

## CHAPTER 3

# THE MACHINERY OF JUSTICE IN NIGERIA

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### Introduction

The human society is dynamic, interrelated and ever growing and advancing in every ramification. The rule of the jungle where the fittest and the fiercest is in charge cannot be tolerated if there is going to be anything like civilisation. Yet human nature itself breeds oppression of the weak by the strong – while the evolution of the state itself has to do with protection of the weak from the oppressive tendencies of the strong. The quest for justice and protection brought the law and the law itself is a sure safeguard and handmaiden for Justice. Without law there is no justice, yet persons who are trained to do justice must administer justice itself according to set rules and laws.

The machinery of justice is as important as justice, and the law itself, because it forms the basis, for the dispensation of justice. Where the machinery is faulty the dispensation of justice itself will not be entirely free from fault. The ultimate aim of every good government, and in fact a veritable test of good governance is the faith people repose in the administration of justice, and contentment in the system believing that the judicial system is free from bias, and fundamentally positioned to effect justice in all issues. Failure of the machinery of justice therefore is an invitation to anarchy, when people lose faith in the system. The law of the jungle will take over.

The reason for this paper is to examine the Machinery of Justice in Nigeria, test its efficiency, and determine its adequacy and areas for reform.

### Pre-Colonial and Colonial Era.

The primary and basic ingredient of the Machinery of Justice is the law itself. Without the law, there will be no machinery; the law sets up the courts and other components of the machinery of Justice. We therefore, will first examine the Laws of Nigeria, their form, source and developments.

### CUSTOMARY LAW

Though much of our laws today come under the influence of English Law brought into Nigeria as a result of colonisation, before colonisation there is what we call customary law that is law evolved by the custom of the native people. In civilised societies, their laws are normally enacted by a Sovereign or

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Supreme Legislature, but Customary Law simply evolve from a pattern of behaviour of the people, accepted norms of behaviour. As soon as the people accept a particular norm it is clothed in legal validity, while those that have not been adopted or once adopted but has been abandoned will no longer qualify as a customary law.<sup>1</sup>

The next question is the issue of sanction; all civilised laws are backed by sanctions. Where there is a breach of customary law, the people themselves normally will collectively determine the appropriate sanction. In some societies in pre-colonial Nigeria, there are Chiefs and Obas, both in the North and Western Nigeria, who have been authorised by the people to serve as Judges in most cases, the Obas or Chiefs will normally sit in council and hardly ever determine any issue without consultations with the elders within the community. In effect all sanctions are collectively determined, and the type and gravity of the sanctions for particular offence is carefully noted which guides the council in case of future breach. The sanction for an offence is therefore uniform and regular, though each case is examined and determined on its own merit.

Customary law has a distinctive characteristic therefore are being vague being totally unwritten, and only known to its subjects. It is not all the practices and customs that has the force of law, many practices are merely complied with or without fear of being sanctioned if there is a breach while some that touches the life and being of the community or affects the well being of the community is normally backed with sanctions.

The above was the position of Customary Law during the pre-colonial era. We now turn to colonial era.

#### Colonial Era

In the year 1900,<sup>2</sup> there was a change of sovereignty in the territory now called Nigeria. Hitherto, the societies were governed by themselves and their customs. But, colonisation brought the British into Nigeria as the Supreme power having complete jurisdiction over the country. The obvious result is that the English Laws were imported and applied in Nigeria, while simultaneously the British engaged in making laws for the good governance of Nigeria. The result is drastic, in the words of Lord Dunedin, "in all cases (of change of sovereignty) the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised, such rights as he had under the

<sup>1</sup> *Eshugbavi Eleko V Government of Nigeria* (1931) A. C. 662

<sup>2</sup> 1862 in Lagos

rule of predecessors avail him nothing".<sup>3</sup>

However, the British Colonial Policy enjoined the British Administrations in Nigeria through the High Commissioner to respect in making law, "any native laws regulating the civil relations of any native chiefs, tribes or populations under H.M.'S protection.. Except so far as the same may be incompatible with the due exercise of H.M'.S. power and jurisdiction or clearly injurious to the welfare of the said natives".<sup>4</sup>

The effect of the above is tremendous on the Customary Law. In the first instance, Native Law and Custom is recognized as an established law, though the law must be differentiated from the mere practice having no legal status. It also follows that upon being established as the law of the people the whole apparatus of coercion of the state is made available to enforce the law. The fresh problem is proof of the relevant customary law and its establishment. The Native Courts established by the English Colonial masters were enjoined to apply Native law and customs and to put the laws into writing. This power was transferred to Native Authorities in 1945.

Such rules once made and approved have the force of law. While under the Evidence Act, the law allows any book or authority recognised, as an authority on customary law to be admitted in evidence as authority on the law, though this may not be a conclusive proof of such custom.

Though the British colonialist allows application of the customary law, it still has to pass certain tests before it could be applied, it was these tests that conclusively changed the forum and content of customary law.

1. *Repugnancy to natural justice, equity and good conscience:*

Though the courts can apply the customary law, such customary law, must not be repugnant to natural justice, equity and good conscience, on this test alone many customs of the people having a force of law has been rejected while many that passed this test has been approved as having the force of customary law<sup>5</sup>

2. *Incompatibility with local enactments:* Much of customary law has suffered through this factor. The colonial policy has been to abolish much of the customary practices of the people, while in some cases, adherence to customary law on the subject is optional, e.g. Prohibition of witchcraft and juju (1903), proscription of unlawful societies.

<sup>3</sup> Privy council, in *Vajesingji Joriawarsingji v Secretary of State of India* (1924) L.R. 51 L.A.357 see also, *Coole v Sprigg* (2899) A. C. 572.

<sup>4</sup> Art. 6; The Southern Nigeria Order in Council 1900 Art 12, The Nigeria Protectorate Order in Council 1922.

<sup>5</sup> *Ademola II V. Thomas* (1946) 12 W.A.C.A 81 *Egba N.A. V Adeyanju* (1936) B.N.L.A. 77. *Re Offiong Okoh Ata* (1930) 10 N.L.R.65, *Martin V Johnson* (1935) 12 N.L.R.46, *Anachree V Kallio* (1913) 2 N.L.R. 108.

3. *In the field of criminal law*, initially, the native courts were allowed to administer the customary criminal law alongside the Nigerian Criminal Code. But from 1933, there began a great debate on whether to allow Customary Criminal Law, or make it subject to the Criminal Code, and by the end of that year, the native courts were exempted from applying the criminal code in 1947 following the case of *Tsofo Gubba V Gwandu N.A.*<sup>6</sup>, the Native Courts, were allowed to apply both Customary Criminal Law and the Criminal Code, except that the courts must apply.

The lesser punishment under the Criminal Code where there is a conflict In 1959, the Western and Northern Regional Governments in Nigeria abolished all criminal jurisdiction under Customary Law except in so far as any customary offence may have been embodied in a rule made by a local council or a native authority<sup>7</sup>. In 1960, the Nigerian Constitution put the final nail on the coffin of Customary Criminal Law when it declares that, no person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is presented in a written law<sup>8</sup>.

### 3. British Law

The introduction of British Laws, or the laws popular referred to as Statutes of General Application, which is simply English statutes in existence before year 1900 are automatically made applicable in Nigeria. Most of these Statutes on Land Law, Inheritance and Succession family relations, Wills, Sale of goods etc though its necessary to guard against assuming that those laws have changed the existing Customary Law on the subject, far from it, but its influence has reduced the effect and observance of the Customary Law.

2. **Native Authorities:** Native Authorities and Local Government Courts are empowered to make rules, of either to embody the Customary Law in the area or to modify such custom.
5. **Influence of British Education**

The British Education System emphasized the good parts of the British system and tagged the custom of the people as barbaric, many who went through the education come out avoiding the customs and prefer the civilized English Customs" imported into Nigeria.

<sup>6</sup> (1947) 12. W.A.C.A. 141

<sup>7</sup> Customary court (Amendment) law 1959 (WR,) Penal code, 1959 (N.R)

<sup>8</sup> S2 1 (10), see *Aoko v Fagbemi* (1961)1 A.U./N.L.R400

## NIGERIA STATUTES.

The history of Nigerian Statutes could be traced back to 1862 then, the Laws were called Ordinances. The British Consul started making Rules and regulations in 1872 and the Royal Niger Company in 1886. However, from 1900, the Northern and Southern Protectorates were formed with powers to make laws called Proclamations. Upon the amalgamation of Nigeria, the two legal systems were merged and replaced by Ordinances applicable to the whole of Nigeria. In 1954, the country adopted the Federal system of Government, and each region was allowed to make its own laws on areas within the concurrent and residual legislative lists, called "Laws of the Region" while those of the Federal Government were referred to as Ordinance.

*There were therefore about 5 categories of laws in Nigeria.*

- a. Federal Laws applying generally throughout the country and called the Laws of the Federation.
- b. Federal Laws applying to Lagos only called Laws of Lagos
- c. Laws of Northern Region
- d. Laws of Western Region
- e. Laws of Eastern Region

After 1954, the problem of converting the Laws of a Unitary state to federal was solved by adopting a compromise solution, S 57 of the 1954 Constitution<sup>9</sup> states:

1. *All existing laws are deemed to have been enacted by the federal legislature in so far as they relate to matters within the exclusive legislative competence or in so far as they relate to Lagos*
2. *All existing laws relating to matters within the concurrent legislative list are deemed to have been enacted by the regional legislatures, except in so far as the Governor General may have otherwise declared*
3. *All existing laws relating to matters outside the exclusive and concurrent legislative lists are deemed to have been enacted by the Regional Legislature.*

The first authoritative Statute book in Nigeria was published in 1923 after the unification of the two legal systems<sup>10</sup>. Many supplementaries were published thereafter until 1948 when a new revised edition with twelve volumes replaced the former laws. A new set of Laws of the Federation was published in 1958. Which remained in use with series of additions for each year until 1990 when the current laws of the Federation was published as the only authoritative

<sup>9</sup> Laws of the Federation.

<sup>10</sup>As Amended in 1957 and 1958, see also S. 44 of the interpretation ordinance Cap 89, Laws of the Federation 1988.

laws collection of Laws of the Federation consisting of 25 volumes". In 1959, the Western region published its own revised edition of Laws of Western Nigeria with 7 volumes, and subject to the various amendments that has taken place over the years, the states comprising the old Western Region still regard the Western Region Laws as authentic.

- II. Each State in Nigeria now has its own set of laws called Laws of the State. They contain all the relevant laws both enacted by the State Legislatures and received laws that has been adopted as Laws of the State.

### STATUTES OF GENERAL APPLICATION

Statutes of General Application are those laws enacted in England but made applicable to Nigeria by our own local law. The range is quite considerable as all laws enacted in England before year 1900 is automatically applicable in Nigeria however, the Western Region Government has abolished those class of Statutes from being applicable in the old Western Region, instead the Government has enacted many of them as a local law with varying degrees of modification to suit local conditions. However, the application of received English Statutes is subject to certain conditions.

- i. They apply subject to local laws, where there is a local enactment on some issue, the English Law will no longer be applicable. Except in rare cases today, most of the received English Laws have been replaced by local enactments.
- ii. They apply so far only as the limits of local jurisdiction and local circumstances permit.
- iii. Only those enacted before 1900 are applicable.
- iv. The Statute must be of general application in Great Britain and not merely for a local or restricted use.

### The English Common Law and Equity

The English common law and the Doctrines of Equity were developed by the English Judges; in fact, have been popularly designated as Judge made laws but the Judges had merely applied the customs prevalent in England at the period, and over the years developed it into law. Though in the light of its development especially in Nigeria and other commonwealth countries, the Common Law and Doctrines of Equity could no longer be regarded as strictly foreign, as our courts have in applying most of the law have modified them to suit our local situation, one can no longer strictly say that we still apply the common law of England, though the decisions of the courts in England especially

those of the House of Lords had been very useful in the determination of cases before our courts but there has been no dogmatic application of those decisions in Nigeria. Presently it is noteworthy that our Case Law has so developed that we now have Nigerian Authorities on all aspects of Law, and need not refer to English decisions again except on very rare cases.

### **Application of Case Law and Doctrine of Precedents in the Nigerian Courts**

The doctrine of Judicial Precedents developed in England and is now mainly of universal application amongst civilised nations. It developed from the use of good law reporting, and enables the court and individuals that come in contact with the court system understand the Law and how it had been applied in earlier cases.

The Nigerian courts also recognise the rule of absolute binding precedent on the courts on lower courts, the decisions of a higher court. Within the hierarchy of courts within each State, every court is absolutely bound by the decision of courts above it, though a court is not bound by its own decisions, yet the court will not make it a practice to give contradictory decisions every time cases come before it.

The Supreme Court is not absolutely bound by its own decisions but will be very careful in overturning its decisions. A lower court in one State is also bound by the decisions of a higher court in another State, while court of coordinate jurisdictions, though not bound by the decision of each other, and even though such decisions are merely persuasive the court should be wary in rejecting it in toto.

### **LAW REPORTING**

An efficient and prompt system of Law reporting is an essential prerequisite for the application of the doctrine of judicial precedent. Law reporting began in Nigeria in 1916 with the publication of series called the Nigerian Law Reports by the Judicial Committee. The practice then, was for each court to publish its report. In Nigeria today we have the West African court of Appeal (W.A.C.A) Reports, consisting of Appeal from the countries that acceded to it<sup>11</sup>, before Nigeria withdrew finally in 1955 had a total of fifteen volumes. The Federal Supreme Court Reports contain the selected judgements of that court later replaced by the Supreme Court Reports. The Ministry of Justice also published the All Nigerian Law Reports containing selected judgements of the

<sup>11</sup> All laws enacted by Western Region for Lagos between 1951 - 1954 is therefore a Federal Law

Federal Supreme Court and the Supreme Court. Currently, there had been prolific intervention by individuals with the result that we now have various Law Reports covering all the courts except the Magistrate Court and the Customary Courts. Each State High Court publishes its High Court Reports, while there is Court of Appeal Reports reporting Court of Appeal decisions. The result is that virtually all cases decided by our Court is reported today and promptly too.

## THE COURT SYSTEM IN NIGERIA

The court system is the main engine for the machinery of Justice in all civilised societies. In this section, we shall examine the development of the court system in Nigeria, from pre-colonial Nigeria to the present position under the 1999 Constitution

### The Judicial System Before Colonisation

Before the introduction of the British system of Government and its courts in Nigeria, each tribe had developed their separate Customary Law that binds the people. In the Northern States, the Emir as the Supreme Ruler with his advisers constitutes the Supreme Court of the land. They resolve land, family and inheritance disputes. In most cases, these cases are referred to the *Akalis*, who are teachers on Islamic Law. In the West, the Oba in Council adjudicates on all issues brought before them, and they applied strict customary law in resolving the disputes. While in the East, the Elders Council and the age grades help very much in settling disputes and in the application of Customary Law.

### Development of the English and Native Courts after Colonisation

After 1900, the British Imperial Government introduced a Court named the Supreme Court into Lagos to decide on disputes involving British citizens and dispute involving British citizens and natives. Gradually, the jurisdiction of the Supreme Court was extended to the Yoruba city states.

By series of agreements between the Colonial Government and the Yoruba Obas of the Supreme Court of Lagos jurisdiction was extended to the whole Yoruba Land in Western Nigeria,<sup>12</sup>. In 1915 all the separate agreements and the Supreme Court Ordinance for each locality were repealed and replaced with Jurisdiction of Courts Extension (Protectorate) Ordinance, 1915 which extended the jurisdiction of the Supreme Court, Provincial Courts, and Statutory Native Courts to the whole of Yoruba Land, and this brought to an end the partial independence of that tribe from the jurisdiction of British courts.

<sup>12</sup> Ghana, Sierra Leone, Gambia and Nigeria



### British Courts

In Southern Nigeria, before the amalgamation of the country, a single court named Supreme Court served the region. The Supreme Court consisted of the Chief Justice and a small number of puisne judges. The Court operated as a Court of law and it sometimes apply the doctrines of equity. As a Court of Law, its powers are unlimited.

*It operates as three Organs,*

1. **Divisional Courts.** Southern Nigeria was then divided into divisions, and each operates with a judge of the Supreme Court exercising the original jurisdiction of the Supreme Court and also serves as Court of Appeal for Native and District Courts.
2. **Full Court:** Appeals from Divisional Courts normally go to the full court, sitting with the Chief Justice as the presiding Judge, while at least two other Judges of the Divisional Court sitting as Appeal Judges sit on appeals from the Divisional Courts. Appeal from the Full Court lay to the Privy Council<sup>13</sup>.
3. **District Courts:** The Administrative officer of each district is the ex officio Commissioner of the Supreme Court., in that capacity, he constituted a court, called the District Court, charged with limited jurisdiction. It was an inferior court.

Upon the amalgamation of the Nigeria, Lord Lugard established for the whole country a Supreme Court<sup>14</sup> and for each province a Provincial Court<sup>15</sup>. The Supreme Court still functioned through the Divisional Courts and appeals lay from it to the full court; appeal lay from full court to the Privy Council<sup>16</sup> in 1933 after much criticisms against the Provincial Courts, it was abolished, and in its place was established the Protectorate Courts. The Protectorate Ordinance established two kinds of British Courts for the Protectorate namely, the High Court and Magistrate Courts, which were Superior and Inferior Courts, and the Magistrate Court is inferior to the High Courts. The Protectorate Courts were not subordinate to the Supreme Courts, though the latter. Court was restricted to Lagos in its territorial jurisdiction. Appeals lay from the magistrate courts to the High Court and from the High Court to the West African Court of Appeal: (WACA).

<sup>13</sup> Ibadan and Oyo Jurisdiction Ordinance 1904 (remained in 1908, The Yoruba Jurisdiction Ordinance. The Ijebu-Ode Jurisdiction Ordinance, 1909.

<sup>14</sup> Appeal to the Privy Council (Southern Nigeria)

<sup>15</sup> Order in Council

<sup>16</sup> The Supreme Court Ordinance 1914 (1923 Edition of the Laws of Nigeria) which established the first Supreme Court of Nigeria.

The WACA had been established in 1928, but it was only in 1933 that Nigeria accepted its jurisdiction. From W.A.C.A appeals lay to the Privy Council. The High Court has coordinate jurisdiction with the Supreme Court.

In 1943, further changes occurred due mainly to criticism from the indigenous lawyers; the High Court was abolished, and the jurisdiction of the Supreme Court was extended to cover the whole country. The Supreme Court now exercised both appellate and supervisory jurisdiction over Magistrate Courts. The West African Court of Appeal was retained as Court of Appeal from the Supreme Court. The High Court was to reappear in 1954 upon the introduction of the Federal Government in Nigeria with powers given to the legislature of each region to make laws for the good governance of the region. There was a measure of independence, while the Federal Government based in Lagos with a Federal legislature with unlimited legislative powers. All these changes are bound to have significant changes on the historical development of the court system in Nigeria. Each region also established its own Native or Customary Law under which it established its own Native or Customary Court.

### COURT SYSTEM UNDER THE FEDERAL CONSTITUTION

Upon coming into force of the 1954 Federal Constitution, each region (Western; Northern and Eastern Regions of Nigeria) was empowered to establish its own court. By virtue of the Regional Constitutions, each established its High Court, Magistrate Court, Customary or Native Courts as the case may be. Appeals lie from the High Court of a Region to Federal, the Supreme Court. The Privy Council still remained the highest court in the land until 1963 when the Constitution of that year was enacted.

The Federal Supreme Court consists of the Chief Justice of Nigeria and Federal Justices. The Constitution of the Federation provided for appeals from the Sharia Court of Appeal, lay to the Federal Supreme Court on disputes relating to the interpretation of the Constitution of the Federation with respect to Fundamental Human Rights, the Chief Justice of the Federation was appointed by the Governor – General in accordance with the advise of the Prime Minister. All the other Justices of the Federal Supreme Court were appointed by the Governor – General on the advise of the Judicial Service Commission. The Chief Justice of each Region was appointed by the Governor of the Region on the recommendation of the Premier, while the other Judges of the High Court of the State are appointed on the advise of the Judicial Service Commission of the Region. Customary Criminal Law was also finally abolished.<sup>17</sup>

<sup>17</sup> The Provisional Courts Ordinance 1914

The Federal Supreme Court serves as Appellate Court for the regional court as well as federal and is competent to interpret both regional and federal laws. Up till today there exists a close relationship between the States and Federal Courts; many have in fact advocated for a single federal court system for Nigeria. The close relationship is due to the following factors:

- a. From the history of the court system in Nigeria and the development of our Laws, it is noteworthy that the Regional Laws draw their source from the same received Laws and Federal Enactments; most of the Laws were merely renamed as State Laws. The decisions of the Regional High Courts are entitled to the greatest weight in other regions especially where the law remains the same. In criminal procedure, there is almost uniformity in the South, while in the whole North where Criminal Procedure Code 1960 has been enacted to replace the Criminal Code for that region, which in some respect differ from the Southern Criminal Procedure Law.
- b. This follows, that the interpretation of the law by the Federal Supreme Court will be applicable in all the courts of the Federation.
- c. The existence of a single Bar in Nigeria is also a unifying factor. Both the Judges and Lawyers belong to the same Bar, with the same training and any lawyer is permitted to practice anywhere in Nigeria. This is important as it helps to create a sense of unity amongst the Bar and Bench throughout the country.
- d. The Police which is the instrument of enforcing the sanctions handed down by the Courts is directly under the Federal Government. There is yet no State Police. It follows that order of Court in one State could effectively be carried out in another State. Closely related to this is the issue of service of processes the Federal Legislature has enacted a uniform regulations on service of processes.<sup>18</sup> The Sheriffs and Civil Process Act allows the Order of Judgement of High Court of a state to be registered in the High Court of another State and so executed by the bailiffs of that state. Though the Customary Courts judgements are exempted from the Sheriffs and Civil Process Act, yet there is a reciprocal enforcement of Customary Courts judgment in each State.

From the foregoing it is clear that though there are State Courts in Nigeria, they are merely for easy administrative purpose, though the State Courts still exists within a united hierarchy of court in Nigeria.

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<sup>18</sup> . The Nigerian Privy Council Appeals Order in Council, 1917.

## The Structure since the Second Republic to date

In this section of this paper it is intended to examine the present structure, by examining the courts within the context of Machinery of Justice in Nigeria.

### THE INFERIOR COURTS.

#### 1. Native And Customary Courts

The Native and Customary Courts in respective states are established under the Customary Courts Law for the respective States. Each Court is established not directly by the enabling Statute but by Warrants issued by the enabling authority. In the Eastern States the Commissioner for Justice, and in Lagos State the Attorney-General and Commissioner for Justice and in the Northern States by Warrant by the Chief Judge of the State.<sup>19</sup>

The warrant defines the jurisdiction powers, and quorum of the court, it established, and its provisions in that behalf are conclusive.

Native and Customary Courts are the responsibility of the Local Government Council.

Customary courts members including the Presidents are appointed by the Customary Courts Judicial Service Committee for the State.

*Qualifications for appointment are as follows:*

- i. He is literate in English Language
- ii. He possess at least the Primary School Leaving Certificate or its equivalent and suitable experience and
- iii. He is a native of the area of jurisdiction of the Customary Court.

A Customary Court has both civil and criminal jurisdiction. In certain civil matters the Customary court has unlimited jurisdiction i.e

- a. Matrimonial cases and other matters between persons married under customary law, that is matrimonial causes and related matters under customary law; and
- b. Suits relating to the guardianship and custody of children under customary law.

It has limited jurisdiction in (1) causes and matters relating to inheritance upon intestacy and the administration of intestate estates under customary law, and (2) other cases under customary law – provided the subject matter of the case does not exceed N100.00.

<sup>19</sup> The West African (Appeal to the Privy Council) Order in Council, 1930.

The Customary Court would exercise criminal jurisdiction in the following cases:

- a. Any offence against the provisions of an enactment, which expressly confers jurisdiction on the court.
- b. Offences against rules and bye-laws made by a Local Government Council or having effect as if so made under the provisions of any enactment and in force in the area of jurisdiction of the court.
- c. Contempt of court committed in the face of the court. With respect to jurisdiction over persons, Customary Courts have jurisdiction over all persons in their respective states.

### The Inferior Courts

There are four types of courts that could be regarded in Nigeria as inferior courts; while two, though strictly could not be regarded as a court *stricto sensu* but play important role in the machinery of Justice in Nigeria. In this sanction therefore we will examine the role of

1. Magistrate Courts
2. District Courts
3. Justice of the Peace
4. Juvenile Courts
5. Coroners Courts.
6. Arbitration Tribunals

We may hasten to explain from the onset, that in Nigeria, we have Superior or Inferior Courts of Record. Court of Record simply means courts that record its judicial acts and proceedings in writing or record book for permanent preservation and memorial. All courts in Nigeria today must record their proceedings in the Record Book of the court.

The former are Courts established under the Nigerian Constitution, and they have unlimited jurisdiction in terms of awards they can make. They also have the power to commit anybody for contempt committed either in the face of the court or out of the court. While inferior courts of record are limited in terms of awards and types of matters they can handle. They are much important in our machinery for Justice as they handle a substantial portion of disputes locally, and about 75% of matters both civil and criminal matters are settled at this level.

### Magistrate Courts.

Magistrate Courts are established and governed by the laws of the various States. In this paper, we will use Lagos State Magistrate Courts Law

(Cap 127), which fairly represents all the others as a case study.

### Composition:

In Lagos State the Chief Magistrates Court are graded, Chief Magistrate Grade 1,2; Senior Magistrate Grade 1,2; Magistrate Grade 1,2 and 3. A Court Registrar with the following duties serves every Magistrate.

- a. To attend at such sittings of the court as the Magistrate shall direct.
- b. To prepare or cause to be prepared Summons, Warrants, Orders, convictions, recognizes, writs of execution and other documents and submit the same for the signature of the magistrate.
- c. To make or cause to be made copies of proceedings when required to do so by the magistrate and to record the judgements, convictions and orders of the court;
- d. To receive or cause to be received all fees, fines, and penalties, and all other moneys paid or deposited in respect of proceedings in the court and to keep or cause to be kept accounts of the same, and
- e. To perform or cause to be performed such other duties connected with the court as may be assigned to him by the Magistrate.<sup>20</sup>

Every Magistrate are ex-officio Justice of the Peace in Lagos State and exercise all the powers of a Justice of the Peace<sup>21</sup>. The Judicial Service Commission is empowered to appoint a justice of the peace as a Magistrate by a Notice Published in the State Gazette.

*The Magistrate or Justice of the Peace has powers to:*

1. issue summons and warrants for the purpose of compelling the attendance of accused persons or persons as witnesses before the court;
2. issue summons and other process in civil causes and matters;
3. remand to the court persons who are accused but not convicted of crime; or admit them to bail,
4. issue search warrants,
5. take solemn Affidavits and Statutory declaration and
6. administer any oath which may be required to be taken before him in the exercise of any of the jurisdiction and powers conferred upon him by law.<sup>22</sup>

<sup>20</sup> See *Aoko v Fagbemi* (1961) All.N.L.R.400

<sup>21</sup> Sheriffs and Civil Process Act

<sup>22</sup> Area Courts Edict 1968 (No.4 of 1968) S3 (2)

### **Organisation.**

The whole State is divided into districts called Magisterial Districts. The Chief Judge of the State pursuant to powers conferred upon him to divide the state into Districts has by Lagos State Magistrate District Directions divided the whole State into 10 Magisterial Districts. These are

- (1) Lagos Magisterial District,
- (2) Surulere Magisterial District.
- (3) Yaba Magisterial District.
- (4) Apapa Magisterial District
- (5) Mushin Magisterial District
- (6) Ikeja Magisterial District
- (7) Badagry Magisterial District
- (8) Ikorodu Magisterial District
- (9) Epe Magisterial District
- (10) Agege Magisterial District

In practice today, Mushin and Agege Magisterial District are yet to be fully operational, and are still under Ikeja Magisterial District, while Surulere is still under Yaba Magisterial District.

### **Jurisdiction**

Every Magistrate shall have jurisdiction throughout Lagos State<sup>23</sup> A magistrates civil and criminal jurisdiction shall extend over any territorial water adjacent to the district in which for the time being he is exercising jurisdiction as well as over inland waters whether within or adjacent to such district <sup>24</sup>.

The Chief Magistrate Grade I shall have and exercise jurisdiction in civil causes or matters in all personal actions whether arising from contract or from tort, or from both where the Debt or Damage claimed is not more than N25, 000.00. The Magistrate has until the Recovery of Residential Premises Edict, has power over landlord and tenant matters. However, they could still adjudicate on landlord and tenant matters where the tenancy is over commercial premises only subject to the N25, 000.00 limits. This has been discovered lately to be too low and has divested the Magistrate Court of jurisdiction in a lot of minor cases that could easily have been handled by them, thus leading to congestion of the High Courts. However, by virtue of a new Law, Lagos State Magistrates Court (Increase In Civil Jurisdiction Amendment Notice 2001) the monetary jurisdiction the various cadres of magistrates courts in Lagos state has been increased to amounts ranging from N25,000.00 in the case of Magistrate grade 2 to N250,000.00 in

<sup>23</sup> See S S16

<sup>24</sup> S See S9

the case of Chief magistrate grade 1,25 the commencement date is 1<sup>st</sup> May 2001, The Magistrate shall observe and enforce the observance of every Customary Law which is applicable and is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of customary law<sup>25</sup>. It should be noted that all residents of Lagos State are subject to the jurisdiction of Magistrate Courts.

A magistrate is vested with powers to try criminal and civil cases summarily. Summary trial means with dispatch with minimum of formalities. Apart from capital offences, the magistrate may try any criminal matter provided the accused is properly given the option to choose summary trial before the magistrate or prefer his matter before the High Court.

The magistrate court lacks jurisdiction over land, matrimonial and succession matters.

The Chief Magistrate court entertain appeals from the Customary Courts, and the Chief Magistrate sits as an appellate court over appeals from the customary courts of the State.<sup>26</sup>

### **The Role of Magistrates in the Judicial System**

They act as the bridge between the Customary Courts and the High Court, the Customary Courts are concerned essentially with the administration of customary law and local enactments. Their personnel are untrained, and are generally non suitable for the enforcement or interpretation of serious laws but inconsequential enactments. The High Courts on the other hand are manned by lawyers and the procedure very elaborate, strict and formal. The personnel are highly trained individuals both in law and procedure. Thus, there is an obvious gap that must be filled by an intermediate court having a personnel neither completely untrained nor over – exalted, and a procedure which would be both simple and fast. Magistrate, also play very important role in maintaining peace and order in the society; as a peace officer, they also have powers to prevent breakdown of law and order in the society; they also administer oaths and take affirmations and declarations. Their role is so vital to the administration of justice considering the fact that majority of the criminal cases going before the High Courts are first charged before the magistrate court on a holding charge while proper charges are being preferred for the High Court. The police has no right of audience in the High Courts, the intermediate period, between the arrest and

<sup>25</sup> See S 8.

<sup>26</sup> See S40 (1) Customary Court Law Cap. 34 Lagos State



investigation and arraignment before the High Court which is normally preceded by the D.P.P.'s report, is taken care of by the matter being taken before the magistrate on a holding charge.

### District Courts

The District Courts are magistrate courts exercising only civil jurisdiction in the Northern Nigeria. They are graded Senior District Judge, District Judges grade I, II and III corresponding to the grades of magistrates. They have the same organization, and the magisterial districts serve as the districts for the district courts. The jurisdiction of the district courts is the same as the civil jurisdiction of magistrates in the rest of the country.

### Justices of the Peace

There are two classes of Justices of the Peace viz. ex-officio and ordinary Justices of the Peace. The Justice of the Peace need not be a magistrate in the first instance, he may be appointed as Justice of the Peace by publication in the state Gazette by the Attorney-General of the state. No qualification is legally required for appointment, but in practice a person to be appointed must reside in the area to which he is to be appointed and be worthy. The Justices of the Peace, are mostly Chiefs, retired top administrative officers and police officers considered capable enough to be entrusted with some of the judicial powers of a magistrate. A Justice of the Peace has the powers, rights and duties of a magistrate to:

- i. Issue summons and warrants for the purpose of compelling the attendance of accused persons as witnesses before a court.
- ii. Issue writs of summons and summonses in civil cases.
- iii. Remand to a magistrate's court persons who are accused, but not convicted of crime, or to admit them to bail.
- iv. Issue search warrants
- v. Take solemn affirmations and Statutory declarations
- vi. Administer any oath, which may be required to be taken before him in the exercise of any of the jurisdiction and power conferred upon him by law.
- vii. Power to preserve peace, to suppress riots and affrays, and to disperse all disorderly and tumultuous assemblies, and for any of these purposes call in the aid and assistance of police officers and others, who shall solely be bound to obey all such lawful commands.<sup>27</sup>

<sup>27</sup> See S. 13. Magistrate Courts Law CAP 127

- viii. Their main concern is with conservation of peace. In doing this he is entitled to call in the aid of the assistance of police officers. And who shall be bound to obey all such lawful commands. A justice of the peace does not act as a court and do not conduct trials.

### Juvenile Courts.

The first enactment for Juvenile Courts in Nigeria is the Children and Young Persons Ordinance 1943. This has been re – enacted and modified by the different States.<sup>28a</sup> A Juvenile court is established in every magisterial district in each state. The court is constituted by a magistrate sitting with such other persons as the Chief judge of the state may appoint<sup>28b</sup>. The Magistrate is the Chairman of the panel, with at least two other persons selected by the magistrate from time to time. The magistrate may sit alone where no panel of members has been appointed or where no member of the panel turned up at any sitting of the court and the magistrate thinks it inexpedient to adjourn the proceedings.<sup>29</sup>

Though the Juvenile Court is part of the magistrate court, in order to avoid contamination, it must sit in a separate place or at different times from these in or at which the ordinary sittings of 30 – The magistrate courts are held.

A juvenile court has jurisdiction to try all types of offences committed by the child i.e. children under the age of 14 and young persons i.e. children between the age of 14 and 18 years of age.<sup>30</sup> if jurisdiction has been assumed on the basis of the age, the trial may go on, even if it was later discovered otherwise. A juvenile court cannot convict or use the word convict in its sentence and no child shall be ordered to be imprisoned<sup>31</sup>. A juvenile court has power to commit a juvenile, by means of a corrective order, to approved institution, or a remand home, or to the care of any fit person who is willing to undertake his care, or to the supervision of a probation officer for a period not exceeding 3 years, or order his parents or guardian to pay a fine or enter into recognizance to exercise proper care and guardianship, or to order the juvenile to be caned. But a juvenile court must not sentence a juvenile to death or imprisonment, though a young person may be imprisoned if he cannot be suitably dealt with in any other way.<sup>32</sup>

<sup>28</sup> see for example a children and young persons law Cap. 25, Lagos State

<sup>29</sup> – see S 6V of Cap 25 Lagos State

<sup>30</sup> S4 of Juvenile Court Rules, Lagos State cap 25

<sup>31</sup> S2 of Children of young persons law cap 25 Lagos state

<sup>32</sup> S 12 of cap. 25 ibid

### Juveniles in need of Care or Protection:

#### WHERE WITHIN A LOCALITY, THE POLICE

May, even where the juvenile has not committed an offence but has reasonable ground to believe that the young person or child comes within the following description:

- a. Who is an orphan or is deserted by his relatives; or
- b. Who has been neglected or ill-treated by the person having the care and custody of such child; or
- c. Who has a parent or guardian who does not exercise proper guardianship; or
- d. Who is found destitute, and has both parents or his surviving parent undergoing imprisonment; or
- e. Who is under care of a parent or guardian who, by reason of criminal or unclean habits, is unfit to have the care of the child; or
- f. Who is found wandering and has no home or settled place of abode or visible means of subsistence; or
- g. Who is found begging or receiving alms or accompanies any person to beg or solicit for laws<sup>33</sup>
- h. Who is lodging or residing in a house or part of a house used by any prostitute for the purpose of prostitution or is otherwise living in circumstances calculated to cause encourage or favour the seduction or prostitution of the child or
- i. Otherwise exposed to moral danger etc. and such circumstances that may bring such a child before a juvenile court is rising daily<sup>33</sup>

The court may make corrective orders in respect of such juveniles<sup>34</sup>. A juvenile court may also make a corrective order to the same effect against an unruly juvenile brought before the court by his parent or guardian provided, the court is satisfied that it is expedient so to deal with him and that his parent or guardian understands the implications of such order and consents to making thereof<sup>35</sup>. The number of cases being handled by the juvenile court is rising daily.

### Coroners Court

The first law or coroners court was the Coroners Ordinance 1944.

<sup>33</sup> S 14 of cap 25 *ibid*.

<sup>34</sup> S27 of cap 25 Lagos State

<sup>35</sup> 27 (2) cap 25 law of Lagos State

Subsequently each region in Nigeria re-enacted their own law, and presently each state of the federation has its own Coroners law. A coroner's inquest may not strictly be called a court of law but every magistrate is permitted by law to hold inquests under the coroners law<sup>36</sup>

It is the duty of a coroner to hold an inquest whenever there is lying in his district the body of a deceased person who died a violent or unnatural death or a sudden death of which the cause is unknown or in a place or under circumstances which in the opinion of the coroner makes the holding of an inquest necessary and desirable.

An inquest must likewise be held in all cases of death in a lunatic asylum or of prisoners or persons in police custody<sup>37</sup>.

A coroners court is merely a fact finding body concerned with the ascertainment of the identity of the deceased and of how, when and under what circumstances he met with his death. A coroner does not commit anyone to trial even where it is discovered that such a person caused the death of the deceased. However, the coroner must stay his inquest, if he finds that criminal proceedings have been or about to be instituted against any person in respect of the death in question; or he comes to the conclusion that criminal proceedings ought to be instituted against such persons.<sup>38</sup>

The coroners inquisition including the depositions and the recognisance's of the witnesses, if any, shall be transmitted by the coroner with all convenient dispatch to the judicial division of the High Court in which the inquisition took place and the registrar of such division shall take charge of such proceedings.

Where the High Court upon something, the coroners inquest proceedings, in order to satisfy itself of the correctness, legality or propriety of any finding or verdict and as to the regularity of such proceedings<sup>39</sup> where it is not satisfied may.

1. Direct the inquest to be reopened for the taking of further evidence, or for the inclusion in the proceedings thereof and consideration with the evidence already taken, if any evidence taken in any judicial proceedings which may be relevant to any issue determinable at the inquest, and the recording of a fresh verdict upon the proceedings as a whole;
2. Quash the verdict in any inquest substituting therefore some other

<sup>36</sup> 29 Cap 25 Laws of Lagos State

<sup>37</sup> S 3 Coroners Law Cap 31 Law of Lagos State

<sup>38</sup> see S 4of Cap 31, Laws of Lagos State

<sup>39</sup> see S4 (a) and (b) Cap 31 Laws of Lagos State.

verdict which appears to be lawful and in accordance with the evidence mentioned above.

- iii. Quash the whole inquest, with or without ordering a new inquest.

### **Arbitration**

Arbitration Ordinance of 1914 was the first Arbitration law in Nigeria. It was re-enacted Arbitration Act of 1955 for Lagos, Eastern, and Northern Nigeria and Arbitration Law for Western Nigerian<sup>40</sup>.

Today we have the Arbitration and Conciliation Act Cap 476 of Laws of the Federation 1990. An arbitration takes place by the submission of a civil dispute between two parties to a third person, called the Arbitrator, in pursuance of a written agreement to submit present and future differences to arbitration.

The agreement normally names the arbitrator or the procedure for his appointment. The provision for the appointment of an arbitrator is binding on the parties to it, and the High Court or any court of law, lack jurisdiction in matters that ought to go to Arbitrator in the first instance, Arbitrator's award is binding upon the parties, and with the leave of the court or a Judge may be enforced 22 Cap. 8, Laws of Western Nigeria, 1959 in the same manner as a judgement or Order to the same effect.

Arbitration is a form of alternative dispute resolution and is gaining more ground especially in commercial transactions and highly technical agreements it's advantages are in its informality, privacy, its ready adaptability to the circumstances and convenience of the parties and its relative cheapness and time saving will make it more popular as an important aspect of the machinery of Justice in Nigeria.

### **THE SUPERIOR COURTS OF RECORD**

The Superior Courts of Record in Nigeria could also be classified into two, the Federal and State Courts consists of the following:-

1. The Supreme Court of Nigeria
2. The Court of Appeal
3. The Federal High Court
4. The High Court of Federal Capital Territory Abuja
5. The Sharia Court of Appeal of Federal Capital Territory – Abuja

*The State Court consists of the following:*

1. High Court of a State.

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<sup>40</sup> See S.28 (2) of cap 31, Lagos State.

2. Customary Court of Appeal of a State.

We also have some courts and tribunals which may not strictly fall within the two classes above but are no less important in the administration of justice in Nigeria – they are,

- 1 Election tribunals,
- 2 National Industrial Court.

### The Supreme Court of Nigeria

The law governing the Supreme Court derives from the following sources: -

- (a) The Constitution of the Federal Republic of Nigeria 1999. Which establishes the court, and prescribes the bulk of its jurisdiction and the method for the appointment and dismissal of Judges
- (b) The Supreme Court Act
- (c) The Supreme Court rules made by the court.

### Composition and Organisation of the Court

The Constitution of the Federal Republic of Nigeria provided for a Court consisting of the Chief Justices of Nigeria, and such number of Justices of the Supreme Court not exceeding twenty-one as may be prescribed by an Act of the National Assembly.<sup>41</sup>

The number of Justices of the Supreme Court had been increased from the former limit of 10<sup>42</sup>. The Chief Justice of Nigeria shall be appointed by the President on the recommendation of the National Judicial Service Commission subject to confirmation by the Senate<sup>43</sup>. The appointment to the office of Chief Justice of Nigeria is therefore not at the discretion of the President, but is based on the recommendation of the National Judicial Service Commission subject to the confirmatory power of the Senate. The minimum qualification of the Justice of the Supreme Court is fifteen-year post call as a legal practitioner. The Supreme Court for the purpose of exercising jurisdiction over any matter shall be duly constituted if it consists of not less than five Justices of the Court, while for the purpose of exercising jurisdiction over appeals under the Fundamental Human Rights Provisions<sup>44</sup> or in the exercise of its original jurisdiction<sup>45</sup> the court shall be properly constituted when Seven Justices sit.

<sup>41</sup>Supreme Court Act, 1960 (No 12 of 1960) S 3 (1) as amended by the Supreme Court (Amendment Decree Act) 1977 (No 72 of 1977).

<sup>42</sup> – See S. 231 26. S 233 (2) (b) (c), (27) S 232

<sup>43</sup> (1981) 2 N.C.L.R. 786

<sup>44</sup> 1979 Constitution

<sup>45</sup> S. 232 Provision

The Supreme Court now sits at Abuja the Nations Federal Capital.

The court is served by Registrars and other administrative personnel; the head of the administrative section is the Registrar of the Supreme Court.

### **Jurisdiction**

The Supreme Court is the final Court of Appeal in Nigeria and the decision of the court is final binding on all parties. In effect no appeal from the decision of the court. The court has both original and appellate jurisdiction. As we have discussed above, the Supreme Court has original jurisdiction over any dispute between the Federation and a State, or between the federation and a state, or between states if and in so far as that dispute involves any question (whether law or fact) on which the existence or extent of a legal right depends. In addition, the National Assembly may add not detract from the original jurisdiction of the court, to what is the position, where the dispute is between the chief executive of a government and another, or between the Arm of Federal Government and a State.<sup>46</sup> Adefarasin J, in the case of *Governor of Kaduna State v the President of Nigeria* <sup>46</sup> in trying to answer the above stated as follows

“It seems to me that S 212 <sup>47</sup> is designed as well to cover only dispute between one government and Government. I consider also that any dispute between one arm of a government against one arm of another government comes within the preview of S212 (1) of the Constitution. I also consider that a dispute between the Chief Executive of the Federation and the Chief Executive of a State will also be covered by the provisions of S212 (1) provided such a dispute raises question of law or fact touching upon a legal right”.

The Supreme Court may not exercise original jurisdiction over Criminal matters <sup>48</sup>.

### **Appelate Jurisdiction**

The Supreme Court, to the exclusion of any other court in Nigeria has jurisdiction to hear and determine appeals from the Court of Appeal. Appeals lie from the Court of Appeal either as of right or by leave of the Supreme Court or

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<sup>46</sup> S 233 (2) (f) that suggests such

<sup>47</sup> S233

<sup>48</sup> S233 (2)

Court of Appeal. Appeals lie as of right from the decisions of the Court of Appeal to the Supreme Court in the following cases:-

- (a). Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings
- (b). Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- (c). Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter IV of the Constitution has been is being or is likely to be, contravened in relation to any person;
- (d). Decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has confirmed a sentence of death imposed by any other court.
- (e). Decisions on any question: -
  - i. Whether any person has been validly elected to the office of President or Vice – President or under the Constitution
  - ii. Whether the term of office of President or Vice-President has ceased
  - iii. Whether the office of President or Vice – President has become vacant and
- (f). Such other cases as may be presented by an Act of the National Assembly.

In all other cases, appeal from the decision of the Court of Appeal<sup>49</sup> to the Supreme Court shall be with the leave of the Court of Appeal or the Supreme Court<sup>50</sup> Appeals can only lie from decisions of the Court of Appeal to the Supreme Court. And from no other Court in Nigeria. The law after specifying the cases where appeals may i.e. to the court as of right in S 233 (2) went on to state that all other cases must obtain leave of Court, before appeal may be entertained, the leave must first be sought from the Court of Appeal before the party may apply to the Supreme Court. All interlocutory appeals fall within this category. Appeals must also be by the parties to the appeal or at the instance of any other person interested in the matter.

And in the case of criminal proceedings at the instance of an accused person or the Attorney – General of the federation or state<sup>51</sup>

It is noteworthy, that only the National Assembly may extend the cases where appeals may lie as of right to the Supreme Court.

<sup>49</sup> S233 (5)

<sup>50</sup> See Akande; *Introduction to the Constitution of Nigeria* 1999. P350, where the learned author suggested that S 222(2) (f) empowered a State to extend the Appellate Jurisdiction of the Supreme Court

<sup>51</sup> the Supreme Court Rules



No State may extend the appellate jurisdiction of the Supreme Court, and there is nothing in S 233 (2) (f) that suggests such<sup>52</sup>

### **Practice and Procedure.**

S236 empowers the Chief Justice of Nigeria to make rules for regulating the practice and procedure of the Supreme Court. Pursuant to this, the Supreme Court rules had been made to aid the internal organization of the machinery of Justice at the Supreme Court<sup>53</sup>

### **The Court of Appeal.**

The Court of Appeal is established under S 237 of the 1999 Constitution and is the next Court in the hierarchy of Courts in Nigeria. Other laws are the Court of Appeal Act 36 and Court of Appeal Rules<sup>54</sup>

### **Composition and Organisation of the Court:**

*The Court of Appeal consists of the:*

(a) President of the Court of Appeal

(b) Such number of Justices of Court of Appeal not less than forty – nine of which not less than three shall be learned in Islamic Personal Law, and not less than three shall be learned in customary law, as may be prescribed by on Act of the National Assembly<sup>55</sup>.

At the level of the Court of Appeal, the Justices of the Court of Appeal must include at least three Justices learned in Islamic law and three in Customary Law. This will take care of appeals coming from Customary Court of Appeal of State or Sharia Court of Appeal as the case may be.

The President of the Court of Appeal is appointed by the President of Nigeria on the recommendation of the National Judicial Council subject to the confirmation of such appointment by the Senate while appointment of the Justice of the Court of Appeal is made by the President on the recommendation of the National Judicial Council<sup>56</sup>. The constitutionally recognized qualification for a Justice of the Court of appeal is twelve-year post qualification as a legal practitioner. The qualification of the President of the Court is not started in the Constitution though it may be argued that the same qualification as applies to the Justice of the Supreme Court should apply to the President of the Court of

<sup>52</sup> Cap. 75, Laws of the Federation 1990

<sup>53</sup> Cap. 62, Subsidiary Legislation under the Constitution of the Federal Republic of Nigeria.

<sup>54</sup> see S 237 (1) (2)

<sup>55</sup> see S. 288

<sup>56</sup> See. S 1 of the President of the Court of Appeal.

Appeal, as they are rated in most cases equal 40. For ease of administration, the Court of Appeal is divided into divisions, spread throughout Nigeria. Today there are 10 divisions of the court<sup>57</sup> each division serving one or more state as follows:-

<b>Judicial Divisions</b>	-	<b>States</b>
1. Abuja	-	Abuja, Kogi, Niger
2. Lagos	-	Lagos
3. Kaduna	-	Jigawa, Kaduna, Sokoto, Kano, Katsina, Yola, Kebbi, Sokoto, Zamfara.
4. Enugu	-	Anambra, Ebonyi, Enugu
5. Ibadan	-	Ogun, Osun, Oyo
6. Benin	-	Delta, Edo, Ondo
7. Jos	-	Adamawa, Bauchi, Benue, Borno, Gombe, Nasarawa, Plateau, Taraba, Yobe.
8. Port Harcourt	-	Abia, Bayelsa, Imo, Rivers.
9. Ilorin	-	Kwara, Ekiti
10. Calabar	-	Cross-River, Akwa Ibom.

The court will be duly constituted to hear and determine appeal if it consists of not less than three Justices of the court<sup>58</sup>. Where the appeals originate from a Sharia Court of appeal, the Justices must be learned in Customary Law.

### Jurisdiction

The Court of Appeal is principally an Appellate Court and exercise Jurisdiction over appeals from the Sharia Court of Appeal, Federal High Court and High Court of a State,<sup>59</sup> however, S 239 now confers on the court original jurisdiction in respect of Election petitions arising from election to the office of President or Vice-President, their term of office and vacancy of the office the court was established under Constitution (Amendment) No.2 Decree 1976 exclusively as an appellate court, but the position has been thus altered.

### Appeals

Appeals to the Court of Appeal may be classified into two, Appeals as of right and Appeals by leave of the court or the lower court.

#### Appeals as of Right:

S241 of the Constitution of Nigeria 1999 specifies circumstances when appeals shall lie as of right from the decision of the High Court and the Federal

<sup>57</sup> See Government notice of 2<sup>nd</sup> Jan. 1999 signed by M.M.A. Akanbi - President of Court of Appeal

<sup>58</sup> S247

<sup>59</sup> See S240

High court, High Court of Federal Capital Territory, Abuja, as follows:

- a. Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.
- b. Where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings.
- c. Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution.
- d. Decisions in any civil or criminal proceedings on questions as to whether any of the provisions of chapter IV of this Constitution has been, is being or is likely to be contravened in relation to any person.
- e. Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death;
- f. Decisions made or given by the Federal High Court or High Court.
  - a. Where the liberty of a person or the custody of an infant is concerned.
  - b. Where an injunction or the appointment of a receiver is granted or refused
  - c. In the case of a decision determine the case of a creditor or the liability of a contributor other officer under any enactment relating to companies in respect of misfeasance or otherwise
  - d. In the case of a decree wise in respect of misfeasance or otherwise
  - e. In such other cases as may be prescribed by any law in force in Nigeria.
- g. There is absolutely no right of appeal where (a) the High Court has granted an unconditional leave to defend an action.
- h. Where a Decree absolute of a divorce or multiply has been granted in favour of a party and the other party did not appeal while the order was still a *decree nisi*
- i. Decision based on the consent of the parties cannot be challenged on appeal except with the leave of either the High Court or Court of Appeal, or appeals as to costs only.

*Appeals with leave*:- like the Supreme Court, appeals lie to the Court of Appeal from the High Courts, with the leave of either the High Court or the Court of Appeal<sup>60</sup>, in all other cases. The practice is to first seek the leave of the High Court, to appeal, and when such is refused, the appellant may then apply to the Court of Appeal. For leave to Appeal.

It is important to state that only parties to suit may appeal or in cases

<sup>60</sup> See S 242

where there are interested parties, then they must first apply for leave to appeal to the High Court or the Court of Appeal.<sup>61</sup>

### **Appeals from Sharia Court of Appeal and Customary Court of Appeal**

Appeals lie from the Sharia Court of Appeal of a State to the Court of Appeal in any civil proceedings before the Sharia Court of Appeal with respect to any question on Islamic personal law, which the Sharia Court of Appeal is competent to decide. The Sharia law is essentially Islamic Civil Law, the Court of Appeal will therefore not be competent to entertain any appeal on Islamic Criminal Law like the one now introduced in some Northern states.<sup>62</sup>

### **Appeals from Code of Conduct Tribunal and Other Courts or Tribunals**

Appeals shall lie as of right from the decisions of the Code of Conduct Tribunal to the Court of Appeal, appeals shall also lie to the Court of Appeal from the decisions of National Assembly Election Tribunals, Governorship and legislative Election Tribunals.<sup>63</sup>

The National Assembly is also conferred with powers to extend the jurisdiction of the Court of Appeal to determine appeals from decisions of any other Court of law or tribunal established by the National Assembly.<sup>64</sup>

### **Importance of the Court of Appeal**

The Court of Appeal is a very important Court in the machinery of justice in Nigeria, unlike the Supreme Court that sits only in Abuja, the Court of Appeal has its divisions closer to the states and thus affords more citizens the opportunity to appeal when aggrieved against any decision of the High Courts. Being a Federal Court, and or even appellate one at that, the allegations of corruption is non-existent there, and many litigants are satisfied with the decisions. It also helps to limit the number of cases going to the Supreme Court, as majority of the cases terminate at the Court of Appeal is not worth it.

That unlike the Supreme Court, the Court of Appeal has experts in both Sharia and Customary law for proper adjudication on matter arising from the Sharia Court of Appeal of state and Customary Court of Appeal of the states.

### **The High Courts**

In this section, we shall examine the Federal High Court, The High Court of the States and the High Court of Federal Capital Territory.

<sup>61</sup> See S 243

<sup>62</sup> See S 244

<sup>63</sup> See fifth schedule, S 15(1) of the Constitution.

<sup>64</sup> S 246

### **The Federal High Court**

The Federal High court took its origin from the then Federal Revenue Court established by Federal Revenue Court ACT, 1973, in order to simplify the machinery of Justice in Nigeria, the Constitution Drafting Committee of the 1979 Constitution simply named the Federal Revenue Court as Federal High Court with its jurisdiction and powers unaltered<sup>65</sup>. It was thus a court of limited jurisdiction. A complication was introduced by Decree 107 of 1993 which seems to enlarge the jurisdiction of the Federal High Court and also stated that all

Matters involving the Federal Government and its agencies must to the exclusion of any other court be determined by the Federal High Court.

However, under the 1999 Constitution which we now examine the position seems to have been corrected and streamlined.

### **Constitution and Organisation**

The Court is constituted by a Chief Judge of the Federal High Court and other Judges of the court appointed by the President, in the case of the Chief Judge on recommendation of the National Judicial Council subject to the confirmation of the Senate, while others do not need Senate confirmation, the minimum qualification of the Chief Judge and other Judges of the Court is Ten years post call as a legal practitioner.

There is established in each State of the Federation a division of the Federal High Court. The court is properly constituted, if it consists of at least one Judge of the Court,<sup>66</sup>

### **Jurisdiction**

S 525 of the Constitution spell out the civil and of the 1999 Constitution criminal jurisdiction of the court they include the following causes and matters.

- a. Relating to the revenue of the Federal Government
- b. Taxation of companies and persons subject to Federal Taxation.
- c. Customs and excise duties, claims against customs service.
- d. Borrowing and other financial institutions actions between two banks, or Central Bank of Nigeria and matters arising out of Banking related issues and other fiscal measures, this does not include Banker/ customer disputes
- e. Matters arising from the operation of Companies and Allied Matters

<sup>65</sup> See S 230(1) of 1979 Constitution. See also S 7(1) of the Act No. 13 of 1973.

<sup>66</sup> S 253

- Act and other Allied issues
- f. Copyright, patent designs trade marks and posing – off, Industrial designs and merchandise marks business names, commercial and industrial monopolies, combines and trusts standards of goods and commodities and industrial standards.
  - g. Admiralty, supply and migration matters inland waterways and the international waterways, Federal Ports, and consular trade representation.
  - h. Citizenship, naturalisation and aliens, deportation, extradition immigration, passports and visa matters.
  - i. Bankruptcy and insolvency
  - j. Aviation and safety of aircraft
  - k. Arms, ammunition and explosives
  - l. Drugs and poisons;
  - m. Heights and measures
  - n. The administration or the management and central of the Federal Government or any of its agencies
  - o. Proceedings for injunction or devature affecting the Federal Government or its agencies.

The Federal High Court also have exclusive jurisdiction and powers in respect of treason, treasonable felony and allied offences.

The interpretation of the jurisdiction of the Federal High Court has been the subject of a plethora of cases mainly due to the vague and ambiguous manner the jurisdiction of the court was couched<sup>67</sup> *University of Abuja v Oloye* (1969) 4NWLR (pt-445) 706 etc

For the purpose of exercising the jurisdiction, the Federal High Court shall have all the powers of the High Court of a State. The court also has its own Rules of heart made by the Chief Judge under S 254 for practice and procedure in the court.

### The High Court of a State and High Court Of Federal Capital Territory

The High Court is at the head of the judicial system in each state and the Federal Capital territory. Its authority derives from the Constitution and the High Court Laws setting it up.

<sup>67</sup> So See- *Mundara v A.G. of the Federation* (1984) ISCNI.R 311, *Tukur v Government of Gongola State* (1989) 4NWLR (P-117) 517.

## Constitution

The High Court consists of the Chief Judge of the State and each member of Judges as may be presented by the House of Assembly of the State. The Chief Judge is the head of the State Judiciary and he exercises administrative control over the entire system, though his judicial powers is not greater than those of other Judges of the High Court; all of whom enjoy equal judicial power and authority.

For the exercise of its original and appellate jurisdiction, a single judge constitutes the High Court, except in the Northern States where the court must sit with three judges on appeals.

Each High Court also have a Chief Registrar who assists the Chief Judge in administrative matters. He is also responsible for the organisation of non – judicial matters like filling of papers in court, taxing and costs, general supervision of the staff, and holidays. The appointment to the office is a stepping-stone for appointment to a Judgeship. In some States, he is also the probate Registrar, while some appoint separate probate Registrars<sup>68</sup>.

The appointment of the Chief Judge of a State is made by the Governor of the State on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State; while the appointment of a Judge of the High Court is made by the Governor acting on the recommendation of National Judicial Council<sup>69</sup>. The minimum qualification for appointment as a Judge of the High Court is Ten years post qualification as a legal practitioner in Nigeria<sup>70</sup>.

## Organisation:

High Court of a State is organised on a territory basis, The State is divided into Judicial Divisions each of which have one or more judges of the High Court constitute the Judicial Division of the State High Court. There is only one High Court of a State, the Judicial Division are merely created for administrative purposes. The Courts are numbered serially, while in most States, the number 1 court is preserved for the Chief Judge in terms of judicial duties and functions, the Judge of the High Court in Nigeria is a special person, he is an expert in all areas of law, and must adjudicate on all matters assigned to him. This has created a lot of problems and it is still a recurring problem today. In England the position is entirely different, the High Court operates through three divisions, viz: the Queens Bench Division which handles mainly common law

<sup>68</sup> *Bank Motors Ltd v Westminster Bank Ltd* (1983) SCNI.R 297

<sup>69</sup> S251 deals with Jurisdiction of the Federal High Court of legal rights, duties, privileges etc.

<sup>70</sup> *R v Sussex Justices ex. P. McCourthy*, (1924) 1K.B.256 at P.259 per Lord Hewart C.J

matters, (contract and tort) the Chancery Division with Jurisdiction over trust, property and equity cases generally and the Probate Divorce and Admiralty Division<sup>71</sup>

This has helped the Judge as well as the law in England, it has enabled the Judges to deal with areas of their greatest interest, and naturally made them experts. This may not be very easy in Nigeria due to great distance between the judicial divisions, the number of Judges and courts available and lack of communication facilities. In Lagos State, the court is now gradually being organised to enable its work be allocated between its judges according to their specialised interests.

### Civil and Criminal Jurisdiction

S272 (1) of The Constitution states 'subject to the<sup>72</sup> provisions of this constitution, the High Court of a State shall have jurisdiction to hear and determine only civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine only criminal proceedings involving or relating to any penalty, punishment or other liability in respect of an offence committed by any person.

The High Court thus have original and appellate jurisdiction in both criminal and civil proceedings. The jurisdiction of the High Court in all matters is unlimited. This means that the court is not limited by monetary limitations unlike the Magistrate Courts, and subject to these areas specifically reserved under S251 for the Federal High Court, and other election matters which is the exclusive preserve of Election Tribunals, the High Court has jurisdiction to try any form of issue or matter so far as it relates to determination or extent of a civil right.

### Supervisory Jurisdiction of the High Court

The High Court exercises supervisory jurisdiction over the lower courts to ensure not only that justice is done but is seen manifestly to have been done<sup>73</sup>

A mistake as to facts or law committed by a lower court or failure to observe a fundamental rule of evidence, corruption, obvious bias, or failure to observe rule of national justice could lead to miscarriage of justice. The High Court supervises the lower courts in various ways, these are:-

1. Appeal
2. Case stated

<sup>71</sup> See S 272(1) of the Constitution.

<sup>72</sup> S see Jackson,

<sup>73</sup> S.260



3. Review by means of mandamus, prohibition, certiorari and habeas corpus proceedings
4. Revision through monthly returns submitted by inferior courts.
5. Transfer of cases from one court to another.

Though, in recent times, the use of Fundamental Human Right Proceedings under the Constitution has overshadowed the use of habeas corpus proceedings

### **The Sharia Court of Appeal**

The Constitution made provisions for Sharia Court of Appeal for the Federal Capital Territory<sup>74</sup> and the State<sup>75</sup> the Constitution and jurisdiction are virtually the same

### **Constitution**

The court is constituted by the Grand Kadi of the court and such number of kadis of the court as may be prescribed by the House of Assembly in the case of a State<sup>76</sup> and National Assembly in cases of Federal Capital Territory (F.C.T.)

The appointment of the Grand Kadis is made by the Governor acting on the recommendation of the National Judicial Council and confirmed by the Senate<sup>77</sup>. The appointment of other kadis made by the Governor on the recommendation of the National Judicial Council in case of a State<sup>63</sup> While that of the F.C.T. is made by President on the recommendation of the National Judicial Council<sup>78</sup> The minimum qualification for the appointment into the office of a Kadi of the Sharia Court of Appeal is ten years post – qualification as a legal practitioner and the person must have obtained a recognized qualification in Islamic Law from an institution acceptable to the National Judicial Council<sup>79</sup>, or in the alternative, the person has obtained a recognised qualification in Islamic Law from an institution approved by the National Judicial Council and has held the qualification for a period of not less than two years, and (i) he either has considerable experience in the practice of Islamic Law, or (ii) he is a distinguished scholar of Islamic Law<sup>80</sup>.

The implication is that the Kadi of the court need not be a lawyer

<sup>74</sup> S.275

<sup>75</sup> S. 275(2)(13)

<sup>76</sup> S.276(1)

<sup>77</sup> S.276(2)

<sup>78</sup> S.261(1)

<sup>79</sup> s.261 (2)

<sup>80</sup> s 276 (3) (a)

provided he has attended an Islamic training institution approved by the National Judicial Council and has considerable experience, though the measure of this considerable experience is not specified; he could in fact need no use any of the above but merely prove that he is a distinguished scholar of Islamic Law. Islamic Law itself is regarded as Customary Law, or rules stated in the Koran quoting devoted Muslims. The rule itself only binds those people subject to it and no others person therefore, the Kadi need not be a lawyer person, or trained under English law, and the Rules of Evidence may not be strictly applicable in such court. The only reason why this court was established under the Nigeria Constitution is to enable these State who wish to practice Islamic Law take the option.

### **Jurisdiction**

It is essentially an appellate court, and sits over appeals from inferior courts in civil proceedings involving questions of Islamic personal law<sup>81</sup>, these include: -

- a. Marriage concluded under Islamic Law, validity, dissolution of the marriage, family relationship or guardianship of an infant
- b. Succession inheritance where the deceased person is a Muslim
- c. Where all the parties to a dispute are all Muslims and have requested the lower court to determine their case according to Islamic<sup>82</sup> Personal Law.

There is absolutely nothing under the Constitution that permits the Sharia Court of Appeal hear or determine Islamic Criminal law.

Three Kadis constitutes a court<sup>83</sup>. The practice and procedure of the court is regulated by its practice and procedure rules made by the current Kadi of the State.<sup>84</sup> In Nigeria today, the Sharia Court of Appeal exists in all the Northern States, and each Northern State has adopted the Sharia Court of Appeal Law 1960 of the Northern Region.

### **Customary Court of Appeal of a State and Customary Court of Appeal of the Federal Capital Territory**

The Constitution also established the Customary Court of Appeal of the State<sup>85</sup> and FCT.<sup>86</sup> The judicial head of the Court is the President of the

<sup>81</sup> S. 276 (3) (b) ; S 261 (3) (b)

<sup>82</sup> - S.277 (2) S 262 (2)

<sup>83</sup> - S 278.

<sup>84</sup> S 279

<sup>85</sup> S 280 (1)

<sup>86</sup> S 265 (1)

Customary Court of Appeal and other Judge of the Customary Court of Appeal as may be prescribed by the House of Assembly<sup>87</sup> or National Assembly in case of FCT. The Provision for the establishment of the customary Court of Appeal in both FCT and the State are identical.<sup>88</sup>

The President of the Court is appointed by the Government of the State on the Recommendation of the National Judicial Council subject to confirmation by the House of Assembly<sup>89</sup>, while the Judges of the court are appointed by the governor of the State on the recommendation of the National Judicial Council.

The minimum qualification for appointment is ten years post-qualification as a legal practitioner and considerable knowledge and experience in the practice of customary law or any one who in the opinion of National Judicial Council has considerable knowledge of and experience in the practice of Customary Law<sup>90</sup>.

### **Jurisdiction**

The court exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary Law. The court entertains appeals from customary courts within the state, and it is properly constituted where three Judges of the court sit over an appeal.

### **Election Tribunals**

The Election Tribunals are established under the Nigerian Constitution to take care of election petitions.

The Court of Appeal has already been constituted into the Presidential Election Tribunal.

The National Assembly Election Tribunal<sup>91</sup> shall have exclusive original jurisdiction to hear and determine petitions relating to elections into the National Assembly<sup>92</sup>. while each State is to establish one or more election tribunals known as Governorship and Legislative Tribunals which shall have original Jurisdiction to hear and determine petitions as to whether any person has been validly elected into the office of Governor, or Deputy – Governor<sup>93</sup> or as a member of the any legislative house.

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<sup>87</sup> S. 280 (2) (b)

<sup>88</sup> S. 265 (b)

<sup>89</sup> S. 281 (v)

<sup>90</sup> S. 281 (3), S. 266 (3) (b)

<sup>91</sup> S. 285 (1)

<sup>92</sup> S. 285 (1) (a), (b), (c), (d).

<sup>93</sup> Note that nobody carries and separate election into the office of deputy Governor of a State and cannot be challenged, as he is a nominee of the Governor.

## Constitution

The court shall be properly constituted when the Chairman and four other members sit on a matter <sup>94</sup>, through the quorum in is chairman and two other members <sup>95</sup>. The Chairman of the Election Tribunals and the other members shall be judges of the High Court, Kadics or Judges of the Customary Court of Appeal. <sup>96</sup>

## Other Important Parts of the Machinery of Justice in Nigeria

In this section we intend to highlight in brief the roles of the legal profession, police and the judiciary in the Machinery of Justice in Nigeria.

### LEGAL PROFESSION:

Lawyers are important contributors to the smooth running of the machinery of justice in any civilized Nation. Law is the primary machinery, those who profess and study the law are vital part of the machinery, without the lawyer, it is absolutely impossible for the wheel of Justice to run if it could ever move at all.

*The lawyer functions in various ways*

1. He advises people and the Government on the making of the laws, its interpretation and application.
2. By his training, he is most suitable to appreciate a judge to adjudicate in the interpretation of law, and settling disputes between citizens as well as between Governments
3. The lawyer represents litigants in courts and help them to present their cases in most logical manner and according to the law.
4. The lawyer also helps in educating the public on their rights, duties and privileges under the law.
5. The Bar also supplies the personnel for the Bench called the Judiciary and also many members of the Bar are now employed as legal advisers to organisations, companies and parastatals, companies and parastatals of Government.

The lawyer therefore is the soul of the whole machinery of Justice without which, justice will breakdown.

Before 1968, only persons who practised as Barristers or solicitors in England, Scotland or Ireland were admitted to practise in Nigeria under the 1968 Legal Practitioners Act,

<sup>94</sup> – 6<sup>th</sup> Schedule

<sup>95</sup> – S 285 (4)

<sup>96</sup> – 6<sup>th</sup> Schedule

*the qualifications to practise are:*

The candidate must

1. Be a citizen of Nigeria
2. Satisfy the chief Justice that he is a good character and
3. Predict a qualifying certificate issued by the Council of Legal Education certifying that;
  - a. He has attended an approved course of examination taken in conjunction with the approved course of study; and
  - b. That he holds, approved qualification by virtue of study and
  - c. That he has successfully completed a course of practical training for one year of the Nigerian Law School.

The Council of Legal Education<sup>97</sup> is the sole authority in Nigeria saddled with education of lawyers and maintains high standards in lawyers training in Nigeria.

## JUDICIARY

The judiciary refers to the whole body of lawyers who preside at the courts. The term therefore includes: Judges of the superior courts, and those of inferior courts – Magistrates and Upper Area Courts.

Judges are appointed from the Bar, it is an honour and it is believed that appointment into the Bench is seen as an acknowledgement of having achieved distinction in the profession. Appointments into the higher bench like the High Court is mainly from Magistrates, Registrar of the High Court, State Councils and practicing legal practitioners. While that of the higher bench – the Court of Appeal and Supreme Court are mainly from the High Courts; and Court of Appeal as the case may be. In Nigeria today, all appointment into the Superior Courts are done on the recommendation of the National Judicial Council; whose duties include general scrutiny, investigation and assessment of each nominee into the Bench.

### Independence of the Judiciary

Independence of the judiciary is necessary to safeguard the whole system from being put to ridicule and disgrace. The independence of the judiciary is best safeguarded by the manner of discipline, removal of Judges and emoluments of the judicial officers.

The Constitution made specific provisions for the retirement of Judges. In the case of Supreme Court and Court of Appeal Justices the retirement age

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<sup>97</sup> Legal Education Act 1962

has been increased from 65 to 70 years while others is 65 years,<sup>98</sup>

On removal of judges from office, the Constitution classified them in two categories (1) Chief Justice of Nigeria, President of Court of appeal, Chief Judge of Federal High Court, Chief Judge of High Court of F.C.T., Grand Kadi of the Sharia Court of Appeal of F.C.T., President of Customary Court of Appeal of F.C.T could only be removed by the President acting on address supported by two – thirds majority of the Senate<sup>99</sup> while those of the States by the Governor acting on address supported by two – thirds of member of the House of Assembly<sup>100</sup>. While other shall be on the recommendation of the National Judicial Council that he be so removed for inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for his conduct or contravention of the Code of Conduct. Why the disparity in the cadre of Judges who could be removed through the National or State Assembly and those that will not have such privilege?. It will seem to make some judges more secure than other<sup>101</sup>, misconduct is not defined here, but contravention of Code of Conduct, should mean that the judicial officer have been found guilty by the Code of Conduct Tribunal; more allegation should not suffice.

However, no Judges could appear before a court in Nigeria after retirement. The Constitution used the phrase "*for any reason whatsoever*"<sup>102</sup>. Does this preclude a retired Judge from defending himself in a court? He cannot practice as a legal practitioner in / before any Court in Nigeria.

The retired judicial officer is also guaranteed the payment of pension, which is equivalent to his salary till he dies if he has served for 15 years, and attained the 65 years retirement age<sup>103</sup>. This also ensure peace of mind and discourages fear of poverty during retirement that could force some Judges to be corrupt in trying to save extra for their retirement.

## POLICE:

The Nigerian Police is established by virtue of S 214 of the Constitution. It is responsible for the prevention of crime, and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of lives and property and the enforcement of all laws and regulations made by the

<sup>98</sup> - S.291 (1)

<sup>99</sup> S.292(1) (a) (i)

<sup>100</sup> S.292(1) (a) (ii)

<sup>101</sup> See. Akande, Introduction to the Constitution of Nigeria 1999 2000.P.407

<sup>102</sup> See S.292 (2)

<sup>103</sup> .

Federal and State Government and bye laws made by the Local Government authorities<sup>104</sup>

The Police also helps in the enforcement of judicial order and judgments. Their role is very crucial in the administration of criminal justice – in the lower courts; they are the prosecutors in those courts and present criminal trials.

The police investigates allegations of crime, and submit the results of their investigations to the Ministry of Justice for advice and further action without the input of the police in criminal investigation criminal trials, would have been non-existent

### **CLOGS IN THE WHEEL OF PROGRESS**

It is most disheartening and distressful that the machinery of Justice in Nigeria is still clogged by various reasons which in most cases have nothing to do with the law itself but with the administration of Justice itself. Kayode Eso JSC (as he then was) commented on the state of the Judiciary as follows: *"I think it is most disgraceful that the administration of Justice in the country should be clogged in any manner"*<sup>105</sup>. We will in this section, examine some of the clogs in the wheel of the machinery of Justice in Nigeria. The clogs could be seen from three angles, (1) the lawyers (2) The Courts (Judges and Court staff) (3) the litigants.

#### **1. The Role of Lawyers:**

The lawyers are active participants in the temple of justice, and it needs, discipline, honesty, integrity and good conduct from lawyers to make the wheel of justice to move in Nigeria today it is worrisome that a lot of lawyers have taken it upon themselves to subvert the cause of justice and deliberately set out to destroy the very foundation of the profession in which they earn their living. It is unfortunate that most lawyers do not ever bother to examine the Rules of Professional Conduct of their profession, and even when they realize the unprofessional conduct they engage themselves, they persist, as there is no serious machinery to discipline them.

Many lawyers engage in bribing the Judges to get what they want, present fake defendants in court, and refusal to serve the proper defendants. This practice led the Lagos State Judiciary to demand for passport photographs from the Defendants before they enter judgments. Use of the court process to abuse the court, causing inordinate delays by the use of crass applications,

<sup>104</sup> - See Akande Op.cit p.326.

<sup>105</sup> - *The State v Aibangbe & Obasuyi* (1988) 3 NWLR (pt 84) at 548

filling of useless motions, writing letters for adjournments and lying as to their whereabouts; many are ready to disgrace their profession in order to "eat", many prefer to stand at the court premises to engage in "charge and bail" most of these "charge and bail" lawyers will even go on to connive with the Magistrates and Police to refuse bail in order to increase their fees! Many lawyers choose their courts through the connivance of court Registrars and even Judges!

These are attitudes and behaviour that bring the profession to ridicule and make the ordinary man in the public lose confidence in the machinery of justice and tend to push people to the law of the jungle.

## 2. The Courts (Judges and Registrars)

The courts are not left out. The court Registrars are serious impediments in the wheel of judicial progress. Many will never move court processes unless they are bribed, there have been cases where files have disappeared<sup>106</sup> after bail was granted. Many Registrars fall into the habit of not listing cases coming up in court thereby causing embarrassment for the court and litigants.

Many of our Judges are highly intelligent and hardworking, a few had constituted themselves into problems to the Judiciary. In the Kayode Eso led panel set up to investigate the activities of Judges and Magistrates inaugurated on 29<sup>th</sup> December 1993 indicted forty – seven Judges for unethical behaviour, persistent reputation for corruption, ineptitude resulting in low productivity, mal – administration and lack of leadership by example, those include, "the negative public perception of the judiciary, exemplified by complaints and allegations of polarisation along tribal or political leaning, corruption, and high profile lifestyles of some Judges, long period of time in the disposition of case, high cost of obtaining Justice, mode of appointment of Judges and their terms and conditions of service etc"<sup>107</sup> we need not say more on this.

## 3. Litigants:

Many litigants also contribute to the clog in the wheel of progress. Some in fact approach judges to bribe them in order to obtain judgement. Many are in the habit of persuading their lawyers to help them in choosing their courts. Many, will refuse to pay their lawyers properly to enable the lawyers present their cases diligently in court preferring instead to bribe the judges and court officials. Many are in the habit of changing lawyers at will in order to delay matters in court.

<sup>106</sup> - See *The State v Aibagbe & Obasuyi* op cit.

<sup>107</sup> - See *Nigerian Magazine Scrutiny* in of vol. 2 No 9 September 1999



### Reflections on Reform

Having identified some of the problems in the machinery of Justice in Nigeria, the last part of this paper is devoted to suggestions for reforming the system. Reformation is aimed at making the machinery of justice achieve its purpose. The law, as we have seen above is not entirely the problem, but the large number of people, both the operators (lawyers, Judges, court registrars etc) and the public at large who are bent on perverting the whole system and creating a scenario of machinery of justice being used to perpetuate injustice.

The aim of reformation may not necessarily involve amending the law as such, except for those areas that has created loopholes for exploitation by agent of destruction in the society. The making of new laws to block the loopholes or creating a whole machinery to check miscreants has been adopted in the past, and is not only costly, but diversionary. The problem is that the same Nigerian will be called upon to effect the changes envisaged.

Reform, must also be people and justice oriented, a system that may be put in place to check abuse of judicial process which in itself will involve inordinate delays, bureaucracy and thereby encourage inefficiency is a problem created not solved. The cost of trying to block loopholes that allows for corruption of judicial officers is so enormous that it would have been better to leave the situation as it is, reform should be approached in three dimensions from the law point of view, the judicial officers i.e. judges and the staff of the judiciary and the litigants.

The law I believe is adequate in many respects. The law as we have it today have evolved over years of use, and has been amended as occasion demands, using experience from other lands and local experience as well. However, the rules of court should be made less cumbersome, in filing of cases, and the rules regarding trials should be less stringent and should make less room for adjournments during trials.

There are cases that went on for more than 10 years while taking evidence. The use of interlocutory appeals to delay the course of justice should be discouraged or minimized. More use should be made of the Rules of court as regard summary judgements, so that issues that are not in disputes could easily be settled without going into extensive trials over non-issues

The Judges remuneration should be upgraded to minimize corruption, and those found corrupt should be quickly removed to avoid the spread of the cankerworm. When, they know that the cost of accepting bribe is that great they will be careful. The Judges should also be monitored in terms of the number

of cases they dispose off in a month or yearly.

The case of *ex parte* rulings to perpetuate injustice should also be discouraged; and injunctions should be granted on very rare occasions. Judges should respect decisions of their brother Judges, even though they are of coordinate jurisdiction, but many Judges are found of giving contrary Rulings all in order to embarrass the judiciary. The examples are during the political problems engendered when Gen. Babangida the former military president of Nigeria did not wish to leave office, some Courts in Abuja gave Rulings stopping the publication of the results of the June 12, 1993 election while others in Lagos and Oyo state were busy giving Rulings to continue the announcements. The President Babangida in his speech gave as reason for the annulment the various Rulings of court, and in order to save the judiciary the election was annulled.

Any judicial officer found demanding for bribe before doing his legitimate duties, or those who will never wish to do their duties until encouraged with monetary gifts should be removed from the office immediately.

The litigants, normally will not give when there is no demand, or when the files are moved appropriately, it is when there is a problem that generally people will want to use money or other inducements to advance their causes.

There should be public enlightenment that any one caught bribing a judicial officer will be punished by the law.

Generally, there should be continuous training for Judges and other Judicial officers, and the appointments into the Higher Bench should be by merit.

### **Conclusion.**

In this paper we have been able to trace the historical basis of the legal system in Nigeria up to the present day.

The machinery of justice in Nigeria is intricate and complex, yet to the operators is very simple and straight forward, and from the Constitutional point of view, caters for all aspects of our society and people, either Sharia, Customary or English Law no one can complain that he has not been afforded the proper judicial process to entertain his claims. It is left for all the participants in the judicial process to make sure it works. The wheel of justice may be made faster, but surely it is moving it has not broken down progress may be slow, it could be made faster, but surely it is moving, it has not broken down.