**THE RELATIONSHIP BETWEEN JUDGES OF THE LOWER COURTS AND JUDGES OF THE SUPERIOR COURTS**

**BEING A PAPER PRESENTED AT THE CONFERENCE OF ALL NIGERIAN JUDGES OF THE LOWER COURTS**

**BY**

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May I commence this session by registering my profound appreciation to my Lord the Chief Justice of Nigeria, Hon. Justice Olukayode Ariwoola GCON the Chairman Board of Governors of the National Judicial Institute (NJI) Abuja for acceding to my nomination to present a paper at this august gathering.

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To the participants I congratulate you for being nominated by your various Heads of Court to participate in this conference.

**RELATIONSHIP BETWEEN JUDGES OF THE LOWER COURTS AND JUDGES OF THE SUPERIOR COURTS**

From the wordings of the topic, the keywords to define here are “Relationship”; “Judges”; “Lower Courts” and “Superior Court”.

In my view, it is from this background that what is expected of us from this topic can be grasp.

Relationship is a noun that sterns from the word “relate” or “relation”.

The New International Webster’s Comprehensive Dictionary of the English language Encyclopedic Edition 2004 at page 1063 defines the word relation among others as

**“The fact or condition of being committed, interdependence,** t**he position of one person with respect to another; conditions in general which bring an individual in touch with his fellows, also the various ways in which one country (individual) may come into contact with another”** in this case judiciary**.**

It also states that relationship is **“The state of being related; connection”.**

The Google defines relationship as **“The way in which two or more people or things are connected, or the state of being connected”.**

The Black’s Law Dictionary by Bryne a. Gardner 9th Ed. at page 1401 defines relationship as **“The nature of the Association between two or more people especially a legally recognized Association that makes a difference in the participants legal rights and duties”.**

The Black’s Law Dictionary at page 916 states that the word Judex which is a latin word and in Roman law it means private person appointed by Praector or other magistrate to hear and decide a case”.

It defines judge simpliciter as **“A public official appointed or selected to hear and decide legal matters in court - - -but in ordinary legal usage, the term is limited to the sense of an officer who (1) is so named in his or her commission and (2) presides in a court. Judge is often used interchangeably with court”**

Again the Black’s Law Dictionary 9th Ed. at page 409 refers to lower court as inferior court and inferior court at page 408 is defined is **“Any court that is subordinate to the chief appellate Tribunal within a judicial system. A court of special limited or statutory jurisdiction whose record must show the existence of jurisdiction in any given case to give it’s ruling presumptive validity”.** Under inferior court, a Magistrate’s Court is specifically named.

At page 410 it defines a superior court as **“In some states a trial court of general jurisdiction. An intermediate court between the trial court and the chief appellate court”.** Both the Google and the Websters Comprehensive Dictionary define the word “superior” as higher in rank, status, quality, surpassing in quantity and quality, preferable, too great to be under the influence of something etc.

On the otherhand it defines the word “inferior” as lower in quality, merit, importance, rank, latter in point of time.

I have taken this time to explore the various definitions because in my thinking, it would shape the discourse on the topic as to how these two strata of the judiciary interface in the course of their duties.

Essentially we would therefore be exploring to see what areas the justices/judges of the superior courts and judges of the lower court as individual appointees or as courts generally relate or connect or better still areas where they Allign or areas where they sever in their respective powers and duties.

**WHICH ONES ARE THE SUPERIOR COURTS**

Interestingly, the constitution of the Federal Republic of Nigeria 1999 (as amended) chose the word “superior”.

S. 6(3) of the said constitution (to be subsequently simply referred to as the constitution) stipulates:

**“The courts to which this section relates established by this constitution for the Federation and for the States specified in subsection (5)(a) – (i) of this section shall be the only superior courts of record in Nigeria--”.**

Subsection (5)(a) – (i) lists the courts as

A. The Supreme Court of Nigeria

B. The Court of Appeal

C. The Federal High Court

D. The National Industrial Court

E. The High Court of the Federal Capital Territory Abuja

F. The High Court of a State

G. The Sharia Court of Appeal of the Federal Capital Territory Abuja

H. A Sharia Court of Appeal of a State

I. A Customary Court of Appeal of the Federal Capital Territory Abuja

J. A Customary Court of Appeal of a State.

The National Industrial Court was established as a result of the Constitution 3rd alteration Act that came into effect on 4/3/2011.

It follows therefore that other than these courts, all other courts in Nigeria are not superior courts of record – see the case of N. U. E. S. Vs. B. P. E. (210) of NWLR (pt. 1194) pg. 53.

**WHICH COURTS ARE INFERIOR/LOWER COURTS**

Some of these lower courts include Magistrate’s Courts, Area Courts, Customary Courts and any other court that has been established by the National Assembly for the Federal Capital Territory Abuja or a State House of Assembly for a State. In the same vein any court subsequently created cannot be a superior court of record except this section is amended to include such a court in the same way the National Industrial Court was created.

Flowing from the above, it can therefore reasonably be said that what is expected out of this topic is a discourse on the areas of connection between persons who decide cases in the superior courts of record and those who do same in the lower courts i.e areas that bind and distinguish them in their legal rights and duties or areas that they have similarities and areas that they have dissimilarities and would extend to areas of interdependence between these two strata of the court system.

**ONE AREA OF CONNECTIVITT**Y/**SIMILARITY IS THE MODE OF CREATION OF THESE COURTS**

1. Both the Superior Courts of record and the lower courts are all creation of the Constitution/statutes/laws.

S. 6(1) of the Constitution provides

**“The judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the federation”.**

(2) **“The judicial powers of a state shall be vested in the courts to which this section relates, being courts established, subject as provided by this constitution for a state”.**

In subsection (5) of the said S. 6 the courts I had highlighted above are listed and they remain the only superior courts of record in Nigeria.

Further-more, in subsection (3) of s. 6 the “B” part stipulates that except as otherwise legislated by the National Assembly or a State House of Assembly, the said listed courts shall have all the powers of a superior court of record.

See also Ss. 230; 237; 249; 254(A)(1); 255; 260; 263; 270; 275 and 280 of the constitution that automatically create the various superior courts of record except that for the Sharia Court of Appeal and Customary Court of Appeal of the States, a State must require such a court before it comes into existence because of the words used in the constitution are **“There shall be for any State that requires it---”.**

The above only relates to superior courts of record. The relevant aspect that concerns the lower courts is S. 6(4)(a) and (b) of the said constitution.

S. 6(4) enacts:

**“Nothing in the foregoing provisions of this constitution shall be construed as precluding**

1. **The National assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;**
2. **The National assembly or any House of Assembly which does not require it from abolishing any court which it has powers to establish or which it has brought into being”**.

Stemming from the above, it is clear that while the superior courts of record are a direct creation of the constitution, the lower courts can be said to be creation of subsidiary legislation to the constitution i.e an Act of the National Assembly or a law of a State House of Assembly.

For instance by S. 299 of the constitution, it is the National Assembly that legislates for the Federal Capital Territory Abuja hence the Magistrate’s Courts and Area Courts/Customary Courts of the Federal Capital Territory Abuja are created via legislations or deemed legislations called Acts that were passed by the National Assembly while in the States the Magistrate’s Courts, Area Courts or Customary Courts are brought to being by legislations called laws passed by the various State Houses of Assembly.

To drive home the point the Magistrate’s Courts that we have in the Federal Capital Territory Abuja were created by virtue of Ss. 4 and 5 of the Schedule to the Criminal Procedure Code Law of Northern Nigeria deemed to be an Act of National Assembly for this purpose and the Area Courts and Customary Courts by virtue of Acts enacted by the said National Assembly.

We should be notified quickly that in the Northern States and this includes the Federal Capital Territory Abuja the courts of Magistrates is the nomenclature used when these courts sit in their criminal jurisdiction while the normenclature used when they sit in their civil jurisdiction is District Courts.

For instance in Nasarawa State like most Northern States the District Courts exist by virtue of District Courts Law Cap. 33 Laws of northern Nigeria. Perhaps it is pertinent to point out generally that the body of laws of Northern Nigeria are still applicable in most Northern States by virtue of adoption laws and some Northern States have amended theirs or enacted new laws to replace them.

**MODE OF DECREATION OF THESE COURTS**

It is conceded that all the superior courts of record are established by the constitution and the lower courts by various legislations and by implication they all may cease to exist through legislation but not by the same way.

From a combined reading of s. 6(1); (2) and (3) of the constitution, the National Assembly not being the body that established the superior courts of record in Nigeria cannot legislate or will them out of existence by simply passing an Act of the National Assembly; to do that there would be the need to amend the constitution by altering or deleting the relevant sections that have to do with all or any of these courts.

This is because by S. 9(1) and (2) of the constitution to amend the sections that created these courts such a proposal must be supported by two thirds of all members of both arms of parliament and also supported by a resolution of not less than two third of all State Houses of Assembly in Nigeria. This makes it ardous and difficult to attain.

On the contrary, lower courts being courts established by various legislations, S. 6(4)(b) of the constitution allows the National assembly or State Assemblies that establish the lower courts to abolish such courts when they do not require them. This is to be done by repealing such Acts/Laws that establish those courts the way any other legislation is amended it does not involve amending the constitution at all.

Apparently the framers of the constitution are deliberate about this i.e that the said superior courts have been established by the direct collectivity of Nigerians since by the preamble to the constitution i.e “we the people of the Federal Republic of Nigeria” (which some people have disagreed with), we gave to ourselves the constitution, hence it is beyond or it surpasses the powers of the National Assembly alone to legislate these superior courts of record out with a stroke of the pen but they can do that as regards the lower courts in the Federal Capital Territory Abuja and State Assemblies for the lower courts in the states.

N. B. In either circumstances since the repeal of any provision that has to do with the superior courts of record has to still take the form of an Act of parliament by way of a bill, the president still has to give his assent to it and where he does not, then the National Assembly still has to override him by two-thirds majority of each House of the National Assembly.

No debate can therefore be invoked that de-legislating the lower courts is easier compared to the superior courts of record because whereas in the former such a bill for repeal does not go round the country and does not require two-thirds majority of all members of the National Assembly but a simple majority, for the latter, it does.

**QUALIFICATION FOR APPOINTMENT**

**(A) JUSTICES/JUDGES OF SUPERIOR COURTS OF RECORD**

Qualification for appointment as a Justice of the Supreme Court/Court of Appeal or Judges of the other Superior Courts of Record is stated in the constitution. See Ss. 231(3); 238(3); 250(3); 254B(3) & (4); 256(3); 261(3)(a)&(b); 266(3)(a); 271(3); 276(3)(a)&(b) and 285(3)(a)&(b).

These provisions outrightly provide that to be appointed as the Chief Justice of Nigeria (CJN)/Justice of the Supreme Court (JSC); President/Justice of the Court of Appeal; Chief Judge/Judge of the Federal High Court; President/Judge National Industrial Court Judge; Chief Judge/Judge of the High Court of the Federal Capital Territory and Chief Judge/Judges of the High Court of a State a person must have been qualified to practice as a legal practitioner in Nigeria and has been so qualified to so practice for not less than 15 years, twelve yers and ten years respectively for the Supreme Court, Court of Appeal and various High Courts/National Industrial Court.

There is however a striking difference in the appointment of a person to the office of the President of the National Industrial Court and a Judge of the National Industrial Court.

As regards the former the qualification is that a person is and must have been qualified to practice as a legal practitioner in Nigeria for not less than 10 years while in terms of the latter one must be a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years and both are in addition to having considerable knowledge and experience in the law and practice of industrial relations employment conditions in Nigeria. See S. 254 B(3) and (4) of the constitution as amended by the 3rd alteration thereof.

As per the Sharia Courts of Appeal of whether of the FCT or States such persons must be legal practitioners of not less than ten years in addition to a recognized qualification in Islamic Law from an institution acceptable to the National Judicial Council (N. J. C.) or such recognized qualification in Islamic Law from an institution approved by the NJC and has held such qualification for not less than twelve years and has considerable experience in the practice of Islamic Law or he is a distinguish scholar of Islamic Law.

Similarly as regards the Customary Courts of Appeal of whether of the FCT or States a person must be a legal practitioner in Nigeria and has been so qualified for a period of not less than 10 years and in the opinion of the NJC has considerable knowledge and experience in the practice of customary law apart from any other requirements that may be imposed by the National Assembly as regards Customary Court of Appeal of the FCT and State Houses of Assembly as regards Customary Court of Appeal of the States.

Now apart from these qualifications the NJC being the body that plays a major role in these appointments have come out with guidelines periodically as to additional requirements to complement these provisions. The extant one being the “2014 Revised N. J. C. Guidelines and Procedural Rules for the Appointment of Judicial Officers of All Superior Courts of Record in Nigeria” that took effect from 3rd November 2014.

**(B) JUDGES OF THE LOWER COURTS**

On the otherhand, the qualification for appointment of members of the lower courts is different. Their qualifications are based on their various State Laws and or other requirements that may be set out by their various State Judicial Service Commissions or Judicial Service Committee of the FCT.

Importantly, these qualifications are fluid and designed to meet the exigencies of the circumstances of the various States. See Ss. 197 & 304 and the 3rd Schedule Part II paragraph C and S. 1 Part III of the constitution that establish the State Judicial Service Commissions and Judicial Service Committee of the FCT.

Additionally, it is salient to state that in most of the lower courts for instance the Magistrate Courts all of them are persons qualified to practice as legal practitioners of various years post call experience. For the other lower courts such as the Area or Upper Area Courts, Customary/Upper Customary Courts, some are manned by qualified legal practitioners while some are manned by non qualified legal practitioners.

It must be hastily added that despite the looming image that the NJC plays in the appointment of the members of the Bench of Superior Courts of Record, bodies such as the Federal Judicial Service Commission, the State Judicial Service commissions and the FCT Judicial Service Committee also play various roles of advising the NJC on nominations for appointment of members of the superior courts of record likewise the President of the Federal Republic of Nigeria and the various State Governors are the ones to make the appointments.

It is therefore undebatable that there are constitutional qualifications for appointment as Justices/Judges of Superior Courts of Record which are sacrosant unless amended and these are in addition to other stipulations by the NJC.

On the contrary, that of the lower Bench is not because it is fluid as seen above and even where their qualifications are by an Act of the National Assembly as it applies to the FCT or State Houses Assembly as it applies to the States, same can be easily amended without much ado.

**COMPOSITION OF THESE COURTS**

**A. SUPERIOR COURTS OF RECORD**

In virtually all the superior courts of record, the courts consist of more than one person while sitting except the High Courts and National Industrial Court.

At the Supreme Court the quorum is five Justices but on appeals that touch on issues of the interpretation and application of the constitution or breach or likely breach of the provisions of Chapter IV of the constitution or where it is sitting as a court of first instance, it must comprise of not less than seven Justices see s. 234 of the constitution – see also the case of A. T. Ltd. Vs. A. D. H. Ltd. (2007) 15 NWLR (pt. 1056) pg. 128 ratios 4 and 5.

In the Court of Appeal the composition is three Justices and where the appeal emanates from SCA or CCA, such three Justices must be learned in Personal Islamic Law or learned in Customary Law. See S. 247 of the Constitution. The full panel of the Court of Appeal is five Justices.

In a descending manner, the High Court of the FCT and States are both courts of first instance and appellate courts see Ss. 257(2) and 272(2) of the constitution. When sitting as courts of first instance, a single Judge sits while in their appellate jurisdiction they consists of not less than 2 Judges in the FCT and most or all Northern States – see for example S. 40 of the High Court Law of Northern Nigeria Cap 49 Vol. Laws of Northern Nigeria.

In the north where the judges are only two on an appeal panel and they do not agree on a decision the Judge that agrees with the judgment of the lower court, his judgment shall be the judgment of the court or and in any other event, the appeal shall be reserved for hearing by a panel constituted of three persons or an uneven number – see 40(3) of the said High Court Law.

The above notwithstanding there is a proviso such as S. 2 of the High Court (Interlocutory Applications in Appellate Matters) Rules i.e Northern Nigeria legal notice No. 19 of 1956, which allows that two or a single Judge can sit to entertain interlocutory applications on appeals such as bail pending appeal in criminal appeals or stay of execution of judgment pending appeal.

How-ever in the Southern States of Nigeria a single judge sits on appeals from decisions of the lower courts.

As regards the Sharia Court of Appeal being only appellate courts, their composition at all times must be three but the panels changed intermittently.

**B. LOWER COURTS**

How-ever the lower courts like the Magistrates Court, it consist of a single person sitting as a judge i.e the Magistrate Courts all over the country are each manned by a single person at all times who is a qualified legal practitioner.

When it relates to the Area Courts or the Customary Courts and in some States the Upper Area Courts and Upper Customary Courts they have Sole Judges. How-ever in some States the Area Courts and Customary Courts simpliciter sit as a panel with a Presiding judge and members. In some States if not most, the Presiding Judge is a legal practitioner.

In the Customary Courts like Anambra State they consist of a Judge and two members one of whom is a legal practitioner while the other is not. In Ekiti State, it is made up of a Presiding Judge who is a legal practitioner and other two members who are lay men.

In Nasarawa State the Upper Area Courts and Upper Customary Courts are manned by Sole Judges who are legal practitioners, while the Area and Customary Courts sit as panels and in some of them the Presiding Judges are a legal practitioners, in some they are not but the members all have Diploma in Law qualification. In some States the members are just assessors.

From the above, it can therefore be seen that there is a convergence in some areas in that some of the superior courts of record i.e the High Courts and National Industrial Court consist of one judge while sitting at first instance just as it applies to all Magistrates Courts and some Upper Area Courts and Upper Customary Courts.

In the same vein there is also some convergence where all the superior courts of record except the Federal High Court while sitting in appellate capacity consist of more than one Justice or Judge, so also some of the lower courts like the Customary Courts or Area Courts who sit as panels even as trial courts.

Of striking importance is that the Federal High Court has no appellate powers. It is at all times a court of first instance.

Mention must also be made that the National Industrial Court while sitting as a Court of first instance may be constituted of a single judge or not more than three judges as the President of the National Industrial Court may direct.

In the same vein the National Industrial Court while exercising its criminal jurisdiction the President may hear and determine such matter himself or assign a single judge to determine same and in exercise of his jurisdiction a judge of the National Industrial Court may call in aid one or more assessors specially qualified in that area or subject of dispute to try and hear the cause or matter wholly or partly with such assessors see S. 254E of the constitution as per the 3rd alteration..

N. B: It appears to me that the role of the assessor may not be more than to guide the judge by lending his expertise in rare cases to him but the judgment is still that of the judge to write.

**REMOVAL FROM OFFICE**

**A. JUSTICES/JUDGES OF THE SUPERIOR COURTS**

The removal of Justices/Judges of the superior courts of record is spelt out in the constitution – see 292 thereof. It is categorized into two

(a) Heads of Courts at the Federal and State levels and

(b) Justices/Judges at the Federal and State levels.

**Heads of Courts:** S. 292(1)(a)(i) of the constitution enacts that the Chief Justice of Nigeria; PCA; CJ Federal High Court; President NIC shall not be removed from office before his retirement age except upon address supported by two-third of the majority of a Senate to the President on the grounds of inability to discharge the functions of his office or appointment whether arising from infirmity of the mind or body or for misconduct or contravention of the Code of Conduct wherein the President can so remove such a Head of Court.

The same S. 292(1)(a)(ii) comes to play when it has to do with the CJ; Grand Kadi or President of the State Courts and the address is to be supported by two-third majority of the House of Assembly of the State for the same reasons to the Governor of a State, then the State Governor can so remove such Head of a State court.

S. 292(1)(b) is the provision as regards justices of the Supreme Court; Court of Appeal; Judges of the FHC and NIC or State superior courts. Their removal is by the president or Governor acting on the recommendation of the NJC for the same reasons as for the Heads of Courts.

It would appear that these provisions are inserted to secure these offices so that they can dispense justice without looking over their shoulders as to whose ox is gored.

Despite these ambitious provisions, it doth seem that the office of a Head of Court is not as secured as that of the other Justices/Judges because while the Heads of Courts have their fate being determined by politicians i.e parliament and the President/Governor, that of Justices/Judges involves the NJC which is a professional body to play a major role because until it recommends, no Justice/Judge of a superior court of record can be removed.

**B. LOWER COURTS**

The reverse appears the case in terms of removal of a Judge of the lower Bench that seem not secured or too secured.

Part of the powers of the Federal Judicial Service Commission, State Judicial Service Commissions and Judicial Service Committee of the FCT is to appoint, dismiss and exercise disciplinary control over the Chief Registrar, their Deputies and all other Staff at the Federal and State levels of the Judiciary which include Judges of the Lower Courts see 3rd Schedule Part 1 paragraph E sub 13(c); Pat III paragraph (C) S. 6(c) and Part III S. 2(c) of the constitution as amended.

Now these commissions and committee have their various Rules that have spelt out how Judges or the Lower Courts are to be removed. Their tenures are not as secured as those of the superior court Justices/Judges.

Indeed it can be said without fear of contradiction that while the NJC membership is mostly comprised of members appointed by the C. J. N. which with the benefit of hindsight are people who are not strangers to the judicial system and are mostly not politicians; that cannot be said of the State Commissions and the FCT Judicial Service Committee because the Governors of the States nominate two legal practitioners and two non legal practitioners and for the FCT the President nominates one legal practitioner and one non legal practitioner.

Additionally, it is the Governor who appoints the Attorney-General and Commissioner for Justice as the case may be making him to have five persons in the JSC and for the F.J.S.C. and FCTJSC the President appoints these legal practitioners and non legal practitioners apart from the Hon. Attorney-General and Minister of Justice. In some States where you have just a Chief Judge without a Grand Kadi of Sharia Court of Appeal and a President of Customary Court of Appeal; then the chief Judge is up against five persons.

If such CJ is blessed or lucky to have the two legal practitioners think as professionals not as politicians then the better for the judiciary. If not, where a judge of the lower court is perceived as hostile to the establishment his/her days may be numbered.

This is a major set back as there appears no concrete guarantee of tenure of office of the judges of the lower Bench.

It is also clear that while the justices/judges of the superior courts of record have a guaranteed retirement age of compulsion at 70 and 65 on their volition and at 65 or 60 under S. 290 of the constitution, that is not obtainable for the judges of the lower courts as theirs is tied to the normal 60 years of age or 35 years of service applicable in the civil service. We would do well to remember that even though I had said the NJC plays a major role in the discipline and removal of Justices/Judges of superior courts who are not Heads of Courts, the Federal Judicial Service commission, the Judicial Service Commissions and Federal Capital Territory Judicial Service Committee can also recommend to the NJC the removal of the Justices/Judges see S. 6(B) Part II of the 3rd Schedule to the constitution. How-ever as I stated earlier the NJC is not populated by politicians who would still have to recommend to the President or Governors and in the process would consider issues in a dispassionate manner.

Nevertheless, in all of these whether as a Justice/Judge of a superior court of record or judge of a lower court, their offices have statutory flavor hence the process of removal must be in accordance with due process; especially the principle of fair hearing must be adhered to see the case of NJC Vs. Yerima (2014) LPELR 24208 CA among many others where it was held that by nature of S. 36 of the constitution whether it is a court of law, tribunal or board of inquiry once it has to delve into determining ones rights, powers, duties such as removal of a judge the NJC being a body envisaged by S. 36 of the constitution has to afford a judicial officer the opportunity to defend a petition investigated by it’s panel after such a judicial officer would have earlier responded in writing to any communication requiring a response to a petition.

This accords with the decision of the Supreme Court in Garba Vs. Uni Maiduguri (1986) 1 NWLR (pt. 18) pg. 550, 618 where Oputa JSC of blessed memory said the main vein or the artery of fair hearing is the opportunity to cross examine ones adversary.

In the case of Manuwa Vs. N. J. C. (2013) 2 NWLR (pt. 1337) 1 at 24 it was held that S. 158(i) of the constitution provides that the NJC in its power to make appointment or exercise disciplinary control shall not be subject to the control or direction of any other Authority or person, it nevertheless does not mean that it must proceed with a petition that has been withdrawn by the author of same.

The principle of fair hearing is universal and must be observed even by the State JSC and FCT Judicial Service Committee because the office of a judge of a lower court is of statutory flavor not as an office of personal service rendered by an employee to his employer – see the case of JSC Cross River State & Anor Vs. Young (2013) LPELR 20592 S. C. on why State Judicial Service Commissions (JSC) must observe fair hearing principle.

POWERS OF THE SUPERIOR COURTS OF RECORD AS APPELLATE COURTS

**SUBJECT MATTER**

**SUPREME COURT** – The Supreme Court by a combined reading of the provisions of Ss. 232 and 233 of the constitution has power on any subject matter once it is an issue that can be adjudicated upon. It is the highest court of the land except that not all appeals to it are as of right, some have to be with the leave of the Supreme Court or the Court of Appeal - - see Ss. 233 of the constitution as amended.

Worthy of mention is that the appeal must stem from the court of appeal and not any other court or body or Authority or institution.

**COURT OF APPEAL**

S. 240 of the constitution vest on the Court of Appeal the exclusive power to entertain appeals from Federal High Court, National Industrial Court, FCT High Court, High Court of the States, SCA of the FCT and States, CCA of the FCT and States; A court martial or other Tribunals as may be prescribed by an Act of the National Assembly.

Note that appeals from the NIC to the Court of Appeal shall only lie as prescribed by an Act of the National Assembly except on issues of Chapter IV of the constitution that concern those issues or subject matter that it (NIC) has jurisdiction on. See s. 243(2) and (3) of the constitution as amended in the 3rd alteration.

Again s. 243(4) of the constitution as contained in the said alteration enacts that in civil appeals the decision of the Court of Appeal from the NIC shall be final.

Additionally, it is the final court on appeals from decisions of the National and State Houses of Assembly Election Petitions see S. 8(3) of the 2nd alteration of the constitution that substituted S. 246 of the constitution.

How-ever it appears that by virtue of s. 254C(5) of the constitution (3rd alteration) in criminal cases or matters on which the NIC has jurisdiction; appeals may go to even the Supreme Court.

Now since the Appellate powers of the Court of Appeal are not the main focus, it is sufficient to state that appeals lie to it from these courts either as of right or upon leave of either the Court of Appeal or these courts as the case may be see Ss. 240, 241 and 242 of the constitution.

Similarly Ss. 244 and 245 of the constitution provide for appeal as of right to the Court of Appeal from SCA and CCA on the issues that these courts have jurisdiction on.

Further-more S. 246 of the constitution as amended by S. 8 of the 2nd alteration confers powers on the Court of Appeal to entertain appeals from the Code of Conduct Tribunal, National and State Houses of Assembly election Tribunals and decisions of the Governorship Elections Tribunal and any other powers that the National Assembly may confer on it.

**HIGH COURTS**

The Federal High Court as stated earlier has no appellate jurisdiction.

The State High Courts have appellate powers to entertain appeals from Magistrate’s Courts, Districts Courts, Area Courts, Customary Courts and any other State Courts that might have been established by the various States and the FCT. Ss. 257(2) and S. 272(2) of the constitution and various High Court Laws of the various States and FCT.

It must be quickly added that the power of the High Court to entertain appeals from the Area or Customary Courts or Upper Area or Upper Customary Courts is restricted to criminal cases or normal civil matters if these lower courts have jurisdiction and not to personal Islamic law or customary law issues.

**NATIONAL INDUSTRIAL COURT**

This court has appellate powers over decisions of the Registrar of Trade Unions or matters relating or connected thereto, appeals from decisions or recommendations of any administrative body or commission of inquiry that has to do with employment, labour, trade unions or Industrial relations as well as appellate and supervisory powers over Arbitral Tribunal or Commissions, Administrative body or board of inquiry on any matter that it has jurisdiction over – see S. 254C L(i) and (ii)(3) of the constitution as per the third alteration.

**SHARIA COURT OF APPEAL (SCA)**

This court exercises only appellate and supervisory jurisdiction over the Area or Upper area Courts or Sharia Courts sitting at 1st instance in civil proceedings involving questions of Islamic Personal Law as to marriages conducted in accordance with Islamic Law, or regarding family relationship, a founding or guardianship of an infant or a Muslim who is physically or mentally infirm, Personal Islamic Law as regards a gift, waft, will or successor where the endower, donor or deceased is a Muslim, where all the parties being muslims requested the trial court to decide the case based on Personal Islamic Law, any other question.

N.B: It has no criminal jurisdiction. This is in addition to any other power that a law of the State House of Assembly or National Assembly may confer on it as it relates to the States or FCT see S. 262 and 277 of the constitution.

**CUSTOMARY COURT OF APPEAL**

This court exercises appellate and supervisory powers in civil proceedings involving questions of customary law from decisions of the Area or Customary Courts of 1st instance. This is in addition to any other jurisdiction that may be conferred on it by the State Assembly in issue or the National Assembly as regards the FCT.

It also has no criminal jurisdiction.

**LOWER COURTS VIS A VIS THEIR APPELLATE JURISDICTION**

To the best of my knowledge these courts do not have appellate powers. They are courts established to deal with simple and not complicated matters concerning day to day interactions or transactions of persons i.e natural and in some cases artificial. I stand to be corrected if they do have appellate powers as of today.

In my view where they do, then that legislation may have to be carefully crafted so that it does not conflict with S. 6(3) of the constitution which therein after recognizing the superior courts of record as established goes on in subsection (4) to provides as follows:

(4) **“Nothing in the foregoing provisions of this section shall be construed as precluding –**

**(a) The National or any House of Assembly from establishing courts, other than those to which this section relates with subordinate jurisdiction to that of a High Court”** clearly any such court so established cannot and should not compete with the High Court in it’s appellate powers.

How-ever and certainly we cannot put a fullstop to this issue without recourse to the provisions of S. 6(5)(J) and (K) of the said constitution.

S. 6(5) After listing the superior courts of record in paragraphs (a) – (i) the section goes ahead to provide thus in paragraphs (J) and (K)

**(J) “Such other court as may be authorized to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and**

**(K) “Such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws”.**

Particular attention should be paid to these provisions because if read calmly, they suggests that a State legislature can create a lower court to determine matters as a court of 1st instance or that has appellate powers so long as it relates to a subject matter on which a State legislature can legislate on. The distinction here is that whatever such court may be and whatever powers it may have, same must be subordinate to the High Court of a State.

It therefore means that it is possible for a State House of Assembly to legislate and confer a lower court with appellate powers on any area that the State House of Assembly has the legislature powers such as issues relating to primary education, markets etc.

It appears that it is not intended that the National Assembly has this powers rather it is peculiar to the State Assemblies.

**POWERS OF THESE COURTS AS COURTS OF 1ST INSTANCE**

**A. SUPERIOR COURTS OF RECORDS**

Here it is intended that the superior courts of record would be categorized into two:

1. Those that are Principally Appellate Courts but have jurisdiction as courts of 1st instance.

These courts include the Supreme Court of Nigeria and the Court of Appeal.

Other than it’s appellate status, the Supreme Court has original jurisdiction over any dispute between the Federal Government and any State Governments or between one or more State Governments and another or others and on any other matter as may be conferred on it by the National Assembly. See S. 232(1) and (2) see also the case of A. G. Federation Vs. A. G. Abia State & Ors (supra); A. G. Rivers State Vs. A. G. Akwa Ibom State (2011) 3 MJSC 1 at 84; BHS Intl Ltd. Vs. A. G. Lagos State (2016) LPELR 40084 C. A.

In the same vein the Court of Appeal is a court of 1st instance where the question has to do with whether a person has been validly elected to the office of President or Vice President or the term of office of such occupant has ceased or such an office is vacant see S. 7 of the 2nd alteration of the constitution that amends S. 25 of the 1st alteration which substitutes S. 239 of the constitution itself.

 The Federal High Court, State High Courts, FCT High Court and National Industrial Court are principally courts of 1st instance but except the Federal High Court others still perform dual roles of exercising appellate and supervisory roles over lower courts and over Arbitral Panels, Administrative or board of inquiries or decisions of Registrars of Trade Disputes as per the National Industrial Courts on areas of its jurisdiction.

The Areas of jurisdiction of these courts are wide ranging as provided for in Ss. 251, 254(c); 257; and 272 of the constitution. The FCT and State High Courts have powers on all areas except those specifically reserved for the Federal High Court and National Industrial Court while the Federal High Court and National Industrial Court have powers exclusively on areas reserved for them and no more. See the cases of Mbonu Vs. Igbo Jekwe & Anor (2013) LPELR 21197 CA; Sambawa Farms Ltd. & Anor Vs. Bank of Agric Ltd. (2015) LPELR 25939 CA; Oloruntoba Oju & Ors Vs. Dopamu & Ors (2008) LPELR 2595 S. C. Indeed as regards the Federal High Court where a party involved is an agency of the Federal Government with exception of fundamental rights enforcement issues the State or FCT High Courts have no jurisdiction Skye Bank Vs. Iwu (2017) LPELR 42595 S. C.; Board of Management of Federal Medical Centre Makurdi Vs. Kwembe (2015) LPELR 40486 CA.

**LOWER COURTS AS COURTS OF FIRST INSTANCE**

There is strong a convergence here between the superior courts of records and the lower courts because all the lower courts are courts of 1st instance. They are feeder courts to the superior courts of record like the High Court of States and the FCT; the Sharia Courts of Appeal and Customary Courts of Appeal of States and the Federal Capital Territory but they are not feeder courts to the Court of appeal and Supreme Court.

The National Industrial Court also feeds by way of appeals from the bodies mentioned before now but not from the lower courts of the States and FCT while the Federal High Court feeds from no court but it is a feeder to the Court of Appeal.

Nevertheless the point must be stressed again that High Courts and in most instances the National Industrial Court are composed of a single judge as courts of first instance while the Sharia Courts of Appeal and Customary Courts of Appeal sit in a panels since they are not courts of first instance.

Simply put, the relationship between the superior courts of record and that of the lower courts is that of a superior and subordinate or loosely that of a senior and junior officer or a commissioned and non commissioned officer but who need each other in the course of their duties.

**PROCEDURE AND PRACTICE OF THE SUPERIOR COURTS OF RECORD AND THE LOWER COURTS**

One point of convergence of all courts whether superior or lower courts is that each court has a body of Rules that govern its procedure. For instance the Supreme Court Rules, the Court of Appeal Rules; the Federal High Court Rules; the National Industrial Court Rules; the High Court Rules of the various States and of the FCT; the District Court Rules for the Magistrates Courts in their civil jurisdiction in the Northern States.

Also the Administration of Criminal Justice Act (ACJA) and Administration of Criminal Justice Law (ACJL) of the FCT and States in terms of criminal jurisdiction regulate the High Courts, the Magistrates Courts and some other categories of Lower Courts that have criminal jurisdictions. These body of rules provide for how cases or suits or actions or matters are brought to court as well as regulating how these courts conduct their businesses in the open or in chambers (at times) and even how the Registries and other court staff are to conduct their businesses.

It must not be forgotten that these rules complement the substantive law and in some instances their infraction could have great consequences for such a litigant while in some instances some infractions are tolerable and so can be glossed over or remedied or regularized.

For instance where a litigant did not pay filing fee in any action, same is not competent – see the cases of Okolo Vs. UBN (2004) 1 SC (pt. 1); Usman Vs. Ruwa (2017) LPELR 41990 CA.

So also where a notice of appeal is not signed by the authorized person or at all – see the cases of Iwunze Vs. FRN (2014) LPELR 22254 S. C; Okwuosa Vs. Gomwalk & Or (2017) LPELR 41736 S. C.

Some of the tolerable infractions include filing a process out of time without extension of time and or leave depending on the circumstances, filing a process without the approved stamp and seal of the NBA. These infractions can be remedied or regularized. See the cases of Nyesom Vs. Peterside (2016) 7 NWLR (pt. 1512) pg. 452; Yaki Vs. Bagudu (2015) 18 NWLR (pt. 1491) (2015) 18 NWLR (pt. 1491) pg. 288 at 301; Alshon S. A. Vs. Saraki (2000) FWLR (pt. 22) pg. 964.

Not negotiable and of no less importance is the need to stress that all the courts whether superior courts of record or the lower courts have as their prime law in procedure as the evidence Act 2011 as amended. It is the statute that regulates the admissibility of evidence or otherwise before all these courts. The only exception is as regard proceedings before an arbitrator, a field general court martial or judicial proceedings before a Sharia Court of Appeal; Customary Court of Appeal; Area Court or Customary Court except any authority empowered to so do under the constitution does that by an order published in the gazette.

Further-more, in judicial proceedings in a criminal cause or matter before an Area Court, the court shall be guided by the Evidence Act and in accordance with the provisions of the CPC law but shall at the same time be bound by the provisions of Ss. 134 – 140.

See the case of Osu Vs. Igiri & Sons (1988) INSCC 112 S. C; Orugbo Vs. Una (2002) 16 NWLR (pt. 792) pg. 175; Agbiti Vs. Nigerian Army (2011) 4 NWLR (pt. 1236) pg. 175.

From the above, it is apparent that the Rules of court are a road map to attain justice and not justice on their own that is why most infractions except fundamental ones can be remedied by way of motions seeking to regularize that which was irregular or to cure slips in procedure because procedural Rules on their own do not confer jurisdiction – see the cases of Ezeigbu Vs. F. A. T. B. Ltd. All FWLR (pt. 529) pg. 7223; Ali Vs. NDIC (014) LPELR 22422 CA; Clement & Anor Vs. Iwuanyanwu & Anor (1989) LPELR 872 S. C.

**INHERENT POWERS OF THE SUPERIOR AND LOWER COURTS**

S. 6(3) of the constitution enacts among other things that superior courts of records “Shall have all the powers of a superior court of record”.

(6) Of the same section also provides that

**“The judicial powers vested in accordance with the foregoing provisions of this section**

1. **Shall extend notwithstanding anything to the contrary in this constitution to all inherent powers and sactions of a court of law”.**

The remarkable words are inherent power.

The Black’s Law Dictionary 9th Ed. at page 1288 says inherent power dates back to the 17th Centuary and it means **“A power that necessarily derives from an office, position or status”.**

At page 853 it defines the word “inherent” to mean **“To exist as a permanent, inseparated or essential attribute or quality of a thing, to be intrinsic to something”.**

At page 853 it says of inherent powers doctrine:

**“The principle that allows courts to deal with diverse matters over which they are thought to have intrinsic authority such as (1) procedural rule making (2) internal budgeting of the courts (3) regulating the practice of law and (4) general judicial house keeping”.**

In Adigun & Ors Vs. A. G. Oyo State No. 2 (1987) 2 NWLR (pt.65) 197 at 235 the Supreme Court per Oputa JSC said among other things of inherent powers **“Simply put, the inherent power of any court is that power which is itself essential to the very existence of the court as an institution and to its ability to function as such an institution – namely as an institution charged with the dispensation of justice, such as the power to punish for contempt, the power to grant an adjournment in the interest of justice etc an inherent power has to be inherent in the sense that it forms an essential and intrinsic element in the whole process of adjudication”** see also Umar & Anor Vs. Aliyu & Ors (2011) LPELR 9354 SC indeed intrinsic is that that thing that is within, it is not to be found elsewhere.

It is meet to say that there is a strong connectivity here in that even though the lower courts are not mentioned but I strongly believe that all courts (inclusive of the lower courts) have inherent powers to exercise if not the courts would turn into institutions of jest or taunting e.g the power to punish for contempt committed in the face of the court i.e contempt infacie curie see Okoduna & Ors v. The State (1988) LPELR 2457 SC; Nwawka Vs. Adikamkwu (2014) LPELR 22927 C. A.

It is because of the central nature of this power that even the constitution itself provides that notwithstanding anything that is provided for in the constitution, the superior courts of record and by extension all courts shall continue to have their inherent jurisdiction or powers.

Essentially there is no law, not even the constitution itself that can take away the inherent powers of courts.

Other supervisory roles of the some superior courts over the lower courts or judicial gate keeping role.

The High Court of the FCT and State High Courts are vested with special supervisory powers other than their normal appellate jurisdiction over the lower courts. In crafting Ss. 257(2); 262(1); 267; 272(2); 277(2) and 282(1) of the constitution as amended that establishes the High Courts, Sharia Courts of Appeal and Customary Courts of Appeal of the FCT and the States, these provisions specifically made mentioned of the appellate and supervisory roles of these courts. The usage of the word “supervisory” stands these courts out. It connotes that they play the role of gate keeping or overseer over these lower courts. This is because these lower courts that we had listed before now are the courts from which complaints or appeals from their decisions are taken to depending on the subject matter.

Now in the common law the High Court of Justice of England has certain powers in the form of prerogative writs in which it can review the decisions of the magistrates courts and in the Nigerian context these includes the District Courts in the North, the Area Courts in the North and the Customary Courts as applicable in the Southern States as well as in some Northern States.

Now the High Court law Cap. 49 Laws of Northern Nigeria S. 24(2) specifically provides:

**“Subject to the provisions of s. 15 and 27 the court shall have all the jurisdiction of the High Court of Justice in England to make an order of mandamus requiring any act to be done or an order of prohibition prohibiting any proceedings or matter or an order of certiorari removing any proceedings cause or matter into the High Court for any purpose”.**

S. 15 talks of excluding the jurisdiction of the High Court in such prerogative writs if the constitution of Nigeria and that of Northern Nigeria excludes such powers while s. 27 removes the proceedings of Native courts from the supervisory role of the High Court.

How-ever I must hastily state that as at that time lawyers were not accorded right to audience in native courts and proceedings were mostly far removed from English common law style of justice but that is not the case now. High Courts and indeed Sharia Court of Appeal and Customary Court of Appeal now do exercise these powers in deserving cases.

As a derivative of the constitution and the High Court Law, Order 42 for instance of the High Rules of Nasarawa State provides for judicial review by way of order mandamus, prohibition and certiorari of the decisions of the lower courts. These powers enable the High Court in a writ of mandamus to mandate or compel a person, body or authority to do a thing that it for no good reason refrained from doing.

A writ of prohibition is to injunct or refrain the doing of an act that ordinarily the person or body restrained would or is likely to do or about doing.

In both instances there must be a duty to do that thing and a duty not to do that thing and where it is otherwise, then these writs may not be appropriate to such a litigant.

A writ of Certiorari on the otherhand entails removing proceedings to the High Court and to quash any order, judgment, rulings, conviction or other proceedings.

In most Rules of court, the judicial review is allowed to be initiated within 3 months of the date of occurrence of the subject of the application.

Apart from these three, there used to be another one called Quo warranto. This one seeks to question the exercise of or the extent of exercise of certain powers where the person or body exercising that power either has no such powers or has exceeded the limit of same. It has now been abolished in Northern Nigeria by S. 25(1) of the said High Court Law Cap. 49 L. N. N. 1963.

Out of the three extant writs, the most commonly used is the writ of certiorari and which the applicant must in the 1st place seek and obtain the leave of the High Court to file the motion on notice and the Judge is satisfied before granting and when it is so granted, it could and most at times serve as an order of stay of proceedings on the lower court. The wisdom there is to preserve the Res if not in some cases the lower court if it has any clue of such application may act in a way that can overreach the application before the High Court.

Of salient note is that where there is an appeal over an issue then the writ would not avail an applicant.

I need say that this has proven a verifiable instrument in the hands of legal practitioners to check excesses of the lower courts especially in the Northern States where an appeal panel must consist of a panel of at least two judges which is more cumbersome and time wasting and alot of inconveniences are involved.

Another striking advantage of this procedure is that where as an appeal must be over a Ruling or decision or order or judgment, the certiorari proceedings can even be to quash steps taken by the court not necessary until there is an order, ruling, decision or judgment e.g issuing an arrest warrant or a summons where the judge should not.

As early as in the case of District Officer & Anor Vs. Queen (1961) LPELR 25082 SC the Supreme Court per Adetokunbo Ademola C. J. F. said on this:

**“The High Court has an inherent power, unfettered by statute to control inferior tribunals in a supervisory capacity such control is by means of certiorari to keep the inferior tribunals within the law, within bounds and within jurisdiction as the legislature deem fit to confer upon it”.**

In this case he had earlier said **“Although when the alternative remedy is available, certiorari would not be granted, it is nevertheless granted when that alternative remedy means going to some other tribunal where the appellant is not likely to get help to remedy the injustice done to him”.**

In the case of Head of the Federal Mil. Govt. Vs. Gov. Midwestern State (1973) LPELR 1269 the Supreme Court had also said

**“It is settled that certiorari lies to the High Court to quash the orders or proceedings of an inferior tribunal which has acted in excess of its jurisdiction and that though the remedy was in the early times limited to courts in the normal sense, it has since been extended to other authorities or bodies exercising judicial or quasi judicial powers”.**

In the case of Bala Vs.Gumel & Anor (2014) LPELR 23469 CA held that

**“It ought to be recognized that a writ of certiorari requires the record or order of the inferior tribunal or court or quasi judicial body to be sent up to the High Court to have its legality inquired into and if necessary to have the order quashed, further, the prerogative writ of certiorari lies to remove proceedings for a variety of purposes. It would issue for any purpose aimed at preventing an injustice, remedy by certiorari proceedings would be granted when any of the following is present in the judgment or order of the inferior court:**

1. **Lack of or excess of jurisdiction or**
2. **Error on the face of the record of an inferior court or**
3. **Breach of observance of natural justice regarding fair hearing”.**

Infact a good number of cases that go before the High Courts are certiorari or related proceedings.

This calls to question how we exercise our powers or jurisdiction at the lower courts.

In the long run the superior courts identified above play a vital role in supervising the lower courts.

It must be said that as regards the Sharia Court of Appeal and Customary Court of Appeal of the FCT and the States, it depends on how their laws and Rules of court are framed as to how they can play this role effectively.

It is nevertheless my view that even at that, it must be related to personal Islamic law issues or customary law issues as provided for in the constitution or any other enabling statute or law.

Therefore there is always a connecting point but seemingly a gate keeping role between the High Courts of the States and the FCT as superior courts of record and the Lower Courts or other subordinate bodies or Tribunals under their various jurisdictions.

**PERIOD WITHIN WHICH JUDGMENT MUST BE DELIVERED**

S. 294(1) of the constitution provides that every court established under the constitution shall deliver it’s judgment in writing not latter than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authentificated copies of the decision within 7 days of the delivery thereof. The courts established by the constitution are the superior courts of record earlier enumerated.

In this provision two cardinal points are to be noted i.e that the delivery of the decision must not be beyond 90 days after the day evidence and final written address were taken and the second being that within 7 days the parties must be given certified records of same. The word “every” is used meaning from the State High Court to the Supreme Court.

As a panorama of this provision, my view is that it is at the heart of the role of a court. This is because if no time frame is given, we may wake up to find out that cases would be tried but no decision would ever be given either because the judges are lazy or careless or in some cases because of corruption.

Tied to this, the need to furnish all parties not some parties with authenticated or Certified True Copies of the decision is to enable the parties appreciate the details and exact order that the court made as well as to afford parties the power to exercise their right of appeal against the decision of the court in issue if it is not the Supreme Court of Nigeria.

S. 15(1)(a) of the Interpretation Act provides that where in an enactment reference to the time of doing a thing is made from the occurrence of a particular event, it shall be construed to exclude the day in which the event took place. In S. 294 the word “after” is used when it comes to rendering the decision. I construe that to exclude the day in which final evidence or addresses were taken by the court.

In the case of Agu & Ors Vs. Idu (2013) LPELR 19992 CA the Court of Appeal in construing S. 294(1) of the constitution held that the 6th of August being the day counsel in the matter adopted their final written addresses, the judge had 90 (ninety) days beginning from 7th August to deliver judgment see also Akeredolu Vs. AKinremi (1985) 2 NWLR (pt. 16) pg. 787 at 293 – 794.

There is however a distinction when it comes to furnishing parties with authenticated copies of the judgment as the word used there is “within” which means inclusive of the day when the decision was rendered.

This provision of delivery of judgment within 90 days has been held to apply to all courts in Nigeria i.e that the Lower Courts are bound by this provision because the laws establishing these courts are birth by the constitution see S. 6(4)(a) of the constitution where the National Assembly and State Houses of Assembly are allowed to establish other courts with subordinate jurisdiction to a High Court.

Nevertheless, the decision cannot be set aside simply because it was rendered after the 90 days period except if it is established that by reason of this a miscarriage of justice was caused, see the cases of Obiozor Vs. Nnamua (2014) LPELR 2304 CA; see also the cases of Bello & Ors Vs. Doris (2016) LPELR 41298 CA; Ofulue & Anor Vs. Okoh & Ors (2014) LPELR 23218 CA.

Also of relevance is the fact that in practice the courts and counsel have by way of what seem like a connivance hatch a scheme called re-adoption of final addresses. The Court of Appeal in the case of Elias V. FRN & Anor (2016) LPELR 40797 CA among others per Sankey JCA frowned at this when it held **“There is nothing esoteric in the concept of re-adoption of written addresses as to relieve the court of its duty to strictly comply with S. 294(1) of the Constitution. Instead by its very nature the re-adoption of counsel addresses is purely and obviously an innovation and contrivance hatched to circumvent the constitutional provision in S. 292(1)”.** See also Alloon Vs. Ita (2010) LPELR 9010 CA.

Indeed the court in this case provided the rationale of the provision to include that it is to ensure that the facts of the case and the impression created by witnesses is still fresh in the mind of the judge see also Nwawolo Vs. FRN (2015) LPELR 24423 CA; so if the lower courts take evidence of witnesses and watch the demeanour of these witnesses the more reason why they are bound by S. 294(1) of the constitution.

One issue that cannot be glossed over is that this requirement of S. 294(1) of the constitution includes even rulings see the case of Olubukola & Anor Vs. A. G. of Lagos State & Ors (2016) LPELR 41451 CA. In this case one of the issues on appeal was a ruling of the Trial Court on a preliminary objection and the issue of delivering the ruling not latter than 90 days arose. The court in the final analysis while acknowledging the applicability of this provision held that the appellant did not established that a miscarriage of justice was occasioned.

See also Babanlungu & Anor Vs. Zarewa & Ors (2013) LPELR 20726 CA where it was also held that the issue of miscarriage of justice is not an abstract concept it must be seen or pinned down in concrete terms from the circumstances of each case.

In the case of Olubukola & Anor Vs. A. G. Lagos State & Ors (supra) the Ruling was over a preliminary objection which by its nature is a terminal ruling if it had been upheld. I do in my humble view think that this would apply to any ruling such as Ruling on admissibility of a document or interlocutory applications pending the determination of a case, because the word used in S. 294 is decision and s. 318 of the constitution defines decision as any determination of the court and it includes judgment, decree, order etc. hence to admit a document or pronounce on interlocutory applications the judge is making orders.

How-ever it is counslled that a judge should at all cost avoid this because S. 294(6) provides that as soon as possible after a case is decided wherein the decision was rendered beyond the 90 days period, the person presiding at the sitting of the court shall send a report of the case to the chairman of the NJC who shall keep the council informed of such action as the chairman may deem fit. This is an alarm to all judges.

Worthy of note is that in the case of Abubakar & Ors Vs. Nasamu & Ors (2012) LPELR 7826 SC the Supreme Court per Onnoghen JSC stated clearly that when it comes to Compliance with provisions of the constitution, it should be given its plain meaning i.e that there is no distinction between interlocutory decisions and final decisions. I am to quickly add that this was an election petition matter in which S. 285(7) of the constitution as amended was in issue which provides that the Supreme Court and the Court of Appeal must determine an appeal within 60 days. This is an election petition matter and election petitions are suigeneris in that in such cases time is followed strictly without room for dithering because of their tenured nature and where it is not necessary that it must not be proved that there was a miscarriage of justice if a judgment/ruling is delivered beyond the time stipulated by the electoral laws or constitution before such a decision can be set aside.

See also PDP Vs. Okorocha & Ors (2012) LPELR 7832 SC where S. 285(7) of the constitution in an election petition was under consideration where the time to deliver a decision was held to be sacrosanct not minding whether or not a miscarriage of justice was occasioned see also Achado & Anor Vs. Alaaga & Ors (2012) LPELR 8627 CA.

It is therefore clear that there is a connection between the superior courts of record and the lower courts in this regards.

Note that the 3rd alteration of the constitution includes the National Industrial Court as one of the courts the section applies to.

By parity of reasoning it appears to me that where by the lower courts are vested with any jurisdiction in terms of Local Government elections, the same principle of interpretation would apply since Local Government elections too are time barred and suigeneris.

**CASE STATED OR REFERENCE OF QUESTIONS OF LAW**

Another area of relationship between the lower courts and the superior courts of record is S. 295(1) of the constitution. It enacts that where in any court other than the Supreme Court, Court of Appeal, the Federal High Court or a High Court in the course of proceedings, any question as to the interpretation and application of this constitution arises in any part of Nigeria and the court is of the opinion that the question involves a substantial question of law, the court may and shall if any of the parties to the proceedings so request, refer the question to the Federal High Court or a High Court of a State/FCT having jurisdiction in that part of Nigeria and the Federal High Court or such High Court if it is of the opinion that the question involves a substantial question of law, refer the question to the Court of Appeal or if it is of the opinion that the question does not involve a substantial question of law, remit the question to the court that made the reference to be disposed of in accordance with such direction as the Federal High Court or such High Court may think fit to give.

S. 295(2) makes similar provisions where the question arises in the Federal High Court or a High Court, same shall be referred to the Court of Appeal and such High Court shall dispose of that case in accordance with the decision of the Court of Appeal.

This section also applies to the National Industrial Court by virtue of S. 11 of the 3rd alteration Act of the constitution.

Conspicuously missing in this regard are the Sharia Courts of Appeal and Customary Courts of Appeal of the Federal Capital Territory and the States. This is because they have nothing to do with issues of interpretation or application of the constitution as had earlier been seen from their jurisdiction.

In a similar manner I think this section may not apply to the Area Courts and Customary Courts since by their subject matter of jurisdiction they do not deal with these issues but where they do, then it should apply to them.

Another striking point is that this provision recognizes the hieraching of courts in that a combined reading of the whole section would reveal that it is only the Supreme Court that cannot refer a question for determinations, that is because it is final not because it is infallible. The only instance when the Supreme Court can correct itself where it has erred is when the opportunity presents itself in another case and not in that same case that the error occurred since it rarely revisits it’s decision see Ikeakwu Vs. Nwankpa (1967) NMLR 224; Cardoso Vs. Daniel & Ors (1986) LPELR 830 S c..

Again it stresses the importance placed on the constitution being the grund norm and on the basis of which all other laws, decisions and governance generally revolve around.

Some attention must be paid to outstanding words on the provision i.e

1. The question for reference must arise in the course of proceedings and not that it is the main relief or prayer or the very subject matter before the court that referred the issue. In the case of Skye Bank Vs. Iwu (2017) LPELR 42595 SC the Supreme Court held that the issue for reference must not be the subject of resolution or part of the prayer before such court, it must arise in the cause of proceedings “extempore” because it is not an avenue for the Court of Appeal to be a conveyor belt between the High Court and the Supreme Court as was done in the case of Abubakar Vs. A. G. Federation (2007) 6 NWLR (pt. 1031) pg. 626.
2. It must involve interpretation or application of the constitution.

In another twist, it should be borne in mind that if the substantial question in issue does not involve the constitution but it is just any other issue of law, the Supreme Court would decline jurisdiction in any such matter referred to it by the Court of Appeal see Atoke Vs. Afejuku (1994) LPELR 585 S. C see also the earlier cases of Otugbor Ganbioba Vs. Esezi II (1961) SCNLR 237.

1. It must involve a substantial issue of law and what is substantial issue of law?

In the case Rossek & Ors Vs. ACB & Ors (1993) LPELR 2955 S. C. relying on the constitution and the case of Otugbor Ganbioba & Ors Vs. Ezezi II the Modje of Okpe & Ors (1961) ISCNLR 115 or (1961) All NLR 54 at 588 the Supreme Court held that for a question to amount to a substantial question of law the following must exist

1. That it must be a question that arguements in favour of more than one interpretation may be reasonably adduced.
2. It must be a question that must be reasonably decided in the proceedings and not one that may prove unnecessary to decide in the proceedings.

The Supreme Court was careful in this case to state that the instances of what amounts to substantial question of law to be determined is not exhaustive.

In the case of A. G. Delta State Vs. Asin & Ors (2010) LPELR 9093 CA the Court of Appeal further held that:

**“But it is safe and necessary to say that where a question which arises in a High Court is one of general public importance or interest and it directly and substantially affects the right of the parties and that it is still an open question in that it has not been pronounced upon in a binding decision by the Supreme Court and either that it is not free from difficulty or there is a difference of opinion or confusion as to what the law is then it is a substantial question of law”**

(C) That the Plaintiff has locus standi where it is a civil case.

Another point to take home is that the court where the substantial question of law arose has a discretion on whether or not to take the issue and make a decision on it or not or to refer it to the next level of appellate court but where it is raised by any of the parties, then it shall or must refer the issue to the next appellate court see Abdullahi Vs. A. G. Federation (supra).

Under S. 295(1)(b) of the constitution where a Federal or a High Court of the FCT or a State holds the opinion that the question of law involved is not a substantial question of law, it may remit the issue back to the court that made the reference to be disposed of in accordance with the direction of such Federal or FCT or State High Court.

All these apply to the National Industrial Court by virtue of s. 11 of the 3rd alternation to the constitution.

It means not all questions referred to the Federal High Court/National Industrial Court or FCT and State High Court must be further referred to the Court of Appeal because these courts where they form the opinion that the question is not a substantial question of law, may remit the case back to the lower court and the lower court shall dispose of it in line with the opinion stated by the Federal High Court or National Industrial Court or FCT or State High Court.

Lastly where the Federal High Court, FCT or State High Court or Court of Appeal has taken a decision or hold an opinion on the question referred to it, it cannot again refer the same question to the next level of appellate court – see Mainstreet Bank Registrars Ltd. Vs. Promise (2016) LPELR 40572 CA. See also A. G. Delta State Vs. Asin & Ors (supra).

To demonstrate that some the lower courts by the various laws establishing them or guiding their proceedings also have in those laws provisions similar to that of S. 295 of the constitution, S. 78 of the District Law Cap 33 Laws of Northern Nigeria is apposite. It provides that the District Judge can without prejudice to the right of appeal may reserve for consideration by the High Court on a case to be stated by him any question of law which may arise in any cause or matter before him or in any appeal before him and may give any judgment or decision subject to the decision of the High Court. It is my belief that similar provisions may be found in the laws establishing the various lower courts of the various States.

What is to be particularly noted is that this provision allows the District Court to refer matters to the High Court and not necessarily only when the question relates to the interpretation or application of the constitution.

In view of the foregoing, it appears the Federal High Court which has no feeder courts may not fit in here.

From the above, there is a good connectivity between the lower courts and the some superior courts of record.

**ENFORCEMENT OR DECISIONS**

If decisions of courts whether judgments, rulings or whatever orders that are made are not enforced, then victorious litigants are left with sterile victory which is not worth the name. Therefore decision of courts of law which have binding effect must be obeyed by being carried out or enforced.

In recognition of this all important societal issue, the constitution in S. 287 enacts that the decisions of the Supreme Court of Nigeria shall be enforced in any part of the federation by all authorities and persons and by courts with subordinate jurisdiction to that of the Supreme Court.

(2) Provides for the same as regards the Court of Appeal and (3) makes similar provisions as regards, the Federal High Court, National Industrial Court, FCT and State High Courts, Sharia Courts of Appeal and Customary Courts of Appeal of the FCT and the States. The 3rd alteration to the constitution in S. 7 thereof amended the said Section 287 to include the National Industrial Court.

This section has paid allegiance to the principle of stare decisis in that the lower court in hierarchy must as a matter of duty enforce the judgment of any court higher than it in status.

It is doubtful if it is the otherway round i.e for the Supreme Court to as a matter of duty to enforce the judgment of the Court of Appeal or that of a High Court or National Industrial Court or a Sharia Court of Appeal and a Customary Court of Appeal or the Court of Appeal of courts lower than it in hierarchy.

Doubts must be expressed if the various laws establishing the lower courts do not also go ahead to provide expressly that such courts are bound to enforce the judgment of courts higher than them or co-ordinate to them in status for instance S. 20 of the District Courts Law (supra) stipulates that the District Court shall when required to do so, cause to be executed any writ or order or process being issued by the High Court. This provision is all embracing i.e it does not mention just a decision but any process is the word used – meaning it is wide in scope.

The step by step details as to how these judgments are to be enforced are provided for in the Sheriffs and Civil Process Act Cap. 56 LFN and the Judgment Enforcement Rules. In these legislations among other things courts of co-ordinate jurisdiction have a duty to enforce judgments of sister courts from other jurisdictions and of higher courts from other parts of the country.

How-ever S. 44 SCPA and particularly the proviso thereof is to the effect that where the execution of a judgment is over an immovable property and the judgment to be enforced is that of a Magistrates Court, such leave or fiat to sell the immovable property must emanate from the High Court usually by way of a motion on notice to the Judgment debtor at the instance of the judgment creditor.

By parity of reasoning, I opine also that where a decision is from any other lower court that involves the sell or disposal of immovable property in the course of execution, such writ of sale should issue from the High Court. It appears that the law is conceived this way because disposal of immovable property is very serious business that should not be treated with levity. All careful steps must be taken before the High Court gives its go ahead to carry out such execution.

Undoubtedly therefore there is a synergy between the courts whether superior courts of record or lower courts when it comes to execution of decisions.

**EXCLUSION FROM PRACTICE OF LAW BEFORE ANY COURT OF LAW OR TRIBUNAL IN NIGERIA**

**JUSTICES/JUDGES OF THE SUPERIOR COURTS**

The office of a judicial officer is a high office of dignity and repute and so the holder of such office is foreclosed after ceasing to hold such office from appearing as a legal practitioner in any court of law notwithstanding for whatever reason he ceased to hold such office – see S. 292(2) of the constitution.

Other than this, it can be stressed that it is most likely that because S. 221 of the constitution provides for the pension rights of justices/judges of superior courts of record and did not leave it to be legislated upon by any legislature hence it can be said that that there is assurance of means of livelihood after ceasing to hold such office.

Judicial office in the constitution under S. 318 is defined to be justices/judges of the superior courts of record.

**JUDGES OF THE LOWER COURTS**

Succinctly put, this provision does not apply to judges of the lower courts.

On a number of a occasions some Magistrates who were relieved of their appointments or have retired or resigned their appointments have been appearing in all courts of the land. This applies to other judges of the lower courts who are legal practitioners.

This is an area of dissimilarity in the relationship between judges of the superior courts of record and judges of the lower courts.

**BINDINGNESS OF THE RULES OF PRFESSIONAL CONDUCT**

In addition to the sacred duties on the shoulders of judges either by virtue of the constitution or other extant laws, the judiciary of this country has in addition given to itself Rules of Code of Conduct.

These are divided into two:

1. The revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria that came into effect on 24/2/2016 and
2. Code of Conduct for court employees of the Federal Republic of Nigeria effective 1/3/2004.

The first one is the one of interest to our discourse.

What is salient of note here is that unlike the constitution which does not view judges of the lower courts as judicial officers, the revised code of conduct for Judicial Officers does.

In the explanatory notes which is S. 1 thereof a Judicial Officer is defined by listing the categories of occupants of the various offices of the various superior courts of record and it adds thus:

**“And every holder of similar office in any office and tribunal where the duties involves adjudication of any dispute or disagreement between person and person (natural or legal) or person and Government at Federal, State and Local Government levels including the agents and privies of any such person.**

**Under the column for application of the code, therein it states:**

**“The code applies to all categories of judicial officers throughout the Federation as defined in this code”.**

S. 2 stipulates that a violation of same amounts to judicial misconduct and or misbehavior and shall attract disciplinary action.

A gloss of the Rules would show that there are fifteen (15) Rules ranging from propriety and appearance of propriety in both professional and personal relations with individual members of the legal profession, duty to abstain from comments about a pending or impending proceeding in a court, abstaining from involvement in public controversies etc.

These are Rules that whether a person is a judge of a superior court of record or of a lower court or even tribunals such as the code of conduct tribunal or anybody or organ or person that performs adjudicatory functions or duties is bound to observe.

**Query**; where the judges or members of these other bodies are not under the disciplinary control of the NJC; FJSC; JSC or Judiciary generally how are they to be sanctioned where they breach these Rules?

The obvious conclusion that one may be attempted to draw is that the judges of the lower court are wearing two caps; one as judicial officers when it comes to code of conduct and non judicial officers when it comes to the constitution and the seeming benefits that go with the office.

I suggest that a meeting ground should be found somewhere.

**ACCORDING RIGHT OF AUDIENCE IN COURTS TO LEGAL PRACTITIONERS**

The right of any legal practitioner except in few exceptions to appear in any court of law in Nigeria is guaranteed see S. 8 of the Legal Practitioners Act (LPA). There are just exceptions like the Supreme Court where a person must have had five years post call experience. I do not know it legal practitioners are barred from appearing in such courts to advocate the causes of their clients.

S. 5 L. P. A. permits that a member of the legal profession can be conferred with the prestigious rank of Senior Advocate of Nigeria (SAN) and subsection (7) thereof provides that certain priviledges may be conferred on such a person who is a SAN. It is based on this that one of the privildges a SAN enjoys is that he does not appear in the lower courts to advocate. He can only appear in superior courts of records.

This is generally one distinguishing feature between the superior courts of record and lower courts.

**DISQUALIFICATION OF CERTAIN LEGAL PRACTITIONERS BEING APPOINTED AS JUSTICES/JUDGES OF SUPERIOR COURTS OF RECORD FOR A CERTAIN PERIOD**

Any legal practitioner who is serving as a member of the National Judicial Council, Federal Judicial Service Commission, Judicial Service Committee of the FCT or Judicial Service Commission of a State cannot be appointed as a Justice or Judge of any superior court of record and shall so remain disqualified until the lapse of three years after he ceases to hold such office see S. 289 of the Constitution.

This restriction in my view should have applied to such legal practitioner holding such an office in the JSC of his State or FCT JSC for the FCT even if he is to be appointed as a judge of the lower court except the extension of time frame of disqualification to a period of three years after ceasing to hold such office.

It does not take a soothsayer to know that being a member of the Bench and a member of any of these bodies would mean holding two offices that attract two emoluments. It would also place such a person in a position of conflict of interest because the divergent interest may not most of the times be in alignment with each other.

Secondly, if care is not taken such a person may be found sitting in judgment over his cause and the principle of not being a Judge in ones cause would be breached.

The difference in the three year disqualification period as it relates to superior courts of record is to erase any trace of influence that such a person might have wilded while a member of such a body; whereas for the lower Bench one can resign as a member or serve his tenure as a member and immediately take a job as a judge of the lower Bench. This is because the principle of law is that the mention of the specific excludes the general.

Put anotherway, if the constitution had wanted it so, it would have expressly prohibited it just as it did for superior courts of records.

Your Worships, Your Honours, the above is not exhaustive but a little attempt to beam a search light on the areas that justices/judges of the superior courts of record as courts and as well as humans and judges of the lower courts as courts as well as humans relate either in a converging manner or divergent ways.

Whatever the situation, they have more in common and play complimentary roles to each other.

I dare say that the lower courts are the feeder courts of the appellate courts and if the lower court judges do not make genuine mistakes as to the position of the law or the application of the law to the given facts in each case, then we can equally say that the superior courts of record should close shop or cease to exist since not all of them have the status of being first instant courts and where they do have, the jurisdiction is narrow in scope.

As a consequence of this the relationship between these categories of Justices/Judges is like that of the placenta and the umbilical cord or better still that of a pyramid in that the top stands high because of the base.

The lower courts being the base courts handle more cases than the superior courts but the superior courts of record handle more complex cases than the lower courts.

I want to rest my case by submitting that the superior courts of record jurists should see the judges of the lower courts as their younger ones or children whom they must nuture to maturity so that as “heirs” to the throne they would inherit them at the end of the day.

While saying that, let me kindly caution Your Worships and Honours to think so that you do not stink because if you stink, you stand to sink and if you sink then other co-heirs to the throne like members of the official and private Bar would take your place. I know that is not your lot.

Thank you for your attention.