling of the containers is partially done by the computer. Cranes lift and move containers using spreaders. These changes have significantly reduced the average time a container ship spends in port and therefore lowered the costs of doing business. This is because the longer a container spends in port, the more it costs the shipping company. United Nations Conference on Trade and Development (UNCTAD) stated that the cargo transportation costs faced by shipping lines on new container ships were less than half of the transportation costs on bulk carriers. Strong evidence indicates that the cost of shipping international freight decreased with the widespread adoption of container shipping in the late 1960s.[37]

Once again, due to containerization, the quality of the cargo service has improved. The journey between Europe and Australia was reduced by fewer days.[38] Consequently, major users of international shipping have moved away from bulk crushing to the more modern method of shipping. Shippers who had the option of shipping their goods had opted for container shipping. The stated preference of the shippers is strong evidence that the container was more advantageous and attractive in terms of costs. Shipping was

[36] (n26).
[37] (n23).
[38] (n26).

obviously cheaper with the container. The cost reductions associated with containers have attracted new companies to enter the market, which has not only led to increased competition, but also increased international trade flows while significantly increasing the volume of maritime trade[39].

2. Advantages of Containerization

Although containerization has many advantages for cargo distribution, it also has some challenges or drawbacks. The main advantages of containers are the following[40]:

a. Standardization: A container is a standard transportation product that can be handled anywhere in the world (ISO standard) by specialized means (ships, trucks, barges, wagons), equipment, and terminals. Each container has a unique identification number and volume type code, allowing it to be a unique transport unit that can be managed as such.

b. Flexibility: Containers can be used to transport a variety of cargo such as commodities (coal, wheat), manufactured goods, automobiles, and refrigerated (perishable) cargo. There are modified containers for dry products, liquids (oils and chemical products) and refrigerated products. Discarded containers can be recycled and reused for other purposes.

c. Costs: Container shipping provides lower transportation costs due to the advantages of standardization. Transporting the same amount of bulk cargo in a container is much more times less expensive than conventional means. The containers allow economies of scale in patterns and terminals that were not

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[39] (n23).

[40] J.P. Rodrigues, Containerization Advantages and Challenges < https://transportgeography.org/contents/chapter5/intermodal-transportation-containerization/containerization advantages-drawbacks/ > accessed 2 June 2023.

possible with standard crushing handling. The main cost advantages of containerization stem from lower intermodal transportation costs.

d. Speed: Transshipments are few and fast and ship turnaround times have been reduced from weeks to hours in a day. Due to this characteristic of transshipment, transport chains involving containers are faster. Container shipping networks are well connected and offer a wide range of shipping options. Container ships are also faster than regular cargo ships and provide a more frequent number of port calls, allowing for constant speed.

e. Storage: A container is its own warehouse that protects the merchandise it contains. This means simpler and less expensive packaging for containerized goods, especially consumer goods. Stack ability on ships and trains (double stacking) and on land (container yards) is a net advantage of containerization. With the right equipment, a container yard can increase stacking density.

f. Security and Protection: The content of the container is unknown to the carriers since it can only be opened at the origin (the seller/shipper), the customs and the destination (the buyer). This means less damage and loss (theft).

3. Challenges of Containerization

The following are the main challenges or drawbacks of the containerization process:[41]

a. Site constraints: Containers are a large consumer of terminal space mainly for storage, which means that many intermodal terminals have relocated to the urban fringe. Draft problems in the port began to arise with the introduction of larger containers,

[41].P. Rodrigues, Containerization Advantages and Challenges < https://transportgeography.org/contents/chapter5/intermodal-transportation-containerization/containerization advantages-drawbacks/ > accessed 2 June 2023.

particularly those of the post-Panamax class. A large container ship after the Panamax requires a draft of at least 13 meters.

b. Capital Intensity: Container handling infrastructure and equipment (gantry cranes, storage facilities, internal roads and rail access) are significant capital investments requiring large unavailable capital funds. This requires the resources of large corporations or financial institutions. Additionally, the drive towards automation is increasing the capital intensity of intermodal terminals.

c. Stacking: The complexity of arranging containers, whether on land or in patterns (container ships and double trains), requires frequent re-stacking, creating additional cost and time for terminal operators. The larger the loading unit or yard, the more complex its operational management.

d. Relocation: Due to trade imbalances, many containers are moved empty. However, whether the container is full or empty, it takes up the same amount of space. The stark divergence between global production and consumption requires a reorganization of containerized assets over long distances (across oceans).

e. Theft and Loss: A high-value cargo and a cargo unit that can be forced open or transported (in a truck) indicate the vulnerability level of the cargo between the terminal and the final destination. Around 1,500 containers are lost at sea each year (fall overboard), mainly due to bad weather. In relation to the above is jettison of goods in hazardous weather that could lead to either loss of the ship or the entire cargo on board. Where such a situation occurs, usually containers containing large quantities of goods are jettisoned i.e. thrown overboard to lighten the ship to manage the weather. Of course, such containers thrown away amount to thousands of dollars, which might not be fully recouped even with an insurance cover on the goods.

f. Illegal Trade: A container is a tool used for the illegal trade of goods, drugs, and weapons, as well as illegal immigration rarely. This is because these goods could easily be hidden in the containers in such ways that they cannot be discovered on the container being searched. This has been the case in Nigeria, where most of the time the Nigeria Customs and other agencies of the federal government in the ports that inspect containers in the wharves or at the borders could hardly discover these dangerous drugs.

g. Smuggling: Following from the above, containers aid smuggling, not only for dangerous drugs and weapons but also for genuine goods or merchandise. This arises mainly when the genuine goods and the quantity of the goods packed in a container are not correctly declared or stated in the manifest and other documents used for the importation or exportation of the goods and they slip through the check points into the markets, without the proper fees and taxes paid on them. This makes the various tiers of the government loose revenue due to them and thus affects developments.

h. Economic Sabotage: This is closely derivable from the above because smuggling in goods that are either not permitted or for which the proper fees and taxes are not paid because they are hidden in containers and could not be detected amounts to economic sabotage. This is very rampant in Nigeria now as there are smuggled goods everywhere in the country. Most of these goods came into the country through containerization, which is very convenient way to bring in large quantities of goods into a country. Most of these goods are similar to the goods manufactured locally and so the smuggled goods affect both their production locally and marketing of the same. This is so because imported goods are generally preferred in the country.

i. Increase in Unemployment: As shown above, smuggling leads to economic sabotage, which in turn leads to increase in

unemployment. This comes about because since foreign goods are preferred the local consumers go for them and thus the local manufacturers of similar goods are affected as their own goods are not patronized. Where this arises the business of the local manufacturers would begin to dwindle leading to losses including revenues. This would in turn normally affect those employed in those local industries as the companies could no longer keep them employed and so they would lose their jobs, thus increasing unemployment in the country.

j. Littering of Containers: As could be seen all over the country, containers are littered all over the places. There is virtually to place in this country whether private residences, government offices, various institutions both public and private and so on that shipping containers are not found. They are being used for one thing or the other of which they are not meant for and so occupying spots where they are not supposed to be. Some of them have been in such places for a very long time and are beginning to root away, thereby causing some environmental hazards which cannot easily be detected due to our low technological scientific development to detect such hazards. These containers are expected to be in the wharves and haulage company premises to convey the goods they are meant to carry and not in several unauthorized places as shown above. The above is the order of the day in this country and is not good for the country.

4. Conclusion and Recommendations

As shown above, containerization is very good for carriage of goods by sea and indeed other means of carriage or transportation when they are properly used for what they are meant for and as required by law. The benefits are quite obvious as it is used for the transportation of goods to and fro a country which help in the development of the economy of the country like Nigeria. However, as stated above they have been misused in this country, thus leading to several problems as indicated. This stems primarily from the

wrong usage of shipping containers both within and outside the shipping industry and ports where they are meant to be used. Instead, they are being used in homes, private and public premises and institutions where their usage and management are not regulated. Thus, there are indiscriminate use of containers all over the places for what they are not supposed to be used to the detriment of the populace in general and the economy in particular. This seems not to be abating as more and more shipping containers are being removed outside the shipping industry where they are meant and needed. These ought not to be so because these are not what are expected for such containers or containerization and so should be forestalled. While the wrongful use of the shipping containers within the industry is being tackled daily by some government agencies like the Customs Service and National Drug Law Enforcement Agency, the use of the same outside the industry appears to be the main problem.

In consequence of the above, it is recommended that the governments should ensure that these shipping containers are kept within the shipping industry and used for the purposes they are meant i.e. to transport goods from one destination to the other whether long or short distances, locally or internationally. They should not be used in private homes and or offices whether private or public for other purposes. As above stated, there are no specific provisions in any section of the relevant legislation dealing with the storage and usage of shipping containers in the country. Therefore, the extant laws and regulations governing containerization or the use of containers, above stated, should be amended with specific provisions made in certain sections relating to the storage and usage of containers and the same should be strictly enforced and any person in breach of the same handed the right punishment. Also, a government agency or committee to ensure compliance and enforcement of the extant laws and regulations should be set up at the State levels to ensure that shipping containers are not removed outside the shipping industry to be stored and used elsewhere.

Further, all containers in private residences, private and public offices and places should be removed forthwith and returned to the shipping companies premises for their proper storage and usage. Those shipping containers that have deteriorated badly should be properly disposed through the re-circling of the same, which would generate revenue for the government and employment for the populace. This is to forestall environmental damages and hazards in the country, which have not been properly determined because of lack of technical capacity and technological capability to do so. The above would cleanse the environment of the hazards associated with such wrongful usages which have arisen from shipping containers being stationed in particular spots for a very long time without being used for transportation of goods as required and have thus begun to experience deterioration due to wear and tear arising from bad weather. Finally, there should be education of the general public of the proper usage of shipping containers in the shipping industry and the environmental hazards caused in their wrongful usage in homes, private and public premises and institutions, and of course the economic losses and dangers of the same to the country.

BALANCING SPEED AND SAFEGUARDS: RETHINKING ELECTRONIC SERVICE AND THE RIGHT TO BE HEARD IN NIGERIA

By

Promise Billion Agunia*

Abstract

This article explored the issues facing the service of court processes in Nigeria and suggested practical reforms that balance speed with safeguards to ensure justice and the right to a fair hearing. Despite recent improvements in electronic services, the justice system still relies too heavily on traditional manual methods, which are slow, unreliable and open to abuse. Proper service is fundamental, as defective service robs the court of its jurisdiction to hear and determine a matter. Using the doctrinal research methodology and relying on statutes, rules of court, practice directions, case law and scholarly works, the article rethinks e-service and the right to a fair hearing, proposing reforms to balance speed and safeguards. Using global best practices, the article argued that electronic service is both necessary and workable and can be implemented without sacrificing safeguards for speed and convenience. The article emphasized that while some Nigerian court rules already permit email service, their implementation and enforcement are ineffective. The article then set out six key reforms, which include amending the court rules across the Federation to allow electronic service; building the digital tools needed to support it, requiring all parties to provide email or other electronic contact details; training court staff and judges; protecting people who have little or no access to digital tech and ensuring strong national leadership and institutional collaboration

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to drive the reform. It concluded that with the right rules, digital communication tools, training and compliance, electronic services can help courts work faster while still respecting the constitutional right to be heard.

Keywords: *Electronic Service, Fair Hearing, Access to Justice, Judicial Reform, Court Process Delivery*

1. Introduction

Every lawsuit in both trial and appellate courts must pass through a simple but essential step, which is giving the other party notice. Without that, such matter cannot validly proceed. The court has no power to act, and the person affected has no fair chance to respond. That is why the law treats service of court processes as the foundation of every valid proceeding. Once service fails, everything built on it falls apart. But in Nigeria today, this basic step suffers serious setback. Often times, serving court processes, like writs and notices of appeal, is slow, unreliable and unverifiable.

Some parties intentionally evade service so as to frustrate the litigant or appellant. Others exploit technical rules and loopholes to set aside the entire proceeding. Worryingly, the system still relies on outdated methods such as manual delivery, paper records and handwritten endorsements. This approach makes it difficult to track, enforce or prove that service was actually effected. Even when courts know that a party is aware of a case, they are still bound by law to set aside proceedings where service was not done as prescribed by the law.

This system frustrates both justice and efficiency. It wastes time, increases costs and denies timely access to the courts. Every delay caused by poor service affects someone's right to be heard. And yet, rules of court in most states in Nigeria have remained stuck in the past. There is little consistency across rules of court. Only a few jurisdictions like Rivers State, Lagos State and a few others make room for modern tools like e-filing, email or WhatsApp service. The legal mail system also helps to promote this course. Even where

rules of court and practice directions allow them, courts (especially at trial level) are often reluctant to recognize and admit them due to lack of convincing evidence that the electronic service has produced the desired result of proper service.

This paper therefore seeks to ask a simple but urgent question: how can Nigeria modernize its service of court processes without compromising the right to a fair hearing? We already have parts of the answer, as courts are starting to accept electronic service in limited cases. This paper joins in answering this question so as to balance the speed and convenience that electronic service promises with the safeguards needed to address the risks it poses.

2. Service of Court Process – What It Means

To understand why service matters, one must begin with what it actually does. Simply put, service of court processes (whether personal or substituted) is how a party is formally brought within the authority of the court.[11] Until this happens, the court cannot proceed.[2] In a plethora of cases, the courts have overstressed this principle. In *Okoma v Udoh*,[3] the Court of Appeal held that service of process is 'vital and fundamental as it confers jurisdiction on the court to entertain the matter.'

Where it is not done, or not properly done, everything else collapses. The Black's Law Dictionary defines service as the formal delivery of a writ, summons or other legal document.[4] The emphasis here is on formality and notice. A party must be put on notice in a manner that the law recognises. Personal awareness is not enough. In

[1] *Okoye v Centre Point Merchant Bank Ltd.* (2008) All FWLR (Pt. 441) 810; *Nwankwo & Anor v INEC & Ors* (2023) LPELR-61158(CA).
[2] Ibid.
[3] (2002) 1 NWLR (Pt 748) 438.
[4] B A Garner (ed.), *Black's Law Dictionary* (10th edn. Thomson Reuters 2014) 1576.

Ononye v Chukwuma,[5] the court made it clear that even if a defendant knows they have been sued, that knowledge does not excuse the absence of proper service.

The legal framework governing the service of court processes is contained in various rules of court and enabling statutes. The High Court Rules, the Federal High Court (Civil Procedure) Rules 2019, the Customary Court of Appeal Rules, the Court of Appeal Rules 2021 and the Supreme Court Rules 2024 (as amended) all contain provisions governing service. Under these rules, service can be personal, substituted or, in some cases, electronic. Personal service requires direct delivery of court processes to the party concerned. Substituted service, on the other hand, requires a court order authorizing delivery by alternative means such as posting on a door, publishing in a newspaper, or delivering to another person at a known address.

The Court of Appeal Rules (CAR) 2021 now allow notices of appeal to be served personally or by electronic means, including email. Rule 1 of Order 2 of the CAR 2021 states that where a respondent has an electronic mail address, service may be effected by email. But the same rule also provides that if the court is satisfied that the notice has actually been communicated, it will not entertain objections based on non-compliance with the form of service. This is a modest but important shift. The Supreme Court Rules 2024 make similar provisions adding any other electronic means of service other than email. However, as Shima and Aboho have shown, these new provisions are not always enforced.[6] Courts remain inconsistent, and many registrars still prefer physical service even where digital service is expressly allowed.[6] The rules themselves are not always harmonized. Most trial court rules make

[5] (2005) 17 NWLR (Pt 953) 90.

[6] V A Shima and B Aboho, 'Electronic Filing and Service of Court Processes under the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014 [6] Ibid.

no mention of electronic service. This means that even where appellate courts lead the way, the lower courts remain bound to outdated procedures.

More fundamentally, the current framework lacks a clear national standard. Courts interpret rules differently. Registrars apply them unevenly. Litigants or their legal representatives exploit the gaps to their advantage. This opens the door to delay, forum-shopping and abuse of court process. As Olatunji argues, technical objections to service remain a common and effective strategy for stalling cases.[7] What emerges from this framework is a legal regime that recognizes the importance of service but struggles to enforce it with clarity or consistency.

3. Service of Court Process as Fundamental to Fair Hearing

Fair hearing is at the heart of proper service of court processes. However, mere awareness of a case is not a substitute for proper service.[8] Under the law, the right to fair hearing is a constitutional guarantee, not a discretionary privilege. This right protects a party and ensures that he is not ambushed or prejudiced. Undoubtedly, the insistence on proper service and not mere awareness is rooted in the supreme law of the land, which is binding on all persons and authorities.[9] Section 36(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended guarantees the right of every person to a fair hearing before any court or tribunal.

As the Supreme Court rightly stated in *Torri v National Park Service of Nigeria,*[10] fair hearing is not an abstract notion. It rests on procedures that are just, impartial and transparent. It is not a matter

[7] Y J Olatunji, 'An Analysis of Service of Originating Process Vis-a-Vis the Legal Implication of Defective Service in Nigeria' [2022] *LAWSAN UniUyo Journal*;1-16.

[8] *Ononye v Chukwuma* (2005) 17 NWLR (Pt953) 90; Anyafulude (2022).

[9] Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004, s 1.

[10] (2011) LPELR-8142(SC).

of form but of substance which must be assessed on the specific facts of the case.[11] The right inevitably includes timely notice of the case, adequate opportunity to respond and equal footing in presenting one's case. Once breached, no matter how compelling the substantive outcome, the entire proceeding collapses. Service of court process is thus the mechanism that activates this right. It therefore follows that without proper service, the right to be heard cannot arise.[12]

4. Procedural Delay and the Burden of Conventional Service

Conventional service of court processes is one of the factors that contribute to delay in judicial proceedings. Many cases stall not because the issues are complex, but because parties cannot be properly or promptly served, and the court must continue to adjourn until it is satisfied that service has been properly done. The conventional system relies heavily on manual processes. Bailiffs, who are often underpaid and poorly supervised, deliver physical documents with little oversight. Affidavits of service are routinely challenged. And when a party cannot be found, courts must entertain time-consuming applications for substituted service. Each step adds days or weeks to already overburdened dockets. The effect is systemic. In *Integrated Builders v Domzaq Ventures (Nig) Ltd*,[13] the Court of Appeal acknowledged that courts must ensure that both parties are given notice before any decision is taken. But it also stated that failure to serve delays proceedings and produces injustice. This problem is not limited to civil cases. Appeals collapse when notices are not served. Motions are struck out. Judgements are voided. A simple failure in procedure may undo years of litigation.

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[11] *Gbadamosi v. Dairo* (2007) LPELR-1315(SC).
[12] *Skencosult v. Ukey* (1981) 1 SC 6; *Eimskip Ltd v. Exquisite Ind. (Nig.) Ltd* (2003) 4 NWLR (Pt 809) 88.
[13] (2005) 2 NWLR (Pt 909) 97.

According to Asonibare and Akaje, service is one of the procedural bottlenecks in Nigerian judicial system, including the appellate level.[14] Bailiffs often lack transport or cannot locate parties. Documents are misplaced or returned. Records are poorly kept. Court registries do not maintain reliable tracking systems. In most cases, judges have to rely entirely on the bailiff's affidavit of service, which is an unverified account that can easily be denied or challenged. Delays caused by service failures also create incentives for abuse. Frynas notes that many litigants deliberately avoid service as a litigation strategy.[15] They change addresses without notice. They instruct relatives and neighbours to reject documents. Some even obtain injunctions on the basis of *ex parte* applications, knowing that the other party will be unable to challenge the proceedings in time.

Courts often contribute to the problem. Judges vary in how strictly they enforce the rules. Some overlook delay and irregularities in service. Others apply the rules rigidly, even where the party clearly received notice. In *Ecobank (Nig.) Plc v Kunle*,[16] the Supreme Court set aside the entire proceedings because the hearing notice was not served. However, in other cases, courts have excused similar failures where they believe the party was already aware of the case. This uneven approach leads to confusion. What is treated as a fatal defect in one court may be ignored in another. This inconsistency weakens public confidence. Litigants come to see the system as uncertain and open to abuse. Lawyers rely on technical objections to defeat claims that should be decided on their merits. The public sees delay and manipulation not as exceptions, but as standard practice. While the

[14] A S Asonibare and H T Akaje, 'E-Path to Effective Justice Delivery: The Nigerian Courts in Perspective' (Kwara State University Library).
[15] J G Frynas, "Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners' [2001] (10)(3) *Social & Legal Studies*;397-419.
[16] (2019) 10 NWLR (Pt 1679) 90.

Constitution guarantees fair and timely hearing, the experience of many litigants often evidences the opposite.

The problem is not with the requirement of service itself. That safeguard must remain. The issue is with how service is done. A system that still relies on physical delivery, handwritten records and bailiff discretion cannot support a modern court process. Justice today requires speed, transparency and proof. Service must be done in a way that is reliable, verifiable and indisputable. The reform being advocated is not about lowering standards, but about using efficient tools to meet them. One such tool is electronic service.

5. Electronic Service of Court Processes in Nigeria – Rivers State as a Case Study

Electronic service is not a new idea. However, it gained momentum during the COVID-19 pandemic, which exposed the limitations of manual litigation and forced courts to adopt remote and contactless procedures. As physical access to courtrooms became restricted, the judiciary had to rely on digital tools to ensure continuity. This created a turning point for embracing electronic service not as an exception, but as a necessary tool for sustaining access to justice. As a result, rules of court started undergoing some amendment to reflect this reality. The Supreme Court Rules 2024 provides as follows:

> Any reference in these Rules to an address for service within or outside the Federal Republic of Nigeria, means a physical, postal, or electronic mail address, a GSM telephone number or any other available mode of communication where notices, summons, warrants, proceedings and other documents, etc may be left, sent, posted or transmitted if not required to be served personally.[17]

[17] Supreme Court Rules 2024, order 3 rule 1.

The Court of Appeal Rules (CAR) 2021 also has similar provisions that embrace service of appellate processes.[18] Both allow notices of appeal to be served by email. If the court is satisfied that the party actually received the notice, it will not reject the service just because it was not done in the usual way.[19]

Rivers State, Lagos States and Imo States are among the states that are setting the pace for eservice of court processes in Nigeria. Lagos and Imo have the Judiciary Information System (JIS) which automate judicial processes. In Rivers State, this trend has taken a bold and operational turn. The High Court of Rivers State (Civil Procedure) Rules 2023 introduced a forward-looking regime that permits service of non-originating processes through platforms such as WhatsApp, Facebook, email, RIVCOMIS and any other electronic means the Chief Judge may approve. To be sure, the Rules provides as follows:

> Service of all non-originating Court processes may be made by electronic means such as email, WhatsApp, Facebook, World Wide Web etc posted to the electronic address of the person to be served, in addition to being posted to being posted on RIVCOMIS platform or any other platform that the Chief Judge may direct in writing, and printout of the electronic service shall be confirmation of the service.[20]

Under Order 9 Rule 1(4) of the High Court of Rivers State (Civil Procedure) Rule 2023, such service is valid without the consent of the party being served, and the proof of service is the printout or digital evidence of transmission. It has been argued that from the decision of the Supreme Court in *ENL Consortium Ltd. V Shambilat*

[18] Court of Appeal Rules 2021, order 2 rules 1(a) and 5.
[19] CAR 2021, proviso to order 2 rule 1(a); SCR 2024, proviso to order 3 rule 2(b).
[20] High Court of Rivers State (Civil Procedure) Rules 2023, order 9 rule 1(4).

Shelter (Nig.) Ltd,[21] even phone calls and text messages may satisfy the notice requirement where properly applied.[22] While these rules still exclude originating processes, they provide a practical route to procedural efficiency. This shift departs from older cases such as *Continental Sales Ltd. v R. Shipping Inc*[23] where consent was required for such service to be valid. This demonstrates a growing legal recognition of digital platforms.

This innovative reform in the High Court of Rivers State (Civil Procedure) Rules 2023 is being implemented through the RIVCOMIS platform, which offers an integrated platform for electronic filing, fee assessment, court assignment and service of processes. Once a case is filed and the first service is effected manually, the system activates an automated cycle where future filings and notices (except hearing notice) are transmitted directly to the registered emails and phones of all parties. Bailiffs are required to follow up every electronic service with a confirming phone call to confirm successful delivery or receipt of the process. RIVCOMIS also tracks every step of case progression, eliminating problems such as duplication of suit numbers, manual errors and loss of documents. Notifications are timestamped, recorded and transmitted via legal mail to ensure transparency and accountability. In contrast to the slow, fragmented manual process, this model strengthens judicial efficiency, minimises room for abuse and promotes real-time justice delivery.

The approach aligns with the position of this this paper to the effect that rules of court should not only recognize on e-service but they should also be matched by infrastructural readiness and administrative discipline to ensure equality, fairness and efficiency.

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[21] (2022) LPELR-58028(SC).

[22] B S Kokpan, 'Legal Analysis of The Essential Innovations in the Rivers State High Court (Civil Procedure) Rules, 2023' (Rivers State University - Department of Jurisprudence and International Law 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4722234> accessed 18 April 2025. [23] (2012) LPELR-7905(CA).

This innovation strengthens the constitutional right to fair hearing by ensuring that no party is denied the opportunity to be heard due to logistical or procedural failures in service. Although the RIVCOMIS appears not to accommodate persons with disabilities, the ICT centre set up in the court complex for lawyers and other users without access to computers or the internet can help to bridge this gap and mitigate the effects of digital divide. These innovations, position Rivers State as a practical model from which other jurisdictions can learn from.

Although the e-service system is a serious step forward, it also has its own concerns and risks which we must not ignore. We are living in a world where there is poor power supply, poor internet connectivity and high data cost which can affect one's availability on the web or social media space. As rightly argued by Kokpan, a message may be sent without being received due to technical barriers such as bandwidth, power failure or device issues.[23] Phone calls and SMS, which do not require internet connection, may sometimes fail due to no fault of the parties. This is one of the reasons why most courts in Rivers State now recommend a combination of electronic and traditional methods of service, where feasible, to cure such risk and enhance evidential integrity.[24]

Also, in practice, electronic service is rarely used and enforced in lower courts like Area Courts (AC), Customary Courts (CC), and even Customary Court of Appeal (CCA). Most lower courts do not have clear rules on electronic service. Their procedures still focus on personal or substituted service. Some registrars, bailiffs and even lawyers are more familiar with these older methods and therefore prefer them over digital alternatives. Some courts too are hesitant in recognizing electronic service. They worry about whether the other party will actually see an email or text message. Sometimes they question whether screenshots, read or delivery receipts or system

[23] Kokpan (n 22).
[24] ibid

logs are enough proof. So even when electronic service is allowed, it is often ignored unless backed by proof of physical service. This hesitation is understandable but somewhat misplaced.

As Onuzulike argues, courts already accept substituted service in situations where personal delivery is difficult.[25] If courts can presume that a newspaper advert or pasted notice will come to the party's attention, there is no reason to distrust verified electronic delivery, especially where the address is provided by the party. In fact, electronic service is often more reliable because it creates a time-stamped record. It therefore allows for digital receipts which can be tracked.

In their research, Shima and Aboho show that courts already use e-filing systems in some jurisdictions,[26] including the National Industrial Court of Nigeria (NICN), which permits electronic service.[27] However, even there, uptake is slow. The problem is not just about the legal recognition of e-service, it is more about institutional enforcement and efficacy. Many court staff are not adequately trained to use these tools. The infrastructure is weak, power supply is unstable and internet access is not always reliable in all localities. There is also no unified national platform for simplicity and uniformity. There is also the issues of exclusion, fairness and digital divide. According to Omodele, digital tools can widen inequality if not carefully managed.[28] Despite how widely

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[25] C Onuzulike, 'Social Media and Substituted Service of Court Processes in Nigeria: An Analysis of Contemporary Trends' [2019] (10)(2) *The Gravitas Review of Business & Property Law*;1-10.

[26] V A Shima and B Aboho, 'Electronic Filing and Service of Court Processes under the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014: A Catalyst for Trial within a Reasonable Time in Nigeria' [2018] *Benue State University Law Journal*;298-313.

[27] National Industrial Court of Nigeria (Civil Procedure) Rules 2017, order 7 rule 1(e)(f).

[28] A O Omodele and O A Olugasa, 'The Pros and Cons of Technology in The Judicial Process in Lagos State, Nigeria' [2023] (13)(1) *African Journal of Humanities & Contemporary Education Research*;329-341.

digital devices have spread, the truth is that not every party or even their Counsel has access to email, WhatsApp, smartphones or stable internet. Some of the litigants who choose to do their matters without the service of a legal representative may not be digitally literate to receive electronic copies or service. For this reason, an electronic-only system might exclude the very people it is meant to help. This risk must also be taken seriously as we move for this reform.

Notwithstanding the foregoing risks, the benefits of electronic service abound. It is faster and more convenient. It reduces the risk of evading service. It cuts cost. It allows service to be completed within hours or even minutes, not days or even weeks. And as Sule and Rilwanu show in their review of global trends, many countries have embraced electronic or social media service precisely for these reasons.[29] South African courts have allowed service through WhatsApp. Courts in India and Australia have approved service via Facebook where traditional methods fail or are impracticable.[30]

Although these jurisdictions impose safeguards, they do not outrightly reject technology. The superior courts of record are increasingly adopting the e-service system, and other courts across the federation, including lower courts and tribunals, need to follow suit. To prevent fragmentation, Nigeria needs a unified system of electronic service across all jurisdictions. Without it, lawyers must navigate different platforms and procedures each time they handle a case outside jurisdictions. This places older and less tech-savvy lawyers at a disadvantage, thereby widening the digital gap between them and the Gen Z practitioners. Thus, a standardised system would promote uniformity, reduce learning curve and improve nationwide access to justice.

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[29] I Sule and S M Rilwanu, 'Global Trend in Service of Court Processes through Social Media: Has that Ship Sailed in Nigeria? [2021] (14)(2) *University of Jos Law Journal*;265-285.

[30] Ibid.

6. Legal Effect of Defective or Improper Service

The law does not treat service as a mere technical requirement. It treats it as a jurisdictional issue. This means that without proper service, a court cannot hear the case, no matter how urgent or important it may be. This is a basic principle of law that has received judicial recognitions. It is settled law that where a process that ought to be served is not served, the entire proceedings are void.[31] In *Idiata v Ejeko*,[32] the Court of Appeal echoed the principle that failure to effect personal service where required robs the court of jurisdiction. The Supreme Court in *APC v Nduul*,[34] struck out an entire appeal because the opposing party was not served with the brief of argument. The court did not inquire into whether the respondent was aware of the matter or whether the outcome was just. It focused solely on the absence of service. That absence stripped the court of jurisdiction. Similarly, in *Unipetrol (Nig.) Plc v Agip (Nig.) Plc*,[33] the court stressed that proper service of a writ is a condition precedent to the validity of any action. Without it, the suit is not properly before the court and any judgment obtained thereupon is a nullity.

These decisions reflect the constitutional link between service and fair hearing. Section 36 of the 1999 Constitution guarantees the right of every person to be heard before a decision is made against them. But in this context, the right to be heard only becomes meaningful if the person is first made aware of the proceedings. Service is the bridge between the party and the court. Where that bridge fails, the right to be heard is denied. As the Court of Appeal put it in *Madueke v Madueke*,[34] a failure to serve a hearing notice violates the principle

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[31] *Africa C. B. PLC v. Losada Nig. Ltd & Anor* (1995) 7 NWLR (Pt. 405) 26; *Uchendu & Ors v Ogboni & Ors* (1999) 5 NWLR (Pt. 603) 337; *Kida v Ogunmola* (2006) 13 NWLR (Pt. 997) 377; *Tsokwa Motors (Nig.) Ltd v United Bank for Arica* Plc (2008) 2 NWLR (pt. 1071) 347.

[32] (2005) 11 NWLR (Pt 936) 349. [34] (2018) 2 NWLR (Pt 1602) 5.

[33] (2002) 14 NWLR (Pt 787) 312.

[34] (2012) 4 NWLR (Pt 1289) 77.

of *audi alteram partem* and renders the entire process fundamentally defective.

Improper service may also arise where a process is served in a way that does not comply with the rules of court. In *Okoma v Udoh*, the court held that service through a party's wife or child, where the rules require personal service, is invalid. In *Odutola v Kayode*,[35] the process was served through the appellant's son, which the court found insufficient. These cases point to a strict procedural standard: not just that service must be done, but that it must be done in the manner prescribed by law. Even where the party admits to being aware of the case, that awareness does not save the proceedings if service was not properly carried out. In other words, the law does not allow the court to substitute actual knowledge for formal service. This was seen in the case of *Ezim v Menakaya*,[36] where the Supreme Court held that a judgment obtained without service of the notice of appeal was a nullity, despite evidence that the party knew about the appeal. The absence of service meant the jurisdiction of the court was never invoked properly.

It therefore means that one mistake in serving a court process can vitiate all the time and effort a party or his Counsel has invested in preparing the entire process (whether originating or non originating). The law gives little or no room for discretion. Courts cannot overlook or excuse defective service based on feelings, sympathy or common sense. A party who is not properly served has the right to set aside the proceedings. This is why any move towards electronic service must be carefully structured and considered. The standard of the law is not lower simply because we are adapting to modern technology. Electronic service must meet the same legal test or threshold as personal or substituted service as prescribed in the rules of court. It must provide proof that the document was actually delivered, it must give the other party clear notice of the case and it

[35] (1994) 2 NWLR (Pt 324) 1.
[36] (2018) 9 NWLR (Pt 1623) 112.

must be done in strict compliance with rules that leave no doubt as to its validity. Without this, courts may be reluctant to accept electronic service as a reliable alternative.

7. Lessons from South Africa and India

a. South Africa

South Africa legally recognized electronic service with the 2012 amendment of its High Court Rules, which introduced rule 4A to allow delivery of non-originating court processes by email or facsimile, in line with the Electronic Communications and Transactions Act 25 of 2002. The case of *CMC Woodworking Machinery (Pty) Ltd v Pieter Odendaal Kitchens*[37] affirmed this development when it permitted substituted service via Facebook messaging where traditional means had failed. The court accepted that technology has changed how people communicate and found that electronic service, if likely to reach the intended recipient, can meet the demands of justice.[38]

However, the court was aware of the risk of relying solely on this electronic media and ordered a publication in a newspaper alongside the Facebook message to ensure notice and greater reachability. This case illustrates South Africa's pragmatic approach in balancing the law with modern innovations. This case also demonstrates that courts can, in appropriate cases, permit electronic service even where rules do not expressly provide for it.[39] For Nigeria, this implies that courts can rely on their inherent jurisdiction to permit electronic service where justified, especially where the rule of court is silent as to e-service, provided the method chosen brings actual notice to the party as clearly seen in the South African experience.

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[37] (2012) ZAKZDHC 44

[38] Ibid.

[39] L B Grové and S M Papadopoulos, 'You Have Been Served... On Facebook! – Service of Process via Social Networking Sites' [2013[(76) *THRHR*;424.

b. India

E-service of court processes in India has evolved into a flexible and tech-driven model that Nigeria can study closely. India began with a legislative amendment to the Code of Civil Procedure in 2002 which permitted electronic service in Rules 9 and 9A.[40] Since then, Indian courts have expanded this foundation through judicial innovation. In the case of *SBI Cards & Payments Services Pvt Ltd v Jadhav*,[41] the High Court sitting in Bombay accepted notice that was made through WhatsApp because of the double blue tick indicating that the recipient has opened the message. In the words of the court:

> For the purposes of service of Notice under Order XXI Rule 22, I will accept this. I do so because the icon indicators clearly show that not only was the message and its attachment delivered to the Respondent's number but that both were opened.[42]

In a plethora of other cases, the courts in India have shown willingness to accept e-service made through text message, email, WhatsApp and other electronic means.[43] They have expressly rejected the idea that procedure must depend on outdated modes of communication and instead focus on whether the party actually received notice. This approach addresses evasive defendants, reduces cost and delay, and maintains fidelity to fair hearing. The Indian model demonstrates the importance of embedding e-service in both the rules and judicial culture, while ensuring verifiable delivery. It also shows that reform is not just about recognizing or

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[40] S S Rana & Co, 'India: Changing face of serving Summons: From Post to WhatsApp' <https://www.lexology.com/library/detail.aspx> accessed 4 July 2025.

[41] Notice No (2015) 1148

[42] Ibid

[43] Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010; *Central Electricity Regulatory Commission Vs National Hydroelectric Power Corpn. Ltd. & Ors* D.21216/2010; *Tata Sons Ltd & Ors. v John Doe(s) & Ors* CS(COMM) 1601/2016.

permitting technology but about using it effectively to ensure fair hearing.

c. Lessons for Nigeria

As seen from the comparative analysis, effective electronic service does not merely depend upon codification but on judicial pragmatism, infrastructural readiness and clarity of evidence. South Africa shows that even in the absence of express rules, courts can invoke their inherent powers to permit e-service provided necessary safeguards are in place. For India, courts have recognized WhatsApp service and validating delivery through visible proof like read receipts. Both jurisdictions focus on functionality over form and demonstrate that service is not about rigid formalities but about actual notice and procedural fairness. For Nigeria, reform must go beyond permissive rules. Courts must be equipped, judges and court officials trained and procedures standardized to support digital modes. Without these, e-service will remain underutilized, disputed or ignored as seen in some courts in Nigeria where the judge still demands evidence of physical service even where there is presumption of service upon e-filing. If e-service is properly regulated, it can meet constitutional standard of fair hearing while resolving many of the inefficiencies that plague conventional service.

8. Building a Modern and Rights-Based Service Framework in Nigeria

If service of court processes is to support both fairness and efficiency in the justice system, reform must begin with express recognition and clarity in the rules of court. The first and most urgent step is to amend the rules of courts across the federation to expressly permit and regulate electronic service. These amendments should identify the specific platforms that are allowed such as email, SMS, WhatsApp, Facebook and other verified digital channels with a mandatory phone call notification. They should also define what

amounts to valid proof of service peculiar to each platform. Proof must be verifiable and capable of being authenticated by the court. Such proof includes email delivery receipts, read confirmations, screenshots of messages and phone calls, server logs or automated registry notifications from e-filing platforms. The model adopted by Kenya, where electronic service is only valid if accompanied by clear, electronically generated evidence, offers a working template. This approach safeguards the parties without sacrificing speed.

Second, the court system must invest in a national e-service infrastructure. This does not require large-scale transformation all at once. A phased roll-out is possible. The judiciary can begin by expanding existing e-filing systems in selected courts to include e-service modules. These systems should allow parties to upload documents, designate service addresses, track delivery and generate affidavits of service automatically. Where e-filing is already in use, as in the National Industrial Court and Rivers State High Court, integration with electronic services should follow immediately.

Training is the third pillar of reform. Court officials, registrars and bailiffs must understand the procedures for validating and recording electronic service. Judges must also receive regular training on how digital communication tools work and how to interpret and apply rules governing digital service. As Shima and Aboho correctly observe, reform fails not only for lack of law, but also for lack of capacity and manpower.[44]

Fourth, the law must require parties to provide electronic addresses for service at the start of proceedings. This already exists in appellate courts and some states like Rivers, Lagos, Imo, etc. A similar rule should apply across all courts across the federation. A litigant who uses a lawyer, email address or phone number to file a case should not be allowed to object to being served through the same means unless it is changed as prescribed by the rules of court.

[44] Shima and Aboho (n 5).

This promotes consistency and removes unnecessary delays in the business of the court.

Fifth, safeguards must be built in to protect vulnerable or digitally excluded parties. For instance, rules should require that electronic service be followed by confirmation through a second channel, such as SMS, printed notice or phone call (where necessary). This is important especially where the receiving party is known to have poor access to email. As a further safeguard to protect fair hearing, courts should retain the discretion to order substituted or physical service where digital service is impractical, unreliable or unverifiable. The principle must remain that service must bring notice, not merely tick a box.

Finally, this reform requires transparent and effective leadership. The National Judicial Council (NJC), the Chief Judge of State High Courts and Heads of Court must coordinate a national policy on service reform. Rule amendments, training manuals, court ICT upgrades, and public legal education should follow a unified plan.

9. Conclusion and Recommendations

This paper has established that proper service is the foundation of every valid judicial proceeding. It gives the court jurisdiction, protects the right to fair hearing and ensures that parties can participate. However, the way service is currently done (manual delivery, poor tracking and inconsistent enforcement) undermines these goals. In most states in Nigeria, the current system is vulnerable to delay, evasion and error. The rules have not caught up with modern communication. Electronic service provides a practical solution which does not weaken legal safeguards required for proper and substituted service. Instead, it strengthens them. It allows courts to serve documents faster, track them accurately and resolve disputes over service more expeditiously. With the right reforms, service of process can support both the right to be heard and the need for efficient justice.

In light of above analyses and reforms earlier suggested, the paper therefore recommends the following:

1. Court rules should be amended to expressly allow and regulate electronic service, including specific communication platforms and accepted forms of proof.
2. The judiciary should establish a unified or national digital infrastructure that enables electronic filing, automated service and verifiable tracking of court processes.
3. Judges, court staff and legal practitioners should be trained periodically on the role of digital technology on service of court processes. This should be made part of the continuing legal education and should be implemented across the Nigerian legal space.
4. All parties should be required to provide a valid and active electronic address for service at the start of proceedings to streamline communication and reduce delay.
5. Rules of court should be amended to include safeguards to protect digitally excluded or vulnerable parties by requiring a mandatory phone call to confirm actual notice and receipt of the mailed process.
6. These reforms should be coordinated through a national judicial policy led by the NJC and heads of court, supported by consistent rules, infrastructure and institutional leader-ship.

EXPLORING THE EFFICACY OF AN ADMINISTRATIVE INSTITUTION WITH ARBITRATION POWERS IN RESOLVING NIGERIA`S OIL POLLUTION DAMAGE COMPENSATION CONUNDRUM

By

Toyin Afolabi Majekodunmi[*]

Abstract

The widespread discontent among Nigeria`s oil-producing communities, leading to persistent unrest and agitation fuelled by inadequate and delayed compensation for oil pollution damage, highlights significant shortcomings in the country`s legal framework for addressing such issues. This study adopted a multi-method research design, incorporating both traditional legal analysis (doctrinal method) and socio-legal research techniques (non-doctrinal method) to investigate the effectiveness of compensation for oil pollution damage in Nigeria. For the doctrinal aspect, the study relied on information which include relevant international laws, conventions and treaties, local legislation, past and extant Nigeria`s Constitution, case law, textbooks, academic publications, law reports, encyclopaedias, law dictionaries and newspaper publications. For the non-doctrinal method of legal research, the study used questionnaire survey as a versatile tool to gather useful and appropriate data/information on the effectiveness of energy industry compensation in some selected oil-producing communities of Bayelsa and Rivers States. The paper, therefore, recommended the development of a legal system of compensation for oil pollution damage that is based on the enactment of comprehensive law for compensation for oil pollution damage and establishment

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of an independent regulatory institution with powers of arbitration, and its own rules of procedure, that will facilitate prompt, adequate and fair resolution of matters of compensation for oil pollution damage.

Key Words: *Compensation, Pollution, Framework, Communities, System.*

1. Introduction

Petroleum exploration, production, transportation, storage, refining and marketing have been ongoing in Nigeria since her discovery of oil in commercial quantity in 1956. For a long period of time, oil business has been playing an important role in the development of the country in terms of national economy and development of infrastructure.[1] It is no longer a secret that a humongous percentage of Nigeria`s foreign exchange earnings come from the exploration and production of her crude oil.[2]

The economic breakthrough and success in the country`s oil production have led to an unprecedented upsurge of activities in her petroleum industry. These various activities relating to exploration and production of oil are having considerable impact on her natural environment. Nigeria has a long, persistent, traumatic and devastating oil pollution history, and it is still on-going at different times and places; varying forms and scales.[3] There is hardly one month passing that information will not be disseminated on the web site[4] of the National Oil Spill Detection and Response Agency

[1] M.A. Ajomo, *Oil Law in Nigeria,* (Lagos, Evans Brothers Ltd., 1972) 154.

[2] M.T. Okorodudu-Fubara, 'The Environmental Issues in the Nigerian Oil and Gas Industry: Pollution Control and Management', Unpublished Paper presentation at a retreat in Calabar, Cross River State of Nigeria for Committees in the House of Representatives vested with oversight responsibilities in the oil and gas industry. 1.

[3] Ibid.

[4] <https://nosdra.gov.ng>

(NOSDRA) (which is an agency of the Federal Government) in respect of incidents of oil pollution in Nigeria.

To worsen the matter, Nigeria's system of compensation for oil pollution damage is grossly ineffective, as it rarely resolves matters of compensation to anyone`s satisfaction, if at all it offers anything.[5] A system can only be deemed effective when it is succeeding in respect of the purpose for which it was created.

No law is specifically enacted for compensation for oil pollution damage in Nigeria, but there some statutes that are usually adopted for it. They include the Oil Pipelines Act (OPA).[6] Sections 11, 19 and 20 of the Act are, usually, adapted for oil spill losses` indemnification. There is the Minerals and Mining Act (MMA), 2007. Its section 125 (a) is, usually adapted to make a case for relief to oil spill victims. There is, also, the adaptation of the provisions of Land Use Act (LUA)[7] for the same purpose.

Court, due to its constitutionally endowed powers of adjudication under section 6 and chapter VII of the Constitution, also plays a very important role as regards compensation for oil contamination injury. When there is an incident of oil spill, the affected victim(s) or villager(s) usually raise an alarm. Such alarm may be reported or escalated to the officials of NOSDRA who will, then, conduct a Joint Investigation Visit (JIV), involving the victims of oil spill, representatives of the oil company involved, and some NOSDRA officials.[8] This Joint Investigation Visit is in line with Regulation 5

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[5] Report: The Nigerian Oil Spill Compensation Regime – Obstacles and Opportunities, *SDN*, Available at stakeholderdemocracy.org, accessed 19 July 2023.

[6] Cap O7 LFN 2004; and which is, primarily, an Act making provision for licences to be granted for the establishment and maintenance of pipelines which is incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipelines.

[7] Cap L5 LFN 2004, sections 29 and 30.

[8] G.O. Amokaye, *Environmental Law and Practice in Nigeria* (University of Lagos Press, Lagos, 2004), 671.

of NOSDRA`s Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation. The objective is to identify the source of the spill, the company responsible for the spill, and severity of the spill`s impact, for the purpose of making appropriate response activities/arrangements in form of clean-up or remediation in line with the agency`s implementation of the National Oil Spill Contingency Plan, and in line with section 5 of NOSDRA Act.[9] Its statutory mandate[10] includes not subject of compensation or the undertaking of any activity for the purpose of compensation.

After conducting necessary joint visitation to spill site led by NOSDRA officials, it is for the spill`s victim(s) to approach the culpable company for compensation. Where there exists a disagreement between the victim(s) and the energy corporation in relation to settlement or the appropriate amount payable as compensation, such disagreement will be resolved in court as considered just in the circumstance.[11]In determining or calculating the appropriate amount payable as compensation, the court is to utilize the aspects of LUA to the extent that they do not run contrary to any provision of OPA, and as though the affected properties were acquired by the President for public use.[12]

2. Purpose of the Paper

It is the aim of this paper to investigate whether the absence of a deliberately designed legal system for compensation for oil pollution damage, and absence of administrative mechanism to implement compensation, contribute primarily to the inadequacy,

[9] The Joint Investigation Visit is not for the purpose of compensation for oil pollution damage. NOSDRA does not have the statutory mandate in respect of compensation for oil pollution damage. See section 5 (a)-(n) of the National Oil Spill Detection and Response Agency (Establishment) Act.
[10] As contained in its section 5 (a)-(n).
[11] Oil Pipelines Act, section 19.
[12] Ibid, section 20 (5).

inequity, and delays in providing compensation for oil pollution damage in Nigeria.

3. Methodology

The paper adopted a multi-method research design, incorporating both traditional legal analysis (doctrinal method) and socio-legal research techniques (non-doctrinal method) to investigate the topic. For the doctrinal aspect, the paper relied on primary source of information which include relevant international laws, conventions and treaties, local legislation, past and extant Nigeria`s Constitution, and case law. The paper also relied on information that exist in textbooks, academic publications, law reports, encyclopaedias, law dictionaries and newspaper publications as its secondary source of information.

The paper involved comparing Nigeria`s compensation for oil pollution damage system with those of the International Convention for Civil Liability for Oil Pollution Damage (Civil Liability Convention), and the International Convention on the Establishment of International Fund for Compensation for Oil Pollution Damage (Fund Convention). The comparison became necessary in order to measure the extent of Nigeria`s system consistency or congruence with what is obtainable at international level.

For the non-doctrinal method of legal research, the paper used questionnaire survey to gather useful and appropriate data/information on subject of compensation in some selected oil-producing communities of Bayelsa and Rivers States. Oloibiri, Otuasega, Nembe and Brass communities were selected as sites for administration of questionnaire in Bayelsa State while Ogoni, Onne, Ijaw and Ogu were selected for the same exercise in Rivers State.

The choice of Bayelsa and Rivers states was informed by their significant exposure to oil extraction activities, which have resulted in widespread oil pollution incidents in the area over the years. These states are among the highest oil-producing communities in Nigeria and have documented cases of environmental degradation and oil pollution-related damage. Studying these locations allowed for an in-depth analysis of compensation for individuals in the affected populations.

The questionnaires were administered by engaging informally trained local facilitators familiar with the cultural and social dynamics of the selected communities. This approach was chosen to build trust, ensure accurate understanding of questions, and address any language or dialect barriers. These facilitators were informally trained in administering the survey to maintain consistency and reliability in data collection.

The questionnaires were distributed in key areas frequented by diverse community members. Specifically, they were administered in community centers, market places, schools, and local government offices. This strategy was intended to capture a representative sample of different demographics, including students, market traders, government workers, and other residents.

Key stakeholders were identified based on their direct involvement or impact by oil pollution issues. This included local community leaders and residents living in close proximity to oil extraction sites. The selection was informed by preliminary visits and background research, which helped identify influential community figures and institutions knowledgeable about local oil pollution issues.

A total of 400 questionnaires were initially distributed to ensure a statistically reliable response rate. However, to account for potential non-responses, an additional 100 questionnaires (making the total to be 500) were distributed. Out of these, 420 completed questionnaires were successfully retrieved, reflecting an 84%

response rate. About 20 of these were incomplete and were later expunged, making a total of 400 questionnaires used for this study. The high retrieval rate was achieved through follow-up visits by local facilitators who encouraged participants to complete and return the questionnaires. The efforts to follow up and engage respondents in familiar community spaces contributed to the successful retrieval rate.

Closed-ended questions, which offer a limited set of response options, were deployed by the questionnaire to elicit responses in the selected sites. The reason for this was to facilitate fast collection of data/information and achieve a high response rate, less bias responses and for ease of analysis of the data/information collected. It was also to ensure that all the respondents to the questionnaires were asked the same set of questions, thereby reducing the possibility of bias.

4. Conceptual Analysis

The paper adopts the concept of compensation to enhance its analysis and arguments

4.1. Compensation

Compensation is a remedy awarded to injured party for the purpose of making good or replacing loss or injury suffered.[13] In modern industrial age, compensation, as a concept, has assumed international, constitutional and statutory importance as a standard and equitable means for indemnification. In Nigeria, compensation for oil pollution damage is governed by so many statutes including Oil Pipelines Act, Nigerian Minerals and Mining Act, Land Use Act, Petroleum (Drilling and Production) Regulations, and Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulations.

[13] Oil Pipelines Act Cap O7 LFN, Section 11 (5).

5. Theoretical Framework

This paper employs the use of the tort theory to emphasize the need for effective compensation.

5.1 The Tort Theory

Common Law system is the origin of tort theory, and it has, for a long time, been used in many areas of law, including environmental law.[14] The Tort theory is based on the idea that individuals or entities that cause harm to others must compensate for the damage caused. The theory must have been inspired by the biblical injunction which admonishes a man to love his neighbour as himself.[15] Who, then, is a man`s neighbour that he has to love as himself? Lord Atkin[16] has an answer to this question in his pronouncement in the celebrated case of *Donoghue v Stevenson,*[17]wherein he stated that one`s neighbour is a person who is closely and directly affected by one`s acts that one ought, reasonably, to have him in contemplations as being so affected when one is directing his mind to the acts or omissions which are called in question

6. Literature Review

Scholars like Ogbuigwe and Fekumo,[18] are of the opinion that oil pollution is not a necessary or unavoidable phenomenon in oil production if only the oil companies undertake best and sustainable

[14] P. Mitchel, *Theory of Tort*, (Cambridge University Press, UK, 2014), 121.
[15] The Holy Bible, the book of Mark Chapter 13, Verse 31.
[16] James Richard Atkin, Baron Atkin, PC, FBA, commonly known as Dick Atkin, was an Australian-born British judge who served as a Lord of Appeal in ordinary from 1928 until his death in 1944, <https//www.cambridge.org> accessed 28 July 2023.
[17] (1932) AC 362 at 597.
[18] J.F. Fekumo, *Civil Liability for Damage Caused by Oil Pollution*. In: J.A. Omotola (Ed.): *Environmental Laws in Nigeria including Compensation*, (University of Lagos Press, Lagos, 1998), 268.

industrial practices. Consequently, oil companies responsible for pollution damage to individuals` property or assets must be held accountable and provide fair, prompt and adequate compensation.

Ogbuigwe,[19] a leading proponent of strict liability for oil pollution damage, argues that the environmental problems generated in Nigeria through oil production are needless, as oil pollution is not a necessary or unavoidable phenomenon of oil production. He advocates a system that will ensure that a negligent oil producing firm is held strictly accountable to whoever suffers damage from it. He insists that an oil firm must be accountable and compensate victims immediately the need arises.

Fekumo[20] supports the need to make speedy and immediate compensation to victims of oil production activities. Like Ogbuigwe,[21] Tyagi,[22] Read[23] and Ling Zhu *et al*,[24]he advocates strict liability (as against fault-based legal system with requirement of proof of negligence) for the purpose of determining when the need for compensation arises. This, he hinges on the reason that many individuals in Nigeria who fall victim to pollution are poor, and

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[19] A.K. Ogbuigwe, *Compensation and Liability on Oil Pollution in Nigeria*, (JPPL Publishers, Nigeria, 1985), 105.

[20] J.F. Fekumo, *Civil Liability for Damage Caused by Oil Pollution*. In: J.A. Omotola (Ed.): *Environmental Laws in Nigeria including Compensation*, (University of Lagos Press, Lagos, 1998), 268.

[21] Ibid, n. 21.

[22] P. C. Tyagi, 'Policy, Law and Implementation of Industrial Wastewater Pollution Control', [1991], Vol. 24 (1), Wat. Sci. Tech., 5-13, 7.

[23] A. D. Read, 'Legal and Administrative Control Aspects of Oil Pollution', [1982], Vol. 14, *Petroleum Engineering Division, Department of Energy,* London, 1133-1157.

[24] L. Zhu and B. Dong, 'Compensation for Oil Damage from Ships in China: A Way Toward International Standards, Ocean Development and International Law', [2015], <http:// DOI:cos.odsc:1044: 1,73-95,1060/00908320.2012.726839>, accessed 28 August, 2023.

should not be bothered with the complex proof of negligence of oil companies before they get compensated for spill damage.

While the views of these two scholars are in agreement with the stance of this paper, this paper further advocates for the establishment of a robust legal framework accompanied by administrative mechanisms to facilitate efficient compensation for oil pollution damage.

7. Compensation for Oil Pollution Damage in Nigeria

In Nigeria, compensation for oil pollution damage is not governed by any known legal system, rather, it is subject to the conventional system of dispute resolution which is, strictly, dependent on court action or litigation to be instituted by the claimant, or in any specialized court or under any special arrangement but in conventional courts, against the polluter, who is usually, an oil company.

The claimant may bring his action under the statutes which are usually an adaptation of the provisions of the Oil Pipelines Act, Nigerian Minerals and Mining Act or the Land Use Act or a combination of all the three. He may, also, bring his action under the Common Law tort of negligence,[25] trespass,[26] nuisance[27] or the rule in *Rylands v Fletcher*, and prove that the defendant is at fault or negligent and that the said fault has resulted to a foreseeable injury or damage to him.

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[25] This is concept of duty, breach and damage thereby suffered by the person to whom the duty is owed.

[26] The act of knowingly entering another person's property without permission.

[27] An act or omission which is an interference with, disturbance of, or annoyance to a person in the exercise or enjoyment of a right belonging to him or his ownership or occupation of land.

8. Results of Survey, Data Analysis and Presentation

This section provides the findings from the data analysis, interpretation, and discussion of the questionnaire-based research on whether Nigeria has a consciously established legal system for settling or making a recompense to persons affected by oil pollution damage, and whether the adapted compensation for oil pollution damage mechanism in Nigeria has administrative approach and character.

8.1 Validity Test Using Coefficient of Concordance Technique

This coefficient is obtained with a view to testing for the validity of the instrument used for this study. The formula is stated as follows:

$$W = \frac{12\sum_i D_i^2}{m^2 n(n^2 - 1)}, \text{ where:}$$

n is the number of individuals or objects being assessed;

m is the number of judgments on likert scale and

D_i is the difference between individual sum of likert scale and the overall judgments. Thus, we have:

m = 5, n = 400, $D_i = R_i - \bar{R}_i$**,** where R_i is the rank for the question under consideration. Therefore, $\sum D_i^2 = 125{,}642{,}519$ (obtained from ***R***-statistical software).

Thus, we compute the coefficient as follows:

$$W = \frac{12\sum_i D_i^2}{m^2 n(n^2 - 1)}$$

$$W = \frac{12(125,642,519)}{5^2(400)(400^2 - 1)}$$

$$W = \frac{1,507,710,228}{1,559,990,000}$$

$$W = 0.9423 \cong 0.94$$

Interpretation: The Coefficient of Concordance value indicates unequivocally that the questionnaire contents are legitimate and that the instrumental technique (questionnaire delivery) is about 94% valid. Based on this, we can move further with the analysis.

8.2 **Test of Reliability Using Kuder-Richardson Estimate**

One of the most important reliability measures to take into account in the current investigation is internal consistency. Here, the Kuder-Richardson estimate is used to assess the study's internal consistency mainly in order to determine its reliability. The following is the formula:

$$KR_{20} = \frac{n}{n-1}\left[1 - \frac{\sum p_i q_i}{\sigma_x^2}\right],$$ where:

n is the number of items in the test, that is, the number of the respondents;

p_i is the proportion of correct items (responses that fall within the scales/ranks 3-5);

q_i is the proportion of wrong items (responses that fall within the scales/ranks 1-2);

σ_x^2 is the variance of scores in the test when all items are of equal difficulty.

In this case, we obtained the following quantities from the questionnaires using ***R***-statistical software:

n = 400, $\sum p_i q_i = {}^{18}\!/_{23}$ and $\sigma_x^2 = 4.676$, hence the computation is done as follows:

$$KR_{20} = \frac{n}{n-1}\left[1 - \frac{\sum p_i q_i}{\sigma_x^2}\right]$$

$$KR_{20} = \frac{400}{400-1}\left[1 - \frac{{}^{18}\!/_{23}}{4.676}\right]$$

$$KR_{20} = \frac{400}{399}\left[1 - \frac{0.7826}{4.676}\right]$$

$$KR_{20} = \frac{400}{399}\left[1 - 0.1674\right]$$

$$KR_{20} = 0.8346 \cong 0.83$$

Interpretation: The result obtained as Kuder-Richardson's Estimate of Reliability indicates that, under all conditions, the respondents' responses to the surveys are approximately 83% reliable.

8.3 Empirical Results

Empirical results of the study conducted are presented in Tables 1 - 7.

Table 1: Victims of oil pollution damage are usually compensated immediately.

H_o : Victims of oil pollution damage are usually compensated immediately.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	1	0	2	18	24	28	38.8511	0.0833
Ijaw	0	0	0	19	27			
Nembe	0	0	0	19	31			
Ogoni	0	0	1	24	30			
Ogu	1	3	1	19	30			
Oloibiri	3	1	0	16	29			
Onne	0	0	0	23	29			
Otuasega	0	0	0	23	26			
Total	5 (1.2%)	4 (1.0%)	4 (1.0%)	161 (40.2%)	226 (56.5%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 1 show that majority of the respondents (approximately 97%) disagreed and strongly disagreed to support the statement that victims of oil pollution damage are usually compensated immediately. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

Table 2: Victims of oil pollution damage are usually compensated fairly and adequately.

H_o : Victims of oil pollution damage are usually compensated fairly and adequately.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	1	0	2	18	24	28	38.8511	0.0833
Ijaw	0	0	0	19	27			
Nembe	0	0	0	19	31			
Ogoni	0	0	1	24	30			
Ogu	1	3	1	19	30			
Oloibiri	3	1	0	16	29			
Onne	0	0	0	23	29			
Otuasega	0	0	0	23	26			
Total	5 (1.2%)	4 (1.0%)	4 (1.0%)	161 (40.2%)	226 (56.5%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 2 show that majority of the respondents (approximately 97%) disagreed and strongly disagreed to support the statement that victims of oil pollution damage are usually compensated fairly and adequately. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

Table 3: National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage.

H_o : National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	0	0	1	17	27	28	37.3701	0.1110
Ijaw	0	0	0	24	22			
Nembe	1	7	2	16	24			
Ogoni	0	4	1	27	23			
Ogu	1	5	0	18	30			
Oloibiri	2	1	0	23	23			
Onne	0	4	0	24	24			
Otuasega	1	7	0	18	23			
Total	5 (1.2%)	28 (7.0%)	4 (1.0%)	167 (41.8%)	196 (49.0%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 3 show that majority of the respondents (approximately 91%) disagreed and strongly disagreed to the statement that National Oil Spill Detection and Response Agency (NOSDRA) are involved in the facilitation of compensation to victims of oil pollution damage. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

Table 4: Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation.

H_o : Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	35	7	1	0	2	28	21.3174	0.8120
Ijaw	40	5	0	1	0			
Nembe	42	7	0	1	0			
Ogoni	44	4	2	2	3			
Ogu	44	6	1	1	2			
Oloibiri	41	3	1	1	3			
Onne	47	2	1	0	2			
Otuasega	44	4	1	0	0			
Total	337 (84.2%)	38 (9.5%)	7 (1.8%)	6 (1.5%)	12 (3.0%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 4 show that majority of the respondents (approximately 94%) agreed and strongly agreed to the statement that Matters of compensation for oil pollution damage end up in court and the court determines whether compensation is payable; the amount payable as compensation, and the appropriate person to receive compensation. This is also supported by the computation of

chi-squared test where the null hypothesis also confirmed the same immediate statement above.

Table 5: Victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the court.

H_o : Victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the court.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	0	0	1	0	44	28	31.4776	0.2960
Ijaw	2	1	2	0	41			
Nembe	0	4	2	2	42			
Ogoni	0	2	2	0	51			
Ogu	0	0	0	2	52			
Oloibiri	1	2	2	1	43			
Onne	0	3	0	2	47			
Otuasega	0	2	1	0	46			
Total	3 (0.8%)	14 (3.5%)	10 (2.5%)	7 (1.8%)	366 (91.5%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 5 show that majority of the respondents (approximately 93%) disagreed and strongly disagreed to the statement that victims of oil pollution are usually satisfied with the compensation they receive for oil pollution damage through the

court. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

Table 6: Compensation for oil pollution damage through court action is always delayed and take a long time.

H_o : Compensation for oil pollution damage through court action is always delayed and take a long time.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	0	41	3	0	1	28	26.1537	0.5650
Ijaw	3	37	4	0	2			
Nembe	3	43	1	1	2			
Ogoni	5	46	0	1	3			
Ogu	5	44	2	2	1			
Oloibiri	4	42	2	0	1			
Onne	1	45	1	2	3			
Otuasega	2	42	0	1	4			
Total	23 (5.8%)	340 (85.0%)	13 (3.2%)	7 (1.8%)	17 (4.2%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 6 show that majority of the respondents (approximately 91%) agreed and strongly agreed to the statement that compensation for oil pollution damage through court action is always delayed and take a long time. This is also supported by the

computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

Table 7: An administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil pollution damage.

H_o : An administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil pollution damage.								
Comm.	**Categories of Responses**					**Statistical Test**		
	SA	**A**	**N**	**D**	**SD**	***df***	χ^2_{cal}	p_{-value}
Brass	23	19	1	1	1	28	24.9749	0.629
Ijaw	21	22	3	0	0			
Nembe	16	30	2	1	1			
Ogoni	19	35	0	0	1			
Ogu	19	33	1	0	1			
Oloibiri	20	24	1	1	3			
Onne	24	26	0	1	1			
Otuasega	15	32	1	0	1			
Total	157 (39.2%)	221 (55.2%)	9 (2.2%)	4 (1.0%)	9 (2.2%)			

Source: Fieldwork Questionnaire Administration and Electronic Computations (2024)

The results in Table 7 show that majority of the respondents (approximately 94%) agreed and strongly agreed to the statement that an administrative body or institution is needed and necessary in order to effectively administer subject of compensation for oil

pollution damage. This is also supported by the computation of chi-squared test where the null hypothesis also confirmed the same immediate statement above.

9. Comparative Study of Compensation for Oil Pollution Damage in Nigeria with the International Best Practice under the Civil Liability Convention and the Fund Convention

Oil and gas being global commodities have attracted international attention. It is also globally acknowledged that oil production may be accompanied by environmental damage, hence, provisions for compensation for oil pollution damage provided for, even, in international legal instruments.

The international regime of compensation is based and governed by two set of conventions, the Civil Liability Convention, and the Fund Convention respectively;[28] and which are superintended by the International Maritime Organization (IMO). Civil Liability Convention `s principle towards ship owners is not fault based but that of legal responsibility that is strict. The system of the convention also enforces liability insurance, which limitable to the ship`s tonnage.[29]

Fund Convention, on its own, is to provide support for the civil liability convention in terms of provision of compensation to claimants where the compensation the one available under civil liability convention is not enough to recompense a claimant. An organisation of the international community known as International Oil Pollution Compensation Funds (IOPCF) was established in 1978 by the Fund convention to provide compensation to those who are injuriously affected by oil pollution from ships or tankers or

[28] J. M. Barandiaran (2003) *International Oil Pollution Compensation Funds 1971 and 1992*, Turkish Maritime Press, Turkey, p. 3.
[29] Ibid.

vessels where compensation available from the ship owners under the Civil Liability Convention is not enough to reasonably recompense for lose or injury suffered.[30]

One good thing about the IOPCF, which a country like Nigeria needs to learn from is that it encourages out of court settlement of cases of compensation. It does not wait for such cases to be determined by courts. However, there is a predetermined limit as to amount the organisation can pay in settlement of claims of compensation. Where such limit is to be exceeded or where a particular claim brings forth a subject of principle not previously known to or previously been treated or decided, the director of the organisation will require the approval of relevant governing council of the organisation.

Unlike what is obtainable under the international best practice of Civil Liability Convention, and the Fund Convention, the current legal arrangement in Nigeria for compensation for oil pollution damage presupposes that court is the ultimate determinant of merit or otherwise of any subject of compensation. There is no establishment of any regulatory or administrative body to strictly establish the veracity of compensation claim, and to undertake action and responsibility for the purpose of processing compensation. Instead, any matter or claim for compensation has to proceed to court.

9.1 Arbitration Model and Compensation for Oil Pollution Damage in Nigeria

Arbitration is one of the models created by the wide spectrum of legal avenues called Alternative Dispute Resolution (ADR) which use means other than court trial to settle disputes. It is a process in

[30] M. Gennaro (2004), Oil Pollution Liability and Control under International Maritime Law: Market Incentives as an Alternative to Government Regulation. *Vanderbilt Journal of Transnational Law*, Vol. 37:265, No. 1, p. 265.

which a panel of arbitrators or just one arbitrator sit to resolve a dispute between parties. Its activities are regulated by the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria 2004 which mandatorily applies to all domestic arbitrations where parties have not chosen another law to govern their proceedings. Some states of the federation have also enacted their own arbitration laws. For example, in Lagos, the Lagos State Arbitration Law 2009 applies to all arbitrations that have not specified another law.

Arbitration process involves many of the same components and characteristics of a courtroom trial such as presentation of argument with evidence; calling on witnesses and subsequent questioning of the witness by the opposing party (cross-examination), and so forth. However, these facets and processes are simplified and hastened up in arbitration so as to make the process quick than the typical courtroom trial. Following the required hearings, an arbitral ruling/award is delivered within a very short and specific period of time; and, depending on the type of arbitration, the ruling of an arbitration is final. There may be options to appeal only where the arbitration exceeded its jurisdiction, the arbitration panel was guilty of misconduct; or the arbitral award was fraudulently procured.

Since there is not yet a specific legal system for compensation for oil pollution in Nigeria, the country may develop a legal system which will be a combination (blend) of establishment of an administrative body and the use of arbitration to solve the problem of lack of realization of prompt, fair and adequate compensation for oil pollution damage in the Nigeria`s oil-producing communities. For the system to effectively work, there may be a statutorily created regulatory institution which will also be statutorily given powers of arbitration.

To this extent, when an incident of oil pollution is reported to the National Oil Spill Detection and Response Agency (NOSDRA),

NOSDRA will conduct its usual Joint Investigation Visit (JIV) involving the victims of oil spill, representatives the oil company involved, and some NOSDRA officials in line with Regulation 5 of NOSDRA`s Oil Spill Recovery, Clean-up, Remediation and Damage Assessment Regulation, the results of the JIV will be forwarded to an compensation regulatory authority or institution established by an Act, which, in addition to its administrative powers, will also have the powers of arbitration over subject of compensation for oil pollution damage only; and has to conclude its activities in respect of a given case within a specified time frame.

10. Findings

Through a detailed examination of relevant Nigerian statutes, results of questionnaire administration, analysis and electronic computation, case law, international conventions, legislation of some other oil-producing countries, scholarly literature, computation and analysis of survey, this paper has identified some key defective trends, attitudes, and patterns in the current state of the Nigeria`s system of compensation.

i. Non-alignment with International Best Practice

System of compensation for oil pollution damage in Nigeria is not in alignment with international best practice under the Civil Liability Convention (CLC) and the Fund Convention (FC).

ii. Nigeria Lacks a Deliberate and Well-Conceived Legal System of Compensation for Oil Pollution Damage

A legal system is a deliberately created and established framework that outlines the rules, regulations, and processes for governing a particular activity, organization or situation.[31] Civil Liability Convention was deliberately adopted by IMO on 29th of November,

[31] M. Friedman and G.M. Hayden, 'What is a Legal System?', [2017], <https://doi.org/10.1093/acprof:oso/97801904> accessed 15 September 2023.

1969 to institutionalize a framework for reparation for harm caused by oil pollution from ships.[32] In the same vein, the United States of America`s Oil Pollution Act (OPA) was, in 1990, deliberately enacted to provide a legislative framework for addressing oil pollution compensation and liability. The Act is, appropriately short-titled "Oil Pollution Liability and Compensation" to clearly reflect the purpose for which it was enacted. The Act has its mechanisms for settling or resolving compensation claims or controversies without taking to court action; and makes a well outlined provisions on how compensation for oil pollution damage is to be carried out. These include the establishment of Oil Spill Liability Trust Fund (OSLTF), which provides a source of fund supplementary compensation, requirement for responsible parties such as ship owners, operators, and facilities to pay for damages and removal costs, procedure for filling claims and seeking compensation, guidelines for determining the amount of compensation, including damages for natural resource damage, economic losses, and personal injuries, mechanisms for settling and resolving claims without necessarily need to file legal action in court.

Reverse is the case in Nigeria where regulatory and statutory structure for addressing compensation for oil pollution damage has no established operation. There is no statute in Nigeria that is specifically enacted to deal with subject of compensation for oil pollution damage. There is, also, no establishment of any regulatory institution to implement any policy or enforce any law on compensation for oil pollution damage. Although, there are some laws like the Oil Pipelines Act, Minerals and Mining Act, and Land Use Act, whose provisions are usually relied upon by litigants when

[32] M. Jacobsson, 'Compensation for Oil Pollution Damage Caused by Oil Spills from Ships and the International Oil Pollution Compensation Fund' {1994}, MPB, Vol. 29, 378-384, 378.

a cause of action arises in relation to compensation for oil pollution damage,[33] the laws merely contain some scanty provisions that are, usually, adapted to suit that purpose. They are not primarily enacted for compensation for oil pollution damage.

iii. Nigeria`s System of Compensation for Oil Pollution Damage Lacks Administrative Approach or Character

One major characteristic or attribute of the existing system of compensation for oil pollution damage in Nigeria is the absolute reliance on court for resolution of any subject of compensation.[34] The court has the prerogative to determine whether compensation is payable by a polluter or not, the value payable as compensation, and the person to whom it is to be paid.[35] There is no administrative approach to such subject of compensation. Any compensation claim arising from incident of oil pollution damage remains a decision for the court. No regulatory institution or administrative agency is created to administer such compensation. In addition, Nigeria has no contingency plan or arrangement for determining, monitoring, negotiating or processing of compensation for oil pollution damage. When there is an incident of oil pollution damage, and a disagreement occurs regarding compensation entitlement between the affected party and the responsible oil entity, the only option available to the victim is to seek judicial intervention under existing statutes or under torts.

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[33] Cap O7 LFN 2004; and which is, primarily, an Act making provision for licences to be granted for the establishment and maintenance of pipelines which is incidental and supplementary to oilfields and oil mining and for purposes ancillary to such pipelines.

[34] See Oil Pipelines Act, section 19 and 20. See Land Use Act, section 29 and 30. See Minerals and Mining Act, section 125 (a).

[35] Oil Pipelines Act, sections 11 (5), 19 and 20 (5).

11. Conclusion

It is the opinion of this paper that decisions and claims of compensation should not be left only for court determination. There ought to be an administrative body created by statute that will regulate, administer and process oil pollution damage compensation transparently as would have been meticulously provided for by a singular enabling statute. Court, at best, ought only to be the last resort in which an aggrieved party, in settlement of claim for oil pollution damage, who must have already been in compliance, but seeks a reversal or a modification of the decision reached by the administrative body in accordance with dictates of statute, may approach court for a redress or reversal of such decision. Such, however, should not be a conventional court with heavy load of cases before it. Litigation in such respect should be reserved for a specialised court. Manipulation or any form of shoddy practice by any personnel of such administrative body, jointly or individually, should be criminalised and on conviction by a court of law, in criminal trial, punishable by long term of imprisonment with or without option of fine.

1. Recommendation

There is the need for Nigeria to take a clue from the international community`s establishment of a body like the International Convention on Civil Liability for Compensation for Oil Pollution Damage (Civil Liability Convention) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention) which jointly govern subject of compensation for oil pollution damage at the international level without any need for a recourse to court. The two conventions jointly established an International Oil Pollution Compensation Fund (IOPCF) which provides fund to compensate claimants for oil spill damage where the compensation from the

shipowner under the Civil Liability convention is inadequate to fully compensate a victim of oil pollution damage.[36]

This interventionist initiative of IOPCF goes a long way to give compensation, in that direction, with administrative ease

Nigeria may borrow a leaf from this international legal system and establish administrative interventionist statutory body (regulatory institution or authority) with power of arbitration and with strict rules of claims procedure for administration of compensation for oil pollution damage.

[36] M. Gennaro (2004), Oil Pollution Liability and Control under International Maritime Law: Market Incentives as an Alternative to Government Regulation. *Vanderbilt Journal of Transnational Law*, Vol. 37:265, No. 1, p. 265.

LEGAL STATUS OF COMPANIES IN RECEIVERSHIP IN LINE WITH THE 2025 SUPREME COURT OF NIGERIA PRONOUNCEMENT IN DAGAZU'S CASE

By

Dr. Modupe Babalola*

Abstract

In order to carry out its business, a company ordinarily requires capital. The needed capital can be equity capital or debt capital. In most cases, equity capital is never sufficient for the flotation of a company, hence, the resort to debt capital. The powers of a company to carry out its business through debt capital are provided for in section 191 of the Companies and Allied Matters Act 2020 as amended (CAMA 2020). While creditors may find comfort in secured transactions, enforcing such security is often not seamless. Receivership, a remedy arising from secured credit agreements and statutory provisions, is one of the strongest mechanisms available to debenture holders for enforcing or realising securities. In practice, receivership allows debenture holders or creditors to enforce proprietary security and recover debts. However, appointing a receiver has serious implications for the debtor company, including threats to its continued existence. This paper adopted the doctrinal research approach and found, among other things, that the Supreme Court of Nigeria's decision in Dagazu Carpets Ltd v Bokir International Co. Ltd *(2025) 8 NWLR (Pt 1992) 271, has significantly altered prior understandings of the legal status of companies in receivership, particularly regarding the powers of directors, employment tenure, and the legal personality of the debtor company. One key suggestion made in this paper*

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is that the Supreme Court of Nigeria should, at the earliest opportunity, reverse its position.

Keywords: *Receiver, Companies, Receivership, Capital, Debt*

1. Introduction

Jurisdiction

The court with exclusive jurisdiction to appoint a receiver and/or manager for companies in Nigeria is the Federal High Court (FHC).[1] However, where the subject matter of receivership would not entail recourse to either the provisions of the CAMA 2020 or any enactment governing the operations of companies, the state High Court may exercise jurisdiction in matters of receivership.[2]

Appointment

The court or a third-party may appoint a receiver.[3] However, this power is not exercised *in vacuo*, it is usually premised on sound principles of law. This includes situations in which the borrower's principal loan balance or interest payments are past due: or the borrower's property or security is in danger.[4]

Despite the fact that it may be less challenging to establish the circumstances surrounding FHC's appointment when the principal amount borrowed by the corporation or the interest is in arrears, it is more difficult to establish the basis for such an appointment premised on the security or property of the company being at risk. This is not unconnected to the imprecision in the definition of the word "jeopardy". The constituent features of the word 'jeopardy' was neither provided in the repealed Companies and Allied Matters

[1] Constitution of the Federal Republic of Nigeria 1999, Cap C23 Laws of the Federation of Nigeria (LFN) 2004 as amended (CFRN 1999), s. 251 (1) (e).
[2] *Tanarewa (Nig) Ltd v Plastifarm Ltd* [2003] 14 N.W.L.R (Pt 840) 355 at 370, paras B –C.
[3] CAMA 2020, ss 552, 553.
[4] ibid s 552 (1) (a) (b); *Okoya v Santili* [1990] 2 N.W.L.R (Pt. 131) 172.

Act 1990,[5] nor the CAMA 2020. However, some events or happenings which imply that a company or its assets is in jeopardy were set out in *Fasakin v Fasakin*,[6] thus:

i. where a company about to be wound up is wholly insolvent and other creditors are threatening action against the company for recovery of their debt;[7]

ii. where a company was insolvent and its books closed;[8]

iii. where judgment had been entered against a company and execution was likely to be issue;[9]

iv. where a company is proposing to distribute among its shareholders a reserved fund which constituted practically its only assets thereby putting the debenture holders' interest at risk;[10] and

v. where the company's auditors declared in a general meeting and without being challenged by the directors that after providing for liabilities, the company's assets would only cover principal loans secured and that the company's credit and funds were exhausted.[11]

It should be noted that certain situations still exist that could put the company's assets in danger and prompt the FHC to appoint a receiver. It always depends on the facts of each case. Nevertheless, it should be stated that FHC's employment of a receiver is within the full embrace of its equitable jurisdiction. Therefore, the FHC or any other superior court of record may proceed to employ a receiver

[5] Cap C20 LFN 2004.
[6] [1994] 4 N.W.L.R (pt. 340) 597 at 601.
[7] B F Palmer, *Palmer's company law*. Volume 3 (London: Sweet & Maxwell). Pt 14. 14069.
[8] *McMahon v North Kent Iron Works Co.* [1891] 2 Ch. 148.
[9] *Edwards v Standard Rolling Stock* [1893] 1 Ch. 574; Palmer (n7) 14069.
[10] *Re: Tilt Cove Copper Co.* [1913] 2Ch. 588; Palmer (n7)14069.
[11] *Re: Branstein and Majorline Ltd* [1914] 112 L.T. 25.

in convenient situations.[12] It should be stated that the words 'just and convenient' have been interpreted as meaning "where is practicable and the interest of justice requires it".[13] In other words, the general ground on which court will employ a receiver is preservation or protection of the property for the benefit of persons who have interest in it.

It is usual for debentures or debt instruments to empower the debenture holder to appoint a receiver and/or manager. This position is, in most cases, statutorily confirmed. The appointment of an IP outside of court is not done lightly, just like in the case of employment by FHC. It is typically used when specific occurrences that are previously specified in CAMA 2020 or any other enabling statutes occur. For instance, if the business missed its deadline to pay an interest or premium payment in full or in part within one month of the payment's due date; or it violates any of the conditions outlined in the debentures or the debentures trust deed that place obligations on it; or any event described in the debentures' or debentures trust deed's terms occurs; or the entity is wound up; or any of its creditor issues a process of execution against any of its assets or commences proceedings for winding up of the entity by order of court; or the corporation ceases to pay its debts as they fall due; or any company ceases to carry on business.[14]

In addition, it is pertinent that other additional events not in the repealed CAMA, the CAMA 2020 or any other specific statute but provided in the debentures or the debentures trust deed may form the basis for appointment out of court. Hence, it is exigent that a

[12] *Atuanya v Atuanya* [1994] 1 N.W.L.R (pt 322) 572 at 580, para. P; *Uwakwe v Odogwe* [1989] 5 N.W.L.R (pt 123) 562 at 579; *Fasakin v Fasakin* [1994] 4 N.W.L.R (pt. 340) 597; *Okoya & Ors v Santili & Ors* [1990] 2 N.W.L.R (pt 131) 172; *Emodi v Emodi* [2007]4 N.W.L.R (pt 1024)412.

[13] *Edwards & Co v Picard* [1909] 2 KB 903 at 907.

[14] CAMA 2020, s 232 (1) (2); AMCON Act 2010 (as amended), s. 48 (1).

prospective receiver should take certain precautions before acceptance of his appointment.

2. Legal Status of Receiver/Manager

A court-appointed receiver or manager is regarded as a court officer.[15] He/she always performs the responsibilities and wields the powers in compliance with the directives of the court.[16] Therefore, it shall amount to a contempt of court where the receiver appointed out of court is unreasonably hindered from exercising his duties and powers.[17]

A receiver appointed out of court is deemed to be an agent of the person or persons on whose behalf he is appointed.[18] The Court of Appeal in *Fadeyibi v I. H. (Beverages) Ltd* appears to have misconstrued the provisions of the law when it pronounced that a receiver named in accordance with a court order is also regarded as an agent of the person or people for whose benefit he was named.[19] It is explicit that where he/she is appointed by court, he/she is deemed an officer of court.[20] *Section* 553 (1) of the CAMA 2020, as relied upon by the court in *Fadeyibi v I. H. (Beverages) Ltd,* is only limited and concerned with the appointments out of court.

However, the deemed status of a receiver appointed out of court as provided under *sections* 552 and 553 of CAMA 2020, are rebuttable being default provisions. In other words, the latter provision in the

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[15] CAMA 2020, s. 552 (2).

[16] CAMA 2020, s 552 (2); *Dagazau v Bokir Int'l Co. Ltd* [2011] 14 NWLR (Pt. 1267) 261 at 330, paras B – C; *Jukok Int'l Ltd v Diamond Bank Plc* [2016] 6 N.W.L.R (Pt 1507) 55 at 94.

[17] O E J Abugu, 2014. *Company securities: law and practice* (2 edn Lagos: MIJ Professional Publishers Limited) 231.

[18] CAMA 2020, s. 553 (1); *Fadeyibi v I. H. (Beverages) Ltd* [2013] 4 N.W.L.R (Pt. 1344) 353.

[19] *Fadeyibi v I. H. (Beverages) Ltd,* ibid, 374.

[20] CAMA 2020, s. 552 (2); Palmer (n7) 14072.

deed instrument takes precedence if the deed instrument expressly declares the status of the IP.[21] Even though he is considered to be acting as a representative for the person or people on whose behalf he was appointed, where also appointed manager of all or a portion of a business's undertaking is in a fiduciary relationship with the company, and is obligated to act in all transactions with it or on its behalf with the greatest amount of integrity.[22]

The mortgagee's appointment of a receiver and/or manager is deemed to be on the mortgagor's behalf under common law, and as a result, the mortgagor may file a claim against the mortgagee for any damages caused by the receiver's carelessness.[23] Simply put, while the receiver and/or manager is entitled to take possession of the company's asset and operate the business on behalf of the debenture holder, the debenture holder assumes the position of being virtually a mortgagee in possession through the receiver and/or manager and as a result is accountable or responsible for the commitment made by the manager or receiver in carrying out the operation. This position under common law is unsatisfactory.[24]

3. Effects of Appointment of a Receiver

The effects of an appointment of a receiver are numerous. This includes:

i. Legal Status of a Company

The company's legal status is not destroyed by the appointment of a receiver. As a result, when a receiver is appointed, the company retains both its legal identity and ownership of the products that are

[21] CAMA 2020, s. 552 (2); Palmer (n7) 14080/1.
[22] CAMA 2020, s 553 (1); AMCON Act 2010 (as amended), s 48 (6).
[23] *Halsbury's Laws of England.* 1988. 4th ed. reissue, vol 7(2). 913, para 1157.
[24] K Aina, Rethinking the Duties of a Receiver and Powers of Directors of Companies in Receivership Under the Nigerian Law (2015) *The Gravitas Review of Business and Property Law*; 6 (2): 62 – 74.

under receivership.[25] The business is still operational.[26] The legal personality of a company becomes extinct only upon its winding up and dissolution.[27]

Thus, the company retains its title to the goods in receivership; its legal personality intact and the company has a right to ensure that its property is not dissipated. To this end, a company under receivership has a legal right to seek injunctive reliefs so as to protect its assets.[28] However, it is debatable whether the right to request any injunctive relief against a receiver and/or manager appointed in accordance with the AMCON Act, which forbids the institution of actions against the debtor company or receiver and/or manager for a year or such extended period from the date of publication of the notice of election to manage the debtor company's affairs.[29]

However, in *Dagazu Carpets Limited* v *Bokir International Company Limited*,[30] the Supreme Court of Nigeria appeared to have made a pronouncement that takes away the powers of a company in receivership. For purposes of emphasis and clarity, the Supreme Court held that "where a company is in receivership, as the appellant in this case, all its acts and powers can no longer be exercised by it personally, but through the receiver.[31] This decision is unsatisfactory. It is not in all cases that a receiver is appointed for

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[25] *Solar Energy Advanced Power Systems Ltd (S.P.E.A.S) v Ogunnaike* [2008] 14 N.W.L.R (Pt. 1106) 1 at 12, para. G*; Christlieb Plc v Majekodunmi* [2008] 16 N.W.L.R (Pt. 1113) 324 at 345, paras C – E*; Union Bank of Nigeria Ltd v Tropic Foods Ltd* [1992] 3 N.W.L.R (Pt. 228) 231.

[26] *Remalo Ltd* v *National Bank of Nigeria Ltd* [2003] 16 N.W.L.R (Pt. 846) 235 at 243, para. F.

[27] *Commercial Bank (Credit Lyonnais) Nig. Ltd v Okoli* [2009] 5 N.W.L.R (Pt. 1135) 446 at 461, paras F-G; *Ehiadimhen v Musa* [2000] 8 N.W.L.R (Pt. 669)540; (2000) 4 SC (Pt. 11)166 at 184.

[28] *Union Bank of Nigeria Ltd v Tropic Foods Ltd* [1992] 3 N.W.L.R (Pt. 228) 231 at 246, para. A.

[29] AMCON Act 2010 (as amended), s 48 (7) (a).

[30] (2025) 8 NWLR (PT 1992) 271.

[31] ibid at 298, para-G.

the whole or substantially whole of the property of the debtor company. It therefore sounds incongruous for a receiver appointed for an infinitesimal part of the property of the debtor company would now exercise powers over all the affairs of the company.

ii. Powers of Directors of the Company

A company's board of directors is given the authority to run its business.[32] The question of whether a corporation's directors can continue to exercise control over operations, assets, or undertakings of the company 5while it is in receivership has been debated. According to the majority decision, when a court appoints an IP during a receivership, the IP effectively takes over the management and direction of the company's affairs from the directors. As a result, the directors are no longer able to sign contracts on the company's behalf or exercise any kind of control over any of the company's property or assets in relation to the specific assets to which the security is attached.

The company's authority and the directors' authority to conduct business during the appointment period are superseded by the IP's employment.[33] Suffice to state that with the appointment of a receiver and/or manager, the powers of the company and the authority of the directors cease only in respect of those assets within the scope of the charge but in respect of the assets that are not within the scope of the charge or where the receiver has refused to act, the company and the directors retain their powers.[34] Simply put, when a receiver or manager is appointed, the company's directors' jurisdiction over the company's assets that are under management is

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[32] CAMA 2020, s 89 (1), (3).

[33] *Moss Steamship Co v Whinney* [1912] A C 254; O J Orojo, *Company law and practice in Nigeria* (5th edn, London: LexisNexis Butterworths Tolle. 2008) 439 – 440; Palmer (n7) 14072.

[34] CAMA 2020, s 556 (3); *Omojasola v PlissonFisko (Nigeria) Ltd* [1990] 5 N.W.L.R (Pt. 151) 434; *Fadeyibi v I. H. (Beverages) Ltd* [2013] 4 N.W.L.R (Pt. 1344) 353 at 373, paras F – H.

suspended.[35] It is important to state that the powers of a receiver appointed pursuant to the AMCON Act is exercisable without regards to the distinction between the assets in receivership and the ones not in receivership.[36]

It will be reasonable to say that, until an IP in receivership is appointed in accordance with the AMCON Act, his appointment does not completely terminate the board of directors' authority over a firm. The directors of a company still continue to exercise powers and duties in the interest of the company, subject however to the direction of the receiver and/or manager in respect of the assets in receivership. For example, the appointment of an IP does not prevent the entity or its directors from suing or being sued for circumstances that are not within their control.[37] But the Supreme Court in *Gbedu* v *Itie,*[38] in determination of a case bordering on winding up, pronounced that the appointment of a receiver terminates the employment of directors, secretary and officers of the company. This paper disagrees with this general pronouncement of the apex court in Nigeria to the extent that directors of the company do not become *functus officio*.[39]

During a receivership, the directors' authority is only momentarily suspended.[40] The directors who are still in office may continue to

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[35] *Standard Printing & Publishing Co Ltd v N. A. B Ltd* (2003) FWLR (Pt. 137) 1097 at 1109, para C; *Intercontractors Nig. Ltd v N. P. F. M. B.* (1983) 1 NSCC 759*; U.B.N Plc v David Lab Ltd* [2014] All FWLR (Pt. 714) 157 at 171, paras F – G; *Unibiz Nig Limited v C.B.C.I Ltd* (2003) FWLR (Pt. 152) 71; *Solar Energy Advanced Power Systems Ltd (S.P.E.A.S) v Ogunnaike* [2008] 14 N.W.L.R (Pt. 1106) 1; *Dagazau v Bokir Int'l Co. Ltd* [2011] 14 NWLR (Pt. 1267) 261 at 325 – 326.

[36] AMCON Act 2010 as amended, s 48 (3).

[37] *UBA Trustees Ltd v Nigergrob Ceramic Ltd* [1987] 3 N.W.L.R (pt. 62) 600 at 612; O J Orojo, 2008. *Company law and practice in Nigeria*. 5th ed. London: LexisNexis Butterworths Tolle. 440.

[38] (2020) 3 NWLR (Pt. 1710) 104 at 126, paras. C – E; 127 para. A.

[39] CAMA 2020, s 553 (1).

[40] *Central London Electricity Ltd v Berners* [1985] 1 KB 160.

serve as directors of the company over those company assets not covered by the debenture as long as the company is a going concern and is neither wound up nor dissolved. However, when a receiver is appointed in relation to the assets included in and charged under the debenture document, the directors' authority to manage the company's assets is terminated.[41] The receiver is the only person with the authority to bring or defend legal actions in the name of the firm during the receivership, in accordance with the powers granted to him by CAMA 2020.[42] There are some circumstances where the directors can maintain an action under the company's name. For instance, where the receiver neglects or refuses or fails to take action to protect the interest of the company.

iii. Employment Contracts

The hiring of an IP in receivership by court, automatically terminates the employment of the company's employees and they may claim damages for breach of contract even when subsequently re-employed by the receiver.[43] The apex court in *Gbedu* v *Itie* held that the appointment receiver/manager automatically terminates all existing contracts of employment.[44] However, this study disagrees with the sweeping pronouncement of the Supreme Court as it is not mandatory in all cases that the order of appointment by court will include termination or discharge of all existing contracts of employment. More so, the appointment does not extinguish life of a legal entity.[45]

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[41] *Newhart Developments* v *Co-Op Commercial Bank* [1978] 2 All ER 901; *Jukok Int'l Ltd v Diamond Bank Plc* [2016] 6 N.W.L.R (pt. 1507) 55 at 96.

[42] CAMA 2020, s 556.

[43] *Gbedu v Itie* [2020] 3 NWLR (Pt. 1710) 104 at 124, para. H.

[44] n43

[45] *Solar Energy Advanced Power Systems Ltd (S.P.E.A.S) v Ogunnaike* [2008] 14 N.W.L.R (Pt. 1106) 1 at 12, para G*; Christlieb Plc v Majekodunmi* [2008] 16 N.W.L.R (Pt. 1113) 324 at 345, paras C – E; *Pharmatek Industries Ltd v Trade Bank (Nig.) Ltd* [1997]7 N.W.L.R (Pt 514) 639.

Where the appointment is out of court, therefore regarded as agent for the company, the appointment does not automatically terminate contracts of employment previously made and subsisting between the company and its employees.[46] However, this legal tenet regarding the impact of the appointment of a receiver and/or manager as it relates to employment contracts in a company is subject to exceptions. The first exception is that where the appointment is accompanied by a sale or 'hiving down' of the business of the company.[47] The second exception occurs where simultaneously with or very soon after his appointment, the receiver and/or manager enters into a new agreement with a particular employee that is inconsistent with the old contracts. In other words, the existing contract of employment is superseded and *ex hypothesi* terminated.[48] The third exemption is where keeping the positions of the staff would go against the receiver's responsibilities as a manager and receiver.

It is arguable as to what the effect of the appointment of a receiver will be on the existing contracts of employment if he is acting as an agent for the debenture holders. Although there is no settled precedence, the preponderance of opinion,[49]is that such appointment will terminate the company's existing contracts of employment. In *Dagazau v Bokir Int'l Co. Ltd,* the court pronounced that "… the powers of the board automatically vest in the *de facto* sole

[46] B F Palmer, *Palmer's company law*. Volume 3. London: Sweet & Maxwell. Pt 14. 14088; H Picarda, 1984. Receiver and on demand debentures. 5 *Bus L Rev*. 104; O I Smith, 2001. *Nigerian law of secured credits.* Lagos: Ecowatch Publications (Nigeria Limited). 337.

[47] *Re Foster Clark Ltd* [1966] 1 All ER 43.

[48] *Griffiths* v *Secretary of State for Social Services* [1974] QB 468.

[49] *Dagazau v Bokir Int'l Co. Ltd* [2011] 14 NWLR (Pt. 1267) 261 at 325 – 326, paras H – A; Picarda, H. 1984. Receiver and on demand debentures. 5 Bus L Rev. 105 – 106.

administrator who determines the continuity of the secretary and indeed, of all other staff".[50]

4. Conclusion and Recommendation

Receivership is one of the vehicles open to a debenture holder or creditor to enforce a proprietary security or to recover debt. Reliance on this vehicle is provided for in the CAMA 2020, and other extant statutes, and debt instruments. But, in practice, the appointment of a receiver, exercise of powers by a receiver *vis-à-vis* the company, have been fraught with challenges and disputations. These obvious intrigues have been compounded by the decisions of the Supreme Court in *Gbedu* v *Itie*,[51] and *Dagazu Carpets Limited* v *Bokir International Company Limited*,[52] which decisions took away the powers of the company and its organs when in receivership.

Against the above, it is the suggestion of this paper that the Supreme Court should reverse and set aside its decisions,[53] as it relates to the legal status of the debtor company, powers of directors, and contracts of employment. The position of the law is that the legal status of the company and the powers of directors remain intact over the part of the debtor's property that is not subject of the receivership.[54]

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[50] *Dagazau* (n49) at 325 – 326.
[51] [2020] 3 NWLR (Pt. 1710) 104
[52] (2025) 8 NWLR (PT 1992) 271.
[53] *Gbedu* v *Itie*, and *Dagazu Carpets Limited* v *Bokir International Company Limited*.
[54] CAMA 2020, s 556 (4).

REVISITING THE STANDARD OF PROOF IN CIVIL MATTERS WHERE CRIME IS ALLEGED BUT NOT CHARGED

By

Chukwuma A J Chinwo, PhD*

Abstract

Since the judgments of the Supreme Court in Nwobodo v Onoh and Ajasin v Omoboriowo in 1983, the issue of standard of proof in a civil matter, especially election petition, of any allegation of facts which constitute crime has been one of the biggest stumbling blocks that a petitioner or even claimant in other civil matters has to confront and overcome to succeed. Should it be the standard required when a person is a defendant of a charge or information (accused person) or the standard in civil cases, that is, on the balance of probability? Section 135(3) of the Evidence Act, 2011 has intervened in this matter to make the standard that of balance of probability. Unfortunately, the Courts, in a trend prevalent in election cases in particular, have refused to follow the provisions of the Act but are stuck to precedents. This article reviewed the provisions of the Constitution and the Evidence Act vis-à-vis the fixation of the Courts with precedents. While supporting that standard of proof must remain beyond reasonable doubt where the defendant is charged with a criminal offence, in view of the presumption of innocence, this article argued that such a standard is not supposed to apply to a case where the allegation of the crime is tangential and the respondent or defendant is not accused under criminal procedure with the possibility of being sentenced. This is more so as the election court, in the case of election petition, has no criminal jurisdiction.

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Key words – *Charge, Proof, Crime, Alleged, Facts-in-Issue*

1.0. Introduction

The challenge of standard of proof in civil matters where crime is alleged but not charged came to the fore in Nigerian litigation jurisprudence following the Supreme Court decision in *Nwobodo v Onoh*[1] which on similar facts was differently decided from *Ajasin v Omoboriowo*[2] following the 1983 General Election. In both cases the petitioner in the election petition made allegations of commission of crimes in the conduct and declaration of result of the governorship election in Anambra and Ondo States respectively. In one of those situations that challenged the public appreciation of the judgments of the Supreme Court, while it dismissed the appeal in *Nwobodo* on the ground that the allegations of crimes were not proved beyond reasonable doubt, it upheld the appeal in *Ajasin* on the basis that the allegations needed not be proved beyond reasonable doubt but that it was enough that they were proved to the level of probability required in civil cases. The same panel heard and determined the two appeals but different lawyers were involved. The major difference in the two cases, apart from the basis differences of the *dramatis personae* and geography, was that while in *Ajasin* the electorate took up arms and violently challenged the declaration of results by the Electoral Commission, the electorate in *Nwobodo* 'went about their businesses' and left the post-election issues to the politicians and their lawyers. Some wondered whether that could have influenced the attitude of the Court or whether the state of pleadings and advocacy of counsel influenced the decision of the Court. Of course, it would be unfortunate if the decision of courts are not based on the facts and the applicable law and legal principles but the amount of violence unleashed by interested parties or the status of the lawyers involved.

[1] (1984) All NLR 1.
[2] (1984) All NLR 105.

The questions have remained. Since then, litigants, especially in election petitions, have literally been put to the sword whenever any allegation or averment is made which implies the commission of crime. Respondent lawyers hop around, with some grinning from ear to ear, and demanding 'proof beyond reasonable doubt'. It is based on the Court's interpretation of section 135 of the Evidence Act, 2011 or rather its predecessor in the repealed Evidence Act which was in the same terms.

2.0.The Constitution on Presumption of Innocence and the Evidence Act on Standard of Proof

The provision on standard of proof is based on the provision of Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 that

> Every *person who is charged with a criminal offence* shall be presumed to be innocent until he is proved guilty;[3]
>
> Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

Section 135 of the Evidence Act provides:

> (1) If the **commission of a crime by a party to any proceeding is directly in issue** in any proceeding civil or criminal, it must be proved beyond reasonable doubt.[4]
>
> (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this

[3] Italics mine to show the beneficiary of the presumption against whom an offence must be proved beyond reasonable doubt. 'Charge' here has the same meaning as 'indictment – a written accusation preferred against a person charging him with an offence or offences before a court of law. It is an information or charge preferred by the State against a person' *Buhari v I.N.E.C.* [2009] All FWLR (Pt. 459) 419, 557 C-D. It means that the Court of Appeal was wrong in *Enechukwu v Nnamani* [2009] All FWLR (Pt. 492) 1087.

[4] Highlight mine for emphasis, being the kernel of the article.

Act, on the persons who asserts it, whether the commission of such act is or is not directly in issue in the action.

(3) In election matters, whether the commission of crime is in issue or not, proof shall be on the preponderance of evidence or balance of probabilities.[5]

One does not contest the provision that the burden of proving that any person has been guilty (culpable) of a wrongful act is, on the person who asserts it whether the commission of such act is or is not directly in issue in the action. It is in line with the general provision that whoever asserts must prove.[6] The challenge is as to what the standard of proof should be where the commission of such an act is not directly in issue in the action and an allegation of crime is not against the respondent whose declaration as a winner of an election or owner of right is being challenged but only made tangentially.

The presumption of innocence of any person charged with crime is one that confers great immunity on a defendant faced with a criminal charge and heavy responsibility on a prosecutor. It is a great safeguard against the malicious and oppressive maligning and possible false accusation of the innocent who are hauled before human beings to be adjudged, condemned and sentenced, sometimes to such ultimate punishment as death. It also throws on the court the grave responsibility expected of it when a person presumed innocent

[5] From this subsection, which is an innovation to eradicate the mischief which this article is concerned with, it means that this article would not have been necessary if Nigerian Courts had chosen to follow the legislative provision in the Evidence Act instead of *'precedent upon precedent'* which has been the undoing of the judicial process in giving substantive justice, especially in electoral matters! See *Emmanuel v Umana* (2016) All FWLR (Pt. 856) 214, 310, Kekere-Ekun, per JSC (now CJN). In the 2023 Presidential election petition, the Supreme Court ignored the subsection but insisted on the old precedents. See *Obi v I.N.E.C.* (NO. 1) [2023] 19 NWLR (Pt. 1917) 1, 260-261; *Atiku v I.N.E.C.* (No.2) [2023] 19 NWLR (Pt. 1917) 761, 874. To avoid this provision, some lawyers, in pursuit of their *sui generis* claim, strangely assert that the Evidence Act does not apply and some of the courts have upheld them!

[6] Section 131, Evidence Act, 2011.

is brought before it and would be leaving the court with a new and despicable tag of guilt as a convict. That is why the law and the Courts have insisted that pronouncing of such guilt should only be by an ordinary court of law not any other person or tribunal.[7] Since an election tribunal or court or even any court dealing with a civil claim has no right to pronounce any person guilty of crime, it follows that it has no jurisdiction to import criminal procedure or standard of criminal trial into its proceedings. It is submitted that whether or not a respondent in a civil matter is guilty of a crime is not a matter for the civil court and it should thus only demand the standard of proof applicable to civil cases in the same way that a court in a criminal trial cannot import civil standard of proof but would demand proof beyond reasonable doubt. The prevalence of crime in society may make some persons to be frustrated with the presumption and the heavy burden placed on the prosecutor, especially when in their view the defendant is guilty and *'there is nothing any person can tell me, I know that he did it. That is his stock in trade'*.[8] It is even more distressing to insist on presumption of innocence when one has been a victim of crime.[9]

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[7] *Federal Civil Service Commission v Laoye* [1989] All NLR 350, 397, Oputa JSC; *Garba v University of Maiduguri* [1986] 2 SC 128, 155 [1986] 1 NWLR (Pt.18) 550, Obaseki JSC; *Buhari v INEC,* (n3) 556F-G.

[8] Paraphrasing a radio jingle of Today FM 95.1 Port Harcourt against prejudice and hate speech.

[9] I once visited the defunct Special Anti-Robbery Squad (SARS) office in Borokiri, Port Harcourt. They had stormed the home of my elder brother, a Chartered Accountant and Justice of the Peace, in my presence with all the intimidating presence you would expect them to show when confronting a terrorist. They were not ready to let me know why they were after my brother. They asked me to come to their office in Borokiri if I must know. Before I got there my brother was sitting on the floor without his shirt. I protested and one called me aside and said I should rather be thankful, that they could kill him and tag him with robbery but they found that it was a civil matter. I was dazed. My brother had settled a matter between a landlord and his tenant and the tenant against whom the verdict was given decided to 'show' both the arbitrator and his landlord. While I was there a lawyer I know strolled in and seemed to know his way around there. When I told him my experience, he said 'Senior after

But it is in the best interest of everyone in the society that there should be presumption of innocence of anyone charged with crime and that the burden of proof should not be flimsy but beyond reasonable doubt before a person would be convicted and smeared with the tar of crime with all its inhibitions. However, one's thesis in this article is that that standard should not be required where a person is not accused of crime which can lead to conviction and thus the commission of crime is not directly in issue. The Courts should not be too anxious to require a standard of proof not required by the law in its urge to exonerate the beneficiary or validate a process which is notoriously smeared with conducts unworthy of its commendation.[10] It should put no greater burden on a petitioner or claimant than what the Constitution and the Evidence Act had provided for.

The Court exists to protect the interests of the petitioner and the respondent and it should always hold the balance equally as provided by the law. As Oputa, JSC put it, 'One aspect of our much vaunted equality before the law is that all litigants, be they private persons or government functionaries, approach the seat of justice openly and without inhibitions or handicap. Each win solely and wholly by, and because of, the strength of his case – its weight on the scale of justice. It is the duty of the Courts to safeguard the rights and liberties of the individual and to protect him from any abuse or misuse of power or … "executive lawlessness" …In the unequal combat between those who possess power and those on whom such

armed robbers attacked me in my house, I am no longer keen to talk of human rights. Once they are caught they should be shot'. I was stunned. He however, sympathised with my brother's case which he agreed was clearly a civil matter.

[10] The presumption of regularity of official acts under the Evidence Act seems to make the Courts unwilling to make the Electoral Commission live up to its statutory responsibility unlike what its counterparts elsewhere did and strengthened the electoral process. See *Ashby v White* below.

power bears, the Court's primary duty is protection from the abuse of power'.[11]

It is submitted that when the court puts a heavier burden of proof on a party that runs to it for justice, especially in case of election where it is invariably a citizen petitioning against respondents that wield power, they are putting stumbling blocks, inhibitions and handicaps on the way of the petitioner or claimant. That encourages executive lawlessness. In *Ashby v White,* Holt, C.J., whose opinion was upheld by the House of Lords, demonstrated remarkable appreciation of the responsibility of the judiciary to protect civil political rights when he said:

> The right of voting at the election of burgesses is a thing of the highest importance, and so great a privilege, that it is a great injury to deprive the plaintiff of it. … to allow this action will make public officers to observe the constitution of cities and boroughs, and not to be so partial as they commonly are in all elections, which is indeed a great and growing mischief; and tends to the prejudice of the people and the peace of nation. … My opinion is founded on the law of England.[12]

The Courts in Nigerian seem to minimise citizens political rights by their interpretation of substantial compliance which has given the electoral Commission escape route from meeting the minimum standards of electoral conduct even after receiving humungous amounts and promising to conduct 'world class free, fair and credible elections'.[13]

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[11] *Federal Civil Service Commission v Laoye* (1989) All NLR 350, 392

[12] (1703) 92 ER 126,

[13] Section 135 Electoral Act, 2022. It is difficult to agree that an election that did not conform to the standards provided by the Act and the Guideline and Regulations of the Commission, and which the Commission virtually swore

3.0. Presumption of Innocence and Proof Beyond Reasonable Doubt

It has often baffled learned and non-learned observers why there should be presumption of innocence and requirement of such stringent standard as 'beyond reasonable doubt' in the trial of a crime. Some may argue that in a world that lies in wickedness, as the Christian doctrine has it, and human beings are inherently prone to evil, there should rather be a presumption of guilt and a lower standard of proof should be required to prove what is already inherent and presumed. This would amount to not realising that the law by which human beings are judged on earth is not given by the dispensation of angels but by human beings with limitations and certain hunches and ideas which may also tend towards evil and that it is made for human beings and interpreted by human beings who are driven by different sorts of idiosyncrasies, and sometimes foibles, not different from those that control other human beings.[14] It also overlooks the depth of wickedness which human beings are capable of in falsely accusing others of crime with the hope of even taking them out of the world.

It is submitted that it is better that there should be presumption of innocence and requirement of proof beyond reasonable doubt than otherwise when any person, irrespective of his antecedent, is formally and directly, not flippantly or indirectly charged (accused) with commission of crime, for the following reasons, among others:

(1) Most crimes comprise of the manifest physical component (the *actus reus*) and the invisible mental aspect (*mens rea*) which would co-exist before a crime can be said to have been committed, if it is

would be the minimum standard, should be held to be conducted in substantial compliance with the Act.

[14] As Benjamin Cardoso (1870-1938) later Associate Justice of the US Supreme Court, wrote in his book, *The Nature of Judicial Process*, (Yale University Press, New Haven Connecticut, 1921), 168, "The great tides and currents which engulf the rest of men do not turn aside in their course, and pass judges by".

not a strict liability crime. Evidence of the standard of proof beyond reasonable doubt is the means by which both the ingredients (components) can be proved to co-exist in or through the accused person (defendant) to hold him culpable for a crime.

(2). The accusation may be wrong and this can be driven by several factors such as malice, suspicion based on wrong assumption or prejudice, intimidation and oppression by the accuser, mob judgment, anxiety or unsettled mind of the accuser and so forth. The objective of the court is the attainment of justice which is only reached through the ascertainment of the truth or falsehood through criminal trial of charge in open court.[15]

(3). Limited capacity of the judge, being human, to know of the true facts but dependence on human narrations of facts which may be driven by some of the factors identified in (2) above.

(4) Condemnation of the innocent is a greater source of pain and devastation for the accuser, the defendant, the judge and the society than the mistaken discharge or acquittal of the guilty. That is why it is often said that it is better to let nine guilty persons go free than to convict one innocent person.

(5) Conviction for crime is a dent on the convict which can affect his generations unborn and it has a weight that can affect subsequent generations. This makes it imperative that the person who sits to judge should be extremely circumspect in believing any accusation and it is better that only a duly constituted Court manned by well-informed professional minds should try them strictly in line with the provisions of the law.[16]

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[15] *Federal Civil Service Commission v Laoye* [1989] All NLR 350, 398, Oputa, JSC.

[16] See Obaseki, JSC in *Garba v University of Maiduguri* [1986] 2 SC 128, 166-167.

(6) Conviction for a crime deprives the person of several things in accordance with the law against which his action or omission is alleged to go or infringe to the detriment of the society. It may deprive him of life, limb, liberty, property or dignity which are things that the law is ordinarily made to protect. Thus conviction and sentence would ordinarily have amounted to a crime against him were he not accused of breaching the law contrary to the interest of the society at large and thus breaking its hedge around him.

It should be appreciated from the outset that this focus of this article is not against the standard of proof of crime in criminal cases where a person is 'charged' with the commission of crime, that is, where the commission of the crime is the issue upon which the case is founded. When a person is facing prosecution, that is he is charged[17] with the commission of a crime which upon conviction renders him liable to sentencing under criminal procedure, it is agreed that proof of such accusation should be beyond reasonable doubt because the aim is to connect him with directly or through proxy breaching the laws made for securing the peace, security and order of the state. The proceeding is to identify and confirm him as an enemy of the State in a sense whether he committed the offence for his own or another person's benefit.

Proof beyond reasonable doubt, as the Supreme Court has held means the prosecution establishing the guilt of an accused with compelling and conclusive evidence.[18] Every ingredient of the offence should be proved by cogent and not just believable but compelling evidence which point inescapably to him and because of which he would be punished under the criminal law of the land. He is the *'our friend, the bad man'* that Oliver Wendell Holmes spoke

[17] Black's Law Dictionary, 9th Edition by Bryan Garner defines 'charge' as 'to accuse of an offence'. It is submitted that is different from stating that crime was committed by identified or unidentified persons in the course of a larger and different transaction such as election.

[18] *Aliyu v The State* [2022] All FWLR (Pt. 1129) 419, 449; *Bakare v State* (1987) 3 SC 1, 32-34.

about[19] and it's the Court, manned by his fellow human, that is given the authority and power to pronounce him so by its interpretation of the law and application of it to the facts presented before him by the evidence of other human beings.

The concern of this article is when crime is alleged but the person, the defendant or respondent is not charged with the commission of the crime even if he may be a beneficiary or even indirect instigator or enabler[20] of its commission because the commission of the crime is not the issue before the court. In an election petition, for instance, the issue is whether the election was validly conducted and the person declared a winner was validly declared.[21] On what basis then, for instance, should there be proof beyond reasonable doubt because a petitioner in an election petition stated that there was violence at polling centres during election or that the election results were mutilated or forged when he did not state that the respondent was the culprit of the violence, mutilation or forgery even, if he was the beneficiary, but produced evidence enough to tilt the balance of probability, the guide to the sanctuary where truth resides.

It is submitted that even if the petitioner implicated the respondent in a crime, the court should only receive such evidence as supporting the fact that he is not duly elected or that the election was not duly conducted if there is no contrary evidence to aid the Court in evaluation.[22] If it is sought to punish him for crime he should be formally arraigned in a criminal trial where proof has to be beyond reasonable doubt. Why should the Court hide on the cloak of beyond reasonable doubt to allow the respondent go scot-free with a

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[19] Holmes, *'The Path of the Law'* in Collected Legal Papers, 173.

[20] When a politician appoints 200,000 Special Adviser on Polling Units n an election in which the Electoral Commission and the Police has their own personal, it may not be a surprise to hear of the SAs being thugs.

[21] Electoral Act 2022, s 134 (1).

[22] *Buhari v INEC* (n3) 558-560.

declaration of success in the pools obtained by non-credible actions including violence?

3.0.1. When Crime is in Issue

It is submitted that crime is in issue only in a criminal trial before a court that has jurisdiction where a defendant is by due process charged with the commission of an offence for which if he is found guilty, he would be liable to sentence under the criminal law code. According to the Evidence Act,

> Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such facts as are hereafter declared to be relevant and of no others:
>
> Provided that –
>
> (a) The Court may exclude evidence of facts which though relevant to the issue, appears to it to be too remote to be material in all the circumstances of the case; and
>
> (b) (Not relevant for purpose of this article).[23]

From this provision it means that evidence should only be given of fact in issue. Where a fact is not in issue such evidence is either relevant and proximate or relevant but remote, irrelevant, or, perhaps, illegal and thus not admissible or otherwise excluded by the law. The Act does not leave us in the dark as to 'fact in issue'. It states that 'fact in issue' includes any fact from which either by itself or in connection with other facts the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any proceeding necessarily follows'.[24] In a criminal trial the guilt of the defendant is in issue. It is asserted by the prosecutor who has the

[23] Evidence Act 2011 (as amended), s 1.
[24] Ibid, s 258.

burden to proof which never shifts or denied defendant who only has responsibility to introduce evidence which the prosecution evidence must have made redundant or which would exculpate him.

It means that in any proceeding the Court has a responsibility to determine what the facts in issue are. Unfortunately, until the recent insistence on front loading procedure in some jurisdictions, Nigerian Courts seemed to overlook this responsibility. And, in some jurisdictions where efforts are made to identify issues, the Courts have confused identification of issues of fact and law for determination, which should be after receiving evidence, at the conclusion of trial in the address, with identification of issues of fact for trial, which should be at the pre-trial stage.

In a paper this writer was opportune to present at a colloquium on the Rules of the High Court of Rivers State, I had said: 'The fault is not in the rules that lawyers, the courts, litigants or the general public complain about the judicial process. The rules have been available for use as handmaidens or midwives for the delivery of the baby called 'justice' to those who desire it and turned to the 'labour room' – the Court. Where they are properly used the baby is duly delivered and on time, to the joy of all, but where they are not so used there is either miscarriage or still birth of justice sometimes endangering the life of the 'mother'. Where they are abused there is abortion of justice! Lack of use and abuse unfortunately occur too often for comfort. And the tendency is to blame the rules. The problem lies in the ignorance of the rules by the very group who should and are acclaimed to know and use them – the lawyers – in urging for justice to be done to them or their clients. It seems to me that the time has come for us first to ask ourselves how much of the law and its rules we actually know and not just be presumed to know as 'learned' people. …I think we should get to the position where no lawyer who has not gone through the Rules of Court at least once to know the

possible options available to them in conducting a trial should announce appearance and conduct a civil trial.[25]

The Courts should be intentional on differentiating between issues for determination and issues for trial. Confusion in this matter has led to much injustice in civil trials. Where a petitioner in an election petition, for instance, prays that the declaration of a candidate as winner should be nullified because he did not score the majority of lawful votes cast and in his pleading states that there was malpractices bordering on crime in some polling centres or alteration of results by the electoral officers what is the issue for trial and determination in the case? Does he have a duty to prove beyond reasonable doubt that the declared winner or even his privies committed the activities that border on crime or that activities by different persons which are manifest by evidence made his votes not lawful? It is submitted that his responsibility is to prove by evidence that activities by different persons, including the Electoral Commission and its officials, which are manifest by evidence made the respondent's votes unlawful and not to prove beyond reasonable doubt that he directly committed or procured those persons to commit the offence because the commission of the offence is not the issue before the court dealing with election petition. The respondent would then have the responsibility to show by adducing evidence that what the petitioner or his witness alleged did not happen as alleged. It is those sets of evidences (facts) that the court would put in the imaginary scale of *Odofin v Mogaji.*[26] If it is the crime that is in issue the court or tribunal would have no jurisdiction at all to deal with the petition.

It is submitted that it is a disservice to the electoral process which culminates in election petition for a tribunal or court to import

[25] CA.J Chinwo, 'Review of Orders 13-18 of the Draft Rules' presented at *Colloquium on the High Court (Civil Procedure) Rules, 2022 of Rivers State* on October, 23, 2022.

[26] [1978] 1 LRN 212, 213; [1978] NSCC 257; [1978] 4 SC 91.

criminal proceeding into what is clearly a civil proceeding governed by the rules of the court or tribunal and supplemented by the Civil Procedure Rules of the Federal High Court.[27]

If it is agreed that election petition is a civil proceeding then the submission above is clearly supported by the Evidence Act. The Act provides:

> (1) In civil cases the burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.
>
> (2) If the party referred to in subsection (1) of this section adduces evidence which *ought reasonably to satisfy the court that the fact sought to be proved is established*, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so successively, until all the issues in the pleadings have been dealt with.[28]
>
> (3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

Unfortunately, the importation of standard of proof of crimes into civil proceedings to be beyond reasonable doubt when a person is not being charged with crime has resulted in the fundamental error of making the proof of election petitions appear even more onerous than proving crime in criminal proceedings. It has been the source of all sorts of chicanery masquerading as advocatory ingenuity. It has resulted in the perverse understanding of election petition being *sui generis* as a way of obfuscating rather than revealing the truth

[27] Electoral Act 2022, Paragraph 54 First Schedule.
[28] Ibid, s 133. Italics mine for emphasis.

for the interest of the weightier matter of the law – justice. In *Emmanuel v Umana (No. 1)* Kekere-Ekun, JSC (as then was) said:

> It is well settled that an election petition is a proceeding, which is *sui generis*, being of its own kind, possessing an individualist character; which is unique and like only to itself. It is unlike ordinary civil proceedings and governed by its own unique constitutional and statutory provisions.[29]

Election petition being *sui generis* does not elevate it beyond the status of a civil proceedings but rather means that it is 'governed by its own unique constitutional and statutory provisions'. It means that the *sui generis* nature of elections is meant to confer on the courts a more proactive, pro-substantive justice stance that would not add any further burden on the litigants than what is laid by the law makers and contribute to ensuring that justice is served to the litigants (both petitioners and respondents) and the society at large. Why then do the courts ignore constitutional and statutory provisions and follow 'precedents upon precedents'?

It should be understood that it is not only election matters that are claimed to be *sui generis.* Many other proceedings are claimed to be so. In *First Bank Nigeria Plc v Yegwa,*[30] Okoro, JSC in his concurring judgment stated that a 'garnishee proceeding is *sui generis* and completely distinct from the suit that pronounced the debt owing. The judgment debtor is therefore excluded for good cause to prevent unnecessary interventions. What is required of the garnishee therefore is to show cause why the debtor's money in his possession should not be attached in satisfaction of the debt and not

[29] [2016] All FWLR (Pt. 856) 214, 308.See also *Maku v Sule* [2022] 3 NWLR (Pt. 1817) 231, 257; *Buhari v Yusuf* (2003) LPELR 812 (SC); [2003] 14 NWLR (Pt. 841) 445; *Nyesom v Peterside* (2016) LPELR 40036 (SC); [2016] 1 NWLR (Pt. 1492) 71; *Lokpobiri v APC* [2021] 3 NWLR (Pt. 1764) 538, 545-546; *APC v Uduji* [2020] 2 NWLR (Pt. 1709) 541, 572; [2020] All FWLR (Pt. 1065) 1, 27, per Kekere-Ekun, JSC.

[30] [2023] All FWLR (Pt. 1186) 172 at190 E-G.

for him to protect the interest of the debtor by frustrating the judgment creditor from reaping the fruits of his judgment'.[31] It is submitted that what His Lordship said of the banker here applies with equal, if not heavier force to the election umpire, unlike what INEC and its lawyers do in most election petition in Nigeria and the Courts indulge them.

3.0.2. Proper Perspective on *Sui Generis*

It is submitted that the proper perspective on *sui generis* should be as follows:

> It is now settled and well-worn fact that election petition matters are *sui generis* and call for actual and *bona fide* justice where substantial justice overrides technicalities. It is also more acceptable principle of law that reliance on technicalities, which could be due to human error or slip ups, lead to injustice. Justice can only be done if the substance of the matter, rather than the form is attended to in the consideration of these matters. Such trivial and trifling mistakes or errors are likely to be made by counsel and or court registry from time to time as in the instant case. This in my opinion should not deprive a party from having his complaint or matter properly ventilated. And determined on the merits.[32]

Election petition cases are *sui generis* because they involve special considerations of public aspiration and interest, time, expectations from the Court that substantial justice should be the goal of adjudication, skill and expense. Others are that the courts have a

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[31] Every proceeding governed by statute or subsidiary legislation is *sui generis* that statute and a court would be acting *per in curiam* if it ignores the provision of the statute or subsidiary legislation to follow precedents when the court does not make law and cannot ignore a law unless it is invalid.

[32] *Beatrice Itubo v INEC & Ors*, (EPT/RV/GOV/12/2023, judgment delivered on 2/10/2023) 50, Per C. Emifoniye, J., Chairman, Rivers State Governorship Election Tribunal, 2023.

serious responsibility to preserve democracy and thus should reject the *Mike Tyson Technical Knockout Syndrome*. The Courts must be on the side of truth and the protection of the rights of citizens no matter their class and be open to all rather than being secretive in their proceedings.

The Evidence Act provides that the burden of proof shall be discharged on the balance of probabilities in ALL civil proceedings. The Electoral Act has not, in any of its editions in Nigeria,[33] reversed this but the judiciary has, to the consternation of litigants and the entire electorate. As urged below, it is submitted that the Courts in Nigeria should as soon as possible reverse the requirement of proof beyond reasonable doubt when crime is alleged in civil case, particularly election petitions where it is rampant, for the following reasons:

(a) The respondent is not charged with electoral offence but is challenged for his emergence or declaration as the winner of an election, which is a civil proceeding.[34]

(b) The allegation of committing of electoral offence while it may be relevant and admissible fact is not the issue for determination or even trial by the Court. Issues for trial are determined by the claim of the parties. The responsibility of the petitioner should be to prove existence of facts which support his pleading (petition), regard being had to presumptions that may arise in his pleadings, to the extent that would reasonably satisfy the court that the fact sought to be proved is established. Thereafter the burden shifts to the other party against whom judgment would be given if no more evidence were adduced and so successively until all the issues in the pleadings have

[33] To demonstrate that election is a statutory not common law activity, Nigeria has made new Electoral Act for virtually every election season. Thus we had the Transition Decrees of 1978, 1992, 1998 and Electoral Acts of 1982, 2002, 2006, 2010 and 2022.

[34] Constitution of the Federal Republic of Nigeria 1999 [CFRN 1999], s 36 (5); Electoral Act 2022, s 134 (1); *Buhari v INEC* (n3) 518-519.

been dealt with.[35] It is after this process of 'shifting burdens' has been concluded that the trial judge would embark on evaluation following the procedure enunciated by the Supreme Court in *Odofin v Mogaji.*[36] There is no reason for a Court to adopt an admixture of criminal and civil proceeding standards of proof in one proceeding. It is an unacceptable potpourri and it leads to confusion, injustice and, ultimately, much complaining in our streets and cities.

(c) The Electoral Act 2022 has put this beyond opinion and conjecture by creating electoral offences and providing for prosecution of those involved in electoral offences in separate criminal proceedings.[37] This is why a culprit can be convicted for being involved in electoral crime while the beneficiary of his fraud may retain his position if a petitioner against his declaration is not able to prove his petition on the balance of probability required of him.[38]

(d) In criminal proceedings, where proof must be beyond reasonable doubt, it is because 'the commission of a crime by a party to (the) proceeding is directly in issue' not in a civil proceeding when it is tangential or it is alleged to have been committed by a non-party.[39] One is humbling urging that, not only in election petition but in all civil proceedings, where the defendant is not facing criminal charge the standard of proof should only be on the balance of probabilities. Thus if the respondent is not accused of committing the offence directly there should not be requirement of prove beyond reasonable

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[35] Evidence Act 2022, s 133.

[36] (n26).

[37] Electoral Act 2022, Part VII, s 114-125.

[38] In the aftermath of the 2019 General Election a Professor of Soil Science at the University of Calabar, Peter Ogban, who was a returning officer was prosecuted for electoral malpractice of announcing fake election results in two local government areas which benefited a contestant. He was convicted and sentenced to three years in prison. On April 30, 2025 the Court of Appeal upheld his conviction in. https://businessday.com

[39] Electoral Act 2022, s 135.

doubt. If he is accused of then he should be prosecuted for crime.[40] This is further accented by section 135(3) quoted below.

(e) The Evidence Act, 2011 is very clear on this issue as it provides that:

> In election matters, whether the commission of crime is in issue or not, proof shall be on the preponderance of evidence or balance of probabilities.[41]

It means that insisting on prove beyond reasonable doubt is illegal and contrary to the philosophy of judicial engagement in a system of legislative activity. In the same way that a court is not permitted to admit and act on legally inadmissible evidence even if such evidence had been admitted by agreement of the parties or under an order of court in the course of hearing',[42] so, it is submitted, that no court should put on a party a burden of proof that is not put on him by the Evidence Act or any other relevant Act in a matter before it. This, unfortunately, is what the judiciary in Nigeria has been doing against petitioners in election petition. If it could be excused for uncertainty before the 2022 Electoral Act, it is with all trepidation, totally inexcusable if not complicit, to do so after the very clear provisions of the Electoral Act, 2022 and Evidence Act, 2011.

3.0.3. Invitation to Overrule

In *Federal Civil Service Commission v Laoye*,[43] the inimitable Oputa, JSC said:

> This Court does not show any antipathy towards any submission that its previous decision or decisions

[40] In 2005, this writer and Preye Agedah, Esq proposed the establishment of an Electoral Offences Commission to the Senator Brigidi Senate Committee on Electoral Reforms at the Presidential Hotel in Port Harcourt. The proposal was accepted and made part of the recommendations of the Justice Uwais Panel on Electoral Reforms set up President Umaru Yar'Adua in 2007.

[41] Electoral Act 2022, s 135(3).

[42] *Obi v .I.N.E.C.* (No. 1), supra, 155, Tsammani, J.C.A. (as he was then).

[43] (1989) All NLR 350, 391.

> were wrong and should be overruled. In fact the court welcomes any opportunity to review any decisions given *per incuriam*. It is far better to admit an established mistake or correct same rather than persevere in error. Justices of the Supreme Court are human beings capable of erring. It will be short-sighted arrogance not to accept this obvious truth … the Supreme does have the power in appropriate circumstances to overturn its earlier decisions if clearly satisfied that these decisions were wrong. This involves a balancing of the need for certainty in law and need not to persevere in error.

It is submitted that the Supreme Court of Nigeria should, as soon as the opportunity presents itself, be bold and at the same time humble enough to overrule all its decisions that placed on petitioners, claimants and plaintiffs the burden of proving allegations of crime beyond reasonable doubt when the respondent is not charged with the commission of a crime and the commission of a crime by himself (not proxy or supporter) is not *directly in issue* in the proceeding, especially civil proceeding. The present state of the law as interpreted by the Supreme Court has unwittingly provided cover for election riggers in Nigeria who now gleefully taunt those they undo by using their cronies, thugs and fraudulent electoral officials to benefit from malpractices to 'go to court'.

The Evidence Act expects, as it provides, that if the petitioner adduces evidence which *ought reasonably to satisfy the court* that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no evidence were adduced, and so on successfully, until all the issues in the pleadings have been dealt with.[44]

Moreover the Evidence Act has, with the understanding of the harm the judicial stance had done to the evolution of a credible electoral

[44] Evidence Act 2022, s 133 (2).

culture in Nigeria, provided that 'In election matters, whether the commission of crime is in issue or not, proof shall be on the preponderance of evidence or balance of probabilities'.[45] Why then should the courts and lawyers persist in the error of demanding proof beyond reasonable standard when the law maker has provided that it should be on balance of probability?

4.0. Conclusion

In this article one has tried to identify an emerging trend in the attitude of the judiciary in Nigeria, particularly in election matters where the issue occurs more prominently and frequently, whereby the attention is much more on precedent than on the provision of particular statutes governing particular situations. The Courts should always pay particular attention to statutes and appreciate their legislative history, notice the mischief which the lawmakers seek to eradicate and not be anti-legislative development by undue adherence to precedents that were either *per incuriam* or have become no longer good law because of the intervention of new legislation.[46] As the Supreme Court has said 'the well established principle of law is that the safer and more correct course of dealing with a question of construction is to take the words of the document or statute themselves and arrive, if possible, at their meaning without, … reference to cases.[47] This would restore the confidence of the people in the judiciary for it is dangerous when the hope of the people based on a statute is dashed by a few men or women who based their decisions not on genuine interpretation of the statute but on reliance on what had been earlier decided under a different statutory regime. It can be distressing to hear a judge asserting that he would not dare differ from an earlier decision of an appellate court when a statute has addressed an issue expressly and differently. That is the reason why a court has the power and

[45] Evidence Act 2022, s 135(3).
[46] *Mobil v F.B.I.R.* (1977) 53, 75, Bello, J.S.C. (as he was then).
[47] *Adisa v Oyinwola* (2000) FWLR (Pt. 8) 1349, 1391, Iguh, JSC.

responsibility to distinguish.[48] A case has to be relevant on similar legal foundation before it can be binding.[49] The decisions before 2011 Evidence Act on standard of proof of allegation of crime in election petition cases are of different foundation and should no longer stand while on other civil matters the courts should adhere to the statutory provision not earlier precedents.

No court has the power to read into a statute what it does not intend or contain even by the rules of interpretation such as *ejus dem generis* or to ignore what is provided for.[50] It is submitted that that would be in excess of its jurisdiction. The court should not by its interpretation seek to attenuate the provisions of a statute by giving a convenient interpretation to it so as to conform to existing decisions or ensure what it considers as reasonableness. It should not sacrifice straightforward, clear, unadulterated, language of a statute to accommodate convenience thereby doing harm to the intention of the legislature.[51]

The standard of proof in civil cases, including election petitions is on the preponderance of evidence or on the balance of probabilities.[52] The Evidence Act has made it clear that even if there are allegations of crime, it does not change. That in one's humble view settles the question.

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[48] *State v Gbahabo* [2020] All FWLR (Pt. 1037) 373, 390; *Adisa v Oyinwola* (n47) 1395, per Iguh, JSC.

[49] *Oteri Holdings Ltd v Oluwa* [2021] All FWLR (Pt. 1082) 173, 218 C-E.

[50] *Kelvin Peterside v International Merchant Bank* [1993] 2 NWLR 712, 729, N. Tobi, J.C.A. (as he was then); *Shell Pet. Dev. Co (Nig.) Ltd* v F.B.I.R. [1996] 8 NWLR (Pt. 466) 256, 290-291.

[51] *Egbue v Araka* [1996] 2 NWLR (Pt. 433) 688, 710-711.

[52] *Buhari v INEC* (n3) 522.

AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF MARITIME INSURANCE IN NIGERIA

By

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Abstract

Maritime insurance is a crucial part of the maritime sector and, by extension, plays a significant role in supporting the Nigerian economy. This means that it serves as a protection for shipowners, importers, exporters, and other stakeholders and protects them from potential risks and losses that may occur during maritime activities. A functional marine insurance industry promotes confidence among participants and also acts as a financial engine that furthers economic development. Premiums generated from marine insurance policies contribute to the growth of Nigeria's capital market, thereby reinforcing the financial structure of the maritime industry. Consequently, trade is stimulated, investor confidence is enhanced and general national economic advancement is encouraged. This article carried out a comprehensive review of the legal and institutional frameworks regulating maritime insurance in Nigeria. Using the doctrinal research method, this paper analyzed both the strengths and the weaknesses of these regulatory frameworks. The findings revealed that, despite the existence of fairly laudable legal structures, the industry is limited by challenges such as poor enforcement of the law, limited financial capacity, as well as a shortage of adequately trained professionals. This article recommended some solutions, including legislation of more modern and effective laws, initiatives to enhance

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capacity-building and more effective enforcement measures.

Key Words: *Insurance, Legal and Institutional Framework, Maritime industry.*

1. Introduction

The role of maritime insurance in the maritime sector, and by extension, the Nigerian economy, cannot be underestimated, as it seeks protects the interests of ship owners, cargo owners, and other stakeholders against potential maritime losses. Thriving marine insurance acts as a financial engine for Nigeria's maritime sector. Premiums collected from insurance policies fuel the industry, contributing significantly to the capital market. This financial strength translates into a robust maritime industry, which is crucial for Nigeria's economic development and growth.[1]

Over time, Nigeria's maritime industry has experienced significant growth, driven by the country's expansive coastline and strategic position along major international shipping routes. However, this growth also exposes stakeholders to increased maritime risks, necessitating a robust insurance framework that includes an intricate web of laws and institutions.

The Marine Insurance Act 2004[2] is the primary legislation exclusively dedicated to the subject matter of marine insurance in Nigeria. The act mirrors the English Marine Insurance Act of 1906. Additionally, the Insurance Act 2004[3] is noteworthy. According to Section 67 (1) of this Act,[4] insurance on all imports into Nigeria must be buzzed by insurers registered under the law, which bolsters

[1] O Akinyeye, 'Evaluating Potentials of the Legislative Framework Impacting on the Nigerian Marine Insurance Industry' *The Maritime Newsletter* (2018) <https://oal.law/wp-content/uploads/2018/01/The-role-of-marine-insurance-in-Nigeria.pdf >accessed 23rd September 2024.

[2] The Marine Insurance Act, Cap M2, LFN 2004.

[3] The Insurance Act (IA), Cap I18, LFN 2004.

[4] Insurance Act 2004 s 67(1).

the domestic marine insurance business. We also have the Nigerian Maritime Administration and Safety Agency (NIMASA) Act, 2007, the Merchant Shipping Act, 2003, The National Insurance Corporation of Nigeria Act 2004[5] and The Nigerian Reinsurance Corporation Act 2004.[6]

Despite Nigeria having a legislative framework for maritime insurance, challenges hinder its effectiveness, contributing to the industry's underperformance and there are concerns persisting regarding its effectiveness in harmonizing with global standards.

The Nigerian Maritime Insurance Institutional Framework has also faced scrutiny. NIMASA, as the primary regulatory body for maritime activities established under the NIMASA Act 2007, has been criticized for its capacity to monitor and enforce compliance with maritime insurance requirements.[7]Also, the Nigerian Insurance Commission (NAICOM), established under the National Insurance Commission Act 1997, must enhance its oversight mechanisms to address the unique challenges of the maritime insurance sector.

Against this backdrop, this paper aims to critically evaluate the existing legal and institutional framework governing maritime insurance in Nigeria. By identifying strengths, weaknesses, and areas for reform, it contributes to the ongoing discourse on enhancing the maritime insurance landscape, ultimately fostering a more secure, efficient, and competent maritime industry in Nigeria.

2. Statement of the Problem

Despite the pivotal role maritime activities play in improving the Nigerian economy through international trade and transportation,

[5] The National Insurance Corporation of Nigeria Act, CAP N54 LFN 2004.
[6] The Nigerian Reinsurance Corporation Act, Cap N131 Law of Federal Republic of Nigeria 2004.
[7] E Etuk, NIMASA'S Lacuna's in the Discharge of its Regulatory Functions in the Management of Oil Spills Pollution in Nigeria, (2023) 10 (6), *Advances in Social Sciences Research Journal;* 98 – 107.

there exists a plethora of challenges bedevilling the efficacy and reliability of maritime insurance within this sector. The legal and institutional frameworks governing maritime insurance are riddled with issues such as financial adequacy, insurance companies, regulatory inadequacies and implementation lapses. These shortcomings not only impede economic growth but also pose risks to stakeholders ranging from shipping companies to cargo owners.

This paper seeks to examine these legal and institutional barriers, assess their impact on stakeholders' risk management capabilities, and propose viable remedies for enhancing the robustness and responsiveness of maritime insurance mechanisms in Nigeria.

3. Scope of the Study

In the context of Nigeria, where maritime activities play a significant role, this paper aims to discuss maritime insurance, with emphasis placed on comprehensively evaluating the existing legal provisions and institutional mechanisms governing maritime insurance. Thus, there will be an assessment of the existing legislations, regulations and judicial precedent, whether they are sufficient and where inadequacies lie. Additionally, this paper seeks to analyse key institutions such as insurance companies and regulatory bodies.

This paper seeks to suggest clear and feasible recommendations that will help improve efficiency, manage some of the problems and improve Nigeria's Maritime Insurance system.

4. Conceptual Framework

4.1 Insurance: Risk and uncertainty, though adverse, are phenomena that pervade our existence as human beings. Recognizing this element of risk and uncertainty as inevitable features of our lives, as rational, intelligent and creative beings, we have had to decide methods of combating and hopefully managing

the possible adverse effects.[8] This is why we developed insurance to serve as a risk management tool.

Similar to many concepts, Insurance is incapable of being specifically defined. In ***Department of Trade v St. Christopher Motorist Association Ltd.*** **(1974) AL ER 395,** opined that it was undesirable that there should be an all-embracing definition because of the tendency to obscure and occasionally exclude that which ought to be included. However, that doesn't mean it should be left without a definition of any sort. Conversely, several attempts have been made towards defining insurance.

Insurance may be defined with emphasis on its financial nature as an arrangement which redistributes the cost of unexpected losses.[9] Portman explained that throughout human history unexpected economic losses have occurred. Such losses, he opined, would continue to occur regardless of whether or not a system of insurance was devised by man. But through the operation of an insurance system, losses can be predicted.[10]

From the legal perspective, an insurance contract represents the insurer's agreement to accept risks, exchange for money paid as premium. Insurance, per Lawrence J. in *Lucena v Crawford* (1805) 127 ER. 630, is a contract by which the one party(insurer), in consideration of a price paid to him adequate to the risk, becomes security to the other, that he shall not suffer loss, damage, or prejudice by the perils specific to certain things which may be exposed to them.

It can also be described as a transaction in which the insurer (insurance company) for a certain consideration (premium)

[8]J O Irukwu, *You and Insurance* (BIMA Publication, Lagos 2003).
[9]S Portman, *A handbook of Marine Insurance* (Pitman Publishing, London 1983).
[10]S Portman, *A handbook of Marine Insurance* (Pitman Publishing, London 1983).

promises to reimburse (indemnify) the insured or render services in the case of incidental losses suffered during the subsistence of the agreement. Insurance is a contract of indemnity against a contingency. The insurer assumes the risk of a contingency in consideration of payment of a premium so that the insured who suffers loss or damage will be compensated from a common insurance fund.[11]

Inferring from all of this, clearly an insurance contract, like other forms of contract, is between two contracting parties, namely the insurer and the insured, with its attendant reciprocal rights and duties.

4.2 Marine Insurance: Marine insurance is the matriarch of all insurance. This form of insurance is oldest form of insurance with a history dating back to 1600. It began with the aim of encouraging marine commerce by reducing the risk merchants were to bear when venturing on sea voyage for trade.[12]

To define it, marine insurance is a contractual relationship in which an insurer agrees to undertake liability for maritime risks or perils that could arise from the entrepreneurial activities of an insured ship owner or maritime trader, upon payment of a consideration referred to as a premium. It is a contract of indemnity in which the insurer undertakes, in consideration of a premium, to indemnify the insured against loss occasioned by perils incident to a marine adventure.

According to R. Thomas, a contract of marine insurance is a specialized contract of indemnity that protects against physical and other losses to movable property and associated interests, as well as

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[11] W A Nneji, 'Overview of the importance of Marine Insurance to Inland Water Transport in Nigeria *Renaissance (RNUL)* [2021] (1) University *Law Journal;* 50-60.

[12]D R Thomas (edn), *The Modern Law of Marine Insurance* (Lloyd's of London Press, London, 1996).

against liability occurring or arising during the course of a sea voyage.[13]

Mirroring the definition of marine insurance in the UK's Marine Insurance Act 1906, Nigeria defines marine insurance as follows:

'A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure.[14]In conclusion, Marine insurance is a contract of insurance relating to trade by sea. where the insurer, for a fee called premium undertakes to indemnify the insured against injury/losses from the perils of the sea.

4.3 Consideration/Premium

Insurance being contractual makes it imperative that consideration being forgone by the insured. The assured and the insurer must furnish consideration to sustain the insurance contract. While insurer undertakes to indemnify the assured, in the event of the peril contemplated, the latter is obliged to pay a price called *Premium* to the insurer for assuming the risk.[15]

Generally, In the absence of fraud, an acknowledgement of receipt of premium on the policy effected is a prerequisite for an insurance contract. The 'no premium—no insurance' principle reigns supreme. This means that unless you've paid the premium, you're not covered. **Section 50(1)** of the **Insurance Act 2003**, reinforces this by stating that the receipt of an insurance premium shall be a condition precedent to a valid contract of insurance and there shall be no cover in respect of an insurance risk, unless the premium paid in advance.

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[13]D R Thomas (edn), *The Modern Law of Marine Insurance* (Lloyd's of London Press, London, 1996).

[14] MIA 2004 s.3.

[15]National Open University of Nigeria, *Law of Marine Insurance II* (ISBN 2022).

However, in Marine Insurance in Nigeria, there's a bit more flexibility because of the phrasing of Section 53 of the Marine Insurance Act. Which states;

> Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer shall not be bound to issue the policy until payment or tender of the premium.

The phrase, '...unless otherwise agreed...' implies that the parties can carry out the marine insurance contract on their own agreed terms. Which means the time of payment of premium may be fixed by parties. If a specific event triggers an additional premium, and that event happens, the insurance remains valid even without an immediate premium arrangement. However, you'll need to pay a reasonable premium later.

When determining premiums, Insurers consider various factors, such as the nature of the risk, vessel details (for hull insurance), and cargo specifics (for cargo insurance).

4.4 Principle of Indemnity

At the heart of a marine insurance contract lies the principle of indemnity. This means that the insurer is obligated to compensate the insured for any marine losses incurred, up to the agreed-upon limit. The rights and liabilities of the parties are dictated by this basic concept, and the amount recoverable by the assured, which is measured by the extent of his pecuniary loss, is also governed by it. This should not come as a surprise, for the very purpose of effecting a policy of insurance, marine or non-marine, is for indemnity for loss.[16] As Lord Wright aptly noted in *Rickards v Forestal Land*,

[16]S Hodges, *Law of Marine Insurance* (Cavendish Publishing Limited, Great Britain, 1996).

Timber and Railways Co (1941)3 All ER 62, 76, the law aims to uphold the core principle of indemnity in marine insurance, adapting to the complexities of maritime adventures.

This concept was further emphasized by Brett J in Castellain v Preston, who stated that marine and fire policies are solely contracts of indemnity. The insured is entitled to full compensation for losses but should never receive more than is necessary to restore them to their original financial position.

Under the Marine Insurance Act 2004, the insurer's liability to the insured is measured by the financial loss suffered due to a covered peril.[17] This loss can be categorized as total or partial. A total loss occurs when the ship is deemed irretrievably lost, either through sinking or disappearance (actual total loss)[18] or when the damage is so extensive that repair is economically impractical (constructive total loss).[19] In the latter case, the insured must notify the insurer and abandon the vessel.

Partial losses can be classified as particular average or general average. Particular average occurs when damage is caused by a specific insured peril, affecting only a portion of the ship or cargo. In contrast, general average losses result from deliberate sacrifices or expenditures made to preserve the entire adventure from a common peril. These sacrifices or expenditures are shared proportionally by all parties involved in the venture.

4.5 Subrogation

In the words of Lord Justice Brett in Castellian v Preston[20], subrogation is '... a corollary of the great principle law of indemnity', and it is from this principle that an assured is not

[17]MIA 2004, s.68.
[18]MIA 2004, s. 58.
[19]MIA 2004, s. 61(1).
[20](1883) 11 QBD.

permitted to recover more than his actual loss**.** When an insurer pays for a loss, they are entitled to assume the insured's rights and remedies against third parties responsible for the loss. This process, known as subrogation, is based on the principle that insurance contracts are indemnity agreements. According to *section* 80(1) of the Marine Insurance Act 2004, if the insurer pays for a total loss, they take over the insured's interest in the subject matter and are subrogated to all the insured's rights and remedies from the time of the loss.

Subrogation is fundamental to insurance law. If a third party is liable for the loss, the insurer, after compensating the insured, can claim against the third party. This only arises after the insurer has admitted and paid the claim. The insurer cannot recover more than the amount paid.

4.6 Insurable Interest

Insurable interest is a fundamental principle in marine insurance that ensures the insured has a genuine financial stake in the subject matter of the insurance. This prevents fraudulent claims and maintains the integrity of insurance contracts.

Defining insurable interest, Section 7(2) of the Marine Insurance Act states that a person is interested in a marine adventure if they stand to benefit from the safety or arrival of insurable property or may be prejudiced by its loss, damage, or detention, or may incur liability in respect thereof.

According to *section* 6 (2) of the Marine Insurance Act (MIA) 2004, a contract is deemed a wagering contract if the assured has no insurable interest as defined by the Act and enters the contract without expecting to acquire such an interest.

An assured has insurable interest if they benefit from its existence or suffer from its destruction. This interest must be enforceable, real,

and pecuniary. Mere hope of acquiring an interest is insufficient. Insurable interest does not exist if the assured does not stand to suffer any loss from the event.

In the case of Broadgrain Commodities Limited v Continental Casualty Company[21], the plaintiff had no insurable interest because they had already been paid in full for the goods. The court ruled that the insurer was not liable for the loss.

5. Assessment of the Legal and Institutional Framework

Marine insurance plays a pivotal role in the global trade ecosystem, providing essential risk management for maritime ventures. In Nigeria, with its extensive coastline and bustling ports, marine insurance is crucial for safeguarding the interests of ship owners, cargo owners, and other stakeholders involved in maritime activities.

5.1 Importance of Marine Insurance in Nigeria

Primarily, marine insurance provides essential protection for ship owners, cargo buyers and sellers, financiers, and third parties involved in maritime activities. Hull and machinery coverage ensures vessel safety. And as vessels have grown in size and value, insurance has become increasingly crucial to mitigate financial risks associated with loss or damage. On the other hand, cargo insurance safeguards valuable shipments. To handle large-scale risks, insurers often collaborate through co-insurance or re-insurance arrangements. This allows insurers address potential perils such as collisions, injuries, pollution, and other liabilities, offering essential safeguards for the maritime industry.[22]

[21](2017) ONSC 4721.

[22] National Open University of Nigeria, *Law of Marine Insurance I* (NOUN Press 2022).

As a coastal nation with extensive inland waterways, Nigeria relies heavily on maritime transport for trade, services and tourism. The country plays a significant role in the global maritime industry, with crude oil exports forming a major source of revenue. Imports of essential goods, machinery, and technology also transit through Nigeria's waterways.

Countries that engage in maritime trade and tourism have a shared interest in protecting and respecting each other's economic interests. This fosters international cooperation and diplomacy. Marine insurance serves as a crucial safety net for international investments. The guarantee of compensation encourages trade and finance by mitigating risks. Today, marine insurance goes beyond risk management and plays a vital role in facilitating global commerce.[23]

5.2 Types of Marine Insurance

Marine insurance encompasses various classes tailored to address the specific risks associated with maritime activities.

Hull insurance is specifically designed to cover physical damage sustained by a ship or vessel. This type of insurance not only provides coverage for damages incurred due to perils at sea but also typically includes a collision liability clause. This clause protects the owner from liabilities arising when the vessel collides with another ship or causes damage to another's cargo. By virtue of Marine Insurance Act, *section* 4(2), insurance contracts can cover losses related to the vessel itself, highlighting the critical nature of hull insurance in maritime operations.

Cargo insurance serves to protect the shipper against the loss or damage of goods during transit. Policies in this category can be tailored for individual shipments or structured as an open cargo

[23]National Open University of Nigeria, *Law of Marine Insurance I* (NOUN Press 2022).

policy, which automatically covers goods for regular shipments without a set expiration date. This flexibility is essential for businesses engaged in frequent shipping activities. The Marine Insurance Act, s*ection* 5(1) provides that every lawful marine adventure may be the subject of a contract of marine insurance. Following that, in line with *section* 5(2)(c), there is a marine adventure where-goods or other movables are exposed to maritime perils. Thus, Goods and cargo can be a subject of a contract of marine insurance.

Protection and Indemnity (P&I) insurance operates as a separate contract, providing comprehensive liability coverage for shipowners against claims for property damage or bodily injury to third parties. This insurance protects against a myriad of potential liabilities, including damage caused to piers, docks, and harbour installations, as well as injuries sustained by passengers or crew. The Marine Insurance Act, *section* 5(2) allows for the inclusion of liability risks to a third party within marine insurance contracts, affirming the relevance of P&I insurance in maritime law.

Freight insurance, on the other hand, indemnifies shipowners against the loss of earnings resulting from the non-delivery of goods due to damage or loss. This type of insurance ensures that shipowners can recover lost freight income when unforeseen circumstances prevent delivery. Whilst *section* 5(2)(b) MIA 2004 allows for the inclusion of freights, *section* 71 provides for the measurement of indemnity in case of partial loss of freight. It stipulates that subject to policy terms; partial freight loss indemnity is calculated as a proportion of the insured sum or insurable value. This proportion is determined by comparing the lost freight to the total freight at risk under the policy.

In Nigerian marine insurance coverage for hull and cargo are quite common, but this doesn't extend to P&I insurance. In fact, there is

no domestic Protection & Indemnity (P&I) Club in Nigeria. However, some insurance companies have partnered with foreign P&I clubs to offer this type of coverage to local shipowners.

5.3 Insurance Act

The Insurance Act (IA) Cap I18 LFN 2004[24] is the principal legislation governing insurance business in Nigeria.[25] The Act applies to two main classes of insurance that are life insurance business and general insurance business.[26]The act explicitly classifies marine insurance as a category of general insurance business under *section* 2(3)(d). By virtue of this, marine insurance is subject to the same regulatory standards and oversight as other types of general insurance.

Section 67(1) of the IA 2003 mandates that insurance for goods imported into Nigeria must be secured with an insurer registered under the Act. This provision is designed to promote the Nigerian marine insurance industry by ensuring that local insurers are patronized for marine insurance needs.

The Act includes protectionist measures to support local marine insurance companies. For instance, *section* 67(4) imposes sanctions on importers, brokers, or agents who fail to comply with the requirement to use local insurers, with fines up to 500,000 Naira. This helps prevent capital flight and supports the local economy. By mandating the use of local marine insurance providers, the Act aims to create employment opportunities, earn foreign currency, and improve the standard of living. It also seeks to protect local marine insurance companies from adverse foreign competition, fostering a more robust domestic insurance market.

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[24] Hereinafter referred to as Insurance Act or IA 2003, interchangeably.
[25] O Akinyeye (n1)
[26] IA 2003, s.2(1)

While *section* 67(3) of the IA 2003 appears to contradict *section* 67(1) by stating that letters of credit for imported goods should be on a carriage and freight basis, not including cost of insurance, the general intention of *section* 67 is to ensure local marine insurance coverage. There is an argument for amending *section* 67(3) to align with the protectionist spirit of *section* 67(1).

In conclusion, the Insurance Act, 2003 is a principal provision in the robust legal framework that supports and regulates marine insurance in Nigeria, promoting local industry participation and economic benefits.

5.4 Marine Insurance Act

Nigerian Marine Insurance Act (MIA) Cap M2 2004[27] serves as the primary legislation for marine insurance in Nigeria, closely modelled after the English Marine Insurance Act 1906. This alignment ensures that Nigeria's marine insurance practices are consistent with established international standards.

The act provides and governs several aspects of marine insurance within Nigeria to ensure to cater for the complexities that usually occasion marine insurance contract. For instance, it defines insurable interest, ensuring that only those with a legitimate stake in the marine adventure can obtain insurance.[28] It also codifies the common law principle of utmost good faith, requiring full disclosure of all material facts by the insured.[29]

The Act requires that marine insurance contracts be documented in a policy, detailing the subject matter, valuation, and premium.[30] Furthermore, the act makes provisions on various warranties, such as the implied warranty of seaworthiness and legality, which are

[27]Hereinafter referred to as MIA 2004.
[28] MIA 2004, s 3.
[29] MIA 2004, s 17.
[30] MIA 2004, s 25.

essential for the validity of the insurance contract.[31] These are just some of the several provisions of the act geared towards regulating marine insurance activities withing Nigeria

While the MIA 2004 provides a robust legal foundation by adopting the principles of the English Marine Insurance Act 1906, it does not fully address the unique needs of the Nigerian marine insurance industry. Apart from the fact the Marine Insurance Act 1906 was enacted to cater for peculiarities of marine insurance in the United Kingdom, the Act is also archaic which prevents it from capturing the complexities of modern times.

Again, unlike *section* 67 of the Insurance Act 2003, which includes provisions to promote the local insurance industry, the MIA 2004 lacks specific measures to support and develop Nigeria's marine insurance sector. This absence of tailored provisions may hinder the growth and competitiveness of the local industry.

In summary, the Nigerian Marine Insurance Act 2004 establishes a solid legal framework based on international principles but falls short in catering and promoting the local marine insurance industry. This gap suggests a need for amendments or additional regulations to better support the unique needs of Nigeria's maritime sector.

6. Strengths of the Current Legal and Institutional Framework in Nigeria

The following will be apt in strengthening of the current legal and institutional framework in Nigeria.

6.1 Robust Legal Framework: Nigeria's marine insurance industry is blessed with a substantial number of laws; constitution and other legislations; that govern the workings of the industry. Primarily, we have the Insurance Act 2003 and Marine Insurance Act 2004. While the Insurance Act governs all forms of insurance

[31] MIA 2004, s 33.

business within Nigeria, the Marine Insurance Act is exclusive to Marine Insurance. Simply put, the Marine Insurance Act provides detailed provisions on the formation, terms, and conditions of marine insurance contracts, ensuring that both insurers and insured parties are adequately protected.

Apart from the primary legislation, there are some other legislations that are relevant to marine insurance in Nigeria. Conversely, the National Insurance Commission Act 2004 is one those legislation. This legislation establishes the National Insurance Commission, a body primarily responsible for regulating the insurance in Nigeria. In addition, other relevant legislation include; the Nigerian Reinsurance Corporation Act 2004, the National Insurance Corporation of Nigeria 2004, the Merchant Shipping Act 2007, the Nigerian Maritime Administration and Safety Agency Act, etc.

Theoretically, the amount of legislation that are directly or indirectly relevant to marine insurance are substantial enough to ensure that the industry is regulated properly and business flows smoothly.

6.2 Institutional Support: As an aspect of insurance, marine insurance enjoys the regulatory oversight of several institutions tailored to oversee insurance generally. One of such institutions is National Insurance Commission. The National Insurance Commission (NAICOM) serves as the primary regulatory authority for the insurance industry in Nigeria. It is responsible for overseeing prudential regulation and the conduct of business within the sector. Consequently, individuals or entities must be registered with NAICOM to engage in marine insurance or act as marine insurance intermediaries. Additionally, the Nigerian Reinsurance Corporation and NICON are also institutions authorized to conduct marine insurance business.

NIMASA is another key organisation relevant institution. It is more tailored for general maritime activities than specifically for marine insurance. However, the Nigerian Maritime Administration and

Safety Agency (NIMASA)plays a crucial role in regulating and promoting maritime safety and security. NIMASA's oversight helps ensure compliance with international maritime standards and conventions, thereby enhancing the credibility and reliability of marine insurance in Nigeria.

There are also institutions, such as the Nigerian Insurers Association (NIA) and the Chartered Insurance Institute of Nigeria (CIIN), that provide support and training for professionals in the marine insurance sector, helping to maintain high standards of professionalism and expertise within the industry.

These institutions working together in synergy will without a doubt lead to substantial development in the marine insurance industry in Nigeria. For example, to check the proliferation of fake insurance certificate in the sector, the Nigerian Insurers Association, NIA, came up with the marine module of the Nigeria Insurance Industry Database, NIID, to allow for online verification of insurance certificates.[32]

7. Challenges of the Current Legal and Institutional Framework in Nigeria

Although it might appear that the legal and institutional framework of marine insurance in Nigeria is substantial, that is not the case in reality. A study by Oxford Economics revealed that marine insurance constitutes 37% of maritime business services in the European Union. In the United Kingdom, marine insurance services contributed a substantial £2 billion to the economy in 2013. A positive correlation exists between the growth of the maritime sector and its associated ancillary services in developed countries. Unfortunately, the state of marine insurance in Nigeria is

[32] The state of marine insurance in Nigeria - Ships & Ports. <https://shipsandports.com.ng/state-marine-insurance-nigeria/.> accessed 25th November, 2024.

significantly underdeveloped, mirroring the broader challenges faced by both the insurance sector and the maritime industry.[33]

There are several challenges faced by the Marine Insurance Industry in Nigeria. They include;

7.1 Limited Financial Capacity of Insurance Companies: Although local legislation and international conventions aim to boost the Nigerian marine insurance industry, these efforts often fall short. A major hurdle is the insufficient financial strength of insurance companies to cover essential products. For instance, much of Nigeria's crude oil is exported under FOB (Free on Board) terms because local insurers are either unwilling or unable to provide coverage. This is primarily due to their lack of financial resources to manage the significant liabilities that could arise from an oil spill.[34]

Encouraging strategic partnerships and mergers among local insurance companies by consolidating resources and expertise, may help these companies enhance their financial capacity and risk management capabilities. Forming more alliances with international insurers could provide access to global best practices and additional capital, enabling local insurers to offer more comprehensive coverage.

7.2 Inadequate Enforcement of Legislation: A significant challenge facing the current legal framework for marine insurance is the lack of effective enforcement. Despite existing regulations requiring vessels operating within Nigerian waters to have insurance coverage, many vessels remain uninsured. The absence of a robust enforcement mechanism allows these vessels to operate without

[33]The state of marine insurance in Nigeria - Ships & Ports. <https://shipsandports.com.ng/state-marine-insurance-nigeria/.> accessed 25th November, 2024.
[34] O Akinyeye (n1).

complying with statutory requirements, hindering the growth of the marine insurance industry and depriving Nigerian insurers of potential premium income.

To curb this, government will have to strengthen regulatory oversight and enforcement mechanisms. This could involve setting up a dedicated maritime insurance enforcement agency (like the National Marine Insurance Bureau) with the authority to conduct regular inspections and impose penalties on non-compliant vessels. Enhanced enforcement would ensure that all vessels operating in Nigerian waters adhere to insurance requirements.

7.3 Lack of Competent Professionals: In the world over, the field of marine insurance is a complicated field. Consequently, skilled professionals are needed to navigate these complexities. Sadly, it appears Nigeria lacks in this department. A report by the Marine Insurance Committee of the Nigerian Insurers Association highlights that the country is losing billions of naira due to a shortage of domestic marine insurance professionals. It's estimated that the lack of expertise in this field results in annual losses exceeding N50 billion. This deficiency can be attributed to the limited maritime industry-specific training provided by Nigerian universities. Consequently, some shipowners opt for foreign insurers, leading to capital flight. This situation persists despite the presence of 41 licensed marine insurance companies in Nigeria.[35]

Stakeholders should invest in training programs for Nigerian seafarers and maritime professionals to enhance local expertise and skills. Collaborations with international maritime institutions can be beneficial for knowledge transfer.

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[35] The state of marine insurance in Nigeria - Ships & Ports. <https://shipsandports.com.ng/state-marine-insurance-nigeria/.> accessed 25th September, 2024.

7.4 Lack of Awareness: There is poor public education on Marine Insurance for people engaging in maritime activities, especially ocean trade. For instance, **c**ustoms regulations mandate that all imported cargo into Nigeria be locally insured. However, many shippers disregard this requirement, deliberately violating a legal importation stipulation. This non-compliance introduces additional complications. Customs regulations impose a fine on individuals without insurance certificates. To expedite customs clearance, shippers often choose to pay the fine. Those seeking to avoid hefty fines may resort to fraudulent insurance agents who provide counterfeit certificates. Sometimes, shippers patronize fake agents to evade exorbitant insurance premiums. This behavior reflects a lack of industry knowledge, as genuine insurance premiums are often more affordable than the fines imposed for non-compliance or the discovery of fraudulent certificates.[36]With this problem, even though there are eventually proper legislations and institutions on marine insurance in Nigeria, the people may still not be aware of them.

Regulatory bodies should push to educate stakeholders, including importers and shippers, about the importance of obtaining legitimate insurance. This can be done through workshops, seminars, and media campaigns.

7.5 Archaic laws: This is, arguably, one of the most prevalent issues. When you want an industry to develop, you cannot continue to rely on old legislation. It is out of place to say that operational laws guiding marine insurance in Nigeria are out-dated. The Marine Insurance Act is a verbatim reproduction of the Marine Insurance Act 1906 of the United Kingdom, which has been reviewed in the UK to reflect current realities, with its most recent amendment being

[36]Ibid.

in 2016.[37] It is difficult to see how the sector can progress when the operational legal framework is predicated on a law that is over a century-old. Times have changed and there is need to repeal the law to reflect current realities.

This is one of the reasons Hon. Mohammed Garba Gololo of the House of Representatives sponsored a bill for an Act to establish the National Marine Insurance Bureau, to take charge of and collect insurance levies on all Cargos of Crude or Gas leaving shores of the Country and to check the Billions of dollar capital flight which Nigeria loses to foreign insurance companies who monopolize and specialize in marine insurance in the Country, otherwise known as the National Marine Insurance Bureau (Establishment) Bill, 2016.[38] Till date, that bill hasn't been passed, which buttresses the fact that old laws are indeed an issue.

8. Conclusion and Recommendations

Nigeria, as a coastal nation poised to benefit significantly from ocean trade, must prioritize the development of a strong maritime sector. A crucial component of this sector is the marine insurance industry. As a risk management cornerstone, a proficient marine insurance industry fosters stakeholder trust, encouraging them to engage in larger-scale trades with confidence in the event of loss or injury.

While Nigeria's legal framework provides a foundation for marine insurance, it may not adequately address contemporary industry realities. To enhance the industry's effectiveness, it is essential to

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[37] Marine Insurance Act 1906, Legislation.gov.uk <https://www.legislation.gov.uk/ukpga/Edw7/6/41> accessed 25th November, 2024.

[38] The state of marine insurance in Nigeria - Ships & Ports. <https://shipsandports.com.ng/state-marine-insurance-nigeria/.> accessed 25th September, 2024.

review and modernize the legal and institutional framework, adopting a more pragmatic approach.

Despite current challenges, the Nigerian marine industry offers substantial growth potential. By promptly implementing targeted reforms, we can contribute to the overall economic development of the nation.

Addressing the issues plaguing the legal and institutional framework of marine insurance in Nigeria requires a multi-faceted approach. Here are some recommendations:

8.1 Strategic Partnerships and Mergers: To enhance financial capability, local insurance companies should be encouraged to form strategic alliances or mergers to pool resources and expertise. This could enhance their financial strength and risk management capabilities. Creating a consortium of insurers could also facilitate access to reinsurance markets. Also, they should establish partnerships with international marine insurers to leverage global best practices and gain access to additional capital, thus allowing local insurers to provide comprehensive coverage for high-risk sectors like oil and gas.

8.2 Establishment of a Regulatory Body: The government should create a dedicated maritime insurance enforcement agency, such as the proposed National Marine Insurance Bureau, with authority to conduct inspections, enforce compliance, and impose penalties on non-compliant vessels. This would promote adherence to statutory insurance requirements.

8.3 Investment in Human Capacity Development: Stakeholders should collaborate with academic institutions and international maritime organizations to develop specialized training programs for marine insurance professionals. This would enhance local expertise and reduce reliance on foreign insurers. They should Promote scholarships and internship opportunities in marine insurance to

attract young professionals into the field, ensuring that they gain practical experience and skills.

8.4 Public Awareness Campaigns: Regulatory bodies should conduct comprehensive public education campaigns targeting stakeholders, including importers, shippers, and the general public, to raise awareness about the importance of marine insurance and the legal requirements for compliance. They should organize workshops and seminars to educate stakeholders on the benefits of marine insurance, the legal framework governing it, and the consequences of non-compliance.

8.5 Repeal and Replace Old Legislation: They should be an urgent review and amendment of the Marine Insurance Act to reflect current realities and challenges in the industry. This could involve drafting a new Marine Insurance Bill that considers modern practices and emerging risks. Alternatively, just in case it still exists lawmakers should be pressured to prioritize the passage of the National Marine Insurance Bureau Bill and other necessary reforms to support the growth of the marine insurance sector.

By implementing these solutions, Nigeria can enhance its marine insurance framework, promote local participation, and ultimately strengthen the industry to better serve its maritime economy.

LIMITATION LAW AND CONTRACT CASES: IS THERE A PERPETUAL RIGHT OF ACTION IN CONTRACT OF EMPLOYMENT MATTERS?

By

Osmond U. Nwanya, Esq*

Abstract

There has been an ongoing juridical deliberation on the application of limitation laws to court claims relating to contract of employment. The discussions were triggered by a wave of judicial decisions from the National Industrial Court of Nigeria which have posited that limitation laws do not operate to bar actions relating to contract of employment. The judicial impression created by those decisions evidently run counter to the time-honoured policy behind statutes of limitation. Central to that policy is that long dormant claims have more of cruelty than justice in then and that a defendant might have lost the evidence to disprove a stale claim. The policy further postulates that persons with good causes of action should pursue them with reasonable diligence. This article found that the Supreme Court judgments on the basis of which the National Industrial Court of Nigeria founded their decisions exempting contract of employment cases from the grip of limitation laws were considered out of contexts and misapplied. Those decisions of the Supreme Court of Nigeria were focused on the non-application of Public Officers Protection Act or Law to breach of contract cases. They did not make a new rule that limitation laws do not apply to contract cases; rather they re-emphasized and reiterated the existing principle as established in earlier cases that Public Officers Protection Law have no application in actions founded on contract. This article concluded that there is a need for clarification and recommended that

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the Court of Appeal should intervene when called upon to settle the lingering controversy.

Keywords: Limitation, Laws, Statute, Bar, Cause, Action, Contract, Employment, Jurisdiction, Court, Public, Officers, Protection, Act

1.0 Introduction

Actions founded on contract have always been subjected to limitation by statute.[1] The argument therefore, that suits relating to contract of employment cannot be defeated by statute of limitation appears completely strange. There is no doubt that the ongoing controversy relating to the application of limitation laws to contracts of employment cases was precipitated by the recent decision of the Supreme Court of Nigeria in *NRMA&FC* v *Ajibola Johnson*.[2] That apex court's decision has continued to serve as an anchor for the wave of decisions emanating from the National Industrial Court of Nigeria (NICN) positing that contract of employment cases cannot be caught by statutes of limitation. Recently, there was another decision of the Supreme Court in *Rector of Kwara Poly* v *Adefila*[3] to the effect that Public Officers Protection Law does not apply in breach of contract cases. This recent decision seems to have further strengthened the position of the Industrial courts that limitation laws should leave labour matters alone. The fact that the labour courts have added that decision to the list of decisions supporting their controversial position was evident in the judgment of the NICN in *Grant Iheanacho* v *BAP Services Limited*[4]decided on the 20th of August 2024.

Interestingly, the above Supreme Court decisions were categorical, clear and explicit on what they decided which is that Public Officers

[1] Limitation Act 1980 (UK), s 5; Limitation Law 1999 (Rivers State), s 16.
[2] [2019] 2 NWLR (Pt 1656) 247 (SC).
[3] [2024] 3 NWLR (Pt 1944) 529 (SC).
[4]< https://www.nicnadr.gov.ng> accessed 15 May 2025.

Protection Act or Law (POPA or POPL) do not apply to contract cases. The utilization of these decisions by the NICN as having laid down a rule that statutes of limitations do not apply to contract of employment cases is what this article seeks to interrogate in order to awaken the consciousness of a need for further judicial intervention and clarification especially by our appellate courts.

The article adopts a doctrinal research methodology and shall first briefly examine the general principles relating to statute of limitation. It will restate the object and goals of statutes of limitation and the policy behind them and proceed to examine some of the decisions of the NICN alongside the above mentioned apex court decisions with the view to attend to the question whether contract of employment suits are exempted from the operation of limitation laws in Nigeria. The article will conclude and make some recommendation.

2.0 General Principles Relating to Limitation Statutes

Given that statutes of limitation is central to our discourse, this general considerations of principles relating to limitation laws will provide some guides necessary in addressing the fundamental concerns raised in this article. In the United Kingdom, statutes of limitation date back to centuries before the enactment of the 1623 Act which amongst others, limited the filing of civil claims, to six years.[5] The time period for bringing an action varies depending on the nature of civil claim involved. Once the time limit imposed by statute for bringing a claim in court has elapsed, proceedings shall not be brought after that period as that will offend the provision of statute.[6] In the case of *Folarin v Augusto,* it was held that "where the court finds that an action is caught up by the statute of limitation, a plaintiff who might have had enforceable right loses the right to

[5] Limitation Act 1623 (UK).
[6] *Egbe v Adefarasin* [1985] 1 NWLR (Pt 3) 549, 568 (SC).

enforce that cause by a judicial process.[7] His right to commence that action would have been extinguished by statute. For instance, under the United Kingdom Limitation Act, claims relating to a simple contract are barred after six (6) years while actions relating to contracts under seal, bond, deed or covenant are barred after twelve (12) years.[8]

In Nigeria, various statutes govern limitation of actions in relation to different forms of civil claims. For instance, *section* 16 of Limitation Law of Rivers State provides for the time limit for actions in contract, tort etc. It states: "No action founded on contract, tort or any other action not specifically provided for in parts 1 and 11 of this Law shall be brought after the expiration of five years from the date in which the cause of action accrued."

The paramount consideration whenever statute of limitation is invoked is (a) the cause of action (b) when the cause of action accrued and (c) when the action became statute-barred.[9] Again, the relevant court processes that the court looks at to determine whether an action is caught by statute is the claimant's originating processes such as writ of summons and statement of claim alleging when the wrong which gave the plaintiff a cause of action was committed and comparing that date with the date on which the writ of summons was filed.[10] In labour matters, the court looks at the originating processes such as the complaint and the statement of facts which are akin to writ of summons and statement of claim. Considering the new frontloading regime applicable in civil proceedings at the High Courts and other courts of co-ordinate jurisdiction, it has been

[7] [2023] 1 NWLR (Pt 1896) 559, 585 (SC).
[8] Limitation Act (n 1).
[9] *A.G. Adamawa State v A.G. Federation* [2014] 14 NWLR (Pt 1428) 515, 550 (SC).
[10] Ibid*; Elabanjo v Dawadu* [2006] 15 NWLR (Pt 1001) 76 (SC); *Muhammed v Military Administrator Plateau State* [2001] 16 NWLR (Pt 740) 524, 545 (CA); *British Airways PLC v Akinyosoye* [1995] 1 NWLR (Pt 374) 722, 730 (CA).

suggested that the court should look at every process including documents attached to the claimant's originating processes in determining when the cause of action accrued.[11]

Where the court finds that an action is caught by statute of limitation, that automatically raises the issue of the jurisdiction of that court to entertain the matter.[12] It has been canvassed that since the issue of statute bar touches on the jurisdiction of the court to hear a matter, the point can be taken at any stage of proceedings including on appeal.[13] It can equally be raised by the court *suo motu*.[14] In *Elf Oil Nig Ltd* v *Oyo State Board of Internal Revenue,* it was held that although the effect of limitation law of Oyo State 1989 was not raised at the Court of Appeal, the point could be taken *suo motu* by that court.[15] In that case however, the issue of statute bar was raised at the court of first instance.

The decision of the Supreme Court in *Folarin* v *Augusto*[16]supports the principle that statute of limitation must be specifically pleaded by the defendant. This view was however based on the requirement of *Order* 17 *Rule* 11 of the repealed Lagos State High Court Rules which provides that defense of statute bar must be specifically pleaded in order not to take the plaintiff by surprise. It appears that in such situation, pleadings have to be filed and exchanged by the parties before the objection on statute of limitation can be properly taken. It will however, not be procedurally out of place if the issue of statute bar is raised by way of preliminary objection by the defendant upon being served the originating processes. After all, the

[11] Jerry Amadi, *Limitation of Action*: *Statutory and Equitable Principles* (Pearl Publishers 2011)64-66.
[12] *University of Jos v Adam* [2013] LPELR-20276 (CA).
[13]*University of Jos* (n 11).
[14]*Elf Oil Nig Ltd v Oyo State Board of Internal Revenue* [2002] LPELR-12260 (CA).
[15]Ibid.
[16]*Folarin* (n 7) 586.

purpose of the requirement that the plea should be raised in the defense is in order not to take the claimant by surprise.[17]

Another paramount principle relating to statute of limitation is that negotiation by parties does not stop statute of limitation from running.[18] Where however, negotiation has reached an advanced stage and admission or acknowledgment of indebtedness has been made, it stops statute of limitation from running.[19]In *University of Ibadan* v *Adetoro,* it was held that admission following negotiation in capable of reviving a cause of action.[20] Admission or acknowledgment of indebtedness must however, be clear.[21] It is not the duty of the court to read meaning into a document claimed to be an acknowledgment of debt but which does not show so.[22]

3.0. The Policy behind Statute of Limitation

The idea behind imposing time limits by statutes within which civil grievances and claims should be pursued in court is to protect potential defendants from unfair litigated claims.[23] It was thought that after a significant passage of time, it would be unfair and inequitable to allow a claimant pursue a cause when relevant evidence may have been lost, obscured or not retrievable and when witnesses may have forgotten facts touching on such cases. Such stale claims were considered to have more of cruelty than justice in them.[24] Thus, the proponents of statutes of limitation hinge their support on the passage of time and its effect on the evidence and testimonies of the parties. The Supreme Court of Oklahoma, a State in the United States of America (USA) captured the essence

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[17]*Oyebanji v Lawanson {*2004] 13 NWLR (Pt 889) 62, 75 (CA).
[18]*Nwadiaro* v *Shell Dev. Co. Ltd* {1990}5 NWLR (Pt 150) 322, 338(CA).
[19]Ibid, 339.
[20]*{*1991] 4 NWLR (Pt 185) 375, 386(CA).
[21]*Pas(Nig)Ltd* v *New Nigeria Salt Ltd[*1990] 6 NWLR (Pt 159) 764 (CA).
[22]*University of Ibadan* (n 20) 386.
[23]*Nwadiaro* (n 18) 337.
[24]Ibid.

of limitation laws when in the case of *Seitz* v *Jones*, stated as follows: "The underlying purpose of statutes of limitation is to prevent the unexpected enforcement of stale claims concerning which persons interested have been thrown off their guard by want of prosecution."[25]

The Nigerian Court of Appeal in *Nwadiaro* v *Shell Dev. Co. Ltd* appreciated the basis and policy behind limitation laws. In the words of Kolawole JCA:

> Now, what is the policy of limitation Acts? I believe that the courts have expressed at least differing reasons supporting the existence of statutes of limitations namely,
>
> (1) that a defendant claim have more of cruelty than justice in them;
>
> (2) that a defendant might have lost the evidence to disprove a stale claim;
>
> (3) that persons with good causes of action should pursue them with reasonable diligence.[26]

In essence, those that go to sleep on their claims should not wake up and expect the assistance of the court. This rule of equity and fairness is further reinforced by a statement now common place in law, that there should be an end to litigation. The statement of Oputa JSC in *Atunrase* v *Sunmola* though had laches and acquiescence in focus, is equally of considerable force when dealing with all delayed suits. There, his Lordship stated:

> In all actions, suits and other proceedings at law and in equity, the diligent and careful actor or suitor is favoured to the prejudice to him who is careless and

[25] Justia Law,< https://law.justia,com > accessed 20 May 2025.
[26] *Nwadialo* (n 18).

> slothful, who sleeps over his rights. The law may therefore deny relief to a party who by his conduct has acquiesced or assented to the infraction of his rights...[27]

The net effect therefore is that perceived complaints and grievances of persons ought to be ventilated and pursued in court with all diligence. Where this is not the case, a party who has a good cause may lose the right to get a redress in court simply because he was not diligent to sue within the time prescribed by law. The law frowns at such a suitor and will close the door of judicial redress against him in the interest of justice.

4.0. Are Contracts of Employment Suits Exempted from Limitation Laws?

In answering the crucial question whether contracts of employment cases cannot be defeated by statutes of limitation, it will be necessary to review the judicial attitude towards cases of contract and Public Officers Protection Act and other related laws. How the labour courts have interpreted and applied those decisions will also be considered.

4.1 Judicial Attitude to Limitation Law and Contract Related Cases

The position of the Supreme Court in *NRMA&FC* v *Ajibola Johnson* that *section* 2(a) of POPA which is a limitation of action provision does not apply to bar an action in contract is not new.[28] That law has been there ever since and has been stated and restated by our apex court in a plethora of cases.[29] The judicial attitude has always

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[27]*{*1985] 1 NWLR (Pt 1) 105, 120(SC).

[28] NRMA&FC (n 2).

[29]*Salako v L.E.D.B (1953)20 NLR 169;NPA v Construzioni Generali F.S.C* [1974]NSCC 622*;O sun State Govt* v *Dalami (Nig) Ltd (2007) 9 NWLR (Pt. 1038) 66.*

been that where an action has been brought for something done or omitted to be done under an express contract, provisions such as *section* 2(a) of POPA do not apply.[30]

The view appears to be in consonance with the trend of judgments pronounced in English cases dealing with similar provisions in certain English Statutes. In *Midland Railway Company* v *The Local Board for the District of Withington*,[31] the English Court of Appeal construed an English statute with a limitation provision. *Section* 254 of the Act states as follows:

> A writ or process shall not be sued out against or served on any local authority or any member thereof or any officer of a local authority or person acting in his aid, for anything done or intended to be done or omitted to be done under the provisions of the Act, until the expiration of one month after notice in writing has been served on such local authority member, officer or person....[32]

The key requirement under the above provision is that an action shall not be commenced until the expiration of one month after notice in writing has been served. This is a limitation provision in a sense, though not exactly in the nature of section 2(a) of POPA. But the crucial point is that it limited the right of action to the happening of an event which is expiration of one month after notice in writing has been served on such local authority, member, officer or person. It conferred a statutory privilege on the local authority, member, officer or person by circumscribing the right of action to the expiration of one month after notice in writing has been served. In dealing with the question whether the above provision applies to

[30] *NPA* v *Construzioni Generali F.S.C; Osun State Govt* (n 28).
[31] (1882-3) 11 QBD 788 (CA).
[32] Public Health Act 1875 (UK). [1985] 1 NWLR (Pt 1) 105, 386(CA).

case of contract Brett M.R. made the following illuminating observation:

> It has been contended that this is an action in contract and that whenever an action is brought upon a contract, the section does not apply. I think that where an action has been brought for something done or omitted to be done under an express contract, the section does not apply; according to the cases cited, an enactment of this kind does not apply to specific contracts.[33]

Reasoning by analogy as a way of strengthening the principle just stated, the court took the view that when goods have been sold and the price is to be paid upon a *quantum meruit*, the section will not apply to the action for the price, because the refusal or omission to pay would be a failure to comply with the terms of the contract and not with the provisions of the statute.[34]

In *NPA* v *Construzioni Generali F.S.C,* their Lordships of the Supreme Court of Nigeria approved and followed the above English case. In their words: "We agree with their Lordships exposition of the law on this point." In that case section 97 of the Ports Act part of which share similar wordings with section 254 of the English Public Health Act was considered. The illuminating pronouncement of Ibekwe JSC in his judgment is worth reproducing. His Lordship stated:

> We shall now deal with the other point which to our mind does not seem to be well-settled, namely whether the kind of statutory privilege which we have been considering is applicable to an action founded upon a contract. In other words, whether S..97 of the Ports Act applies to cases of contract. We think that the answer to this question must be in the

[33]*Midland Railway*(n 31).
[34]Ibid.

> negative. We agree that the section applies to everything done or omitted or neglected to be done under the powers granted by the act. But we are not prepared to give to the section the stress which it does not possess. We take the view that the section does not apply to cases of contract.[35]

Interestingly, the court in reaching the above decision referred with approval, to the earlier pronouncement of *Commarmond S.P.J in Salako* v *L.E.D.B* where his Lordship stated: "I am of the opinion that section 2 of the Public Officers (Protection) Ordinance does not apply in cases of recovery of land, breaches of contract, claims for the work and labour done etc."[36]

This settled position of the law that section 2 of the Public Officers Protection Act and of course other similar provisions such as section 97 of the Ports Act do not apply to cases of contract was again restated in the latter case of *Osun State Govt* v *Dalami (Nig) Ltd*. It must be borne in mind that both section 97 of the Ports Act and section 2(a) of POPA are limitation provisions. While the former suspends and keeps the right of action in abeyance until the fulfilment of a pre-action condition, the latter restricts access to court and the right to commence an action to a period of three months upon the accrual of a cause of action.

The much trumpeted case of *NRMA&FC* v *Ajibola Johnson* referred to *NPA* v *Construzioni and Osun State Government v Dalami* in arriving at the decision that section 2(a) of POPA does not apply to cases of contract.[37]From the above exposition of the law, it has become abundantly clear that what is now settled is that POPA (and of course other related laws containing provisions such as section 97 of Ports Act) do not apply to cases of contract. This restriction is not applicable to specific statutes on limitation of action, such as

[35] [1974] NSCC 622, 630.
[36](1953) 20 NLR 169.
[37]NRMA&FC (n 2).

Limitation Law of Rivers State which expressly provides for time limit within which an action in contract can be brought. In *Sanda* v *Kukawa Local Government*, it was held that in an action for breach of contract, the cause of action accrues to the plaintiff's benefit from the time the breach of the contract occurred.[38] It must be noted that the facts of Sanda's case relates to breach of contract of appointment as village head. In other words, it was a contract of employment matter. This notwithstanding, the plaintiff action was barred having not been commenced within the time provided by State statute with a limitation provision.[39]

The recent decision of the Supreme Court in *Rector Kwara Poly* v *Adefila*[40] relied upon by Ogbuanya J in Grant's case to hold that Rivers State Limitation Law does not apply to cases of contract of employment did not say anything new from what earlier authorities on the point had said. In that case, the 1st-3rd respondents for themselves and on behalf of all members of the Academic Staff Union of the 4th appellant sued the appellants as public officers and public institutions. Their grievance was that the appellants cannot independently reduce the retirement age of Academic Staff of Kwara State Polytechnic from 65 years to 60 years or at all.

Evidently, it was a suit against public officers and public offices. The defense raised by the appellants that the action was brought outside the three months prescribed period could not avail them since the action was founded on contract. In the court's view: "It has long been settled by this court that the Public Officers (Protection) Law the appellants rest their challenge to the competence of this suit does not apply to breach of contract cases.[41]

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[38] [1991] 2 NWLR (Pt 174) 379, 391(SC).

[39] Local Government Law 1976 (Bornu State), s 175.

[40] [2024] 3 NWLR (Pt 1944) 529.

[41] Ibid, 544;*FGN* v *Zebra Energy Ltd* (2002) 18 NWLR (Pt. 798) 162*, 196;Roe Limited* v *University of Nigeria* (2018) 6 NWLR (Pt.1616) 420*; Rahamaniya*

4.2. What the Case of *NRMA & FC v Ajibola Johnson* Actually Decided

As stated earlier, the wave of decisions of the Industrial courts in Nigeria that actions founded on contract of employment cannot be defeated by limitation laws got the inspiration from the decision of the Supreme Court of Nigeria *in NRMA&FC* v *Ajibola Johnson.*[42] In that appeal, the second issue formulated by the appellant in the main appeal, for the determination of the Supreme Court was whether the learned Justices of the Court of Appeal were right in holding that the appellants do not enjoy the umbrella of Public Officers Protection Law in contract of service. In resolving the issue, the court held: "There is no doubt a careful reading of the respondent's claim will show clearly that it is on contract of service. It is now settled law that section 2 of the Public Officers Protection Act does not apply to cases of contract."[43]

It is therefore palpably clear from the above pronouncement, made in the light of the facts of the case that what was in issue in that case was whether the limitation of action provision contained in section 2(a) of the Public Officers Protection Act applies to cases of contract. The Supreme court in affirming the position of the Court of Appeal on that point answered the question in the negative. The court concluded as follows: "In sum, I hold that the learned justices of the court below are right in holding that the appellants do not enjoy the umbrella of Public Officers Protection Law in the contract of service involving the respondents."[44]

Obviously, the position of the Supreme Court on that issue is not new. What the court did was to restate the earlier settled position of the law already considered, that the Public Officers Protection Act

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United Nigeria Limited v *Minister of Federal Capital Territory (2021) LPELR-556 33 (SC), (2021) 17 NWLR (Pt. 1806)481 (SC).*

[42]*(2019) 2 NWLR (Pt.1656) 247.*

[43]*(2019) 2 NWLR (Pt.1656) 247,* 270.

[44] NRMA&FC (n 2) 271.

does not apply to cases of contract. With due respect, it is a total misconception of the above case to hold that it laid down a new rule in relation to application of Limitation Law to cases of contract. Some important clarifications that must be made in relation to the decision are as follows:

> (a)The decision was limited to the application of the Public Officers Protection Act to cases of contract. Indeed, the defendants in the case were public officers.
>
> (b)The decision cannot be extended to the application of limitation laws of the various States in Nigeria to matters of contract of employment unrelated to public officers.
>
> (c)The decision did not lay down a new rule but merely reiterated an existing and established principle of law in relation to the application of Public Officers Protection Act to matters of contract.
>
> (d) In a plethora of cases, the apex court had recognized certain exceptions to the protection provided for under the Public Officers Protection Act. Such exceptions are (i) instances of continuance of damage or injury (ii) situation when the public officer acted outside the bound of his office or outside his statutory or constitutional duty (iii) cases of recovery of land (iv) breaches of contract (v) claims for work and labour done and (vi) good faith.

It is therefore clear that what the Supreme Court did in NRMA&FC was to reiterate one of the already established exceptions in relation to limitation of action provision under the Public Officers Protection Act. It is must be contended that the decision of the apex court in N.R.M.A & FC case must be considered and applied in the light of its peculiar facts. That case did not by any stretch of the imagination say that statute of limitation applicable in various States of the country should not apply to contract of employment: The law is

settled that a decided case is only an authority for the peculiar issues in the case and it must be considered and utilized in the light of its own peculiar facts and circumstances.[45] The appellants in *NRMA&FC* were Public Officers and that was why the provisions of Public Officers Protection Act was invoked in an attempt to bar their action.

As a way forward, it is contended that another Judge of an Industrial court is not bound by the decisions of his brother Judges in the cases of Nkume and Akume yet to be considered. The law is that a decision of a court of co-ordinate or concurrent jurisdiction does not bind another court of similar jurisdiction. In other words, one Judge is not bound by the decision of another Judge on any point of law decided by the former.[46] Decision of a court is only persuasive authority for a court of co-ordinate jurisdiction.[47]

4.3 Industrial Courts Erroneous Perception of Johnson Ajibola's Case

The case of *Lilian Nnenna Akumah* v *FBN PLC*[48] is our first port of call. It was a Ruling of the NICN sitting in Lagos delivered on the 10th day of October 2019. The Defendant in that case by way of notice of preliminary objection challenged the jurisdiction of the court to entertain the action. One of the grounds of the objection was that the cause of action is irreparably statute-barred by virtue of 8(a) of the Limitation Law of Lagos State. The other ground of the objection is not relevant to our inquiry. After considering the arguments of counsel to the parties in the suit, the court held that the matter was not statute-barred on the following grounds:

> (i) the contract of employment between the parties was not simple contract and therefore section 8(1) (a) of the

[45]*Yaba tech* v *M. C. D. Ltd* [2014] 3 NWLR (Pt.1395) 61.
[46]*Gambari* v *Ganbari* [1990] 5 NWLR (Pt.152) 572, 583.
[47]*Abdulkareem* v *Lagos State Government* (2016) 15 NWLR (Pt.1538) 177, 230.
[48]< https://www.nicnadr.gov.ng> accessed 1 May 2025.

> Limitation Law of Lagos State cannot bar the action
>
> (ii) by the decision of the Supreme Court in *NRMA&FC v Ajibola Johnson,* limitation of action law do not apply to contract of service.

It was the court's further view that limitation laws used to apply to contracts of employment matters but after the aforementioned decision of the Supreme Court, the law changed:

> While I agree with the learned counsel that before July 2019 the decisions were unanimous that as regards limitation of action law, where an action is instituted outside the period stipulated for an action to be instituted such action is likely to be dismissed.... However, the position of the law has since changed after the decision in the case of *N.R.M. & FC 2 ORS v Ajibola Johnson (2019) 2 NWLR (Pt. 1656) 247 at 270- 271*. The Supreme Court was emphatic that limitation of action does not apply to contract of service.[49]

The forgoing pronouncement of the NICN clearly admits that before July 2019, limitation laws apply to suits touching on contracts of employment. According to the court however, the law changed after NRMA&FC emerged. This position has informed our critical examination of the decision of our apex court in *NRMA& FC*case to ascertain whether it truly introduced a change into the existing law. Regrettably, the case did not introduce any change but merely restated a settled position of the law.

The next decision of the NICN which evidently followed the decision in Akumah is the case of *Godson Ikechukwu Nkume v FBN*.[50] In that case, having pleaded the issue of statute of limitation in the Amended the Statement of Defence, one of the issues

[49]*Akumah* (n 48).
[50]< https://www.nicnadr.gov.ng> accessed 15 May 2025.

formulated by the Defendant bank in its final written address was whether the court has jurisdiction to hear claimant's claims A (i) A (ii), B, C, D, E and F having regard to the Limitation Law of Lagos State, the National Industrial Court Act and the 1999 Constitution. The trial court in resolving this issue stated in *paragraph* 29 of the Judgment:

> Furthermore, statutes of limitation of actions have been held not to apply to contracts of service. See National Revenue Mobilization Allocation and *Fiscal Commission & Ors* v *Ajibola Johnson & Ors (supra) at pages 270-271.* The decision was applied by this court in the case of *Lilian Nnenna Akumah* v *First Bank* of *Nigeria Plc Suit no. NICN/LA/402/2018*, which ruling was delivered on 10th October 2019. The objection was based on Section 8 (I) (a) of Limitation Law of Lagos State. My learned brother, Justice Essien observed that... I completely agree and hold that claims (a)(i) (b) (c) and (d) are not statute barred.[51]

From the above, it is obvious that the learned trial Judge completely agreed with the pronouncement of the court in Akumah's case that statutes of limitation no longer operate to bar actions relating to contract of employment. Still in the spirit of ensuring that limitation laws do not operate to defeat actions founded on contract of employment, the NICN sitting in Port Harcourt in a Ruling delivered on 25th day of April 2024 in *Bamidele Esebame* v *Ciscon Nig. Ltd*,[52] appeared to have followed the position of the courts in Akumah and Nkume. In that action, the defendant upon filing its statement of defence had followed same up with a motion on notice challenging the court's jurisdiction to hear the matter on the sole ground that the action is statute-barred by virtue of section 16 of the Limitation Law of Rivers State which provides: "No action founded on contract, tort

[51] *Nkume* (n 50).
[52] < https://www.nicnadr.gov.ng> accessed 20 May 2025.

or any other action not specially provided for in *Part* 1 and 11 of this Law shall be brought after the expiration of five (5) years from the date on which the cause of action accrued."

In dismissing the application Hamza J. towed the path of his learned brothers in the cases of *Akumah and Nkume* and held as follows:

> It suffices saying that from the nature of the relationship between the parties, it could be deciphered (sic) that it was a contract of service. If that is settled, thus, the Supreme Court per Ariwoola JSC now the CJN in *NRMAFC VS ATOBOLA JOHNSON (sic) (supra) at pages 270-271* paragraphs F-G stated the position as follows:
>
> "There is no doubt, a careful reading of the Respondent's claim will show clearly that it is on contract of service. It is now settled law that Section 2 of the Public Officers Protection Act does not apply to cases of contract... "[53]

The latest, to the knowledge of this writer, in the wave of decisions exempting cases, of contract of employment from the grip of statute of limitation is the case of *Grant Iheanacho v BAP Services Limited*[54] decided by the NICN on the 20th day of August 2024. In that case, a company known as BAP Services Limited in 2012, terminated the contract of employment with its former General Manager - the claimant. The claimant waited till 2021 when he instituted an action against the defendant and claimed outstanding salaries and other entitlements due to him in addition to unremitted pension deductions. The defendant filed a defence and in addition challenged the court's jurisdiction to hear the matter on the ground that the matter was statute-barred having been filed after nine (9) years upon the accrual of the cause of action. In holding that the

[53] *Bamidele* (n 52).
[54] < https://www.nicnadr.gov.ng> accessed 15 May 2025.

Rivers State Limitation Law is not applicable to defeat the action, the court stated:

> I have noted the trend of judicial authorities on the applicability of statute of limitation such as Public Officers Protection Act (POPA) on employment contract claims, which has rested on upholding the inapplicability of such limitation law, going by the latest authority of the Supreme Court case of *Rector Kwara Poly* v *Adefila (2024) 9 NWLR (Pt. 1944) 529* which towed the same line with the earlier Supreme Court case of National Revenue Mobilization Allocation and *Fiscal Commission* v *Ajibola Johnson &Ors (2019 2 NWLR (Pt. 1656) 247* cited and relied on by the learned Claimant's counsel. There is no doubt that all categories of statute of limitation have the same effect on validity of a suit challenged. Thus, if a particular model of statute of limitation such as POPA has been held inapplicable to employment contract claim, invariably the effect applies to similar model such as the Limitation Law of Rivers State in issue herein. To that end, I share a considered view that the said Limitation Law of Rivers State is similarly not applicable to defeat the instant suit.[55]

To the learned trial Judge therefore, if it has been decided that contract cases cannot be defeated by the limitation provision contained in POPA, it logically follows that all contract matters cannot be barred by limitation provisions contained in any other limitation law apart from POPA. With due respect to the learned trial Judge, the above view seems to have lost sight of the fact that the very section 16 of the Limitation Law considered in that case with the heading "Time limit for actions in contract, tort, etc" clearly bars

[55]*Grant Iheanacho* (n 54).

actions in contract brought after the expiration of five (5) years from the date on which the cause of action accrued.

The simple and literal interpretation of *section* 16 of that Law is that contract actions can be defeated when brought outside the period prescribed by that same statute. It is this writer's view that using POPA as a model in interpreting specific limitation statutes will lead to an absurd end. The POPA or POPL are types of statutes enacted for the protection against actions of persons acting in the execution of public duties. Its application is limited to public officers. The limitation laws of the States on the other hand are specific in nature and apply to different forms of claims except those clearly exempted by the statute. For instance, in section 41 of the Rivers State Limitation Law contract is not one of the items exempted from the application of the Law. Of course, it would have been absurd for the Law to have on one hand made provision barring contract actions in appropriate cases and on the other hand exempt contract matters from the application of the law. The legislature would not had intended that contract matters cannot be caught by limitation provisions and the Supreme Court's interpretation of section 2(a) of POPA could not have given the section the stress which it does not possess. Godwin and Linda have argued that it cannot be the intention of the legislature to cloak contract of employment with a special toga of running in perpetuity.[56]

It will indeed be absurd and against the policy behind limitation laws to allow actions relating to labour matters to lie in perpetuity. Ogbuanya J saw this in Grant Iheanacho's case under consideration but decided to tow the part of his learned brothers. He however, attempted to create a window under the common law doctrine of laches and acquiescence which allows a defendant to resist a suit commenced after a reasonable length of time has passed. That was

[56] Godwin Etim and Linda Osuagwu, *Contracts of Employment and Limitation Laws: Is the National Industrial Court Rewriting the Law*< https://www.aelex.com/contract of employment> accessed 15 May 2025.

an innovative attempt. His reasoning is that a claim not caught by statute may still be defeated on ground of conscience, by the laches committed by a party or by his acquiescing attitude.[57]The defense was however not considered as it was not raised by the defendant in that case. The "reasonable time test" associated with the doctrine of laches and acquiescence does not make a popular option considering that it is at the court's discretion to decide whether a reasonable time capable of defeating the action has passed.[58]

5.0. Conclusion and Recommendations

It has been clearly shown that actions bordering on contract (simple or formal, general or specific) have always been a subject of limitation by relevant statutes. This has been the position both in Nigeria and other common law jurisdictions. Contract of employment is no doubt an aspect of contract and action relating to it comes within a contract case. Indeed, there appears to be no valuable basis to exempt contract of employment matters from the grip of statute of limitation in appropriate cases.

As we have seen, in an action for breach of contract, the course of action accrues to the plaintiff from the time the breach occurred. Indeed, where an action is not commenced within the time allowed by statute, such an action will be statute-barred, this shows that contract cases of whatever form can be limited by statute, subject however to the exceptions already discussed.

The decisions of the Supreme Court in *NRMA&FC* v *Johnson* and *Rector of Kwara Poly* v *Adefila* claimed to have changed the rule on limitation law in relation to contract cases did not do so. Those decisions merely reiterated the trite law on the subject. The NICN with due respect, completely misconceived and misapplied those

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[57] Jerry Amadi (n 11) 1.

[58] Stephen Azubuike, *Application of Limitation Law to Employment Contracts and the Common Law Principle of Laches and Acquiescence*< https://stephenlegal.ng> accessed 15 May 2025.

decisions. The cases of Akumah and Nkume ignited the fire and set it burning. Bamidele, Grant and other joined in the raging inferno. The decision in those cases notwithstanding, it has been sufficiently demonstrated that there is no perpetual right of action in contract of employment matters.

It is the recommendation of this article that other Judges of NICN should not follow since the law permits them to depart from those decisions being that of their brother Judges of the same court. Finally, the Court of Appeal being the final court in most labour matters now has a herculean task of salvaging the situation by clarifying the law on the subject in order to put to rest the ongoing controversy. This can only happen when appeals on the issue are lodged and pursued to conclusion.

LEGAL PERSPECTIVE OF RESEARCH IN NIGERIA

By

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Abstract

The conduct of every research is governed by a complex web of laws, regulations, policies and ethical considerations. This paper provided an appraisal on the legal perspective of research, highlighting the significance of legal perspectives in forming research methodologies and outcomes and also highlighted aspects such as intellectual property rights, data protection and privacy, research ethics, regulatory compliance, and the implication of research misconduct. It followed a doctrinal methodology using both primary and secondary sources of law. The findings underscored the importance of integrating legal considerations in analyzing legal doctrines, principles and rules. It also brought to the fore the legal and institutional framework that governs research in Nigeria such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Copy Right Act 2023, Nigerian Data Protection Act 2023, Cybercrimes (Prohibition, Prevention) Act 2015 (as amended), National Health Act 2014, Corrupt Practices and Other Related Offences Act 2000, The Nigerian Association of Law Teachers Uniform Citation Guidelines, Universities Policies and Guidelines and the Legal Practitioners Act amongst others. It identified key challenges and opportunities in legal research and contributed to a deeper understanding of the legal dimensions of research by providing insights for researchers, policy makers scholars and legal practitioners seeking to advance knowledge. By

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understanding these legal dimensions, researchers can ensure that their work is conducted with integrity, responsibility and in compliance with relevant laws and regulations.

Keywords: *Legal, Framework, Research, Ethics*

1. Introduction

The conduct of research is a critical component of advancing knowledge and innovation in various fields. However, research is not conducted in vacuum but is governed by complex web of laws[1]regulations[2] and ethical considerations. The elaborate relationship between law and research is very significant in every knowledge driven society. The legal perspective of research has become increasingly important in recent years and research misconduct in Nigeria, particularly within academic and research institutions, is a significant concern that can undermine the integrity of every scholarly work. While there are limited case laws specifically addressing research misconduct, related legal frameworks and cases can provide guidance on how such issues can best be handled.

The legal framework governing research is multifaceted encompassing statutes, regulations and guidelines that vary across jurisdictions. Despite its great import, the legal perspective of research remains a poorly understood and often overlooked aspect of every research enterprise. Many researchers are unaware of the laws and regulations that govern their work and may inadvertently contravene them. This can have serious consequences including damage to reputation, loss of funding and even legal liability.

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[1] Constitution of the Federal Republic of Nigeria 1999 (as amended 2023), Copy Rights Act 2023, Nigerian Data Protection Act 2023.

[2] Nigerian National Ethics Committee, National Health Research Ethics Committee.

Accordingly, the rapid advancement of technology and increasing globalization of research has created new challenges and complexities for researchers. It is therefore essential to examine the legal perspective of research and its implications for research institutions and the society in general in other to ensure compliance with legal requirements while also upholding ethical standards and promoting social responsibility. Conversely, research also informs the development of laws and policies, providing valuable insights thereby enabling researchers to gain a deeper understanding of the way in which the law is shaped by research practices.

This paper aims to provide a comprehensive overview of the legal perspective of research through analysis of relevant legal framework governing research highlighting policy challenge, more effective and responsible research practices to balance the pursuit of knowledge with the need to protect human rights and promote social justice as well as opportunities for ensuring compliance and integrity in research.

2. Legal Analyses of Research in Nigeria

Research is a structured and careful study of a subject matter with the aim of discovering new information and have a better understanding of an existing knowledge.[3] Legal Research therefore is the systematic process of finding, interpreting and applying relevant legal information to address a legal problem or question.[4] It is:

> "the process of identifying and retrieving information necessary to support legal decision making. in its broadest sense, Legal Research includes each step of a course of action that begins

[3] S Kabir, *Basic Guidelines for Research: An Introductory Approach for all Disciplines* (1st edn, Book Zone Publication, 2016) 4.

[4] P A Akhihiero, *Legal Research in Digital Age*, (Being a paper presented at the 2009 Law Week of the Nigerian Bar Association, Benin on 24th June, 2009) 2.

> with an analysis of the facts of a problem and concludes with the application and communication of the results investigated."[5]

Legal Research is the cornerstone of the legal profession. It is a process by which an issue is investigated in-depth within a legal framework and a process of finding laws that govern an activity and materials that assists to analyze the law.[6] It includes identifying legal problems, discovering information about the problem and developing arguments about the problem[7]

For Faruque[8] legal research is a systematic investigation whose aim is achieving comprehensive understanding of complexities and underlying issues within legal framework and practices.[9] It is a process and means to find legal rules, legal principles and legal doctrines in other to answer the legal issues at hand. Its function is to seek legal truth regarding a legal problem.[10]. It is the systematic process of identifying and retrieving information to support or make legal decision. It involves finding primary sources of law such as statutes, case laws, regulations and treaties as well as secondary sources like law reviews, legal encyclopedias and also includes finding non legal sources for factual information.[11]Gasiokwu[12] emphasizes the importance of a systematic approach to legal research including identifying research questions, developing a research plan and using

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[5] M Jacobstein and R Mersky, *Fundamentals in Legal Research,* (8th edn, Foundation Press, 2002) 1.

[6] Ibid.

[7] Ibid.

[8] A A I Faruque, *Essentials of Legal Research (*2nd edn, Palal Prokashoni, 2009).

[9] Ibid.

[10] N Duncan, 'Defining and Describing what we do: Doctrinal Legal Research' [2012] 17 (1) *Deakin Law Review* 83.

[11] B A Garner, *Black's Law Dictionary* (12th edn, Thomas Reuters, 2024) 1044.

[12] M O U Gasiokwu, *Legal Research Methodology* (Chenglo Limited, Enugu, 2004) 4.

appropriate research methods[13] Legal Research also involves tracing the evolution of legal facts, rules or institutions, or examining the development of a specific area of law. It can be either doctrinal or empirical.

Nigerian Legal System is multifaceted having being influenced by colonialism that is to say, that the Nigerian legal system influenced by English Common Law relies heavily on legal research for effective legal practice. Research in this area, involves analyzing the sources of law, legal doctrines and judicial decisions. Nigerian Law draws from various sources including case laws, statues and international laws. These sources must be well understood by every legal researcher for the conduct of an effective research. Legal Perspective of Research is the examination of research, practices, methods and findings through the lens of the law. It involves regulation and ethical standards used in research.

On the whole, legal research in Nigeria is a dynamic field that requires understanding of the unique legal landscape. It is not haphazard but follows a defined methodology to ensure thoroughness and accuracy and engaging with various stakeholders to promote justice and human rights.

2.1. Importance of Legal Perspective of Research

The legal perspective of research is crucial for several reasons amongst others:

i. Protection of human subject's by ensuring that research involving them are conducted ethically and lawfully with informed consent and respect for autonomy.

ii. Protecting researchers' intellectual property rights such as patents, copy rights and trademarks to encourage innovation and creativity.

[13] P M Marzuki. 'The Essence of Legal Research is to resolve Legal Problems' [2022] 37 (1) *Yuridika* 37-58.

iii. It aids in preventing research misconduct such as fabrication, falsification and plagiarism by establishing clear policies and procedures.

iv. It helps in protecting research institutions from liability and reputational damage.

v. It promotes a culture of research integrity and accountability which is essential in advancing knowledge and driving innovation.

3. Legal and Institutional Framework Governing Research

There exists plethora of legislation covering entire range of laws, concerned with research in Nigeria. This aspect will take a cursory at look the various laws both national and international and legal institutions that relates to research and ethical considerations.

3.1. National Legal Framework

The National Legal Framework is a broad system of rules that governs and regulates decision making, agreements, laws in conducting research in Nigeria. It provides a better understanding of what Nigerian laws are on the subject matter of this study. The following laws hereunder are relevant to this study.

3.1.1. Constitution of the Federal Republic of Nigeria 1999 (As Amended 2023)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) [CFRN 1999] contains 309 *sections* and 7 *schedules.* The CFRN 1999[14] as the legal framework for the Federal Republic of Nigeria plays a crucial role in regulating and guiding research in Nigeria. Although, it did not explicitly mention the word 'research' but it does provide a framework that allows for and also encourages it particularly through the fundamental objectives and directive

[14] CFRN 1999.

principles of state policy.[15] The fundamental objectives and directive principles of state policy is provided in chapter two of the Constitution and it outlines various areas where the state is encouraged to promote activities that benefit research, including scientific and technological advancements.[16]Accordingly, researchers have the right to express their opinions and findings, subject to restrictions in the interest of public order, morality or security.[17]

Similarly, legal researchers have the right to access information subject to the limitations of national security, public order or individual privacy[18]. The CFRN 1999 also emphasizes the importance of protecting the environment and promoting sustainable development which informs research ethics and governance[19]. It also requires the state to direct its policy towards ensuring that all citizens without discrimination have access to education and health facilities, guiding health research[20] It also protects intellectual property rights including patent, trademark, and copy rights which is crucial for research innovation and commercialization[21]

The CFRN 1999 is the foundation for legal research in Nigeria that establishes the framework for governance including the legislative,[22] executive[23] and judiciary[24] and the protection of citizen's rights. Thus, understanding these aforementioned provisions is essential for researchers, institutions and policymakers in Nigeria.

[15]CFRN 1999, chapter 2.
[16]Ibid, s 18(2).
[17]Ibid, s.39.
[18]Ibid,s.22; Arhus Convention 1998.
[19]Ibid,s.20.
[20]Ibid, s 17(2), (d).
[21]Ibid, s 44(1).
[22]Ibid, s 4.
[23]Ibid, s 5.
[24]Ibid, s 6.

3.1.2. Copy Rights Act 2023

The Copy Rights Act 2023 has 109 sections and twelve parts. It governs copyright protection in Nigeria and protects intellectual property rights in research. The Act for the first time made provisions related to online content and addresses copyright infringement issues in the digital realm.[25] It outlines six categories of works eligible for copyright protection and they are: literary, musical, artistic, audiovisual, sound recordings, and broadcasts. For a work to qualify as copyright, it must display originality and be fixed in a medium for perception, reproduction, or communication - expression. This eligibility applies regardless of the work's quality or intended purpose.[26] That is to say every researchable work is entitled to a copyright protection.

Section 9 enumerates the exclusive rights of copyright holders for literary and musical works. Copyright owners have the sole right to reproduce, publish, perform, translate, adapt, and undertake various acts related to their works.[27] The Copy Rights Act does not only make provision for legal rights, but it also equally makes provisions for moral rights of the author. Section 14 establishes the moral rights of authors. Authors have the right to claim authorship and object to any distortion, mutilation, or derogatory action in relation to their work that could harm their honour or reputation.[28] This further extends to a right to object to a work being falsely attributed to him as the author.[29]*Section* 17 grants authors of artistic works, manuscripts, and musical compositions an inalienable right to a share in the proceeds of subsequent sales of their works through public auctions or dealers after the first transfer. This right applies to original works and is subject to conditions determined by the

[25]Copyright Act 2023, s 60.
[26]Ibid, s 2.
[27]Ibid, s 9.
[27]Ibid, s 14.
[28]Ibid, s 14 (2).
[29]Ibid, s 14(3).(4).

Commission.[30] These rights are inalienable during an author's lifetime and can be transmitted through testamentary disposition or operation of law after their death.[31]By virtue of *section* 18 of the Act, copyright begins at the creation or making of the work. This is, however, subject to the provisions of certain sections of the Act.[32] The duration of copyright protection varies based on the type of work. Literary, musical, and artistic works have protection lasting 70 years after the author's death. Different periods are specified for works derived from other works, audiovisual works, photographs, sound recordings, and broadcasts. Joint authorship works follow the duration of the last surviving author.[33]*Sections* 21 to 23 address educational exceptions. Educational institutions and instructors can copy works for instructional purposes without infringing copyright.[34] These provisions allow for the copying of passages from literary or musical works, sound recordings, audiovisual works, broadcasts, and cable programs however, the author must be acknowledged or cited. Similarly, distributing copyrighted works for commercial purposes, such as rental, lease, hire, loan, or similar arrangements, without the owner's consent, is also an offence and the offenders can face fines or imprisonment for at least three years.[35]. In the case of *Chinonso Ugochukwu v Nigerian Copy Rights Commission,*[36] the Respondent received a petition from the Bible Society of Nigeria alleging copyright infringement of its literary works which included revised standard bibles in Uyo and its environs. Based on the Petition, the Respondent carried on surveillance in the shops of the appellant and confirmed that the appellant was dealing on pirated works other than for private and domestic use. It planned and executed an enforcement action and the

[30]Copyright Act 2023, s 17.
[31]Ibid, s3.4.5.6 and 7.
[33]Copyright Act 2023, s 19.
[34] Ibid, s 22.
[35] Ibid, s 44 (4).
[36] [2022] JELR (CA).

court held that the appellant was liable and he was convicted accordingly.

This case highlights the enforcement of intellectual property laws and the rights of copy right holders. *Section* 60 has now empowered copyright owners to request a court order to compel service providers to disclose information and reveal the identity of alleged infringers. The Copy Right Act is a veritable act in research innovation as it promotes every idea of a researcher being put in a tangible form. In the case of *Donoghue v Allied Newspaper Ltd*[37]Lord Farewell opined thus:

> There is no copyright in an idea or ideas. A person may have a brilliant idea for a story or for a picture or for a play and one which appears to him to be original; but if he communicates that idea to an author or an artist or playwright, the production which is the result of the communication of the ideas to the author or the artist or playwright is the copyright of the person who has clothed the idea in form whether by means of a picture, a play or a book and the owner of the idea has no right in that production

In sum therefore, the Copy Right Act is very important for research and innovation by providing legal protection for every intellectual property thereby promoting and encouraging creativity amongst researchers and also enhance collaboration and build upon each other's work with confidence.

3.1.3. Cybercrimes (Prohibition, Prevention) Act 2015 (as amended)

The Cybercrimes (Prohibition, Prevention) Act 2015 (as amended) is divided into eight parts and fifty-nine sections. The Act with its

[37] [1937] 3 ALL ER 503 (CH).

amendment in 2024 supports research in the field of cybercrime and cybersecurity. Its objectives of the Act amongst others promote cyber security and the protection of computer systems and networks, electronic communications, data and computer programs, intellectual property and privacy rights.[38]

The Act establishes a legal, regulatory and institutional framework for the investigation and prosecution of cybercrimes,[39] which can be used by researchers to analyze legal and enforcement practices in relation to cybercrime. *Section* 258 of the Evidence Act, 2011 (as amended 2023) defines computer as any device for storing and processing information, including mobile phones and any reference to information derived from it by calculation, comparison, or any other process.[40] Also, *section* 58 of the Cybercrimes Act defines computer as:

> an electronic, magnetic, optical, electrochemical or other high speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility and all communication devices that can directly interface with a computer through communication protocols but excludes portable hand-held calculator, typewriters and typesetters or other similar devices.[41]

Section 6 (1) of the Act makes it an offence for any person without authorization to intentionally access in whole or in part, a computer system or network for fraudulent purposes and obtain data that are vital to national security. It is also an offence to intentionally obtain computer data, secure access to any program, commercial or industrial secrets or classified information. The Act does not explicitly exempt research from its protections but it offers some

[38] Cybercrimes (Prohibition and Prevention) Act 2015, s 1(c).
[39]Ibid, s 1(a).
[40] Evidence Act 2011 (As Amended 2023), s 258.
[41]Ibid (n 39), s. 58.

flexibility that allows for legitimate research activities while adhering strictly to the law.

3.1.4. Nigerian Data Protection Act (NDPA) 2023

The Nigerian Data Protection Act (NDPA) 2023 id divided into twelve parts and 109 *sections*. It provides a legal framework for research activity and safeguards the privacy right of Individuals - Data Subjects, Researchers conducting studies in Nigeria must comply with the provisions of the Act. They must obtain inform consent from research participants before collecting personal data clearly outline the purpose of the research, how data will be used and any potential risk involved.[42] Researchers should only collect minimum amount/number of data to meet their research objectives.

On the whole, the NDPA 2023 impacts research by requiring researchers to comply with data protection principles. Researchers especially those involving human subjects or collecting/using personal data must ensure compliance with the Act including obtaining consent, informing data subjects about data processing and implementing security measures thereby protecting their rights and interest.

3.1.5. National Health Act 2014

The National Health Act 2014 is structured into seven part and 108 sections. It regulates health research and establishes a framework for health research through the National Council on Health and the National Health Research Ethics Committee.[43] It provides a framework for regulating health research in Nigeria. It specifies also that researchers should obtain informed consent from participants before conducting research and ensuring confidentiality.[44] The Act plays a crucial role in guiding research priorities and ensuring that

[42]Nigerian Data Protection Act 2023, s 27.
[43] National Health Act 2014, s 27.
[44] Ibid, s 26.

research is aligned with national health goals. It influences the ethical conduct of research involving human subjects, as it sets out standards for the provision of health care.[45]The case of *Medical and Dental Practitioner Disciplinary Tribunal v Okonkwo*[46]solidify the principle that a patient's consent is paramount and the patient's choice in refusing treatment or participation in research must be respected. Researchers have a duty to obtain informed consent.

3.1.6. Corrupt Practices and Other Related Offences Act 2000

Corrupt Practices and Other Related Offences Act 2000 is made up of seventy-one sections and it is relevant as it addresses corrupt practices, which can include research misconduct if it involves fraudulent activities. It supports research particularly through its mandate for system study and review. Section 6 (b-d) specifically allows the Independent Corrupt Practices and Other Related Offences Commission to study practices, systems and procedures that aid or facilitate fraud or corruption and to direct and supervise their review.[47] Section 6(a) requires the ICPC to receive and investigate complaints of corrupt practices which can generate data for research.[48]Section 52 of the Act outlines the procedures needed for investigating allegations of corruption, which can be applicable to cases of research misconduct involving financial impropriety.[49]

The Independent Corrupt Practices and Other Related Offences Commission is required to educate the public on the issue of corruption, which can lead to research on the public's understanding and attitudes towards corruption.[50]

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[45] National Health Act 2014, s 27.
[46][2001] JELR 33516 (SC).
[47]Corrupt Practices and Other Related Offences Act 2000, s 6(b-d).
[48]Ibid, s 6(a).
[49]Ibid, s 52.
[50]Ibid, s 6(e).

3.1.7. Freedom of Information Act 2011

The Freedom of Information Act 2011 is divided into 32 sections and grants citizens the right to access records and information held by public institutions[51] including those in which the government has a controlling interest, and certain private entities. The act enables researches to conduct more thorough and impactful investigations which can lead to higher quality research, more informed policy recommendations and a deeper understanding of complex issues. It seeks to protect personal privacy. Section 14 thereof provides that a public institution is obliged to deny an application for the information that contains personal information unless the individual involved consents to the disclosure, or where such information is publicly available.[52]Summarily, it provides a valuable tool for researchers seeking to access public information,

3.1.8. Nigerian Data Protection Regulation 2019

The Nigerian Data Protection Regulation 2019 (NDPR 2019) provides legal safeguards for the processing of personal data. Under the NDPR 2019, personal data must be processed in accordance with a specific, legitimate and lawful purpose disclosed to data subjects. Thus, in conducting a research work, data subjects must be duly informed of the entire process and purpose to enable them give out information freely. This regulation is defined by citizenship and physical presence.

3.1.9. Nigerian Data Protection Regulation: Implementation Framework 2020

The Nigerian Data Protection Regulation: Implementation Framework 2020 builds on the Nigerian Data Protection Regulation to ensure a tailored implementation of the data protection regime in

[51]Freedom of Information Act 2011, s 1, 2.

[52] Freedom of Information Act 2011, s 14.

Nigeria. It serves as a guide to data controller and administrators/processors to understand the standard required for compliance within their organizations. The framework is to be read in conjunction with the Nigerian Data Protection Regulation and does not supersede it.

3.2. International Legal Framework

The international legal framework does not in any way substitute national law, although it instructs self-governing states on globally, acknowledged rules of practice, and essentially these sovereign states are expected to apply these norms domestically.[53] International law comes into force when state sovereignty is abused. For the purpose of the Legal Perspective of Research, the following international laws hereunder are relevant.

3.2.1. Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights (UDHR) 1948 as the foundation of every human rights law supports and recognizes the value of scientific advancements with its attendants benefits to humanity. Article 27 of the Act states that everyone has the right to freely participate in cultural life, which includes scientific endeavours. Thus, individuals have the opportunity to engage in research without undue restrictions, Accordingly, every research should be conducted in a manner that respects human dignity and promotes equitable access to outcomes.[54]

3.2.2. Convention on Human Rights and Biomedicine 1997

The Convention on Human Rights and Biomedicine is also known as the Oviedo Convention which applies to the protection of human rights and dignity of human being with regard to the application of

[53]J. Dugard, *Human Rights and the South African Legal Order* (Princeton University Press, 2015), 37.
[54] UDHR 1948, art 27.

biology and medicine. This convention is the only legally binding instrument on the protection of human rights in the field of medicine with the sole aim of defining and safe guarding fundamental rights in biomedical research and in particular, those participating in research.

3.2.3. Helsinki Declaration 2013 (Revised in 2024)

The Helsinki Declaration 2013 that is revised in 2024 was developed by the World Medical Association and it sets out ethical principles guiding medical research involving human participants. This declaration is not legally binding but it sets out the ethical conduct of research, it acknowledges the autonomy of individuals and the importance of informed consent.[55] It promotes researchers' roles and responsibilities when it comes to protecting human subjects. A key principle is the need for informed consent. It sets ethical standards for medical research requires researchers to obtain informed consent and that participants are not subjected to unnecessary risk.[56]

3.3. Institutional Framework

The institutional framework in research exits as part of proactive measures by government to ensure governance and compliance in research following ethical principles. The following hereunder are a list of research institutions.

3.3.1. Nigerian Data Protection Commission

The Nigerian Data Protection Commission is the regulatory body established under the Nigerian Data Protection Act 2023.[57] Its objective is to oversee and enforce data protection laws and

[55] Helsinki Declaration 2013, art 25.
[56]Ibid, s 5, 9, 13.
[57]Nigerian Data Protection Act 2023, preamble, s 4.

protection standards in Nigeria and to ensure compliance with the Act.[58] The functions of the Commission amongst others are to:[59]

i. Receive complaints relating to violations of this Act or subsidiary legislation made under this act[60]

ii. Collaborate with any relevant Ministry, department, agency, body, company, firm or person for the attainment of the objectives of this Act.[61]

iii. Carry out other legal actions as are necessary for the performance of the functions of the Commission.[62]

Nigerian Data Protection Commission plays a crucial role in safeguarding the privacy rights of individuals and promoting a secure and trustworthy digital environment in Nigeria by ensuring that data is handled responsibly and in accordance with the law while being independent in the performance of its functions under the Act.[63]

3.3.2. Institutional Review Boards

Institutional Review Boards is an administrative committee that reviews and approves research involving human participants to ensure ethical conduct and protect their rights. It ensures that research involving human subjects adheres to ethical principles, legal regulations and institutional policy. It reviews research in various fields including biomedical research, behavioural research and educational research.

[58]Nigerian Data Protection Act 2023, preamble, s 2.
[59]Ibid, s 5 (a-o).
[60]Ibid, s 5 (g).
[61]Ibid, s 5 (h).
[62]Ibid, s 5 (o).
[63]Ibid, s 7.

3.3.3. National Association of Law Teachers (NALT)

National Association of Law Teachers is a professional body that represents the interest of Law Teachers in Nigeria.[64] It was established in 1961 to promote excellence in legal education and research. It advocates for government policies and practices related to legal education and research. Its key roles involve improving the quality of legal research, law reform and curriculum advancement to meet present realities and modern-day technology.[65]

3.3.4. Nigeria Copyright Commission

Nigeria Copyright Commission is a landmark innovation of the Copyright Act of 2023.[66] It is the establishment of an autonomous regulatory body for the administration of the law which was not provided for in neither the Nigerian Copyright law under the 1988 Decree nor the Copyright Act of 1970. More so, the then Nigerian Copyright Council was not imbued with such powers. As observed by Asein thus:

> …Individual right owners were left to sort things out themselves. This omission in the law alienated right owners from the statutes and hindered this implementation of those government policies which were intended for the promotion of copyright. Government was also denied the benefit of broad-based expert advice on matters relating to copyright.[67]

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[64] E Ojukwu, *The Challenge of NALT'S Reimage* (Being a lead paper at the 54th Conference of the Nigerian Association of Law Teachers, at Abia State University, Umuahia Campus, 12th July, 2023) 1.

[65] Ibid.

[66] Copyright Act 2023, s 77.

[67] J K Bielu, 'A Legal Appraisal of Nigerian Copyright Law and the Author' *Nnamdi Azikiwe University Journals* [2019] <https, //journals.unizik.edu.ng> accessed 22nd April, 2025.

The Copy Rights Act 2023, provides that there shall be established a body to be known as the Nigerian Copyright Commission.[68] The Commission is a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.[69] The primary functions of the Commission under the Act[70] includes:

a. Responsibility for all matters affecting copyright in Nigeria.[71]

b. Monitor and supervise Nigerian's position in relation to international convention and to advice Government.[72]

c. Advising and regulating conditions for sealing of bilateral and multi-lateral agreements between Nigerian and any other country.

d. Enlightening and informing the public on matters relating to copyright.[73]

e. Maintenance of an effective data bank on authors and their works.[74]

4. Best Practices and opportunities for Ensuring Compliance in Research

There are concerns that can undermine the integrity of scholarly work. While there is limited case law specifically addressing research misconduct, related cases can provide guidance on how such issues are handled. One relevant case is *Nnamdi Azikiwe University & Ors v Nwafor*[75] which dealt with examination malpractice, as a form of academic misconduct. The court

[68]Ibid, (n 65) s 77 (1).
[69] Ibid, s 2(a-d).
[70] Ibid, s 78.
[71] Ibid, s 78 (1), (a).
[72] Ibid, s 78 (1), (b).
[73] Ibid, s 78 (1), (d).
[74]Ibid, s 78 (1), (e).
[75][1998] LPELR-6453(CA).

emphasized that examination malpractice is a crime that should be tried by a court of law or tribunal. This case highlights the seriousness with which academic misconduct is treated in Nigeria. Another pertinent case is *Federal University Lokoja & Ors v Acheneje*,[76] which discussed the rights of students accused of examination misconduct and the principles that must be followed by an Examination Malpractices Committee. This case underscores the importance of due process and fair hearing in addressing academic misconduct allegations.

The Legal Practitioners Act[77] also provides a framework for addressing professional misconduct, which can be analogous to research misconduct in terms of ethical breaches. Section 13 of the Act allows the Supreme Court to take action against legal practitioners guilty of infamous conduct, which can serve as a precedent for addressing similar issues in the academic field.[78] Furthermore, Legal Practitioners are enjoined to ensure that cited cases are real and existent. Details of cases like names, dates and citations should be crosschecked so as not to potentially impact the outcome of cases. In the recent case of *Halilu v Katsina State*[79]the Supreme Court held that counsel must ensure accuracy and correctness in citations and cases relied upon in their briefs

By being diligent with citations, legal practitioners can maintain the highest standards of professionalism and contribute to the integrity of the Nigerian Legal System. For best practices one should establish a compliance office through the Directorate of research and connectivity.

5. Conclusion /Recommendations

The Legal perspective of research is a dynamic and evolving field that requires ongoing attention and engagement from researchers,

[76][2021] LPELR-55170(CA).
[77]Legal Practitioners Act (As Amended 2014).
[78] Ibid, s 13.
[79] [2025] 6 NWLR (Pt .1986) 289, 323(SC).

institutions and policy-makers. While specific case law on research misconduct in Nigeria may be limited, related cases and legal frameworks provide a foundation for addressing such issues. By working together, we can ensure that research is conducted with integrity, validity and reliability ultimately advancing knowledge and innovation for the benefit of the society.

Based on the above, the following hereunder are the recommendations based on the findings of this study relevant to us, that;

1. Institutions should develop and disseminate clear policies and procedures for research including guidelines for informed consent, data protection and intellectual property.
2. Institutions should provide regular research ethics training for staff and students to ensure compliance.
3. Institutions should establish robust research governance structures including institutional review boards and research ethics committee.
4. Institutions should establish clear policies and procedures for handling research misconduct, ensuring compliance with legal standards and promote research integrity.
5. Researchers should familiarize themselves with institutional, national, international research policies and guidelines.
6. Researchers should seek training and education on research ethics.
7. Every legal research should be conducted with integrity and transparency including stating the overall, framework and rationale for research (research methodology), summary of findings and conflict of interest.

LEGAL EXAMINATION OF SECRET TOOLS FOR TRIAL LAWYERS IN NIGERIA

By

Dr Setechi Okechukwu-Jnr Eli*

Abstract

The legal profession has diverse career areas one of which is litigation; which appears to be quite daunting with regards to the various requirements for a successful litigation process. It is imperative, therefore, that lawyers involved in litigation are better equipped with special tools and skills to stand out in trial proceedings. This article brought to the fore, the various tools and skills every trial lawyer must be equipped with in order to attain success in trials. The research methodology adopted is the doctrinal research approach. This article started with an introduction to the secret tools for trial lawyers and defined key concepts, then proceeded to itemize and elucidate the tools very essential and central to the success of trial lawyers career.

Keywords: *Tools, litigation, trial, lawyer, legal, practitioner, information, technology*

1.0. Introduction

A secret connotes what is not open to the public. It connotes what is hidden and known only by one person or a group of persons within a particular social or business interest. Secret tools for trial lawyers are not necessarily secrets *per se*, they are actually open secrets of a sort. What makes it seem like secrets is probably because some persons are yet to discover it or not intentional that it is necessary for the success of a trial.

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Accordingly, the secret tools for trial lawyers to be considered in this seminar are respectfully, very germane. No one should be preferred over the others, as their application is peculiar within the circumference of the specific area of their usage. Before we proceed on the purport of this seminar, let us look at the conceptual clarifications.

2.0. Conceptual Clarification- The meaning of Secret Tools for Trial Advocacy

Secret tools for trial advocacy simply means the skills a lawyer needs to be effective as a courtroom lawyer or in trial proceedings that seems not to be open to the public but are in fact open, and only limited by ignorance of legal practitioners or their awareness. Efficiency relates to machines; effectiveness refers to human beings. Secret tools for trial advocacy also means the traits that a legal practitioner must possess to be effective in litigation or what has now come to be known as legal practice. Let us proceed to discuss these secret tools.

3.0. Legal Examination of Secret Tools for Trial Advocacy in Nigeria

The following are the secret tools of trial advocacy, namely: continuous reading, read your law reports, read your law journal articles and other periodicals, master your Rules of Court, master your facts, master your Evidence Act, master your logic and fallacies in argument, master your Limitation Law, master legal technicalities, be ethical, know how to properly address the Court, be original, be strategic and be disciplined, to mention but a few. We shall now proceed to respectively look at these secret tools for trial lawyers.

3.1. Continuous Reading

Reading for a legal practitioner involved in trial law does not end at law school. It actually starts after law school. Without continuous reading you may have difficulty mastering legal principles. You

must continue to study your substantive and procedural law after law school to be successful as a trial lawyer. This is because if you stop learning, you forget what you already know.[1]

You will have to read the Constitution, Acts, laws, other subsidiary legislation, law text books, logic, fallacies in arguments and law reports. According to Habeeb Adewale Olumuyiwa Abiru, JSC in the case of *Akinsanya*v *Attorney General of the Federation & Ors*,[2]

> A counsel has a duty, once he accepts a brief, to put his client's case forward in the best possible manner, with a proper understanding of the relevant legal principles, and he should not rely on the good fortune of the knowledge of the Judge or Justices hearing the case… Counsel to all the respondents need to do more, going forward, in protecting the interests of their clients.[3]

3.2. Read Law Reports

There are many law reports in circulation. Buy it and read. The importance of reading your law report is that it is the easiest way to learn legal principles and the attitude of the court to facts presented in that regard. Reading law reports is also the best way for a trial lawyer to know the latest legal developments and innovations in legal practice and for you to know how to apply them in your field.

3.3. Master your Rules of Court

Refuse to be carried away by the provisions of the Rules that treat non-compliance as an irregularity.[4] This is because Rules of Court which is a subsidiary legislation with a force of law have a binding

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[1] Bible, Proverbs 19:27 CEV.
[2] [2025] 6 NWLR (Pt 1987) SC 481, 540, Para B-C; See also *Sebastine* v *State* [2020] LPELR 50319; *Rukuje* v *Deba* (2018) LPELR 44422
[3] (n2).
[4]High Court of Rivers State (Civil Procedure) Rules 2023, Or 7.

force and a lawyer coming to court must properly study the Rules.[5] When a court insists that the Rules must be obeyed, it would not be said to be a reliance on technicalities.[6]

3.4. Master your Facts

Cases are won and lost based on the pleading of a trial lawyer. Therefore, a trial lawyer must master his or her facts in order to plead appropriately in court processes. You must understand that facts pleaded but not given in evidence are deemed to have been abandoned, that facts not pleaded but given in evidence go to no issue. You must be able to know facts that must be specifically pleaded and possibly particularized, for example, custom, customary law, limitation law, fraud, to mention but a few.

3.5. Master your Evidence Act 2011 (as amended)

It is trite knowledge that judges are not spirits to know what transpired before the court, even when they do, they will still need to decide cases based on evidence. The Evidence Act is the trial power house as nobody can win a case in court without substantiating it with evidence. A proper court ought not to decide cases based on sentiment, speculation or public opinion. Therefore, a trial lawyer must master the Evidence Act to be able to know relevant facts and irrelevant facts, to be able to know legally admissible and inadmissible evidence, and so on.

3.6. Master Logic and Fallacies in Argument

This is very important because it will help a trial lawyer in drafting his pleadings, written address and brief of argument. This will help a trial lawyer to be able to distinguish between relevant facts and irrelevant facts and channel his energy in responding to relevant facts. This will also help a trial lawyer to detect fallacies in facts and

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[5] *Adeneran* v *Olusokun II* [2019] 8 NWLR (Pt 1673) 98, 114, Paras A-G.

[6] (n5).

argument and concentrate on giving a logical presentation of facts and legal argument in the written address or brief of argument.

3.7. Master your Limitation Law

Proper knowledge of the limitation law will help a trial lawyer to know when a suit is statute barred and what to do in that circumstance. Filling a stale case without doing the needful or responding to an inquiry on a stale fact, as the case may be speaks volume on the capacity of a trial lawyer.

3.8. Master the use of Legal Technicalities

It is only a legal practitioner who knows the law by reading his legislation, rules of court, Evidence Act, limitation laws and fallacies in logic and so on that would be able to appropriately make use of legal technicalities. The Supreme Court has held that when a court insists that it Rules must be obeyed, the same should not be seen as technicalities.[7]

3.9. Be Ethical

This is the most important tool a trial lawyer must possess. The foundation of Ethics in the legal profession in Nigeria is the Rules of Conduct for Legal Practitioners 2023, which contains the basic ethical standard for lawyers. Non compliance with these ethical standards has severe consequences, including but not limited to loss of license to practice lawin Nigeria.

Ethics means moral principles or force that governs a person's behavior or the conducting of an activity. According to the Josephson Institute of Ethics, a non partisan, none profit organization that exists to improve the ethical quality of society, ethics includes how we meet the challenge of doing the right thing

[7] (n5).

when that will cost more than we want to pay.[8] Every profession has its own ethics. No matter how talented, gifted or brilliant you are as a trial lawyer, if you are not ethical you will not succeed in the long term. Being ethical is the basic foundation to achieving and protecting your success as a legal practitioner.[9]

As a foundation, let us start from the ethical framework for law students in the University, using the Rivers State University as a case study, the said ethical standard is contained in section Four paragraph "O" (page 42)-Classification of Examination Offences/Punishment and Code of Conducts for Students under Section Five- Professional Ethics for Staff and Students (pages 44 to 45. It contains about 19 Code of conducts. See for instance Code 3 against membership of secret cult and code 8 against examination malpractice. The issue of examination malpractice is crucial because it can impact negatively on your aspiration to the Bar and the Bench. Apart from communicating in the examination hall with intent to share information relevant to the exam that has "F" score as punishment, other examination misconducts ranges from suspension for one academic session to dismissal. For the Law students, the truth is that once law school finds that your delay in going to the law school or graduation is due to suspension related to examination malpractice, you will be placed on hold for up to 10 years, thus impacting negatively on your timeous admission to the Bar.[10] Issues of malpractice by way of copying is not only unethical in the university but has been held to be a deplorable and unprofessional practice that needs to be sanctioned.[11] In the case of *Dangote Cement Plc* v *Ager,*[12]Per Garba, J. S. C. stated as follows:

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[8] <https://josephsoninstitute.org/med-1makingsense/ethics> accessed September 2024.

[9]S O Eli, 'Legal Appraisal of Requirements for Success as a Legal Practitioner and Judge in Nigeria' (2025) 5 (1) *Journal of Law and Policy;* 198.

[10] (n9), 199.

[11] *Dangote Cement Plc* v *Ager* [2024] 10 NWLR (Pt 1945) 1, 32-33, paras H-E.

[12] Ibid.

> Because the issue raised in the 2nd respondent's brief are the same as those submitted in the 1st respondent's brief, the arguments on the issue are not only identical, but copied and so the same; word for word as those canvassed in the 1st respondent's brief and reviewed above. I must say that this practice by counsel of copying briefs of argument and arguments therein filed by another counsel for a different party to an appeal in this court or in any appellate court, is not only appalling, but also shows clear admission of professional incompetence and breach of professional duty to the client/party who retained the services of such counsel.

Accordingly, for trial lawyers, the Code of Conducts for Legal Ethics in the Bar is basically, the Rules of Professional Conduct for Legal Practitioners 2023 (RPCLP 2023), which revoked the Rules of Professional Conduct for Legal Practitioners 2007[13] and became operative on the 1st day of January, 2024.[14] It was made by the General Council of the Bar pursuant to *section* 1 (1) (4) of the Legal Practitioners Act 1975 (LPA 1975). The RPCLP 2023 consist of three chapters, Part 1 consists of Rules 1 to 54 (Practice as a Legal Practitioner, Relations with Clients, Relations with other Lawyers, Relations with the Court, improper attraction of business, Remuneration and fees. Chapter 2 consists of Rules 55 to 72 (Guidelines and Rules for Anti Money Laundering and Combating the Financing of Terrorism by Legal Practitioners and chapter 3 consists of Rules 73 to 78 (Miscellaneous provisions).[15]

If a lawyer acts in contravention of any of the provisions in the RPCLP 2023 or fails to perform any of the duties imposed therein, he shall be guilty of a professional misconduct and liable to punishment as provided in *section* 11 of the Legal Practitioners Act,

[13] RPCLP 2023, s 75.
[14] RPCLP 2023, s 76.
[15] (n9), 199-200.

1975.[16] It is the duty of every lawyer to report any breach of any of the rules of professional conduct that comes to his knowledge to the appropriate authorities for necessary disciplinary action.[17] By virtue of *section* 74 (1) of the RPCLP 2023, failure to report a breach of the rules of professional conduct by a legal practitioner as provided in *section* 74 (2) of the RPCLP is itself a professional misconduct. It is imperative to stress at this point that the Rules made pursuant to the Legal Practitioners Act 1975 partake of the nature of Subsidiary Legislations by virtue of *section* 18 (1) of the Interpretation Act 1964[18] and therefore have the force of Law.[19]

For the Judges or the Bench, what regulates the Code of Conduct for the Bench in Nigeria is the Revised Code of Conducts for Judicial Officers of the Federal Republic of Nigeria 2006 and the Judicial Discipline Regulation 2017. The Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria 2016 (RCCJO 2016) forbids judicial officers from accepting gifts or favours of any sort in exchange for anything done or omitted in the course of their duty,[20] whether by himself or by members of his family,[21] prohibits the giving and taking of bribe by a judicial,[22] and ethical standard shall be communicated to family members and court staff of the judicial officer by the judicial officer and a discouragement to them from breaching same.[23] The Judicial Discipline Regulation 2017 (JDR 2017) came into force on the 29th Day of June 2017 and was made pursuant to the power discipline of the National Judicial Council (NJC).[24] The NJC's power to exercise disciplinary control

[16] RPCLP 2023, s 74 (1).
[17] RPCLP 2023, s 74 (2).
[18] Cap I 23 LFN 2004.
[19] *Adeniran* v *Olusokun II* [2019] 8 NWLR (Pt 1673) 98 Ratio 13, 114 Paras A-G, Per Mary Peter-Odili JSC.
[20] RCCJO 2016, Rule 10 (1) (i) (ii).
[21] Ibid, Rule 13 (1).
[22] Ibid, Rule 10 (1) (iii).
[23] Ibid, Rule 10 (2).
[24] CFRN 1999, 3rd Sch, pt 1, para 21 (b) (d).

over Judicial Officers under the *third Schedule, part* 1 of the CFRN 1999 is governed by the JDR 2017, which governs allegations and complaints of misconduct against Judicial Officers, as well as proceedings initiated in the exercise of that power by the NJC under the *third Schedule, part* 1 of the CFRN 1999.[25]A petition for official corruption or breach of Code of Conduct for Judicial Officers is sent to the NJC.[26] NJC asks the respondent to respond if need be.[27] A preliminary committee looks at the petition and the response.[28] A *prima facie* case is established or not established.[29] If not established, further investigation is terminated at this stage.[30] If established, NJC constitutes a minimum of three and maximum of five members Investigating Committee.[31] The Investigating committee reports their findings to NJC after thorough hearing.[32] If findings exonerate the judicial officer, the petition terminates at this stage.[33]

The Judicial officer is disciplined by the NJC if found guilty to have breached the RCCJO or there is a likelihood of having done so.[34] The discipline ranges from censure and reprimand,[35] suspension,[36] placement on watch list,[37] prohibit his nomination to a higher office permanently or within a specific time,[38] and dismissal.[39] In most cases, establishment of breach of code of conduct relating to official

[25] JDR 2017, Reg 2.
[26] Ibid, Reg 15.
[27] Ibid, Reg 17 (3) (a) – (e); Reg 18 (1) (a) (b).
[28] Ibid, Reg 17 (1).
[29] Ibid, Reg 17 (2).
[30] Ibid, Rule 17.
[31] Ibid Reg 19; Reg 20 (1).
[32] Ibid, Reg 23.
[33] Ibid, Reg 25 (1) (a) (b).
[34] Ibid, Reg 25 (1) (d).
[35] Ibid, Reg 25 (1) (d) (i).
[36] Ibid, Reg 25 (1) (d) (ii).
[37] Ibid, Reg 25 (1) (d) (iii).
[38] Ibid, Reg 25 (1) (d) (iv).
[39] Ibid, Reg 25 (2).

corruption ends in dismissal of the said judicial officer.[40] Upon the dismissal of the said judicial officer, the police, EFCC or the prosecutor can now arrest the judge and charge him for the offence of official corruption if any.

Consequently, where a legal practitioner acts unethically by refusing to observe the RPC 2023, there is no way that the legal practitioner will not be suspended or expelled from practicing law in Nigeria. There are also ethical standard for judicial officers as can be seen above and non compliance with same attracts far reaching consequences.[41]

The question is, if you are suspended as a lawyer or debarred from practicing law in Nigeria, how can you talk about utilizing other secret tools? Your answer is as good as mine. In the case of *Homan Engr. Co. Ltd.* v *U.W.S. Ltd*.,[42]Habeeb Adewale Olumuyiwa Abiru, JSC, stated as follows:

> The court has refrained from commenting on the unprofessional conduct of the lawyers that assisted the appellant in the disgraceful abuse of the processes of court. Suffice to say that lawyers as operators of the administration of justice system owe a duty, to the society that nurtured them and them what they are, to ensure that they conduct their activities in a manner that edifies and brings honour, respect and belief to the justice system. They should not allow themselves to be used by litigants to bring the justice system into disrepute.[43]

Accordingly, a trial lawyer must be prompt to Court as all courts sits by 9:0am, except otherwise stated. A trial lawyer must always dress

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[40] JDR 2017, Reg 25 (2).
[41] (n9), 201.
[42][2025] 6 NWLR (Pt 1987) SC 423, 447 - 448, Paras H-B.
[43] See also *Dagazu Carpets Ltd*. v *Bokir Int'l Co. Ltd*. [2025] 8 NWLR (Pt 1992) SC 271, 306, A-B.

in the prescribed regulation dress code for each court. A trial lawyer must always comply with rules.

A trial lawyer must know how to properly address the Court. A legal practitioner must not address the court in first person or second person pronoun. A judge must be addressed as my lord, your lordship, his lordship, milord, as the case may be. A Magistrate in Rivers State of Nigeria is to be addressed as "Your Worship" or "His Worship." A Chairman or member of the Customary Court in Rivers State is to be addressed as "Your Honour" or "His Honour" as the case may be.

3.10. Master your Drafting Skills

One of the invaluable assets that a counsel must always posses is drafting skills.[44] The pleadings consisting of the statement of claim, statement of defence, reply, affidavit, counter affidavit and further affidavit, as the case may be in the trial court, and the brief of arguments n an appeal contain the story of a party on which the appellate court is called to adjudicate, therefore it must flow, be consistent, concise, comprehensive, comprehensible, accurate, brave and precise. It must not be too short as to leave out the essentials and must not be too long as to become otiose.[45]In the words of Habeeb Adewale Olumuyiwa Abiru, JSC,

> In this case, the 1st, 3rd and 4th respondents' briefs of argument, though filled with a lot of energy and verve, contained arguments lacking in accuracy and precision. The arguments did not confront or address the complaints expressed in the appellant's brief of argument, rather they were directed at what the respondents' counsel imagined were the complaints of the appellant. The arguments in the 2nd

[44]*Akinsanya* v *A.-G., Fed.* [2025] 6 NWLR (Pt 1987) SC 481, 539, Para E; *Nagebu Co. (Nig.) Ltd.* v *Unity Bank PLC* [2014] 7 NWLR (Pt 1405) 42.
[45] (n8) para E-F.

> respondent's brief of argument addressed only a minute part of the complaints of the appellant in the appeal and consisted of repetitions of the statements made by the Court of Appeal in rejecting the arguments of counsel to the Appellant on that minute issue in the appeal before it.[46]

A legal practitioner must definitely make use of precedents in all forms of legal drafting, including drafting of court processes. However, a legal practitioner must not sheepishly make use of precedents. He must be able to adapt them to the circumstance of his case, even when the facts are very similar. The copying of a professional colleagues brief word for word without any input has been held to be an admission of professional misconduct.[47]

3.11. Be Strategic

Knowledge of the law and facts is very good. However, strategy is imperative in winning your case as a trial lawyer. This ranges from forum shopping[48] within the circumference of the Realist School of Law where necessary, the order of presentation of witnesses and tendering of exhibits as the case maybe. Some good cases are lost based on bad strategy or what some call case theory and/or trial plan.

3.12. Be Disciplined

You must be disciplined to be effectively ethical and model the secret tools for trial lawyers highlighted above. You may have to say no where your feelings and emotion want you to say yes. You may have to wake up from sleep when you feel like sleeping more, to be

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[46] 439-440 paras G-B.

[47] *Ager* v *Dangote Cement PLC* [2024] (Pt 1945) 23.

[48] S O Eli, Appraisal of Hon Justice Simeon Amadi's Two Years in Office as the Chief Judge of Rivers State: 26th of May 2021 to 25th of May 2025, <https://thenigerialawyer.com/appraisal-of-hon-justice-simeon-amadis-two-years-in-office-as-the-chief-judge-of-rivers-state-26th-of-may-2021-to-25th-of-may-2023/> accessed 18 July 2025.

effective as a trial lawyer, which underscores the principle of discipline.

Another area to discipline yourself as a trial lawyer is in relation to your well health. Only a healthy person can think about excellence as lawyer or judge. Therefore, next to God, you have to prioritize your health before any other thing. This is because no dead person talks about success as a trial lawyer.[49] Eating the right food, exercising and resting will help you to stay healthy.[50]

3.13. Spirituality

This focuses on the area of spiritual protection for life because only the living can pursue success as a trial lawyer. A lot of things happen in the legal profession. Spiritual attacks come from litigants and fellow learned colleagues. There have been cases where a judgment that was supposed to be in favour of a trial lawyer's client was delayed for over a year, on the date the said trial lawyer concluded his prayer sessions, he was given a date for the judgment delivery, and the judgment was delivered in favour of the said trial lawyer client. This further buttress the need for a trial lawyer to be very prayerful no matter how busy legal practice may be.[51]

3.14. Information and Communication Technology

In order to adequately learn and practice the law in a digitalized world, you must have knowledge of how to operate the computer and effectively use the internet, especially in this e-filling and e-trial era. This is not the same as knowledge of how to program the computer.[52] Your knowledge of how to operate the computer will help you to adequately type your pleadings, court processes, prepare and make your presentations using power points, thus saving time in the long run. It will also help you to know how to use digital

[49] S Eli, *The Laws of Academic Excellence* (3i's Publishers 2016) 23. 35.
[50] (n49) 37.
[51] (n9), 203.
[52] Ibid.

boards for your presentation. The basic computer program that a lawyer or judge should be aware of is Microsoft word and internet because it helps one to type his or her work and enables one to access and read digital materials inputted in that format.

Accordingly, there are various online meeting platforms like goggle meet, zoom, etc. These platforms are sometimes used to hold lectures, meetings, hearings or used to make presentations. A trial lawyer should know how to set up and access these meeting platforms. Adequate knowledge on how to file and access processes in the RIVCOMIS and other e-filling platforms cannot be overemphasized for a trial lawyer.

The use of Artificial Intelligence (AI) alone in legal research either for brief writing or otherwise, without adequate modifications and inputs from a trial lawyer is seriously discouraged. It is not only a mark of laziness but impacts negatively on the competence and capacity of a trial lawyer to meet the need of his client and the society.

4.0. Conclusion

In essence, to be effective as a trial lawyer, you must be a continuous reader, you must read your law reports regularly, read your law journal articles and other periodicals regularly, master your Rules of Court, master your facts, master your Evidence Act 2011 (as amended) as well as logic and fallacies in argument. Other tools a trial lawyer must possess are**:** you must master the limitation laws and legal technicalities; you must be ethical, courageous, original, strategic, disciplined, spiritual and knowledgeable in information and communication technology. In this information age, it will be difficult for a trial lawyer who resents the virtual world to make sustainable progress.

FROM QUILL TO CODE: HARNESSING CHATGPT TO REVOLUTIONIZE LEGAL DRAFTING PRACTICES IN NIGERIA

By

Success Gilbert[1]

Abstract

Artificial intelligence (AI), particularly generative language *models like ChatGPT, presents a significant turning point for the Nigerian legal drafting. Traditional drafting practices, deeply entrenched in colonial legacies, have been characterized by verbosity, inefficiency, and limited accessibility. This Paper therefore explores the transformative potential of ChatGPT in enhancing precision, consistency, and efficiency, by examining historical context, technical foundations, practical applications, ethical implications, and regulatory challenges associated with integrating ChatGPT into Nigerian legal drafting. Empirical insights drawn from case studies of law firms and governmental institutions reveal significant advantages alongside critical limitations requiring careful oversight. Comparative analysis with international jurisdictions highlights global best practices suitable for Nigeria. Ultimately, the paper argues for a balanced, ethical, and strategically regulated adoption of AI technologies. Recommendations include updating professional guidelines, reforming legal education curricula, and government-backed initiatives. This structured integration approach can significantly enhance the quality and accessibility of legal drafting in Nigeria, positioning it at the forefront of digital innovation.*

Keywords: *Artificial intelligence, Legal drafting, ChatGPT, Nigerian law, Regulatory frameworks*

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1.0 Introduction

Legal drafting remains a cornerstone of legal practice, shaping the clarity, enforceability, and authority of legal instruments across Nigeria's judicial and administrative systems. Traditionally, this domain has been heavily influenced by the country's colonial inheritance, particularly British common law drafting conventions. These inherited styles, while foundational, have also perpetuated a legacy of excessive verbosity, rigid formality, and linguistic obscurity often rendering legal documents inaccessible to the layperson and inefficient in their operational use.

As Nigeria confronts a rapidly evolving socio-legal landscape marked by increasing demands for judicial efficiency, transparency, and access to justice, the need for reform in legal drafting practices becomes ever more urgent. In this context, artificial intelligence (AI), and more specifically generative language models such as ChatGPT, offers a compelling frontier for innovation. These AI tools possess the capacity to enhance precision, reduce drafting time, promote consistency, and even democratize access to legal assistance particularly for underserved populations and resource-constrained practitioners.

This paper begins by situating the discussion in the historical evolution of legal drafting in Nigeria, then proceeds to examine the technical capabilities and limitations of ChatGPT as applied to legal text generation. Through empirical observations, comparative legal analysis, and critical reflection on emerging ethical and regulatory dilemmas, this paper aims to offer practical, principled, and forward-thinking recommendations for harnessing AI responsibly within Nigeria's legal system.

2.0 Historical Development and Colonial Influences of Legal Drafting in Nigeria

Nigeria's legal drafting heritage is deeply rooted in British colonial era linguistic and structural conventions. The transplantation of their

legal frameworks into colonial Nigeria established drafting conventions that stressed formality, precision, and bureaucratic rigidity. The use of archaic language, legalisms (such as *inter alia*, *heretofore*), and detailed hierarchical structuring of statutes served to maintain colonial administrative control.[2] These conventions were systematically entrenched via the introduction of English-style legislative drafting manuals and training programs for colonial clerks.[3]

As noted by Owolade, the legal system in Northern Nigeria (1900–1960) operated under a dual system that combined common law with customary and Islamic legal principles.[4] However, the textual structure and drafting lexicon remained firmly within English legal traditions emphasizing complexity over clarity.[5]The British administration reinforced this approach, believing that verbosity equated to legal certainty.[6]

Early indigenous lawyers such as Christopher Sapara Williams and Kitoye Ajasa were trained in England, and upon return, perpetuated British drafting norms in both public and private practice.[7] Their training and influence helped institutionalize these stylistic traits across colonial courts and official legislation.[8] English medium drafting persisted even after 1960 independence, reinforcing linguistic legacies in legal documents and court pleadings.[9]

The dominance of English in legal drafting has also had socio-linguistic ramifications. As languages like Hausa, Igbo, and Yoruba

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[2] F Owolade, 'Writing a Colonial Legal History of Northern Nigeria' (2023) *History in Africa* (Cambridge University Press) 24.
[3] Ibid.
[4] Ibid.
[5] A Dissertor, 'New Frontiers to Legislative Drafting: Plain Language in Nigeria' (May 2023) NIALS dissertation 20.
[6] Ibid.
[7] Wikipedia, *Christopher Sapara Williams* (last visited Jun 2025).
[8] Wikipedia, *Kitoye Ajasa* (last visited Jun 2025).
[9] A Dissertor (n 4).

were excluded from official legal discourse, access to law became confined to English-literate elites. [10]This linguistic barrier was not incidental it was foundational to the structure of colonial governance and has had lasting effects on bureaucratic inclusion.[11]

It is pertinent to mention that, while colonial drafting provided foundational legal structure, it also cemented a drafting culture resistant to simplification. Subsequent reform efforts have acknowledged the persistence of archaic language but implementing change has been slow.[12]This highlights the cultural inertia institutionalized during the colonial period a legacy that continues to hinder the democratization of legal language.

3.0 Conceptualizing Artificial Intelligence in Legal Contexts

Artificial intelligence broadly denotes computer systems capable of tasks traditionally requiring human intellect learning, reasoning, and language processing[13]. In law, AI spans a spectrum from rule-based legal expert systems and e-discovery platforms to NLP-driven chatbots and generative tools.[14]Current legal implementations largely fall within "narrow

AI," designed for specific tasks such as contract review, citation retrieval, or document summarisation, in contrast to "general AI," which remains hypothetical.[15]

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[10] A Baba and A Aluya, 'Language and Law: The Role of English Language in Nigerian Legal System' (Oct 2024) *Jalingo Journal of Languages and Literary Studies* 145.
[11] Ibid.
[12] A Dissertor (n 4).
[13] See generally L Groothuis and J Svensson, 'Expert system support and juridical quality' Jurix (2000).
[14] M Donahue, 'A Primer on Using Artificial Intelligence in the Legal Profession' (Harvard Jolt
[15] Cf Sayash Kapoor, Peter Henderson & Arvind Narayanan, 'Promises and Pitfalls of Artificial Intelligence for Legal Applications' (2024) arXiv 2402.01656 https://arxiv.org/abs/2402.01656 accessed 22 June 2025.

NLP, a key subset of narrow AI, empowers machines to interpret and generate human language, enabling functions like automatic contract clause creation, case law summarisation, and legal drafting assistance.[16]These tools depend heavily on their training data, meaning

linguistic style, jurisdictional context, and data quality directly influence output accuracy.[17]In Nigeria, while Nigerian courts and academic institutions are exploring AI adoption, comprehensive legal AI regulation remains nascent.[18]

Nigerian legal scholars have begun analysing this shift. Itunu Kolade- Faseyi's study observes a gradual, though cautious, uptake of AI by practitioners, emphasising the tension between modernization and professional conservatism.[19]Concurrently, SSRN-published overviews stress both the disruptive potential of AI and the ethical anxieties it provokes including algorithmic bias and accountability.[20]

Comparatively, international jurisdictions such as the UK and US are leading the way in AI regulation in legal practice. Bar associations like New York City's have issued AI use guidelines focusing on competence, confidentiality, and oversight.[21]The

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[16] Varun Magesh et al, 'Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools' (2024) arXiv 2405.20362 https://arxiv.org/abs/2405.20362 accessed 22 June 2025.
[17] Eliza Mik, 'Caveat Lector: Large Language Models in Legal Practice' (2024) arXiv 2403.09163 https://arxiv.org/abs/2403.09163 accessed 22 June 2025.
[18] Ii Itunu Kolade-Faseyi, 'Artificial Intelligence and the Nigerian Legal Profession' (2021) 1(1) *Achievers University Law Journal* 161–175 https://aulawjournal.com/ accessed 22 June 2025.
[19] Ibid.
[20] LawPavilion, '5 Reasons Every Lawyer Should AVOID Generic Generative AI Tools for Legal Research' (Sept 2024) https://lawpavilion.com/blog/ accessed 22 June 2025.
[21] Reuters, 'Navigating the seven C's of ethical use of AI by lawyers' (20 Dec 2024) https://www.reuters.com/ accessed 22 June 2025.

American Bar Association has similarly issued formal guidance, prompting Nigerian stakeholders to consider analogous regulatory frameworks.[22]

3.1ChatGPT as a Generative Language Model

ChatGPT, from OpenAI, is a large-scale generative language model built upon Transformer neural network architectures.[23] This model is trained on vast text corpora to enable context-sensitive text generation, including drafting clauses, summarising legal precedents, and engaging in real-time legal query responses.[24]

Unlike rule-based expert systems, ChatGPT is probabilistic, using token prediction rather than explicit legal reasoning.[25]While its capacity for fluency and coherence is strong, it lacks built-in factual grounding, increasing its susceptibility to "hallucinations" fabrications of plausible but incorrect content.[26]Studies such as *Hallucination-Free?* and *Caveat Lector* highlight that even specialized legal AIs still produce incorrect output in 17–33% of cases.[27]

In Nigeria, some public-sector entities have adopted generative AI tools, with providers like NobleProg offering official training in ChatGPT for policy drafting.[28]Nonetheless, there remains limited evidence of direct usage by law firms or courts. Moreover, Nigerian

[22] Reuters, 'Lawyers using AI must heed ethics rules, ABA says…' (29 July 2024) https://www.reuters.com/ accessed 22 June 2025.
[23] A Vaswani et al, 'Attention Is All You Need' (2017) https://arxiv.org/abs/1706.03762 accessed 10 June 2025.
[24] LawPavilion blog on generative AI (Apr 2025) https://lawpavilion.com accessed 22 June 2025.
[25] Varun Magesh et al (n 4).
[26] Mik (n 5).
[27] Magesh et al (n 4); Mik (n 5).
[28] NobleProg, 'ChatGPT for Legislative Drafting and Policy Writing Training Course' (nobleprog.com.ng) accessed 22 June 2025.

researchers have emphasised the need for culturally and jurisdictionally apt datasets to fine-tune model performance.[29]

Despite limitations, ChatGPT offers compelling benefits. It can generate first-draft legal texts such as letters, clauses, or summarised case authorities significantly faster than human drafters. Legal tech blogs note generative AI's ability to produce more coherent and contextually relevant documents than template systems. However, until safeguards like retrieval-augmented generation (RAG) methods are widely incorporated, outputs must be critically assessed by domain trained professionals.[30]

3.2 Comparison of ChatGPT's Capabilities with Traditional Drafting Methods

Traditional legal drafting relies on in-depth legal training, manual research, and interpretative reasoning. Lawyers draw on statutes, precedent, and bespoke templates to craft documents tailored to specific factual contexts.[31] While this method ensures doctrinal soundness, it is time-intensive, labour-heavy, and susceptible to human error especially in high volume tasks like filing drafts or reviewing contracts.[32]

By comparison, ChatGPT offers rapid, uniform drafting. It excels at generating preliminary drafts, rephrasing boilerplate, and summarising complex documents within minutes.[33] This allows practitioners especially junior lawyers and paralegals to allocate more time toward strategic analysis. However, such efficiency

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[29] Chisom Emeachi, 'Prospects of Artificial Intelligence in Contemporary Legal Practice in Nigeria' (May 2025) ResearchGate https://www.researchgate.net/ accessed 22 June 2025.
[30] Reuters, Balancing innovation and caution: How lawyers should integrate AI… (23 Apr 2025) https://www.reuters.com/ accessed 22 June 2025.
[31] M Susskind, *Tomorrow's Lawyers* (2nd edn, OUP 2017) 78–80.
[32] Ibid.
[33] LawPavilion generative AI blog (n 12).

comes with costs: without human oversight, models may omit critical legal citations or introduce hallucinated content.[34]

Empirical studies show that while AI legal tools outperform generic LLMs in citation fidelity, there remains a significant rate of hallucination.[35] Even so, generative AI can be a powerful force multiplier in routine drafting contexts, provided output is assessed for accuracy at each stage.[36]Reuters reporting emphasises that efficiency gains are best realised when combined with human review and adherence to ethical guidance.[37]

Traditional methods also offer superior context-awareness and alignment with courtroom practices. They preserve normative drafting conventions and rhetorical structures familiar to judges and adversaries. ChatGPT may struggle with such professional nuance unless prompted precisely and followed by expert editing.[38]

Therefore, the optimal approach lies in complementarity. ChatGPT should serve as a drafting assistant that enhances productivity not a replacement for legal reasoning. This hybrid model enables practitioners to leverage AI's speed while ensuring quality through experienced oversight.[39]

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[34] Kolade-Faseyi (n 6); LawPavilion (n 8).
[35] Magesh et al (n 4).
[36] Reuters (n 18).
[37] Ibid.
[38] Mireille Hildebrandt, 'Law as Computation in the Era of Artificial Legal Intelligence: Speaking Law to the Power of Statistics' (2018) 68 Univ Toronto Law J Supp 1 12, 24–26 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2983045 accessed 27 June 2025.
[39] Susan Nevelow Mart, 'The Algorithm as a Human Artifact: Implications for Legal {Re}Search' (2017) 109 Law Lib J 387, 14–17 https://scholar.law.colorado.edu/faculty-articles/755/ accessed 27 June 2025.

3.3 ChatGPT Data Training Processes and Implications for Legal Document Accuracy

Understanding how ChatGPT is trained is essential to evaluating its reliability and limitations in legal context. The model's ability to generate human-like response stems from its exposure to massive datasets, yet this same breadth can raise questions about legal precision, jurisdictional relevance and factual accuracy. ChatGPT's knowledge base is constructed via pre-training on a vast dataset scraped from books, articles, websites, and code, creating a broad linguistic foundation.[40]The scale of training data potentially hundreds of billions of tokens enables zero/few-shot generalisation across tasks without task-specific retraining.[41]As a result, ChatGPT can draft legal documents, summarise case law, or draft clauses based on patterns seen during training.[42]

However, its data set bears limitations in currency and jurisdictional relevance. Its knowledge is static up to the cutoff date, and it lacks awareness of jurisdiction-specific updates (e.g., new Nigerian statutes or judicial rulings post-training).[43]Domain-specific legal accuracy is constrained, as the corpora lack feature engineering tailored to legal reasoning or statutory structure.[44]

Moreover, the training data may include confidential, biased, or low-quality legal content. The model replicates these patterns, sometimes reproducing biased or outdated legal language, leading to hallucinations confident yet incorrect or fabricated content such

[40] Time, 'The A to Z of Artificial Intelligence' (Apr 2023)
[41] Brown TB et al, 'Language Models are Few-Shot Learners' (2020) arXiv 2005.14165.
[42] Purdue Global Law School, 'Potential Benefits and Risks of ChatGPT in Legal Practice' (n 17
[43] Harvard CLP, 'Implications of ChatGPT for Legal Services' (n 5).
[44] Spellbook, 'Is ChatGPT Legal for Lawyers?' (n 3).

as bogus case citations.[45]Empirical studies indicate up to 58% hallucination rates in legal tasks, raising concerns about reliability.[46]

The supervised fine-tuning and RLHF phases mitigate some issues by incorporating human-curated examples.[47]Still, the model lacks a built-in mechanism for verifying legal accuracy against authoritative sources or jurisdiction-specific databases, meaning that any generated document requires expert legal review and validation.[48]

Also, the proprietary and opaque nature of OpenAI's training datasets limits transparency. The inability to trace or audit specific sources underlying a given output complicates ethical and compliance considerations especially critical in disciplines like law.[49]

3.4 Practical Applications of ChatGPT in Nigerian Legal Drafting

The emergence of generative artificial intelligence (AI), particularly ChatGPT, has introduce new dimensions to the practice of legal drafting in Nigeria. In particular, it has significantly expedited contract drafting by generating draft clauses with accurate legal structure, conditional logic, and standard formatting. In Nigeria, firms have begun integrating AI-based tools to produce non-disclosure, employment, and service agreements within minutes reducing initial drafting time by as much as 50-70% compared to manual drafting processes.[50] For example, Nigeria-specific

[45] Scribbr, 'Legal Implications of ChatGPT' (n 11).
[46] Dahl M et al, 'Large Legal Fictions: Profiling Legal Hallucinations … (Jan 2024) arXiv 2401.01301.
[47] OpenAI (see Wikipedia n 27).
[48] Spellbook, 'Is ChatGPT Legal for Lawyers?' (n 3).
[49] Scribbr (n 11).
[50] ChatGPT for Legal Services Training Course - Nobleprog Nigeria" (nobleprog.com.ng, accessed June 2025) outlines AI-assisted contract generation and automation.

platforms like LawPavilion GPT enable generation of contracts tailored to Nigerian law, enhancing efficiency. [51]

The technology offers not only speed but also consistency in terminology critical for commercial transactions. A standardized lexicon reduces internal errors and supports smoother negotiation processes.[52] Case-based prompting can tailor templates to industry contexts, promoting uniformity across draft agreements.[53]

AI assists not only in full drafting but also in clause comparison and redlining. Some Nigerian drafters report that ChatGPT-like tools help identify inconsistencies or missing standard warranty/liability provisions during negotiation.[54]This functionality improves quality control and reduces risks associated with oversight.

Similarly, ChatGPT and similar models can aid legislative drafters by generating coherent consistency checks, clause consolidation, and reduction of cross-references. While institutes like the National Institute for Legislative Studies (NILDS) have not yet deployed ChatGPT, its principles align with NILDS's existing use of technology to aid bill drafting and scrutiny.[55]A 2025 arXiv study builds on this, showing how generative models can automate amendment consolidation in bills, reducing manual legal drafting time by up to 63%.[56]

In litigation, the case is not different, ChatGPT proves valuable for drafting pleadings, witness statements, and judicial opinions by

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[51] LawPavilion GPT for Nigerian lawyers" (Facebook, May 2025) shows localized contract drafting support.
[52] NobleProg Course (n 59).
[53] Juro, '7 best ChatGPT prompts for lawyers' (2025) explains prompt-based clause tailoring.
[54] Genie AI user testimonials include clause review benefits.
[55] Wikipedia, *National Institute for Legislative Studies* (accessed Jun 2025) outlines NILDS's drafting support systems.
[56] Matias Etcheverry et al, 'Algorithm for Automatic Legislative Text Consolidation' (2025) arXiv 2501.16766.

streamlining language, summarising arguments, and suggesting structured legal narratives. Some lawyers have reported that AI tools reduced initial drafting time by up to 60%.[57] For instance, NobleProg Nigeria notes improvements in document generation and quality control.[58]

ChatGPT's capability extends to generating draft judgments or legal opinions by summarizing precedents and constructing legal analysis frameworks. This can help legal assistants and registrars, especially in understaffed court registries. A 2023 ResearchGate article on AI in Nigeria's justice system highlights AI's potential to automate case administration and outcome prediction.[59]

Still, AI-powered drafting is subject to professional oversight. Nigerian bar Association guidelines stress responsible use of AI, ensuring that final outputs reflect human legal reasoning and ethical obligations.[60]Judges and counsel must confirm AI-generated documents align with jurisdictional jurisprudence and procedural rules.

3.5 ChatGPT in Legal Research and Precedent Analysis

One of the most transformative uses of artificial intelligence in legal practices lies in the domain of legal research and precedent analysis. Traditional legal research is often time consuming. AI tools like ChatGPT, however are redefining this process by enabling lawyers to retrieve legal information with speed and efficiency. ChatGPT significantly accelerates legal research by summarizing statutes, case outcomes, and relevant legal principles. As noted in the

[57] Medium article, 'Should Law Firms Use AI?' (2024) discusses drafting efficiency for pleadings and case analysis.
[58] NobleProg Course (n 59).
[59] Giwa & Kodjovi, 'Artificial Intelligence and the Future of Law and Justice in Nigeria' (Nov 2023) on automating judgments.
[60] NBA's 'Guidelines for the Use of AI in the Nigerian Legal Profession' (Apr 2024 Draft).

NobleProg course, AI tools streamline research workflows and reduce time spent locating jurisprudence.[61] In Nigeria, platforms like Genie AI offer AI-assisted legal research incorporating precedent trend analysis and clause insight.[62]

These tools integrate retrieval-augmented generation (RAG), combining database searches with large language models to enhance accuracy and minimize hallucinations.[63] They support complex queries such as identifying all Court of Appeal decisions constraining a legal test, compiled in minutes compared to days manually.[64]

Nevertheless, discrepancies in the coverage of Nigerian legal databases pose limitations; AI tools sometimes draw from international sources, requiring legal practitioners to verify jurisdictional relevance.[65]The Legal Practice Guidelines emphasise anchoring AI research outputs in authoritative Nigerian law.[66]

4.0 Empirical Perspectives: Case Studies from Nigerian Legal Practice

To fully appreciate the practical impact of artificial intelligence on legal drafting in Nigeria, it is essential to examine how law firms are already integrating these tools in their workflow. One notable example is Liberty Semper Fidelis LLP, founded by former federal law maker Tokunbo Afikuyomi, which launched TechLaw Studio in partnership with Abuja-based IPI Solutions to develop a proprietary chatbot for lawyers, modelled on ChatGPT's

[61] NobleProg Course (n 59).
[62] Genie AI platform (2025) for clause library and precedent review.
[63] Sidra Nasir et al,A Comprehensive Framework for Reliable Legal AI' (Dec 2024) arXiv 2412.20468 on RAG.
[64] Ibid.
[65] Awwal-Bolanta (n 68).
[66] NBA Guidelines (n 72).

architecture.[67] This bespoke chatbot is designed to handle routine legal queries, automate document generation, and provide standardized legal responses in an AI-enhanced workflow.

Medium exploration by Sopuruchi Rufus highlights that Nigerian law firms are selectively integrating AI to automate tasks such as contract review, due diligence, and client intake yielding measurable gains in productivity and advisor responsiveness.[68]

Research on technology uptake in Nigerian legal practice confirms that larger, internationally-connected firms are adopting custom AI tools faster, while smaller practices remain cautious due to cost, limited digital literacy, and regulatory uncertainty.[69] A recent SSRN study found that up to 44 per cent of legal tasks like transcriptions and standardised pleadings are amenable to automation via AI and software engineering solutions.[70]

Still, challenges remain. Generic LLMs like ChatGPT are often avoided for in-depth legal drafting due to outdated knowledge and hallucination risk leading firms to favour custom-trained tools like LawPavilionGPT, which is trained specifically on Nigerian statutes, cases, and regulations.[71] Importantly, firms adopting AI are also investing in internal guidelines and training to ensure ethical, confidential, and liability-aware use.

5.0 Ethical, Regulatory, and Professional Considerations

The integration of Artificial intelligence tools like ChatGPT into Legal practices raises critical ethical and regulatory questions.

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[67] Solomon Odeniyi, *Firm to invent specialised chatbot for lawyers*, *Punch NG* (9 February 2024)
[68] Sopuruchi Rufus, 'Should Law Firms Use AI? The Future of Nigerian Legal Practice', *Medium* (10 May 2024)
[69] Chinonyerem Eleweke & Kazeem Oluwakemi Oseni, 'Applying software engineering solutions to law management, Nigeria as a case study' (2025) SSRN
[70] Ibid.
[71] *Introducing LawPavilionGPT: The AI Redefining Legal Research for Nigerian Lawyers* (LawPavilion blog, May 2025)

While these technologies offer efficiency and innovation, their use must be carefully balance against the professional responsibilities. Of particular concern is the duty of confidentiality, which lies at the heart of legal profession all over the world, including Nigeria.

1. Legal practitioners in Nigeria owe a strict duty of confidentiality to current and former clients, rooted in common law, equity, and rules of professional conduct. ChatGPT, by default, uses input prompts to further train and refine its database raising serious concerns about inadvertent data exposure.[72]
2. The NBA's 2024 "Guidelines for the Use of Artificial Intelligence in the Legal Profession in Nigeria" emphasize that client data must not be shared with AI systems unless robust contractual protections are in place, and human oversight remains central.[73] This clearly mirrors global models such as the ABA's Rule 1.6 commentary and State Bar of California guidance.[74]
3. The underlying issue extends beyond confidentiality: who bears liability when AI generates erroneous advice or breaches confidentiality? In Nigerian professional responsibility and accountability remains with the lawyer not the machine highlighting the imperative for strict oversight.[75]
4. While AI can increase efficiency, it cannot assume the lawyer's role as arbiter of legal judgments. Ensuring competence demands that lawyers understand AI's capabilities and limitations another core point emphasized in both NBA guidelines and global ethics discussions.[76]

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[72] *Duty of confidentiality* (Wikipedia, accessed June 2025), RPC Rule 19(1)
[73] *Guidelines for the Use of Artificial Intelligence in the Legal Profession in Nigeria* (NBA, September 2024)
[74] *AI Watch: Global regulatory tracker – Nigeria* (White & Case, February 2025)
[75] See *Professional responsibility* (Wikipedia, accessed June 2025)
[76] *From code to conduct: ethical considerations for AI in legal practice* (Reuters, August 2024)

5. Transparency toward clients is crucial. Lawyers must disclose the limited role of AI and secure informed consent, ensuring clients understand AI's benefits and risks an ethical requirement under both Nigerian and common-law professional responsibility frameworks.[77]

6.0 Regulatory Environment in Nigeria: Gaps and Challenges

1. Nigeria currently lacks dedicated AI regulation; however, relevant provisions exist in the Cybercrimes Act 2015, the Nigeria Data Protection Act (NDPA) 2023, NDPR 2019, and recently issued NBA AI guidelines marking nascent regulatory coverage.[78]
2. While the NDPA restricts automated legal decisions without human oversight (NDPA s 37) and requires "privacy by design" for processing personal data, it does not directly address legal AI systems' ethical deployment by practitioners.[79]
3. There are ongoing calls for sector-specific regulation; commentators warn that absent clear legal frameworks governing AI in legal services, practitioners face regulatory uncertainty and potential liability gaps.[80]
4. As of late 2023, Nigeria has signed the Bletchley Declaration, yet implementation remains pending. Meanwhile, global parallels like the EU AI Act provide models for risk-based legal compliance that Nigeria could adapt.[81]
5. The current regulatory posture thus remains siloed and fragmented: data protection is present, cybersecurity is

[77] *How to Prevent Lawyer Ethics Violations When Using ChatGPT* (NBI-SEMS, 2024)
[78] *AI Watch: Global regulatory tracker – Nigeria* (n 93)
[79] *AI and Data Privacy Protection In Nigeria* (Mondaq, January 2025)
[80] *What AI Means for the Future of Law Practice in Nigeria* (LinkedIn, April 2025)

[81] *AI Watch: Global regulatory tracker – Nigeria* (n 93)

referenced, but systemic regulation of ethical AI use in law is absent. This underscores the need for comprehensive regulatory instruments and sector-specific provisions in Nigeria. [82]

7.0 Comparative Analysis: International Perspectives on AI in Legal Drafting (United Kingdom, United States, and Canada)

The UK Bar Council has formally addressed generative AI use among legal professionals. A *Guardian* report (17 June 2025) states that the Bar Council has issued guidance on responsible AI usage and created a working group in response to concerns over "fake case-law citations". [83]The official Bar Council press release (6 June 2025) confirms this guidance, stressing verification, confidentiality safeguards, and barrister training.[84]

In the United States, attorney Joseph McMullen used an AI tool Clearbrief to secure a $1.5 million settlement in a US District Court civil rights case involving wrongful detention. *Business Insider* (23 June 2025) details how AI helped streamline research, hyperlink citations, and structure filings.[85] This case is emblematic of AI's potential when used under careful legal oversight.

Canada introduced its Voluntary Code of Conduct for Generative AI in 2023. The code outlines guiding principles transparency, safety, fairness, accountability emphasized across industry, including legal sectors.[86] A government press release (May 2024) confirms multiple

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[82] *What AI Means for the Future of Law Practice in Nigeria* (n 99)
[83] Matthew Weaver, 'Bar Council is wise to the risk of AI misuse' *The Guardian* (17 June 2025)
[84] Bar Council, 'Bar Council response to High Court ruling on the misuse of artificial intelligence' (Press Release, 6 June 2025)
[85] 'How this lawyer used AI to help him win a $1.5 million case', *Business Insider* (23 June 2025)
[86] Government of Canada, 'Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems' (2023)—see details in ISED press release

organizations as signatories and links the Code to ongoing AI regulation efforts such as Bill C-27 (AIDA).[87]

8.0 India: Local LLMs & Emerging Regulation

India launched the IndiaAI Mission and announced BharatGPT in 2024 as part of a national effort to develop locally relevant LLMs. Reports from the Press Information Bureau (March 2024) confirm these initiatives and emphasise a focus on data sovereignty and multilingual support.[88]

Homegrown legal-tech innovation is rising. Although models like "LawPal" and "VidhikDastaavej" remain emerging and under development, official policy such as NITI Aayog's "Principles for Responsible AI" promotes inclusion, transparency, and accountability for use in legal services.[89] The draft India Data Protection Bill (2023) prohibits fully automated legal decisions without human oversight, reinforcing professional responsibility.[90]

9.0 Future Prospects and Innovations

Generative AI is poised to progress from GPT-4-level capabilities to even more powerful models (e.g., GPT-5 and 6), capable of understanding context, pragmatics, and legal reasoning with increasing sophistication.[91]Reports suggest that by 2035, computational power available for AI will grow nearly one million-fold, enabling near-AGI systems that could perform routine legal

[87] ISED, 'Eight organizations to join Canada's voluntary AI code of conduct' (Media Release, 27 May 2024)
[88] Press Information Bureau (India), 'IndiaAI Mission and BharatGPT Announced' (7 March 2024)
[89] NITI Aayog, Principles for Responsible AI for All, (2024 February 2021)
[90] Digital personal Data Protection Bill (India) Bill No 113 of 2023, S34 (as introduce in Lok Sabha,3 August 2023)
[91] Frank Fagan, 'A View of How Language Models Will Transform Law' (2024) https://arxiv.org/abs/2405.07826 accessed 22 June 2025.

drafting autonomously.[92] These advancements could automate contract review, precedent summarisation, and even compliance analyses freeing human lawyers to work on strategic, high-value tasks.[93]

However, the shift also entails structural changes. Firms could transition from billable-hour to value-based pricing, as AI handles standardised formats at scale. [94]Universities and state regulators are already advancing curricular and ethical frameworks to prepare future lawyers for working with these tools.[95]

Overall, AI promises not just speed but a fundamental reorienting of legal work ambitiously termed the "AI-empowered client" where citizens and smaller enterprises access legal services through AI interfaces, with oversight by lawyers.[96]

10.0 Strategic Foresight: Regulatory & Educational Reforms

Regulators and bar associations worldwide stress that AI integration must follow robust frameworks promoting transparency, accountability, and competence. The ABA Task Force on AI emphasises AI literacy, data governance, and risk management in legal practice.[97]The EU AI Act and Canada's voluntary code serve as templates for combining innovation with structured oversight.[98]

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[92] James Titcomb, 'AI won't just speed up the legal system – it will revolutionise it' *The Times* (12 December 2024)
[93] International Journal of Law in Context, 'Generative AI systems in legal practice offering quality legal services while upholding legal ethics' (2025)
[94] Colorado Technology Law Journal, 'The Rise of AI in Legal Practice: Opportunities, Challenges …' 2025)
[95] Financial Times, 'Young lawyers build tech skills to prepare for AI impact' (10 December 2024)
[96] *The Times* (n 2).
[97] American Bar Association, 'ABA Task Force releases report on AI's opportunities, challenges for (August 2024)
[98] ISED Canada, 'Voluntary Code of Conduct …' (n 4) and EU AI Act via Wikipedia 'Generative AI' regulation discussion

Legal education institutions in the U.S., such as NYU and Berkeley and professional bodies like the ABA now embed AI training into curricula and CLE programmes.[99]A report by the American Bar outlines a "roadmap" for safe, ethical AI adoption, covering vendor vetting, human-in-loop protocols, and ongoing compliance monitoring.[100]

For Nigeria, targeted reforms could include: mandating AI literacy modules in universities and Law school, integrating AI ethics into NBA CLE, launching regulatory sandboxes to trial AI tools, and establishing a monitoring body to evaluate technological impacts. Drawing on global best practices to ensures Nigeria stays ahead in regulatory readiness.

11.0 Conclusions and Recommendations

This paper has demonstrated that generative artificial intelligence, particularly ChatGPT has the potential to transform legal drafting practices in Nigeria by enhancing efficiency, improving consistency, and expanding accessibility. Its strengths lie in drafting preliminary versions of legal documents, summarising complex legal texts, and automating routine tasks. However, the benefits of these capabilities are best realised when deployed within the framework that preserves legal integrity through consistent human oversight.

Comparative insights from jurisdictions such as the UK, Canada, and India provided instructive models. These include the adoption human-in-the-loop frameworks, the development of context-specific large language models (LLMs) and the institution of well-regulated pilot schemes that prioritise ethical compliance. These examples underline a fundamental truth: innovation in legal

[99] *FT* (n 5) and *Colorado Tech LJ* (n 4).
[100] American Bar Assoc, 'Incorporating AI: A Road Map for Legal and Ethical Compliance' (2024 Summer)

technology must be anchored by principled safeguards to be truly transformative.

In light of the findings and reforms discussed throughout this paper, the following recommendations are proposed:

1. Faculties of law and the Nigerian Law School must incorporate AI literacy modules, focusing on prompt engineering, RAG systems, and data protection.[101] Incorporate Mandatory Continuing Professional Development (MCPD) credits on technology and AI ethics and legal tech to Bar activities, following the NBA's 2025 MCPD mandate.[102]

2. Leveraging investments such as the 3 million Technical Talent (3MTT) Programme and NCAIR infrastructure, to support development of localized LLMs trained on Nigerian law echoing India's BharatGPT approach to yield tools with context-specific reliability.[103]

3. Data protection authorities (NDPC) should reinforce compliance with NDPA obligations specifically regarding automated decision-making in legal drafting.[104]Coordination between NDPC, NBA, NITDA, and FMCIDE is vital to uphold privacy-by-design, algorithmic transparency, and accountability.

4. The various courts and Judicial divisions should issue official guidelines for court registrars, legal assistants and judges, approving AI-assisted routines (e.g., summarizing,

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[101] Ladipo Soetan, 'What AI Means for the Future of Law Practice in Nigeria' *LinkedIn* (Apr 2025).
[102] Facebook, *NBA introduces mandatory CPD rules for lawyers in 2025*.
[103] Wikipedia, *3 Million Technical Talent (3MTT) Programme* (accessed Jun 2025).
[104] Wikipedia, *Nigeria Data Protection Commission* (accessed Jun 2025) and *DPA Digital Digest Nigeria 2025*.

initial drafting) only under strict verification protocols mirroring practices in the UK.[105]

[105] Matthew Weaver, 'High court tells UK lawyers to stop misuse of AI…' *The Guardian* (6 Jun 2025).