Public Law

Reflections on Some Aspects of the Jurisdiction of the Federal High Court under the Nigerian 1979 and 1999 Constitutions: One or More High Courts?

Taiwo OSIPTAN[1], Abiodun ODUSOTE[2]

Abstract: This research makes enquiries on the jurisdictional conflicts under the 1999 Constitution of Nigeria. The central issues in the jurisdictional conflicts under CFRN are two-fold. They are: whether the Federal High Court has jurisdiction in all cases involving the Federal Government or any of its agencies, irrespective of the subject matter of the case or whether the jurisdiction conferred on the Federal High Court is exclusive to the Court or is concurrently shared with other High Courts. A related problem is whether the jurisdiction conferred on the Federal High Court is restricted to those specific causes, listed in Section 251 or extends to all matters within the legislative competence of the National Assembly. The interpretation and application of this provision have generated, and continues to generate the jurisdictional crisis. The conflicts have further deepened with the recognition of the National Industrial Court as a Court of co-ordinate status as the Federal and State High Courts. This paper examines some of the jurisdictional conflicts which have arisen in the jurisprudence of these courts. The problems associated with adoption of dual system of High Courts are thereafter examined. The paper ends with a discourse on the desirability of one or two or three High Courts within the Nigerian judicial system. The paper concludes that the existence of three High Courts within the Nation's judicature raises question of desirability or otherwise of more than one High Court in a judicature which has only one Court of Appeal and only one Apex Court which entertains appeals from the three trial Courts. In the final analysis, the paper makes a proposal for the merger of all trial courts to form a National High Court or High Court of the Federation.

Keywords: Jurisdictional conflicts; Federal High Court; State High Court; National Industrial Court; Exclusive List

JEL Classification: K10

[1] University of Lagos, Nigeria, Address: Akoka-Yaba, Lagos, Nigeria 120105, Tel.: +234 1 734 6830, E-mail: tosipitan@unilag.edu.ng.
[2] University of Lagos, Nigeria, Address: Akoka-Yaba, Lagos, Nigeria 120105, Tel.: +234 1 734 6830, Corresponding author: aodusote@unilag.edu.ng.

1. Introduction

Nigeria attained a full Federal status in 1954 as a result of the creation of Regional Governments and a Central Government. Federal principles were introduced into the Nation's Judicial System in 1973 when the defunct Federal Revenue Court was established. Prior to the establishment of the Court, Regional and State Courts exercised jurisdiction over all causes and matters. The Revenue Court was established against the background, of the need to determine *"with dispatch"* cases involving the revenue of the Federal Government, which the State High Courts were *"too tardy"* in dealing with. It is noteworthy, that the Court was established in spite of opposition and criticisms which greeted the proposal for its establishment. After its establishment attempts were made to abolish the Court. There have also been efforts to either reduce or expand the jurisdiction of the Court. For example, an attempt to expand the scope of the court's jurisdiction to dispute between a bank and its Customer in pure Banking transaction-related dispute was rightly rejected by the Supreme Court in *Jammal Steel Structures* v. *ACB Ltd.* (1973)1 ALL NLR (Part 1) at P. 222; 1973 II SC P. 77. It is gratifying that the Court survived the onslaught of advocates of its abolition. Under the 1979 Constitution, the Court was renamed Federal High Court. The Federal High Court inherited the jurisdiction of the defunct Federal Revenue Court. The renaming of the Court, subsequently resulted in the attempt to expand the scope of its jurisdiction beyond Federal Government's Revenue Matters to causes involving the Federal Government and its Agencies, as well as Matters within legislative competence of the National Assembly. These attempts resulted in some jurisdictional crisis. Since its establishment there has been one controversy or the other on the court's jurisdiction. The jurisdictional relationship of the Federal and State High Court has attracted endless controversies (Osipitan, 1983). There are currently High Courts of Co-ordinate jurisdictions under the 1999 Constitution as amended. These are: Federal High Court, the National Industrial Court and the State High Courts/High Court of Federal Capital Territory. The existence of these Court has generated and will continue to generate jurisdictional conflicts. (Ogungbe, 1992; Dinakin, 1990)

The objective of this paper is to examine some of the jurisdictional conflicts which have arisen as a result of the establishment of the Federal High Court. This paper focuses on aspects of the court's jurisdiction with respect to some Causes involving Federal Government and its Agencies. The jurisdiction of the Federal High Court under Section 251(1),(P),(Q),(R) & (S) and 251(2) & (3) are critically x-rayed

below. These provisions are examined against the backdrop of decisions of the Court of Appeal and the apex Court. The problems associated with adoption of dual system of High Courts are thereafter examined. The paper ends with a discourse on the desirability of one or two or three High Courts within our judicial system. The jurisdictional conflicts are examined below in two phases. These are the conflicts under the 1979 Constitution and the post 1979 Constitution era. The provisions of the Constitution (suspension and modification) Decree No. 107 of 1993 and the present 1999 Constitution as interpreted by the Courts are critically examined. The definition of jurisdiction, its nature and fundamental importance, are necessary foundation in the discussion on the various jurisdictional conflicts. These preliminary issues are examined below.

2. Nature, Importance and Definition of Jurisdiction

It is trite, that there is no universally agreed definition of jurisdiction. Jurisdiction can simply be defined as the power of a court to entertain a suit brought before it for adjudication by litigants. Jurisdiction is the foundation of litigation. It is the life wire of any Suit. Where there is no jurisdiction, the case is dead on arrival in court. In the case of *Ogunmokun* v *Milad of Osun State* (1993) 3 NWLR (Pt. 594) 261 at 265 jurisdiction was defined as "…the basis, foundation and life wire of access to court in adjudication under the Nigerian Civil Process." The term jurisdiction has two connotations. In the general sense, it means the abstract right of a court to entertain matters before it. In the particular sense, it is the right of the court to decide matters litigated before it or to take cognizance of matters presented in the formal way for its decision. It is trite, that jurisdiction must be expressly conferred by statute. Therefore, there can be no jurisdiction by inference. Clear and express words are required to confer jurisdiction on a Court. A Court either has or lacks jurisdiction. The jurisdiction of a Court can either be an exclusive or shared/concurrent jurisdiction. In the former, only the court vested with exclusive jurisdiction can entertain a cause. In the latter, more than one Court can deal with a cause of action. The jurisdiction of a Court, with respect to a cause can either be original or appellate. It can also be supervisory jurisdiction, in the sense that the Court is empowered to supervise inferior courts and tribunals through the use of prerogative powers/reliefs of mandamus, prohibitions and mandamus. All superior courts of record have inherent jurisdiction. However, inherent jurisdiction is neither a substantive nor distinct jurisdiction. It is not capable of giving rise to a separate

jurisdiction. It is a supplementary jurisdiction exercised by the Court in the exercise of its substantive jurisdiction.

There is also ancillary jurisdiction. A Court which has substantive jurisdiction may be conferred with ancillary jurisdiction over matters which are ordinarily within the jurisdiction of another Court. A ready example is the provision of the 1999 Constitution, which gives State High Court ancillary jurisdiction over Federal Causes, which arise in the course of exercising jurisdiction over causes within its substantive jurisdiction, under the law of a State. Substantive jurisdiction should also be distinguished from procedural jurisdiction. The former is traceable to either the constitution or a Law passed by the legislature. The latter is usually rooted in the rules of Court and practice direction. The latter is also adjectival, in the sense that it is a rule of practice and procedure, while it is possible to waive the latter, in the sense that parties can by consent waive non-compliance with its requirements, the former is not waive-able. There is also territorial jurisdiction, which often mandates the courts in deciding propriety of venue to sue either between Nigeria and another country or between one state of the Nigerian Federation and another state to have regards to choice of jurisdiction rules under conflict of laws whether at common law or under extant statutes. The guidelines for determining a Court's jurisdiction was laid down by the Apex Court in *Tukur* v *Govt. of Gongola State* (1989) 2 NWLR (Pt. 117) p. 517. The fundamental importance of jurisdiction can be appreciated against the backdrop of it being the special cord, blood and life of litigation. It is the foundation on which every other processes or proceeding rests. Without jurisdiction, litigants, lawyers, court officials and judicial, officers, involved in a particular case will labour in vain. A case which supports the fundamental importance of jurisdiction is the case of *Jeric Nigeria Limited* v. *Union Bank of Nigeria PLC* (2000) 12 SC (Pt. II) 133 at 137 in that case it was held that:

There is no doubt that in our adversary system of adjudication the question of jurisdiction is very fundamental. In fact it is so fundamental that the adjudicating Court should determine the issue first before starting any proceedings. And if the Court proceeded and it was found that the Court had no jurisdiction in the matter all the proceedings however will conducted amount to nothing and are a nullity. It is also trite Law, that the issue of jurisdiction can be raised at any time by a party even on appeal in the Supreme Court as was done in this Case.

Finally, where a Court finds that it lacks jurisdiction to entertain a cause, it should ordinarily strike out the Suit as opposed to its outright dismissal. Section 22 of the

Federal High Act empowers the Court to transfer a case which is not within its jurisdiction to a State High Court. The provision has attracted two divergent views. There are those who endorse the power to transfer a Suit to State High Court where the Federal High Court finds that it lacks jurisdiction. The other School is of the view that transfer of a case is an exercise of judicial power. Consequently, once there is no jurisdiction, the Court lacks the power to transfer the Suit to the State or any other Court. The Plaintiff must commence a fresh Suit in appropriate Court. Antagonists of Section 22 argue against the backdrop of Federal Principles. They contend that in a Federation each Federating tier of Government is sovereign within its area of competence. Therefore, no sovereign is at liberty to impose obligation on another sovereign. Transfer of a case from Federal to State High Court is therefore seen as an imposition of duty by a Federal on a State High Court. This is antithetical to Federal principles. It suffices to say that the two schools have judicial backings. It also suffices to state that the discussion in this paper centers on substantive jurisdiction of the Federal High Court under the 1979 and 1999 Constitutions.

3. 1979 Constitution

Under the 1979 constitution, there were conflicting decisions of the Court of Appeal on the subject matter jurisdiction of the Federal High Court over Federal causes. This resulted in the then Court of Appeal being unable to properly guide the Federal and State High Courts on the issue of jurisdiction. The source of the conflict was Section 230(1),(b) of the Constitution. The bone of contention was whether the provision conferred immediate or future jurisdiction on the court, with respect to matters within the legislative competence of the National Assembly. Section 230(1),(b) of 1979 constitution provides:

Subject to the provisions of the constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have jurisdiction in such other matters as may be prescribed with respect to the National Assembly powers to make Laws.

In the case of *Federal Minister of Internal Affairs & 3 others* v *Shugaba (*1982) NCLR 915, the Respondent instituted the suit at the Borno State High Court against the President of Nigeria and the other officials of the Federal Government. The Suit was to enforce his right as a Citizen of Nigeria to move about within Nigeria without being hindered and his right as a Nigeria not to be excluded from

Nigeria through a deportation order. Citizenship was evidently within the legislative competence of the National Assembly by virtue of being an item on the Exclusive Legislative List. Against this backdrop, the Appellants challenged the jurisdiction of the Borno State High Court to entertain the Suit. Appellants argued that causes on Exclusive Legislative List are triable by Federal High Court. The jurisdiction of the State High, to entertain an action instituted against agents of the Federal Government was also questioned by the Appellants. The Kaduna division of the Court of Appeal (by a majority decision) held that the State High Court had jurisdiction to entertain the suit, notwithstanding that the Defendants are Agents of Federal Government and that Citizenship which was a cause of action, was within the exclusive legislative list of the National Assembly under the 1979 Constitution. A contrary decision was arrived at by Lagos judicial division of the Court of Appeal in the case of Eze v. Republic (1987) NWLR (Pt. 51) 506. The issue in that case was whether it was the Federal or State High Court which has jurisdiction to try the Respondent who had been arraigned for unlawful importation and possession of fire arms. The Court held that because arms, ammunitions and explosives were listed on the Exclusive Legislative List of the 1979 Constitution, the Federal High Court had exclusive jurisdiction over the charge. On appeal to the Supreme Court, the Court held that the Federal High Court could not entertain a case for wrongful possession of firearms because s. 230(2) only permitted the Federal High Court to entertain criminal law derivations of the 'then few federal items' listed in s. 230(1). In the case of *National Assembly* v *Tony Momoh* (1982), the Lagos Division of the Court of Appeal upheld the exclusive jurisdiction of the Federal High Court in an action for the enforcement of fundamental right which was instituted against the Senate of the National Assembly. The case was decided on the basis of Federal principles, namely, that in a Federation each Government is sovereign and no sovereign will exercise jurisdiction over another unless there is submission to jurisdiction. No appeal was filed against the decision of the Court of Appeal in the *Shugaba's case*. Therefore, the Supreme Court did not have the opportunity of testing its correctness or otherwise.

The attempt in the case of *Dr. Olu Onagoruwa* v *President of the Federal Republic of Nigeria* (1982) to have the case stated to the Supreme Court in order to resolve the conflicting decisions of the Court of Appeal on the issue of jurisdiction was aborted by the Lagos division of the Court of Appeal which held that there was no legal basis for reference to the Supreme Court. It was until the case of *Bronik Motors Ltd* v *WEMA Bank Ltd*. (1983), and subsequent decision in *Savannah Bank Ltd* v *PAN Atlantic Shipping Agencies Limited* (1987) that the Supreme Court was

opportune to offer proper guidance on the proper interpretation of Section 230(1),(b) and 236(1) of the 1979 Constitution which were the sources of the conflicting decisions of the Court of Appeal on the issues of jurisdiction of the Federal High Court. Prior to the above cases, conflicting decisions of the Court of Appeal on the jurisdiction of Federal High Court gave Federal and State High Courts the liberty to pick and choose which of the conflicting decisions of the Court of Appeal to follow. Hear the lamentation of Eso J.S.C of blessed memory in *Bronik Motors case*:

The Federal Court of Appeal has for sometimes now given conflicting decisions on the issue of jurisdiction and this has left the State High Courts which should in lieu of the decision of this Court be guided by the Federal Court of Appeal. The States and Federal High Courts have as a result thereof been at large on the issue, each judge therein taking its own decision on which of the conflicting decisions of the Federal Court of Appeal to follow (1983) 6 SC.

Adenekan Ademola, JCA reminded the High Courts of their right to pick and choose which of the conflicting decisions to follow when he said:

There are two new conflicting decisions of this Court on the issue of jurisdiction. The State and Federal High Courts are free to choose which of the decisions they would follow. This situation would be with us for sometime in the hope that the situation would give rise to a quick decision by the Supreme Court on the matter.

Jinadu. J sitting at the Lagos Judicial division of the High Court of Lagos State in the case of *Dele Giwa* v *I.G.P.* (1982) reviewed the conflicting decisions in Shugaba and Tony Momoh cases and rightly concluded, that he had the right to pick which of the conflicting decisions of the Court of Appeal he would follow. He followed the Shugaba's case and held that he had the right, to entertain the case of the plaintiff despite the fact that the defendant was a Federal Agent. It is gratifying, that in the Bronik Motor's case, the Supreme Court held that contrary to the decision of the Lagos division of the Court of Appeal, section 230(1),(b) of 1979 constitution did not confer immediate jurisdiction on the Federal High Court with respect to causes or matters within the legislative competence of the National Assembly. Section 230(1),(b) was upheld as a provision which enabled the National Assembly to in future pass legislation conferring jurisdiction on the Federal High Court in respect of causes within the legislative competence of the National Assembly. In effect, Federal High Court was to remain a Court of Limited original jurisdiction. In the case of *Savannah* v *Pan Atlantic Shipping Agencies Ltd* (1987) the Supreme Court went a step further, when it held that the jurisdiction of

the Federal High Court under the 1979 constitution and the enabling Law was non-exclusive, consequently whatever jurisdiction was conferred on the Federal High Court was to be shared concurrently with the State High Court whose unlimited jurisdiction under Section 236(1) of the 1979 Constitution was upheld by the Supreme Court.

The questions which greeted the decision of the apex court in the *Pan Atlantic Shipping Agencies Case* was why have a Federal High Court, if all its jurisdiction are also shared concurrently with the State High Court? The implication of the Supreme Court's decision in the above case is that while all jurisdiction of the Federal High Court are within the unlimited jurisdiction of State High Court, none of the jurisdiction of the State High court was brought within the scope of the limited jurisdiction of the Federal High Court by the Supreme Court. The Supreme Court's decision in the *Pan Atlantic Shipping Agency Case* evidently threatened the existence of the Federal High Court to its foundation. The case attracted criticisms and praises simultaneously. Osipitan (1987) reasoned that not only was the decision patently wrong, it amounted to an act of judicial legislation. The opportunity to revisit and reverse the uncomfortable decision of the Supreme Court in the case arose in 1993 when the Constitution (suspension and modification) Decree No. 103 of 1993 was enacted. That Law confirmed the exclusivity of jurisdiction conferred on the Federal High Court. It also specifically spelt out the expanded jurisdiction of Federal High Court.

4. 1999 Constitution

Section 251 of the 1999 Constitution restates the exclusive jurisdiction conferred on the Federal High Court by Constitution (suspension and modification) Decree No. 107 of 1993. These are the provisions through which the jurisdiction of the Federal High Court was expanded beyond causes dealing with Federal Government Revenue, Banking and other Fiscal Measures and Admiralty as conferred on the Court by its enabling Law. The framers of these provisions had hoped that all the controversies on the scope of the Federal Jurisdiction, of the Federal High and the exclusivity of the Court's Jurisdiction would be rested. Regrettably, these provisions have fostered the development of another phase of jurisdictional tussle between the States and Federal High Courts. The relevant provisions of the 1999 Constitution which are in pari-materia with the provisions of the Constitution (suspension and modification) Decree No. 107 of 1993 examined in this paper are:

251(1) Notwith standing anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in Civil causes and matters.

(p) The administration or management and control of the Federal Government or any of its agencies.

(q) Subject to the provisions of this Constitution, the operation and interpretation of this constitution in so far as it affects the Federal Government or any of its agencies.

(r) Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies; and

(s) Such other jurisdiction Civil or Criminal and whether to the exclusion of any other Court or not as may be conferred upon it by an Act of the National Assembly provided that nothing in the provisions of paragraph (p),(q) and (r), of this subsection shall prevent a person from seeking redress against the Federal Government or any of its agencies in any action for damages injunction or specific performance where the action is based on any enactment, Law or equity.

Section 251(2) The Federal High Court shall have and exercise jurisdiction and power in respect of treason, treasonable felony and allied offences.

251(3) The Federal High Court shall also have and exercise jurisdiction and powers in respect of Criminal Cases and matter in respect of which jurisdiction is conferred by sub-section (1) of this Section."

The interpretation and application of the above provisions have generated, are still generating and would continue to generate the jurisdictional crisis. The conflicts would be further deepened with the recent recognition of the National Industrial Court as a Court of co-ordinate status as the Federal and State High Court. The National Industrial Court not only has exclusive jurisdiction over Labour Law issues and industrial relations, it is also vested with jurisdiction to try issues of infraction of fundamental rights which arise from Industrial/Labour Law related disputes.

5. Federal Agencies

In paragraph (p),(q),(r), and (s) of Section 251(1) of the 1999 Constitution, the phrase Federal Government or any of its agencies" is a recurring decimal. There are evidently three tiers of government recognized by the Constitution. These are Federal, State and Local Governments. It is evidently not difficult to identify Federal Government as the Central Government with its capital located at the Federal Capital Territory Abuja. While identification of Federal Government presents no difficulty, this cannot be said of identification of agencies of the Federal Government. The importance of indentifying whose agency or agent a body or person is, is of fundamental importance for the purpose of deciding jurisdiction of the Federal and State High Courts. This is because the provisions of Section 251(1),(p),(q),(r) & (s) can only be activated in favour of Federal High Court's jurisdiction, where the Agency that is suing or being sued (provided the subject matter of the action falls within Section 251(1) of the 1999 Constitution) is an agency of the Federal Government. Therefore, where the agency or official suing or sued is not an agency of Federal Government or did not act as agency of the Federal Government at the relevant time which resulted in the cause of action, the Federal High Court will lack jurisdiction to entertain the Suit under Section 251(p),(q),(r) & (s).

Take the case of *Okoroma* v *Uba* (1999) as a case study. The issue was whether a Police Officer who was implementing the directive of the State Governor acted as an agent of the State or Federal Government. The question that arose in the course of determining it was whether it is the State or Federal High Court that had Jurisdiction over the dispute. It was held by the Court of Appeal that the Police Officer who implemented the directive of a State Governor was not acting as an Agent of the Federal Government. He acted as the agent of the State Government. Consequently, State and not Federal High Court, was the proper forum to litigate the cause of action against such a police officer. The Court reasoned thus:

A police officer is capable of enjoying dual status when he is complying with the directions of the Governor of a State with respect to maintaining and securing public safety and public order within the state, he is an agent of the state and not an agent of the Federal Government even though he is the servant of the Federal Government. On the other hand, where he is complying with the directions of the President in maintain and securing public safety and public order issued to the Inspector General of Police, then he is acting as an Agent of the Federal Government. In the instant case, the 2nd – 6th Respondents were securing public

safety, public order in Enugu State either on the special or general directions of the Governor of the state and were for that purpose agents of the state. *Military Administrator of Kwara State* v *Lafiagi* (1998) 7 NWLR (Pt. 557)213.

In the above case, the Court further held that "on denotative meaning of "agencies" under section 230 of the Constitution (suspension and modification) Decree 107 of 1993 –The word "agencies" used in Section 203(1),(q),(r) and (s) of the constitution (Suspension and modification). Decree 107 of 1993 denotes the Federal Government establishments or organs through or by which the Federal Government carries out its functions. It has consequently been held that the Independent Electoral Commission, *AD* v. *INEC* (2004), a University, *University of Abuja* v. *Ologe* (1996) and Central Bank of Nigeria are all agencies of the Federal Government. Actions by or against these institutions must therefore be commenced in the Federal High Court. However, our Appellate Courts are unprepared to hold that a Limited Liability Company in which the Federal Government has controlling shares is an agency of the Federal Government. And if we may ask is INEC which conducts election into elective positions at Federal and State level an agency of the Federal Government, with the result those actions by or against the Commission should commence in Federal High Court? The name INEC suggests that it is conceived as an independent body by virtue of section 158 of the Constitution. The Commission is neither a Federal nor a State agency. INEC is a National agency with power to conduct elections throughout the Federation. It is therefore not an agency of the Federal Government. Peter-Odili JSC expressed a contrary opinion in *Salim* v *Congress for Progressive Change* (2013) at p. 16, he stated that: "the Independent Electoral Commission (INEC) is an agency of the Federal Government". He further held that in pre-election matters both the Federal High Court and States High Court have jurisdictions to try the matter by virtue of S. 87 (9) of the Electoral Act 2011. Peter-Odili JSC expressed the view that if not for the Electoral Act, the Federal High Court would have had exclusive jurisdiction By virtue of Section 153, INEC is an agency established for the federation.

The central issues in the jurisdictional conflicts under the 1999 Constitution are two-fold. They are whether the Federal High Court has jurisdiction in all cases involving the Federal Government or any of its agencies, irrespective of the subject matter of the case or whether the jurisdiction conferred on the Federal High Court is exclusive to the Court or is concurrently shared with other High Court. A related problem is whether, the jurisdiction conferred on the Court is restricted to those specific causes, listed in Section 251 or extends to all matters within the legislative

competence of the National Assembly. The word "notwithstanding" which appears in Section 251(1) and the words "subject to" which appears in Section 272 of the Constitution have been rightly interpreted as conferring exclusive jurisdiction on the Federal High Court in civil cases in respect of matters enumerated in Section 251(1) of the 1999 Constitution. Section 230(1),(q),(r) and (s) of 1979 Constitution as amended by Decree 107 of 1993 was tested in the case of *NEPA* v *Edegbero* (2002). The Respondents who were staff of the defunct NEPA had their employment terminated. They challenged the Respondent's decision to terminate their employment. The High Court of Niger State was forum of their choice for instituting the action. The case was tried. In the final address, Appellants' Counsel argued that the Court lacked jurisdiction because the action was against an agency of Federal Government. The issue of jurisdiction consequently occupied center stage in the High Court, Court of Appeal and Supreme Court. Ogundare J.S.C, of blessed memory, was not in doubt that the issue at stake centered on party jurisdiction. The result was that once one of the parties is the Federal Government or any of its agencies, the Federal High Court has exclusive jurisdiction regardless of the subject matter of the Suit (cause of action). Hon. Justice Tobi in his supporting judgment, while agreeing that the cause of action fell within the exclusive jurisdiction of the Federal High Court adopted a different approach. His Lordship insisted that not only must the party be a Federal Agency, the subject-matter of the Suit, must be one of the causes listed in Section 251(1) of the Constitution. Interestingly, both Ogundare's endorsement of party jurisdiction and Tobi's party and subject-matter jurisdiction are supported by the decisions of the Supreme Court and Court of Appeal. The result is that lawyers and Judges of the High and Appellate Courts will until the conflicts are settled by the Supreme Court pick and choose which of the conflicting views to embrace. In the case of *Inegbedion* v *Dr. Selo-Ojemen* (2013), the causes of action were negligence, defamation and breach of doctor/patient relationship. One of the parties (2nd Respondent) was admittedly an agency of the Federal Government. The action was instituted in the Ekpoma Division of the High Court of Edo State. The Respondent challenged the jurisdiction of the High Court of Edo State to entertain the suit which was instituted against an agency of Federal Government. The objection was sustained by the Court of Appeal and Supreme Court. Alagoa, JSC held that:

The effect of Paragraph (p),(q) and (r) of Section 251(1) of the 1999 Constitution is to vest exclusive jurisdiction on the Federal High Court over all civil causes and matters in which the Federal Government or any of its agencies is a party. See *NEPA* v *Edegbero* (2002) 103 LRCN 2280 at 2281-2282; (2002) 18 NWLR

(Pt.798) 79 Muhammad JSC also lent his weight to subject-matter jurisdiction when he held that:

The law is unequivocally stated by the 1999 Constitution (as amended) in Section 251(p),(q),(r) and by this court that where in a matter, one of the parties is the Federal Government or any of its agencies, it is only the Federal High Court that has exclusive jurisdiction. A State High Court lacks jurisdiction to entertain such matter. See NEPA v Edegbero (2002) 18 NWLR 7 (Pt. 789) p. 79. Mohammad JSC further stated in *Adetayo* v *Ademola* (2010) 38 WRN 79:

On the face of the provision of the Constitution, it appears that impression has been created that the Federal High Court has exclusive jurisdiction to the exclusion of all other courts in Nigeria in any civil cause or proceedings in which the Federal Government or any of its agencies is a party. However, a very close, careful and proper interpretation or construction of the provisions would show that this is not necessarily the true position. This is because in my view, it is the facts and circumstances of each case that determines. The need to examine the parties in the litigation as well as the subject matter of the litigation was strongly advised for close scrutiny (supra).

The above decision was also followed by the Court of Appeal in *ALI* v *CBN* (1997). The exclusive jurisdiction of the Federal High Court in disputes involving Federal Government or any of its agencies was upheld by the Court of Appeal per Ogebe JCA (as he then was) thus:

In *FGN* v *Oshiomole,* Salami JCA upheld the exclusive jurisdiction of the Federal High Court to entertain the suit because the Federal Government of Nigeria and another functionary are parties to the action. "Ariwoola JC" The proviso in paragraphs (r) and (s) do not derogate from the exclusive jurisdiction conferred on the Federal High Court. It is quite clear from the claims of the appellant before the trial court that the substance of his claim was for unlawful dismissal. The question of breach of his constitutional right is merely ancillary. Assuming therefore (but not holding) that the State High Court may have jurisdiction to entertain the main claim of unlawful dismissal which entirely has to do with the administration or the management and control of a Federal agency. Since the Federal High Court has jurisdiction to entertain both aspects of the claim, constitutional and contractual, it is clear that the proper court to entertain this matter is the Federal High Court and not the State High Court.

A (as he then was) endorsed party jurisdiction as laid down in *NEPA* v Edegbero case in *Ministry, Works & Housing* v *Shittu* (2007). The case dealt with title to land which ordinarily, is within the exclusive jurisdiction of the State High Court by virtue of Section 39(1) of the Land Use Act. Notwithstanding, the fact that Land tenure and title to Land are not part of the jurisdiction vested in the Federal High Court, it was held that on account of the joinder of agency of Federal Government as a party to the Suit, the case fell within the exclusive jurisdiction of the Federal High Court. According to his Lordship:

It must be taken as settled therefore by virtue of section 251(1) of 1999 Constitution, where the Federal Government or any of its agencies is a party to a suit it is not the nature of the claim as endorsed on the writ of summons or averred in the statement of claim that determines whether or not the State High Court has jurisdiction to adjudicate on the matter. The only Court vested with jurisdiction on such matters as listed in the Constitution is the Federal High Court of Nigeria.

The above case is in conflict with the decision in *Achebe* v *Nwosu* (2013) where it was held that Federal High Court lacks jurisdiction over disputes on title to land. The Court also held that it is immaterial that Federal Government or any of its agencies was a party to the Suit. After holding that Federal High Court lacks jurisdiction over title to land, Olagunju JCA observed and counseled thus:

- subsection 230(1) of the Constitution does not contain blanket provision that any suit against Federal Government or any of its agencies must be heard by only the Federal High Court regardless of the subject-matter." This calls to mind similar caution to the Federal High Court in *Mandara* v *A.G Federation* (Supra) at page 33, over the inordinate disposition of that Court to assume jurisdiction over any matter on the slightest pretext as long as such matter is embossed with the logo of the Federal Government or any of its agencies. It cannot be over-emphasised, the axiom that the anatomy of the Federal High Court like that of an individual should not be made to bite off more than it can chew for the good of its digestive system.

The case of *Onuorah* v *KRPC Ltd* (2005) is the authority which supports the proposition that where an agency of Federal Government has been sued for breach of simple contract, the Federal High Court lacks jurisdiction to entertain the Suit. The Appellant, who had contracted to purchase some empty tins from the Respondent at an agreed price, sought to prevent breach of the contract by the Respondent through mandatory orders of specific performance. A central issue was whether he should have sued in Federal or State High Court. It was held, that the key issue was the subject matter jurisdiction. Since simple contract is not one of the

matters listed in section 251(1) of the constitution, the Federal High Court lacked jurisdiction to entertain the case. Akintan JSC (as he then was) held as follows:

In the instant case, since disputes founded on contracts are not among those included in the additional jurisdiction conferred on the Federal High Court, that Court therefore had no jurisdiction to entertain the appellant's claim. The question whether the Respondent is a subsidiary or agent of the NNPC or not has no role when a consideration of the jurisdiction of the court is being made. This is because, as already stated above, the determining factor the court, which in this case, is one founded on breach of contract.

Hon. Justice Niki Tobi (as he then was)

I am in great difficulty to hold that the Federal High Court is conferred with jurisdiction to hear matter of simple contractual relationship between the parties. It is my humble view that the jurisdiction of the Federal High Court does not admit matters of simple contracts between parties and I venture to say such matters are clearly outside the provisions of the enabling decrees interpreted by the Court of Appeal.

Oladipo v *Nigeria Customs Service Board* (2009) is a very interesting but highly disturbing case from the view point of jurisdiction of Federal and State High Court. The Appellant's case was based on trespass to land committed by the Respondent. Appellant instituted the first action in Ilorin Judicial Division of Federal High Court claiming declaratory, injunctive and monetary reliefs. Learned trial Judge *suo motu* raised the issue of jurisdiction of the Federal High Court to entertain the case based on trespass. He called for addresses by Counsel and after the addresses the court declined jurisdiction. The Suit was consequently struck out. The Appellant subsequently commenced another action based on the same cause in the Ilorin division of the High Court of Kwara State. The trial Judge also entertained argument on jurisdiction. The court held that on account of reliefs sought against an agency of the Federal Government, the proper court to entertain the case is the Federal High Court. The appeal by the Appellant was allowed by the Court of Appeal which held that the Federal High Court is a Court of enumerated jurisdiction. Trespass/title to Land is not one of the jurisdictions conferred on the Court under Section 251 of the 1999 Constitution. Hon. Justice Nweze concluded that:

The sum total of what I am saying is that notwithstanding that the Respondent (Nigeria Customs Service) is admittedly a Federal Agency and so ordinarily comes

under the jurisdiction ratione personae of the Federal High Court, the subject matter of the Suit not being one of the eighteen matters listed in section 251 (supra) is outside the jurisdiction ratione materiae or the subject matter jurisdiction of the Federal High Court. In effect the lower court was wrong in chasing away the Appellant from its hallowed temple

The position taken by Niki Tobi (as he then was) in *NEPA* v Edegbero on importance of subject matter was endorsed in the recent case of *Ahmed* v *Ahmed,* at the Supreme Court it was argued that because the 4th Respondent (INEC) is an agency of the Federal Government, the Suit notwithstanding its subject-matter is triable exclusively by the Federal High Court. In the words of Chukwumah-Eneh JSC in the lead Judgment:

I hold the view also as observed in the above cited case that the provisions of Section 251(1),(p),(q) and (r) raise the consideration of both subject matter of the cause of action and the parties in the action. In my view, it is not just enough to identify and rely on such proposition fact of the 4th Respondent being an agency of the Federal Government as sued is conclusive of the issue, in other words without adverting to whether the subject matter of the cause of action in the matter also comes within the exclusive purview of the Federal High Court to deal with. It would be wrong to proceed on that basis alone and hold in conclusion that the instant matter is completely within the exclusive ambit of the Federal High Court to deal with. What I am otherwise saying here is that to determine the applicability of the provisions of the said sub-sections 1(p),(q) and (r) of Section 251 to an action. The subject matter of the cause of action which must co-exist have been so connected to the action as to bring the action within the purview of the provisions of the said Section (i.e. Section 251(1) (supra).

What amounts to an executive or administrative action has however been defined by Nweze, J.C.A in *Oladipo* v *N.C.S.B* (supra) thus:

I take the view that the phrase "executive or administrative action" as employed in section 251(1),(r) must have a direct relationship with the management and administration of the agency concerned. Hence, an executive action must be an action concerned with, or relating to the effectuation of the orders or plans or policies of the agency in question. Equally, an administrative action must be an action directed towards carrying out the policy of the agency

The proviso to paragraphs (p),(q),(r) & (s) has capacity to produce and has indeed produced conflicting decisions. It reads:

-provided that nothing in the provisions at paragraphs (p),(q) and (r) shall prevent a person form seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment Law or equity.

The above proviso is capable of being interpreted as provision which enables a litigant to approach another High Court (State High Court) to seek redress against the Federal Government or any of its agencies where the cause of action is based on damages, injunction or specific performance or based on an enactment. A similar proviso in section 251(1),(d) of 1999 Constitution was construed by the Court of Appeal, *NDIC* v *Federal Mortgage Bank of Nigeria* (1997) and the supreme Court in *Federal Mortgage Bank* v *NDIC* (1999) as vesting the State and Federal High Courts with concurrent jurisdiction in respect of disputes between an individual customer and his bank and in respect of transactions between individual customer and the Bank. It is also possible, to interpret the proviso as confirming the exclusive jurisdiction of Federal High Court to entertain Suits which fall within Section 251(1),(p),(q) & (s) and to grant any or all of the enumerated reliefs of damages, injunction or specific performance where the action is based on any enactment, law or equity. This was the position adopted by the Court of Appeal in *University of Agriculture, Makurdi* v *Jack,* (200) where the Court of Appeal held:

The proviso by no means confers State High Courts with any jurisdiction in matters provided for under Section 230(1). Rather it only expands the jurisdiction of the Federal High Court where the action against the Federal Government or any of its agencies is for damages, injunction or specific performance and the action is founded on some enactment Law or equity.

Similar view was expressed by Hon. Justice Ogundare in his lead Judgment in *NEPA* v *Edegbero,* where his Lordship rejected the possibility of the provisio being interpreted as conferring of jurisdiction on the State High Court thus:

-while paragraph(s) talked of actions for declaration or injunction, the proviso extended this to actions for damages injunction or specific performance. It did not say as the learned trial judge with profound respect appear to read into it that action for damage injunction or specific performance against the Federal Government or any of its agencies could still come before a State High Court.

Hopefully, a differently constituted court will not impliedly overrule the decision through conflicting pronouncement.

6. Criminal Jurisdiction

It is evident that the Federal High Court exercises Criminal Jurisdiction. By virtue of Section 7(3) of its enabling law the Court has been conferred with criminal jurisdiction in respect of matters within its civil jurisdiction. Under Section 7(2) & (3) of the Federal High Court Act, the Federal High Court has jurisdiction to try offences under the criminal and penal codes provided the offences are "in relation to offences to which proceedings may be initiated at the instance of the Attorney General of the Federation".

Under the 1979 Constitution, the issues with the Federal High Court's criminal jurisdiction were also two fold. These are the scope and exclusivity of the Court's jurisdiction. The case of *R v Eze* endorsed the exclusivity of criminal jurisdiction of the Federal High Court with respect to matters in the exclusive legislative list of 1979 Constitution. In the *Eze case* it was held by the Court of Appeal that since Arms and Ammunitions are contained in exclusive legislative list, the offence of unlawful importation/possession of fire arms are triable exclusively by the Federal High Court, on Appeal to the Supreme Court the Court of Appeal decision was overruled. Section 251(2) & (3) of 1999 Constitution confirm the criminal jurisdiction of the Federal High Court in cases of treason, treasonable felony and allied offences. Under section 251(3) the Federal High Court has and is expected to exercise jurisdiction and powers in respect of criminal cases and matters in respect of which jurisdiction is conferred by sub-section (1) of this section.

The criminal jurisdiction of the Federal High Court under the 1999 Constitution has also generated jurisdictional conflicts. In *Okey Nwosu* v *FRN* (2013) the Appellant was alleged to have utilized funds belonging to the Bank, of which he was the Managing Director, to buy shares in names other than that of the Bank. He was arraigned before the Lagos State High Court for stealing the Bank's money. He challenged the jurisdiction of the Lagos State High Court to try him contending that the issue in the case was a capital market issue which is triable exclusively by the Federal High Court. The Court of Appeal upheld his objection by relying on Section 251(2), 251(3) of the 1999 constitution and item 12 of the exclusive legislative list of the same constitution to hold that Federal High Court has exclusive jurisdiction to try the case. Bage JCA in the lead judgment held:

No doubt, the pith and substance of the complaint of stealing as evidenced by the conversion as instructed into shares concerns a matter of capital issue which is item 12 of the Exclusive legislative list. By Section 251(1),(3) of the constitution of the

Federal Republic of Nigeria (1999 as amended), the Federal High Court to the exclusion of any other court is conferred with jurisdiction to entertain matters coming within the exclusive legislative list that is matter over which the National Assembly can legislate.

The above decision runs contrary to the decision in *Abass* v *COP* (1998) where the exclusive criminal jurisdiction of the Federal High Court was jettisoned by the Court of Appeal in favour of shared/concurrent criminal jurisdiction of Federal and State High Courts. The Court of Appeal held as follows:

This is the section that confers criminal jurisdiction on the Federal High Court. The words used in the section are clear and unambiguous. They can easily be understood through the literal rule of interpretation. They require no importation. The legal effect of the section, in my view, is that it confers no exclusive jurisdiction on Federal High Court in criminal cases specified therein. In other words, criminal matters can concurrently be tried by either the Federal High Court or other courts conferred with criminal jurisdiction over the matter in dispute.

The view was also expressed in the above case that "the issue of exclusivity or concurrence of jurisdiction has long been expounded by the Courts". However, contrary to the views, if the signal from the Supreme Court is anything to go by, the last is yet to be heard on the exclusivity and non exclusivity of the criminal jurisdiction of the Federal High Court. In the recent decision of *Bode George* v *FRN*, (2013) the Appellant was arraigned for the offence of "contract splitting" while he was in office as the chairman of a Federal Agency. Trial took place at the Lagos High Court. He was convicted and sentenced along with other accused persons. His conviction was affirmed by the Court of Appeal. On further appeal to the Supreme Court, the appeal was allowed principally because contract splitting is not an offence contained in any written Law. The conviction was evidently contrary to the letters and the spirit of section 36(12) of 1999 Constitution and other line of cases which abolished unwritten Criminal Law. In the course of the judgment, pronouncements were also made by the apex court to the effect that since the Agency involved is a Federal Agency, the High Court of Lagos was precluded from trying the case which is within the exclusive jurisdiction of the Federal High Court to try *Mohammed* v *FRN* (2013). According to Ngwuta J.S.C:

The counts of splitting of contract, if in fact any contract was split, relate to the control and management of Federal Government Agency, the Nigerian Ports Authority over which the Federal High Court has exclusive jurisdiction. See Section 251 of the 1999 Constitution. The Lagos State High Court had no

jurisdiction to try the Appellant and his trial, conviction and sentence must be declared null and void and I so hold.

It is hoped that a differently constituted panel of the Supreme Court will not arrive at a decision which is contrary to the above decision.

7. One or More High Courts

The provisions of the 1979 and 1999 Constitutions have been examined against the backdrop of decided cases in order to demonstrate only one aspect of the jurisdictional conflicts. Of course, there are pre-1979 jurisdictional conflicts. There are also other aspects of the jurisdictional conflicts ranging from Company law related matters to revenue of Federal Government, Banking related cases, Insurance matters, scope of Admiralty jurisdiction of the Federal High Court, Aviation, Ports and other related issues. There are also conflicting decisions on the scope of the Court's jurisdiction with respect to enforcement of fundamental rights. It suffices to acknowledge that prior to the establishment of the defunct Federal Revenue Court, there was no jurisdictional conflict. Regional and State Courts administered Federal, Regional and State Laws simultaneously. Today, we have Federal High Court, State High Court and National Industrial Court. They are all courts of co-ordinate jurisdiction. Appeals from these courts go directly either as of right or with appropriate leave to the Court of Appeal and thereafter to the Supreme Court.

The existence of three High Courts within the Nation's judicature raises question of desirability or otherwise of more than one High Court in a judicature which has only one intermediate Court of Appeal and only one Apex Court which entertains appeals from the trial Courts. The existence of the Federal and State High Courts can be defended on account of observance of Federal principles in the Federation. No such excuse can justify the recent recognition of the National Industrial Court as a court of superior record through the 3rd amendment to the Constitution. It is our respectful views that avoidable expenses and time are being wasted in the pursuit of jurisdictional issues. Virtually all cases, especially criminal cases are challenged by the Defendant in Federal and State High Courts for want of jurisdiction. The journey to the Supreme Court from the High Court through Court of Appeal averages between 10–12 years. It takes such a long time to sort out preliminary issue of jurisdiction, before moving to the substantive case, delayed denial of justice becomes more evident. It is trite that justice delayed is justice

denied. Little wonder, Uwais CJN (as he the then) lamented and counseled thus in *Amadi* v *NNPC* (2000):

The chequered history of this case once more brings to light the dilatory of interlocutory appeal to the substantive suit between parties. The action in this case was brought on the 29th day of April, 1987. The motion on notice to strike out the Case for want of jurisdiction is dated 15th day of April, 1988; that is about a year after the suit was filed. The ruling of the high court was delivered on the 20th day of June, 1988. The appeal against the ruling was delivered by the Court of Appeal on the 16th day of February, 1989. The final judgment on the interlocutory appeal is delivered today by this Court. It has thus taken thirteen years for the case to reach this stage. With the success of the Plaintiff's appeal before us, the case is to be sent back to high court to be determined, hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the proceedings as the case might be. I believe that the counsel owe it, as a duty, to the court to help reduce the period of delay in determining the cases in our courts by avoiding unnecessary preliminary objections as the one here; so that the adage justice delayed is justice denied may cease to apply to the proceedings in our courts.

His Lordship's wise counsel has been embraced by our courts in subsequent decisions with the result that it has become the norm to argue preliminary objection along with substantive suit in cases especially cases commenced through originating summons.

Mention must also be made of an innovative provision in the Federal High Court rules which stipulates that where a party intends to challenge the jurisdiction of the court, he must within days deliver the objection along with his response to the claim. And where the objection is not filed at the appropriate time, its hearing is postponed until final address. This provision aims at ensuring timely filing of preliminary objections by Defendants. It however does not foreclose the right of a party to still challenge the court's jurisdiction to entertain a Suit at any time before judgment. The provision merely delays hearing of the objection until address stage. It also does not foreclose the right of the objector to raise objection on jurisdiction for the very first time in the Court of Appeal. Where the objection is upheld, proceedings in the trial court are nullities and liable to be set aside. When a plaintiff, applicant or petitioner approaches a court, he does so in the hope that his

grievances will be addressed by the court promptly and fairly. No plaintiff briefs a counsel in order to litigate jurisdictional issues from High Court to Court of Appeal and Supreme Court over a period of 10 years or more. The legitimate aspiration of a plaintiff who won a case in the High Court and Court of Appeal will not have been defeated if the fruits of successful litigation are denied by the Supreme Court's decision which reverses the judgments of the High Court and Court of Appeal for want of jurisdiction to try the suit.

Perhaps time has come to start thinking of the desirability of more than one High Court in the Nigerian judicial system which has one Court of Appeal and one Supreme Court. The need for a-rethink is more compelling bearing in mind the available pressure which judges of State High Courts are made to undergo by the Executive and Legislative arms of Government at the State level. When the issue is not about the composition or non-composition of panel of persons of integrity by the State Chief Judge to impeach a Governor or his Deputy, it will be who as between the National Judicial Council and the State Government should have the final word on the appointment of an acting Chief Judge of a State! From the point of view of independence of judiciary, there is need to insulate the judiciary from suspicion and politics. This point can be illustrated with the comment of Ray Ekpu (1983):

When you take a cursory look at the battle of jurisdiction between Federal and State High Courts, you may think it is purely a matter of Law. But if you look more closely, you may convince yourself that it is a matter of politics. Federal officials and institutions that are arraigned before the State High Courts look at these Courts with suspicion. State officials and individuals who are taken to Federal Courts view these Courts with distrust because of political polarization of the country and attitude of some Judges. But why can't someone in Benin hope to get Justice at the Federal High Court Lagos? Why Justice should be determined by geography or politics or geopolitics.

Presently in criminal cases, the prosecuting agencies embark on forum shopping. Federal offences involving the funds of Federal Government that are allegedly stolen or obtained by false pretences are being tried by State High Courts because of the preference of the prosecutors for State High Courts. Defendants charged with offences in some State High Courts suspect State High Courts whose Judges they accuse of being unable to tower above politics and influence of politicians. These defendants resort to filing objections which challenge the jurisdiction of the State High Courts to try them. The existence of more than one High Court has

resulted in jurisdictional juggling between the two Courts. The victims of the juggling are the Plaintiffs, Claimants and in criminal cases, the Prosecution. They have been bearing and would continue to shoulder the cost of multiple High Court system. Speedy disposition of cases by specialist Courts and observance of Federal principles are the identified reasons for multiple High Court System. With the expanded jurisdiction of the Federal High Court under the 1999 Constitution, it is obvious that the objective for its establishment namely speedy disposal of cases involving Federal Government's Revenue which the State High Court were unable to dispose with dispatch has been jettisoned. Today the Federal High Court has and exercises jurisdiction over general and special causes of action, by virtue of Section 46 and 251 of the 1999 Constitution. The Federal High Court may not be a Court of general jurisdiction but is evidently, unlike the National Industrial Court, not a specialist Court on account of the added/expanded jurisdiction. The existence of a specialist BAR is another justification for multiple High Courts. Thirty one years after the establishment of the Federal High Court, we are yet to witness a specialist BAR.

The Federalists argue in favour of dual High Court system against the need to observe Federal principles namely separate Federal and State Courts that will interpret and apply Federal and State Laws respectfully. However, a rigidly dual Federation will also enthrone dual Appellate System of Courts such that appeals from Federal Trial Courts will be determined by Federal Appeal Courts while appeals against State Trial Courts are to be determined by State Appeal Courts. This has not been the arrangement under the 1999 Constitution. Presently appeals from all trial Courts go to Court of Appeal and Supreme Court. There are no State Court of Appeal and State Supreme Court in Nigeria. The time has come to debate the desirability or otherwise of multiple High Courts in Nigeria. This paper is not advocating that the Federal High Court be abolished while State High Court and National Industrial Court are retained. A proposal for the merger of all trial courts to form a National High Court or High Court of the Federation should be seriously considered.

The proposed National High Court or High Court of the Federation should have general jurisdiction over all Civil Causes and matters. The Court like the Court of Appeal and Supreme Court should neither be Federal nor State High Court. It should be a Court established for the Federation. The Court would consequently not be the controlled by the Federal of State Government. A Central body similar to the National Judicial Council with more widespread representations should

control the affairs of the proposed National High Court. The Courts in each state of the Federation should functions as a division of the National High Court the way the Court of Appeal functions as a division in the various states where they are located where the need arises as many divisions as possible should be established in a state. In each state, there should be a presiding judge whose responsibilities will be similar to those assigned to Chief Judges of Federal and State High Courts. A presiding Judge need not be an indigene of the State where he presides. Judges and officials of State High Courts must be ready to accept postings outside their State of origin the way judges and officials of Federal High court serve outside their states of origin. There are others issues such as infrastructure and personnel which can be worked out.

8. Conclusion

The Federal High Court was established on 1973 as a revenue Court with limited original jurisdiction. More than 42 years after its establishment, there has been endless jurisdictional Juggling. Notwithstanding the jurisdictional conflicts, the present constitutional structure of three High Courts (Federal High Court, State High Court and National Industrial Court) is not without merits. The current system ensures that federal character is reflected in the appointment of judges of the Federal High Court and National Industrial Courts. Also, indigenes of a State appointed to the State Bench bring their knowledge of the workings of the State to bear on the judicial process particularly on evidential issues. However, there are also demerits to the present system of three High Courts. There is the problem of political pressure on judges by the State Government. There is also the problem of political suspicion and mutual distrust of the system by litigants and Legal Practitioners which necessitates the preference for litigating in one Court over another. In the process of forum shopping such a Plaintiff is likely to be confronted with jurisdictional hurdles. Time and expenses are wasted in the jurisdictional tussle. We are also likely to witness more jurisdictional juggling as a result of the expanded jurisdiction of the Court under the 1999 Constitution and the recognition of National Industrial Court as a High Court by the same 1999 Constitution. There is so much conflict over the jurisdiction of our Courts. The Supreme Court, as shown above, has not helped matters on account of its conflicting decisions on the various aspects of the Court's jurisdiction. The existence of multiple High Courts and jurisdictional conflicts have added to cost of litigation and delayed Justice.

The following questions are crucial in determining which way to go - How do we avoid jurisdictional conflicts? How do we insulate our Judges from politicians, political suspicion, manipulations and distrust? Would having one National High Court for the whole Country with Judicial Divisions in each State solve the problem? If it would solve the problem, how do we solve the administrative issues it is likely to generate? How do we guarantee that having one National High Court would ensure the independence of the Judiciary without interference from the Executive both at Federal and State level? Would one National High Court reduce costs and avoid jurisdictional conflicts? Have we not made a mistake by having more than one High Court?

We will end this paper by adopting the views expressed by Street, (1978:437) thus:

It is never too late to correct a mistake once the mistake is exposed and recognised. Justice is too precious an inheritance to be allowed to become a pawn in the power struggle between the common wealth and State.What I seek, is to protect and promote the only effective court system available to use in our Federal Nation.

9. Bibliography

Dinakin (1990). Jurisdiction of the Federal High Court under the 1979 Constitution of the Federal Republic of Nigeria. *J.P.P.L* Vol. 138/14., pp. 77-78.

Ogungbe (1982). The Federal High Court before or after 1992. *Juctive,* Vol., 2 No. 12, pp. 45.

Osipitan, T. (1983). *Crisis of Jurisdiction under 1979 Constitution: States v. Federal High Court*. NCLR PP. pp. 231-248.

Osipitan, T. (1987). Insurance Decree, the Federal High Court and some Jurisdictional questions. *Legal Practitioners,* Vol. 2, pp. 35-42.

Osipitan, T. (1987). Judicial Legislation in the Supreme Court: Savannah Bank v. Pan Atlantic & Anor. *Nigerian Current Law Review*, pp. 162- 178.

Ray, E. (1983). Nigeria's Lord Denning. Sunday. *Concord,* 3/4/1983.

Street, L. (1978). The Consequences of a Dual System of State and Federal Courts. *Australian Law Journal,* Vol. 52, pp. 434-437.

Nwama & Nwanebe (1991). 2 NWLR (Pt.172), at 189.

Tukur & Governor of Gongola State (1989). 2 *NWLR* (Pt. 117) 517.

AD & INEC (2004). *All FWLR* (Pt.234) 1886 at 1907.

University of Abuja & Ologe (1996). l 4 *NWLR* (Pt.445), 706.

Bode, George & FRN (2013). *12 SC (Pt. 1) 1*.

Salim v Congress for Progressive Change (2013). 30 WRN P. 1 AT 16, *DIC* v Federal Mortgage Bank of Nigeria (1997) 2 *NWLR* (Pt.490) 735.

Federal Mortgage Bank v NDIC (1999) 2 *NWLR* (Pt. 591) 333.

Mohammed v FRN (2013) 50 *WRN* p. 136 at 150.

(1997). Constitution of the Federal Republic of Nigeria.

(1999). Constitution of the Federal Republic of Nigeria.