

THE JURISDICTION OF STATE HIGH COURTS IN NIGERIA

ENEFIOK ESSIEN*

INTRODUCTION

The jurisdiction of State High Courts in Nigeria is to be found in section 236(1) of the 1979 Constitution of the Federal Republic of Nigeria.¹ The section provides:

“236(1). *Subject to the provisions of this constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any 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 any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.*”²

It is clear from the wording of the constitutional provision that the High Court has an unlimited jurisdiction which can only be restricted by the Constitution itself; thus the commencement: “subject to the provisions of this constitution”. Acts of Parliament and other laws can only add to and not subtract from the unlimited jurisdiction of State High Courts as guaranteed by the Constitution. This is because the Constitution is the grundnorm, the fundamental law of the land³ and, except during military regimes when decrees have primacy, the Constitution has primacy over all Acts, Statutes and Laws.⁴ As section 1(1) of the Constitution emphatically declares: “This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”.

However, the constitutionally guaranteed unlimited jurisdiction of States High Courts now appears to suffer a great limitation arising from recent Supreme Court decisions in *Sadikwu v. Dalori*⁵ and *Oyeniran & Ors. v. Egbetola & Anor*.⁶ The decisions caused a major panic among legal practitioners as they hurried to withdraw their pending land cases from the State High Courts in order to avoid the cases being struck out for lack of jurisdiction. This note examines these two (related) cases to show, on the one hand, that the decisions in the cases are erroneous in so far as they seek to limit the jurisdiction of State High Courts,

* LLB (Hons) (Cal.), LLM (Lagos), PhD (B'ham), Notary Public for Nigeria, and Senior Lecturer in Law at the Faculty of Law, University of Uyo, Nigeria.

¹ As amended by Decrees.

² All emphases are mine.

³ *Obada & Ors. v. Military Governor of Kwara State & Ors.* (1990) 6 NWLR (Pt. 157) 482 at 496.

⁴ Under a civilian constitutional government, the constitution is at the apex of the legislative hierarchy. This is followed by Acts of Parliament. All previous extant decrees take effect as Acts of Parliament on the same plane. Below them are Laws of the State legislature. All extant Edicts rank as Laws of State legislature. During military regimes, on the other hand, Decrees have primacy, followed by the modified and unsuspended provisions of the Constitution. Previous Acts of Parliament rank third. Edicts then follow. Fifth in the ranking are State Laws previously enacted by the State legislature. See generally *Obada & Ors. v. Military Governor of Kwara State & Ors.* (1990) 6 NWLR (Pt. 157) 482; *Labiye v. Anretiola* (1992) 8 NWLR (Pt. 258) 139; *Lekwot v. Judicial Tribunal* (1993) 2 NWLR (Pt. 276) 410.

⁵ (1996) 37 LRCN 707, (1996) 5 NWLR (Pt. 447) 151, (1996) 4 SCNJ 209.

⁶ (1997) 50 LRCN 1376, (1997) 5 NWLR (Pt. 504) 122, (1997) 5 SCNJ 94.

and to assert, on the other hand, that when critically examined, the decisions do not at all touch on, let alone detract from, the unlimited jurisdiction of State High Courts under the Constitution. It shall be concluded that any abridgement of the jurisdiction of State High Courts can only be done by amending the relevant provision of the Constitution or by Decree.

BACKGROUND

As from the 28th day of March 1978, land use and land rights in Nigeria became governed by the Land Use Act, 1978.⁷ All land comprised in the territory of a State is now vested in the Governor of that State, who holds the land in trust for and for the use and common benefit of all Nigerians.⁸ Accordingly, individuals and groups no longer own land. They are only 'holders' or 'occupiers' of the land, and this entitles them to a right of occupation and use of the land.

For the purpose of proper administration of the scheme of the Act, all land in each State of the federation is divided into two: the non-urban (or rural) area and the urban area.⁹ Land which is situated in the non-urban area is subject to the control and management of the Local Government. Thus, the Local Government grants customary right of occupancy where the same is sought,¹⁰ and any alienation of the customary land right (say, by sale) or the creation of any encumbrance (such as a mortgage or, probably, a pledge) has to receive the approval of the Local Government.¹¹ The holder of the right of use and enjoyment of the land is statutorily deemed to have a customary right of occupancy over the land and he may apply to the State Governor to be given a certificate of occupancy as evidence of his said right.¹²

Land in the urban area is subject to the direct control and management of the State Governor. The holder of a right to a piece or parcel of land in an urban area is statutorily deemed to have a statutory right of occupancy to the land and, on application by him to the State Governor, he may be issued with a certificate of occupancy as evidence of his right to the land.¹³

Under the Land Use Act therefore, it is the State Governor who alone issues a certificate of occupancy, whether the land is situated in the urban or in the non-urban area of the State. This means that matters relating to a right in non-urban land are not the exclusive preserve of the Local Government and its agencies.

THE CASES

The first case is *Sadikwu v. Dalori*.¹⁴ The plaintiff claimed title to a piece of land which was, admittedly, subject to a customary right of occupancy. He also claimed damages for trespass and an injunction in respect of the same piece of

⁷ Cap. 202 Laws of the Federation of Nigeria, 1990. The Act was originally promulgated as a Decree by the military regime (Decree No. 6 of 1978), but upon the exit of the military regime and the taking over of government by civilians it was re-designated Act. See s. 1 of the Adaptation of Laws (Re-designation of Decrees, Etc.) Order No. 13 of 1980.

⁸ S. 1 of the Land Use Act.

⁹ S. 2(1).

¹⁰ S. 6(1).

¹¹ S. 21 para. (b).

¹² S. 9(1).

¹³ S. 9(1).

¹⁴ Op. cit.

land. The defendants put up many defences, chief among which was the contention that the trial State High Court had no original jurisdiction to entertain the case because the land in dispute was subject to a customary right of occupancy and, therefore, by the combined effect of sections 39(1) and 41 of the Land Use Act, 1978, it was the Customary Court that had original jurisdiction to hear the case. The sections provide:

“s. 39(1) The High Court shall have *exclusive original jurisdiction* in respect of the following proceedings:

(a) Proceedings in respect of any land the subject of a statutory right of occupancy granted by the military Governor or deemed to be granted by him under this Decree; and for the purpose of this paragraph proceedings includes proceedings for a declaration of title to a statutory right of occupancy;

(b) Proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Decree.

(2) All laws, including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.¹⁵

s. 41 *An Area Court or Customary Court or other court of equivalent jurisdiction in a State shall have jurisdiction in respect of proceedings in respect of right of occupancy granted by a Local Government under this Decree; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a Customary Right of Occupancy and all laws including rules of court regulating practice and procedure of such courts shall have effect with such modifications as would enable effect to be given to this section.*¹⁶

Records show that though the defendant in the case raised the issue of the jurisdiction of the trial court to hear the case, he failed to pursue the issue in his address. The trial court therefore deemed the issue to have been abandoned. We submit that the trial court ought to have proceeded on its own to determine the question of jurisdiction. Indeed, even if the defendant had not raised it at all, the court could on its own raise it if the court considered it to be relevant and decide on it before going into the substance of the case.¹⁷ This is because if it turns out that the court lacked jurisdiction to hear the case, all the time and effort put into the case would come to naught. Thus, it is advisable to resolve the issue of jurisdiction at the earliest opportunity. In this case the High Court failed to do so. The judge gave title to the plaintiff and granted other reliefs claimed. The defendant appealed.

Upholding the defendant/appellant's challenge to jurisdiction, the Court of Appeal reversed the decision of the High Court. The court held that the High Court lacked jurisdiction to determine the case and so its decision was a nullity. The court held further that while section 39(1) of the Land Use Act (reproduced above) conferred exclusive original jurisdiction on high courts where the land concerned is subject to a statutory right of occupancy, the jurisdiction conferred by section 41 of the Act is vested in particular courts which are named in the section. It was the court's further holding that though the jurisdiction conferred under section 41 is not stated to be exclusive to the enumerated courts, it nevertheless deprived the State High Court of original jurisdiction in the matters stated therein because the High Court is not “of equivalent jurisdiction” to the named courts. In the court's view, the non-addition of the word “exclusive” in

¹⁵ The emphasis in the section is mine.

¹⁶ Emphasis mine.

¹⁷ *Inua v. Nta* [1961] All NLR (Pt. 4) 576.

section 41 does not mean that the High Court has jurisdiction as well. The Court of Appeal further noted, rightly, that the Land Use Act (section 41) is an existing law by virtue of section 274(4)(b) of the 1979 Constitution. However, this latter point was hardly necessary because, even if the Act were not an existing law, it would nevertheless still have been applicable to the case in hand on the basis that it was the governing statute at the time when the cause of action arose.¹⁸

The Supreme Court upheld the decision of the Court of Appeal that the High Court had no jurisdiction to hear the case in view of section 41 of the Land Use Act. The Supreme Court reasoned along the same line as did the Court of Appeal.

The second case is *Oyeniran & Ors. v. Egbetola & Anor.*¹⁹ This was a claim in the High Court for a declaration of title to a customary right of occupancy in respect of a piece of land situated in Ogun State of Nigeria, damages for trespass into the said piece of land and an injunction. The trial judge found for the plaintiff as claimed.

On appeal to the Court of Appeal, the defendant raised for the first time the issue of the jurisdiction of the High Court to hear the case.²⁰ He contended that “the learned trial judge erred in law when he assumed jurisdiction over the land in dispute and which [land] is subject to customary right of occupancy”. He relied on sections 39(1) and 41 of the Land Use Act. The Court of Appeal dismissed the defendant/appellant’s contention that the High Court had no jurisdiction to determine the matter and affirmed the decision of the High Court. The defendant appealed further to the Supreme Court.

The Supreme Court considered only the question of the jurisdiction of the High Court to hear the case and, holding that the High Court lacked jurisdiction, allowed the appeal on that ground. In doing so, the Supreme Court relied principally on two earlier Supreme Court cases: *Salati v. Shehu*²¹ and *Sadikwu Dalori*.²² The facts and judgment in the latter case have just been given. In *Shehu v. Salati*, the issue was whether the muslim Area Court in Benue State had jurisdiction to determine a case relating to developed land in an urban area of the State, which land was subject to a statutory right of occupancy. The court held, firstly, that since the case concerned land held under statutory right of occupancy, it was the Land Use Act and not the Islamic law which was applicable. It held further that since the land in dispute had been declared to be an urban area, only the State High Court had jurisdiction to hear the case.

It is noteworthy that what was at issue in this case was not the (extent of the) jurisdiction of the State High Court, rather, it was the extent of the jurisdiction of an Area Court under the Land Use Act. Only section 39(1) of the Land Use Act applied in that case, and so there was no consideration of section 41 of the Act. However, in an *obiter dictum* in the case, KARIBI-WHYTE, J.S.C., said:

“s. 39(1) specifically relates to ‘proceedings in respect of land subject of a statutory right of occupancy granted by the Military Governor or deemed to be granted . . .’
On the other hand, section 41 confers jurisdiction on Area Courts or Customary

¹⁸ *Uwaifo v. A-G of Bendel State* (1982) 7 SC 124.

¹⁹ *Op. cit.*

²⁰ Jurisdiction can be raised for the first time even on appeal to the Supreme Court: *Salati v. Shehu* (1986) 1 NWLR (Pt. 15) 198.

²¹ (1986) 1 NWLR (Pt. 15) 198.

²² *Op. cit.*

Courts or courts of equivalent jurisdiction in respect of customary right of occupancy granted by a Local Government under this Act. There is no ambiguity in the two sections that the exclusive original jurisdiction in respect of land held under statutory right of occupancy is vested in the High Court of the State, whereas jurisdiction in respect of customary right of occupancy is vested in the Area or Customary Courts. The exercise of these jurisdictions will seem to me mutually exclusive. There is no doubt therefore that the one cannot exercise the jurisdiction of the other.”

COMMENTS ON THE CASES

Let us start with the last case, i.e. the case of *Salati v. Shehu*. As noted earlier, the issue here was not the jurisdiction of the State High Court. Rather, it was concerned with the jurisdiction of an Area Court. The statement of his Lordship, KARIBI-WHYTE, J.S.C., recited above was therefore a sweeping and unnecessary *obiter dictum* in so far as it sought to limit the jurisdiction of State High Courts. It is remarkable that the same Supreme Court justice was in the minority when he took the same view with respect to the admiralty jurisdiction of State High Courts; he held that State High Courts have no jurisdiction over admiralty matters because under the Federal Revenue Act, 1973, such matters are exclusively reserved for the Federal High Court which is the successor to the Federal Revenue Court.²³ The majority judgment, which is the judgment of the court, was that by section 236 of the 1979 Constitution which gives State High Courts unlimited jurisdiction, the State High Court has jurisdiction even over admiralty matters, and that section 8(1) of the Federal Revenue Court Act, 1973, which exclusively reserved this matter to the Federal High Court, is void because of its inconsistency with section 236 of the 1979 Constitution.²⁴

Indeed, in respect of federal revenue matters which were hitherto exclusively triable in the Federal High Court, the Supreme Court has held consistently that with the coming into force of the 1979 Constitution, State High Courts have a concurrent jurisdiction over those matters, and that any provision of an Act which seeks to exclude the jurisdiction of State High Courts in those matters is inconsistent with section 236(1) of the Constitution and therefore void.²⁵ In view of this, the opinion was at one time expressed that the only effective way to exclusively reserve jurisdiction in admiralty matters to the Federal High Court was to amend section 236(1) of the Constitution.²⁶ This opinion appears to have been accepted when the Constituent Assembly recommended an amendment of the Constitution. Under the new 1989 Constitution—which is not yet in force—the jurisdiction of State High Courts is provided for in section 255(1) in the same terms as under section 236(1) of the 1979 Constitution. However, the jurisdiction of the Federal High Court is now differently worded. Section 249(1) of the 1989 Constitution provides:

“Notwithstanding 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 or matters: (a) relating to the revenue of the Government of the Federation . . . (d) of Admiralty jurisdiction.”

²³ See: *Savannah Bank of Nigeria Ltd. v. Pan Atlantic Shipping and Transport Agencies Ltd. & Anor.* (1987) 1 NWLR (Pt. 49) 212.

²⁴ *Ibid.*, at 229.

²⁵ The cases are cited and discussed in Enefiok Essien, “The limits of the State High Courts jurisdiction” (1988/89) 10 & 11 *Journal of Private and Property Law*, at 9–19.

²⁶ *Ibid.*, at 19.

By this constitutional amendment, it means that once the 1989 Constitution comes into force the Federal High Court will have exclusive jurisdiction in matters reserved for it notwithstanding the unlimited jurisdiction of State High Courts.

In view of the foregoing, it is regrettable that when it came to deciding on the effect of the circumscription of the State High Court jurisdiction under the Land Use Act the Supreme Court merely relied on a casual *obiter dictum* and left the issue unresolved. The Supreme Court ought to have seized this opportunity to make a clear and considered statement on this point, just as it has done in relation to the provisions of other Acts, e.g. provisions of the Federal Revenue Act, 1973, which are inconsistent with the provisions of the Constitution: such Acts are *pro tanto* void.

Even though the Land Use Act is entrenched in the Constitution,²⁷ the Supreme Court has held that it is not an integral part of the Constitution.²⁸ Its entrenchment in the Constitution only makes it an extraordinary statute²⁹ and so its provisions cannot override those of the Constitution. As noted by the Court of Appeal in *Kadana v. Governor of Kaduna State*,³⁰ it is remarkable that in the *Nkwocha* case,³¹ the Supreme Court similarly declined to answer the specific question of whether a provision of the Land Use Act is void wherever it conflicts with any express provision of the 1979 Constitution. The Supreme Court left the issue open by saying simply, that “the issue does not in fact arise in the main proceeding before the Court of Appeal”. However, in the *Kadana* case the Court of Appeal went further to hold that any provision of the Land Use Act which conflicts with a provision of the Constitution is *pro tanto* void.³² For this reason, it is humbly submitted that the Court of Appeal was in grave error when it recently held in *Ajao & Anor v. Odofin*³³ that “... by section 274(5) of the 1979 Constitution the Land Use Act 1978 is an entrenched part of that Constitution. It is therefore obvious that section 236 of the Constitution is to be read subject to the provisions of the Land Use Act”. The court accordingly held that the unlimited jurisdiction granted to the State High Court under section 236 of the Constitution is subject to section 41 of the Land Use Act.³⁴ We will not say any more on this decision than that it is *per incuriam* in view of earlier Supreme Court authorities to the contrary, and in view of the clearly irreconcilable holding of the self-same Court of Appeal³⁵ in *Kukoyi & Anor. v. Aina*³⁶ where the court posed and answered the question thus:

²⁷ S. 274(5) of the 1979 Constitution.

²⁸ *Nkwocha v. Governor of Anambra State & 2ors.* (1984) 6 SC 362.

²⁹ *Ibid.*, per KAYODE ESO, J.S.C.

³⁰ (1986) 4 NWLR (Pt. 35) 361.

³¹ *Op. cit.*

³² (1986) 4 NWLR (Pt. 35) 361 at 378. In this case, it was s. 47(1) of the Land Use Act, which ousts the jurisdiction of the High Court. The Court of Appeal held that it is in conflict with s. 236(1) of the Constitution, and therefore void.

³³ (1999) 12 NWLR (Pt. 631) 471 at 480.

³⁴ *Ibid.*

³⁵ Interestingly, judgment in the *Odofin* case was delivered on Wednesday 30 June, 1999, at the Ilorin Division of the Court of Appeal, while judgment in the *Aina* case was delivered on Monday 5 July, 1999, at the Lagos Division of the Court of Appeal, i.e. within the space of six days. Apparently one Division of the court did not know about the decision of the other. It is however noteworthy that there is only one Court of Appeal throughout the entire country, though for convenience it is divided into judicial divisions.

³⁶ (1999) 10 NWLR (Pt. 624) 633 at 645.

“The question to be asked now is: Can the Land Use Act whittle down any provisions of the Constitution? I think not. In *Lemboye v. Ogunsiji* (1990) 6 NWLR (Pt. 155) 210 it was held that the Land Use Act not being part of the Constitution of the land cannot override, curtail or whittle down any provision of the Constitution.”

In *Sadikweu v. Dalori*, it is not in doubt that the State High Court had no jurisdiction because the law suit was filed before the coming into force of the 1979 Constitution. The suit was filed on 19 July, 1979, whereas the Constitution came into force on 1 October, 1979. The applicable law to the dispute is the law in force at the time the cause of action arose. In the circumstances, the effect of the provisions of the 1979 Constitution on the provisions of the Land Use Act, 1978, was not at all considered as the issue never arose. The Supreme Court decision in this case cannot therefore be relied upon for saying that because of the effect of section 41 of the Land Use Act, and notwithstanding the provisions of section 236(1) of the 1979 Constitution, State High Courts have no jurisdiction in matters relating to land in non-urban areas of the State.

In *Oyeniran v. Egbetola*, the cause of action arose in 1982, and section 236 of the Constitution fell for consideration in relation to section 41 of the Land Use Act. It is unfortunate that the Supreme Court failed to address the question in this case. The lead judgment of the court made only one passing reference to section 236 of the Constitution and, even then, it left the issue hanging. The court said:

“The learned justice of the Court of Appeal further referred to section 236(1) of the Constitution which provides a wide and all-embracing jurisdiction of a State High Court and pointed out that unless there was anything in the Constitution limiting the extent of the State High Court’s jurisdiction he would conclude that the High Court of a State would have jurisdiction over the land in dispute in the case in hand.”

This is the only reference which the lead judgment made to section 236 of the Constitution. It can be seen that the Supreme Court merely recapitulated what the Court of Appeal had said on the point without expressing its own view one way or the other on the point. The Supreme Court thus merely highlighted the issue but did not even attempt to resolve it. The court overlooked the constitutional provision and concentrated on the Land Use Act to hold that the High Court had no jurisdiction in the matter. The emphasis by the court that the State High Court is “not of equivalent jurisdiction in a State” with an Area or Customary Court hardly answers the question. It is correct that the State High Court is not of equivalent jurisdiction with an Area Court or a Customary Court; but it is to be assumed that the drafters of the 1979 Constitution were well aware of this when they still went ahead to invest the State High Court with unlimited jurisdiction.³⁷ It has been stated earlier that the Constitution is the grundnorm and not just an Act of Parliament. However, even if it were just a statute or an Act of Parliament, by the rules of statutory construction it would override any inconsistent provisions of the Land Use Act by reason of being a latter statute,³⁸ and so the High Court would still have jurisdiction in matters relating to non-urban land.

³⁷ G. Dworkin, *Ogden’s Construction of Deeds and Statutes*, 5th edn, London, Sweet and Maxwell, 1967, at 301: It is always assumed that the legislature knows the state of the law.

³⁸ F.A.R. Bennion, *Statutory Interpretation: A Code*, 3rd edn, London, Butterworth, 1977, ss. 32, 80 at 133, 214.

Statutory construction aside, it is an old common law rule for jurisdiction, “that nothing shall be intended to be out of the jurisdiction of a superior court, but that which specially appears to be so”.³⁹ Under the Land Use Act it does not “specially appear” even to the Supreme Court justices that matters relating to non-urban land should be out of the jurisdiction of the State High Court. In the *Egbetola* case, one of the justices conceded, in his concurring judgment, that under section 41 of the Land Use Act, the State High Court also has jurisdiction over non-urban land in some circumstances.⁴⁰ Such circumstances, in his Lordship’s view, would be where there is no Area Court or Customary Court in any particular state. It is submitted that it is not a tidy argument to say that the High Court has jurisdiction over disputes relating to rights in non-urban land in some states and not in others. This is analogous to saying that the State High Court is “of equivalent jurisdiction” to the Area or Customary Court in some states and not in others. Such selective enlargement and abridgement of the State High Court jurisdiction cannot be said to have been contemplated by section 236(1) of the 1979 Constitution. The 1999 Constitution of Nigeria has now come into force but the problem still remains. As far as the Land Use Act is concerned, the 1999 Constitution still gives the State High Court unlimited original jurisdiction which is now expressly subject only to the exclusive jurisdiction of the Federal High Court⁴¹ under section 251 of the same Constitution. The Land Use Act is still constitutionally recognized as an existing law,⁴² thus maintaining its status as an extraordinary legislation, but not part and parcel of the Constitution.

³⁹ *Peacock v. Bell*, 1 Wms. Saund. 74, 85 ER 84 at 87–88.

⁴⁰ (1997) 50 LRCN 1376 at 1399, *per* Kutigi, J.S.C.

⁴¹ S. 272(1) of the Constitution.

⁴² S. 315(5) and (6) of the 1999 Constitution.