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## THE LIMITS OF THE STATE HIGH COURTS JURISDICTION

Recent judicial decisions have tended to extend the jurisdictional limits or competence of the State High Courts. This paper sets out to examine the extent and implications of such extension of State High Courts jurisdiction vis-a-vis other Courts (both regular and special Courts).

The word "jurisdiction" is capable of varying meanings: As Hans Smit once observed, 'even etimologically, the term's (jurisdiction) meaning is not free from ambiguity'.<sup>1</sup> But as it applies to Courts, jurisdiction, briefly stated, can mean one of two things. Firstly, it can mean the abstract right of a Court or tribunal to exercise its power with respect to a particular subject-matter. In this sense i.e., the broader sense, jurisdiction refers to the legal authority, the legal capacity, to adjudicate at all.<sup>2</sup> The Supreme Court used the term in this wider sense when it upheld the Court of Appeal decision that the trial Customary Court had no jurisdiction to give a declaratory judgement.<sup>3</sup>

Secondly, jurisdiction can mean the right of a Court or tribunal to exercise its powers with respect to a particular subject-matter. In this strict or narrower sense, it refers to the power of Court over the particular subject matter in dispute, over the res or property in contest. This later sense may be referred to as territorial jurisdiction, or venue or the area of authority – the geographical area beyond which the Court's power (or legal jurisdiction) is not to be extended.<sup>4</sup>

This strict or narrower sense will also include cases whereby although the Court has power to decide the question before it, will not, according to its settled practice, do so, except in a certain way or in accordance with settled rules or in certain circumstances<sup>5</sup>. It is in this sense that the Court said that "there may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on any enquiry".<sup>6</sup> And in this sense too, the Supreme Court held in *Nwabueze & Anor v. Justice Obi Okoye*<sup>7</sup> that proper issue of a Writ of Summons and the proper service of same on a defendant in a case are conditions precedent for the exercise of the jurisdiction which a Court may have over the subject-matter of an action or over the defendant.

It is the jurisdiction of the second category (i.e. strict or narrower sense) that is the subject of this paper. Jurisdiction determines the competence of a Court to entertain a Suit,<sup>8</sup> so, as stated by Oputa, J.S.C., "the competence of a Court is an essential element in determining its jurisdiction".<sup>9</sup> Thus when any action is to be brought the plain-

1. Hans Smit, 10 Am. J. Comp. L.164

2. *Onyema & Ors v. Oputa & Ors* (1987)6S.C.N.J. 176 per Oputa J.S.C. at p. 212.

3. *Oloba v. Akereja* (1988) 7 S.C.N.J. (Part 1) 56 at 64-65.

4. *Onyema & Ors v. Oputa & Ors*, op. cit.

5. *CBN V. Manexport S.A. & Ors* (1987) 1 NWLR (pt. 47) 86 t 97. *Guaranty Trust Co. of New York v. Hannay & Co.*(1915) 2KB at 563 *Barraclough v. Brown* (1957) AC 615: *Skenconsult (Nig.) Ltd. v. Godwin Sekondy Ukay* (1981) 1 SC 6 at 25-27.

6. *Anisminic Ltd., v. The Foreign Compensation Commission & Anor* (1969) 1 All E.R. 208 at 233.

7. (1988) 10-11 S.C.N.J. 60 at 77.

8. *Alhaji Salati v. Alhaji Shehu* (1986) 1 N.W.L.R. Pt.15) 198

9. *Sule v. Nig. Cotton Board* (1985) 2 N.W.L.R. (Pt.5) 17 at 36.

tiff first of all asks himself and answers the question: Does this particular Court have jurisdiction to deal with this particular matter? Where the Plaintiff has not addressed his mind to the question when instituting the case, the court itself can raise the issue of jurisdiction *sou motu*<sup>10</sup> or where both the parties and the Court fail to raise the issue, it can still be raised for the very first time on appeal at the Supreme Court.<sup>11</sup>

In each case, however, where ever and whenever the question of jurisdiction is raised it should be tackled first as a decision on it may conclude the entire case.<sup>12</sup>

The reason for this is very obvious: If after the issue of lack of jurisdiction has been raised the Court brushes it aside and still goes on to first hear and decide the substantive suit this would be an exercise in futility because it may well turn out that the Court had no jurisdiction to hear and decide the case. If the Court had no jurisdiction to determine the case then everything it did, the proceedings however well conducted and the decision or judgement no matter how sound and well considered will be void and so a nullity.<sup>13</sup> When an action is held to be void the meaning of the word 'void' and the rationale for avoiding it are as stated by Lord Denning M.R. in *Macfoy V.U.A.C. Ltd.*<sup>14</sup> thus:

"If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of Court to set it aside.<sup>14a</sup> It is automatically null and void without much ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there; it will collapse.

Luckily, the Court has jurisdiction to determine whether it has jurisdiction.<sup>15</sup> It therefore behoves the Court to always tackle the issue of jurisdiction immediately it is raised, because there is no justice in exercising jurisdiction where there is none. It is injustice to the law, to the Court and to the parties so to do.<sup>16</sup>

The High Court of a State,<sup>17</sup> like all superior Courts in Nigeria,<sup>18</sup> has "unlimited jurisdiction". By this is meant that the jurisdictional limit of superior Courts is minimal. They have minimal jurisdictional limits with respect to the type of subject-matter but they are not limited in jurisdiction with respect to the mere value of the subject-matter of a case.<sup>19</sup> So when it is said that a Court is of unlimited jurisdiction it does not mean that its jurisdiction has no limits at all. But is this true of the State High Courts too?

The State High Court is constitutionally given an express unlimited jurisdiction. Section 236(1) of the 1979 Constitution provides thus:

10. *Inua v. Nta* (1961) All NLR (pt.4) 576.

11. *Salati v. Shehu* (1986) 1 N.W.L.R. (pt.15) 198; *Oloba v. Akereja* (1988) 7 S.C.N.J. (pt.1) 56 at 64-65; 70. *Ajao v. Alao* (1986) 5 NWLR 802.

12. *Sule v. Niger Cotton Board*, op.cit, at p. 32.

13. *Ibid* at p.36; *Madukolu v. Nkemdilim* (1962) All NLR 587.

14. (1962) AC. 52 at 160; *Skenconsult v. Ukay*, op.cit at p.9.

15. *Savannah Bank Ltd., v. Pan Atlantic Shipping etc. & Anor* (1987) 1 NWLR (Pt. 49)212, 244  
*Barclays Bank Ltd., v. Central Bank Ltd.* (1976) 6SC 175.

16. Per Obaseki J.S.C. in *Oloba v. Akereja*, op.cit at p. 64.

17. Which is established by S.234 of the 1979 Constitution, as amended by Decree.

18. See A.O. Obilade, *The Nigerian Legal System*, 1979, Sweet & Maxwell, p. 169.

19. *Ibid*.

## *Limits of the State High Courts Jurisdiction – Essien*

"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."

The scope of the unlimitedness of the State High Court jurisdiction has been a point of objection and a ground of appeal in recent times. In some of the cases the jurisdiction of the State High Court has been stated, by Section 236(1) of the Constitution, to be so all pervasive that it even extends to aspects that were the exclusive reserve of other Courts.

Perhaps, one of the latest reported cases that touches on the jurisdiction of the State High Court is *Central Bank of Nigeria v. Manexport S.A. & 3 Ors.*<sup>20</sup> – where the Court of Appeal, Lagos Zone, had to consider the 'exclusiveness', if at all, of the Federal High Court jurisdiction.<sup>21</sup>

The basic issue for determination by the Court of Appeal was whether the trial court, which was a State High court had jurisdiction to hear a case involving foreign exchange measures which is cognizable by the Federal High Court under section 7 (1)(b)(iii) of the Federal High Court Act, No.13. of 1973 which says:

"The Federal High Court shall have and exercise jurisdiction in civil cause and matters connected with or pertaining to (iii) banking, foreign exchange, currency or other fiscal measures."

The Court of Appeal, in a leading judgement read by Nnaemeka Agu, J.C.A., held the view that it is now beyond question that the purpose and legislative intention of section 7(1)(b)(iii) of the Federal High Court Act, 1973, is essentially revenue protection functions recognizable by the Federal High Court whereas ordinary transactions such as that between a banker and its customer are within the jurisdiction of the High Court of a State<sup>22</sup> and that the issue here being that of revenue protection could *only* be investigated in the Federal High Court<sup>23</sup>. It would be noticed here that the Court of Appeal used the word "only", meaning that the jurisdiction of the Federal High court in the matter of foreign exchange is exclusive.

The judgement of the Appeal Court was delivered on Thursday, 27th November, 1986. However, about two months after the Court of Appeal judgement, the Supreme Court in another case delivered a judgement which knocks the bottom off the earlier Court of Appeal decision. The Supreme Court case is *Savannah Bank of Nigeria Limited v. Pan Atlantic Shipping & Transport Agencies Limited & Another.*<sup>24</sup>

There, two of the three issues for determination were:<sup>25</sup>

1. Whether a State High Court has jurisdiction to entertain an admiralty matter

20. (1987) 1 NWLR (Pt. 47) 86

21. Under Section 7 of the Federal High Court Act, 1973.

22. See on this: *Bronik Motors Ltd. & Anor v. Wema Bank Ltd.* (1985) 6 NCLR 1 at 16; *American International Insurance Co. v. Ceekay Traders Ltd.* (1981) 5SC 81 at 82; and the majority decision in *Jammal Steel Structures Ltd. v. African Continental Bank Ltd.* (1973) 1 All NLR (Pt. 11) 208.

23. At pp. 95-96 (emphasis mine).

24. (1987) 1 NWLR (Pt.49) 212.

25. Ibid at p. 213,

in a suit instituted in that Court after the commencement of the 1979 Constitution.

2. Whether Section 8 of the Federal High Court Act, 1973 which stipulates that the Federal High Court shall have exclusive jurisdiction over matters specified in Section 7 of the same Act is not inconsistent with section 236 of the 1979 Constitution which confers unlimited jurisdiction on the State High Court.

The Court of Appeal<sup>26</sup> had earlier held, inter alia, that the High Court of Lagos State had no jurisdiction to entertain the matter being an admiralty case. But on further appeal to the Supreme Court the Supreme Court saw jurisdiction of a Court as being a very serious matter and therefore should be conferred or removed by express words. As a follow up therefore, the Court held that Section 230(2) of the 1979 Constitution does not confer any additional jurisdiction on the Federal High Court and does not constitute any express removal of the jurisdiction conferred on State High Courts by Section 236 of the same Constitution, and that Section 230(2) of the 1979 Constitution simply confers on the Federal High Court the same jurisdiction exercised in Admiralty cases by virtue of Section 7(1) of the Federal Revenue Act, but section 230(2) does not preclude the State High Courts from exercising the same admiralty jurisdiction.

The Supreme Court in its judgement did not forget its earlier decision<sup>27</sup> where it had held that the Federal High Court had exclusive jurisdiction on matters specified in Section 7 of the Federal High Court Act 1973. It duly adverted its mind to the case and overruled itself, holding that that section is no longer the law because it was a decision based on the effect of Section 8 of the Federal High Court Act 1973 which section is void for its inconsistency with section 236 of the 1979 Constitution. It would be remembered that the *Ceekay Traders Case*<sup>28</sup> was one of the bases for the Court of Appeal decision in *CBN v. Manexport*.<sup>29</sup>

The Supreme Court went further to hold that presently, the Federal High Court and State High Court have concurrent jurisdiction on Admiralty matters.<sup>30</sup>

As the law now stands therefore, it means that for all actions arising from the coming into force of the 1979 Constitution the High Court of a State has jurisdiction be it under Section 7 of the Federal High Court Act 1973 or not. But where the cause of action arose between 1973 when the Federal High Court Act was enacted and 30th September 1979 (inclusive), and such cause of action fell under the ambit of Section 7 of the Federal High Court Act 1973, then the Federal High Court would have exclusive jurisdiction. This apparently is based on the principle of law that the applicable law to a cause of action is the law in force when the cause of action arose and not the law in force when the action was instituted.<sup>31</sup>

26. The same Court of Appeal, Lagos Zone, that decided the *CBN v. MANEXPORT S.A.* case in November, 1986.

27. *American International Insurance Co. Ltd., v. Ceekay Traders Ltd.* (1981) 5SC 81.

28. *Ibid.*

29. *Supra.*

30. And ipso facto on all matters in Section 7 of the Federal High Court Act 1973, by virtue of Section 236 of the 1979 Constitution.

31. *Johnson Fatola v. Mustapha & Ors* (1985) 2 NWLR (pt. 7) 438 at 448; *Uwaifo V A-G of Bendel State* (1982) 7SC 124.

have an option, what would the Federal High Courts be doing, especially as the Federal High Court has no other jurisdiction?

It may well be that the reason for the restrictive interpretation by the judiciary of the jurisdiction of the Federal High Court can be seen by looking at the circumstances under which the Court was established. It would be recalled that the Federal High Court was established in the teeth of considerable and sustained opposition from the Bench. A majority of the Chief Justices of the period considered the Court redundant and a colossal waste of much needed manpower. The opportunity for reviewing its usefulness offered itself during the review of the 1963 Constitution which resulted in the present Constitution. The judiciary Committee of the Constitution Drafting Committee recommended its retention and restyling as the Federal High Court and vested with increased jurisdiction embracing all matters within the Exclusive Legislative List of the National Assembly. The parent body, namely the Constitution Drafting Committee, rejected this recommendation and recommended its abolition. The Constituent Assembly with legislative responsibility for considering and approving the Draft of the Constitution Drafting Committee recommended its retention in its present form and was accordingly made a provision of the Constitution and as decreed by the Federal Military Government.

The above judicial attitude to the formation of the Federal High Court would appear to account for the present restrictive judicial interpretation of the Court's jurisdiction. The second explanation would appear to be that the Constitution does not expressly make the jurisdiction of the Federal High Court exclusive to it. In this regard however, the powerful dissenting judgement of Karibi-Whyte J.S.C. in the *Savannah Bank* case deserves consideration. The Learned Justice held, firstly, that the history of the Federal High Court shows that it was intended to have exclusive jurisdiction. Secondly, that the Constitution should be read as a whole to bring out the intention and that when read together with the Federal High Court Act, which is an existing law preserved by the Constitution, the Federal High Court has exclusive jurisdiction. Thirdly, that there are strong dicta even in *Bronik Motors Ltd. v. Wema Bank Ltd.*,<sup>36</sup> which lead to the conclusion that there is a limitation of the jurisdiction of the State High Court by the jurisdiction vested in the Federal High Court by Section 230 of the Constitution. Fourthly, that the 'unlimited jurisdiction' of the State High Court is limited to the State territory even as to subject matter, otherwise there would have been no need to invest the High Court with additional jurisdiction in respect of Federal causes and offences. He held sixthly that Sections 236(1) and 250 of the Constitution are to apply subject to other provisions of the Constitution and Section 230 is one of such provisions. To drive home his view that the jurisdiction of the Federal High Court is meant to be exclusive, the Learned Justice pointed out that Section 236 which relates to "unlimited jurisdiction" of State High Courts is in Part II of Chapter VII of the Constitution on the Judicature, whereas Section 230 relating to Federal High Court is in Part I. He therefore took the view that the section takes its meaning primarily from the part of the Constitution on Legislation in which it is found. It therefore follows, in his view, that Section 236 is confined to matters relating to States and within the jurisdiction of the State.

36. *Supra*.

## *Limits of the State High Courts Jurisdiction – Essien*

The reasoning behind the dissenting minority judgement of Karibi-Whyte J.S.C. is indeed very appealing. But the point still remains that Section 236 in investing State High Courts with 'unlimited jurisdiction' does so without any qualification or reservation. It is a well settled principle of common law that with respect to a High Court every matter not expressly so prescribed as outside the jurisdiction is within its jurisdiction.<sup>37</sup> It is the view of this writer that the jurisdiction of the State High Courts has not been ousted in matters which the Federal High Courts also have jurisdiction. Granted that the Federal Revenue Act is an existing law within the meaning of Section 274(1) of the Constitution, the same section 274(1) also requires that such existing law be modified so as to conform with the provisions of the Constitution. Thus, where any existing law is inconsistent with the Constitution, such as when it limits the unlimited, jurisdiction of the State High Courts, such existing law is *pro tanto* void. It is for this reason that the writer endorses the majority decision of the Supreme Court in the *Savannah Bank* case. The problem therefore lies not with the interpretation of the jurisdiction of the State High Courts. The problem is that the Constitution should have made the Federal High Court jurisdiction in these matters exclusive, or the government should amend the 1979 Constitution by exclusively earmarking the jurisdiction of the Federal High Court, otherwise the Federal High Court will be a Court without jurisdiction.

The second problem<sup>38</sup> left behind by the decision in the *Savannah Bank* case, of course, will be that all existing Nigerian standard text books containing the jurisdiction of courts and tribunals in Nigeria will need a revised edition. Obilade,<sup>39</sup> for instance, will have to be revised so that students would not still believe that 'now State High Courts have no jurisdiction in any matter with respect to which jurisdiction is conferred on the Federal Revenue Court (Federal High Court.<sup>40</sup>) The same goes for Okonkwo's *Introduction to Nigerian Law*<sup>41</sup> where it is stated that State High Courts have 'no jurisdiction to deal with any matter subject to the jurisdiction of the Federal Revenue court.<sup>42</sup>

But the decision of the Supreme Court in the *Savannah Bank* case does not affect only the Federal High Court jurisdiction. It is wide and embrasive enough to affect the jurisdiction of all special and regular courts established whether by Decree of Edict prior to the 1979 Constitution. In fact the Supreme Court itself has confirmed this view in its recent decision in *Western Steel Workers & Anor v. Iron & Steel Workers & Anor.*<sup>43</sup>

In that case the Honourable Mr. Justice Coker J.S.C. had this to say:

On the question of jurisdiction of the High Court of Lagos, I will adopt my reasoning in SC.139/1985, *Savannah Bank of Nigeria Limited and Anor.*, yet unreported, delivered on 30th January, 1987 wherein I decided that State High Courts, by virtue of their unlimited jurisdiction under S.236(1) of the 1979 Constitution, are competent. No Act of the National

37. *Peacock v. Bell Sound* 74, cited in *London v. Cox*. LR.2H.L. 1259.

38. This is not really a problem, strictly speaking. It is an effect.

39. *The Nigerian Legal System*, 1979, Sweet p.187

40. *Ibid.* (Brackets mine)

41. 1980, Sweet & Maxwell

42. *Ibid* at p.122.

43. (1987) 1 NWLR (pt. 49) 284.

Assembly, including the Trade Disputes Act 1976 or the Federal High Court Act 1973 can cut down or oust the jurisdiction conferred on State High Courts by and under Section 236(1) of the 1979 Constitution.<sup>44</sup>

This decision means that even matters that were under the jurisdiction of the National Industrial Court by the Trade Disputes Act 1976 can also legitimately be brought before a State High Court, the Trade Disputes Act being a Pre-1979 Act, and therefore is superceded by the 1979 Constitution which by Section 236 vests unlimited jurisdiction on State High Courts.

It may also perhaps be tempting to say that the State High Court will also have jurisdiction even in matters that were<sup>45</sup> by the 1979 Constitution within the exclusive original jurisdiction of the Supreme Court. By Section 212(1) of the 1979 Constitution, the Supreme Court shall, "to the exclusion of any other Court have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". It would be noticed that though this section of the Constitution has not been suspended by Decree,<sup>46</sup> it has nevertheless been modified so much that the original jurisdiction conferred on the supreme court by Section 212(1) has been deleted.<sup>47</sup> The whole section 212 as modified gives the Supreme Court a nebulous original jurisdiction thus:

The Supreme Court shall have such original jurisdiction as may be conferred upon it by law: PROVIDED that no original jurisdiction shall be conferred upon the Supreme Court with respect to any criminal matter.

As it stands now therefore the Supreme Court has no original jurisdiction since none is yet 'conferred upon it by law' since after Decree No. 1 of 1984.

Since Section 212(1) of the 1979 Constitution which excluded High Court jurisdiction in matters between the Federation and a State or between States is no more, and since the State High Court has unlimited jurisdiction by virtue of the unsuspending and unmodified section 236(1) of the 1979 Constitution, one would perhaps say that the State High Court has jurisdiction even in matters hitherto within the exclusive original jurisdiction of the Supreme Court. This would mean that if it were today the Attorney General of Bendel State who instituted an action in the Supreme Court by originating summons against the Federal Attorney General *et al*<sup>48</sup> would institute the action in the High Court. It must be noted that the State High Court has territorial jurisdiction. Its unlimited jurisdiction is limited to the State territory. As noted by *Oputa J.S.C: in Onyema & Ors, v. Oputa & Ors.*,<sup>49</sup> "reading section 3(2), 6(2) and 234(1) of the 1979 Constitution together one comes to the inevitable conclusion that each State High Court is given exclusive jurisdiction over the area of that State and no more".

Thus, it would not be very sensible to seriously say that the State High Court would have jurisdiction in matters involving another State or the whole Federation.

44. *Ibid* at p. 301.

45. i.e. the 1979 Constitution as it was before its amendment by Decree No.1 of 1984.

46. Constitution (Suspension and Modification) Decree (Decree No. 1) 1984.

47. *Ibid*, schedule 23.

48. See: *A-G of Bendel State v. A-G of the Federation & 22 ors.* (1981) 10 SC1.

49. (1987) 6 S.C.N.J. 176 at 213-214.



The answer to such an issue arising lies in the fact that the military government is unitary in nature so that a dispute can hardly arise between two states or between a State and the Federation. If it does, however, such dispute would most probably be settled by the Armed Forces Ruling Council (AFRC) and so the need for going to Court would not arise. An instance is the recent boundary dispute between Akwa Ibom and Imo States. The Federal Military Government stepped in to resolve the dispute.

The issue of jurisdiction of a State High Court in rent matters where Rent Tribunals exist and where Rent Edict expressly ousts High Court jurisdiction in rent matters came up for determination in *Pan Asian African Co. Ltd., v. National Insurance Corporation (Nig.) Ltd.*<sup>50</sup> There in a leading judgement read by the Honourable Mr. Justice Obaseki, J.S.C., with which all other Justices were in agreement, the Supreme Court held that "by the provisions of Section 34(1) of the Rent Control and Recovery of Premises Law 1976, to the extent that jurisdiction is conferred on the Rent Tribunals, the High Courts and Magistrate's Courts were deprived of jurisdiction".<sup>51</sup> Therefore the proper forum was the Rent Tribunal under the Edict and not the High Court of Lagos.<sup>52</sup> The claim was struck out for want of jurisdiction.

It must be stated that the Constitution being the law of the land supercedes an Edict. Throughout the whole of 93 page judgment the Supreme Court never reminded itself of Section 236(1) of the 1979 Constitution which gives the State High Courts unlimited jurisdiction and it therefore reached the decision it did *per incuriam*. If it had adverted its mind to Section 236(1) of the 1979 Constitution it would most probably have declared Section 34(1) of the Rent Control and Recovery of Premises Law 1976 void for being inconsistent with the Constitution. As stated in *Chief Esi V A-G of Mid Western State*,<sup>53</sup> "if the provisions of any Edict are inconsistent with Constitution or a Decree the Court has jurisdiction to declare such Edict void *pro tanto*. In fact, to emphasize the point, the Court of Appeal recently stated that 'the provisions of the Constitution, as they presently are, including Section 236(1) relating to the unlimited jurisdiction of the High Court. It cannot subtract from or reduce the jurisdiction of the Court and any law purporting to do so is void to the extent of its inconsistency'.<sup>55</sup> Thus the State High Courts have jurisdiction even in rent matters.

Also in *Oloba v. Akereja (supra)*, Obaseki J.S.C. stated clearly that 'from the text of Section 236(1) of the 1979 Constitution, 'it is clear that the State legislature can only add to the jurisdiction of the High Court. It cannot subtract from or reduce the jurisdiction of the Court and any law purporting to do so is void to the extent of its inconsistency'.<sup>55</sup> Thus the State High Courts have jurisdiction even in rent matters.

The only way the Supreme court judgement in the *Pan Asian African Case (supra)* can be defended is by noting that the cause of action in that case arose before the

50. (1982) 9SC.1

51. *Ibid* at p.57

52. *Ibid* at p.93.

53. (1977) 4SC 71

54. *op. cit* at p. 67

55. Governor of Ondo State & Ors v. Adewunmi (1985) 3 NWLR (pt.13) 493.

1979 Constitution and therefore when Section 236(1) did not exist. Thus at that time the Rent Tribunal was the only competent Court.<sup>56</sup> It is a cardinal principle in construing a statute or a statutory provision that it affects something in the future and not what has gone before.<sup>57</sup> Thus, where an act was legally done when the 1979 Constitution did not come into effect, such act is still legal even if it was from 1979 contrary to the Constitution.<sup>58</sup>

This was the observation of the Supreme Court in a Case subsequent to the *Pan Asian African Case*. The case is *Sule v. Nigerian Cotton Board*<sup>59</sup> where Mr. Justice Oputa, J.S.C. said:<sup>60</sup>

... "the 'unlimited jurisdiction to hear and determine any civil proceedings' conferred on the High Court of a State by S.236(1) of the 1979 Constitution 'shall come into force on 1st day of October, 1979' . . . Section 236(1) of the 1979 Constitution, was not meant to have a retro-active effect or a retrospective validity. That section in my humble view will definitely control proceedings filed after 1st October, 1979 by not those filed before 1979 Constitution was born."

It is at this point necessary to consider one important pre-1979 Act (The Land Use Act of 1978) as far as it touches on the jurisdiction of the High Court of a State. By this Act, all land comprised in the territory of each State is vested in the Military Governor of the State.<sup>61</sup> All land in urban areas are controlled and managed by State Military Governor.<sup>62</sup> while all other land<sup>63</sup> come under the control and management of the Local Government of the Area where the land situates.<sup>64</sup> Land in the urban area, within the control and management of the Military Governor, is under the exclusive original jurisdiction of the State High Court.<sup>65</sup> But Section 41 of the Act vests jurisdiction in respect of land in non-urban or rural areas in the relevant Area or Customary Courts as the case may be. But it would be noticed that while Section 39 vests the High Courts with 'exclusive original jurisdiction', the jurisdiction given to the Area and Customary Courts is not 'exclusive'. This means that the State High Court also has jurisdiction in matters of land lying situate in the rural areas.

Even if the Area and Customary Courts had exclusive jurisdiction in these matters the High Court would, from the inception of the 1979 Constitution, have concurrent jurisdiction with the Area and Customary Courts in these matters. This is in accordance with Section 236(1) of the 1979 Constitution and also in accordance with the recent Court of Appeal decision in *Kanada v. The Governor of Kaduna State & Anor*,<sup>66</sup> where the Court held inter alia, that 'any provision of the Land Use Act which is in conflict or inconsistent with 1979 Constitution . . . is void to the extent of such

56. *Fatola v. Mustapha & Ors* (1985) 2NWLR (pt.7) 438 at 448; *Uwaifo v. A-G of Bendel State* (1982) 7SC 124.

57. *Kanada v. Governor of Kaduna State* (1986) 4 NWLR (pt.35) 361 at 375.

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

59. (1986) 2 Q.L.R.N. 102; (1985) 2NWLR (pt. 5) 17

60. (1985) 2NWLR (pt.5) 17 at 35-36.

61. Section 1.

62. Section 2(1)(a)

63. i.e. land in non-urban or rural areas.

64. Section 2(1)(b).

65. Section 39(1).

66. (1986) 4NWLR (pt.35) 361.

conflict or inconsistency'. The Court held that "The Land Use Act is *not* an integral part of the Constitution. Although the said Act is an extraordinary statute by virtue of its entrenchment in the constitution it remains a Federal enactment which the Constitution is *not*"<sup>67</sup> The Court consequently held that Section 47 of the Land Use Act is void to the extent that it purports to deny any person in Nigeria a claim of compensation in respect of compulsory acquisition of his property and is in conflict with Section 236 of the 1979 Constitution, and held further that the High courts has jurisdiction to hear and determine the case, the cause of action which arose in 1981.<sup>68</sup>

The decision of the court in the *Kanada* case supports the view that where the cause of action arose after the coming into force of the 1979 Constitution the High Court will have jurisdiction even in matters under Section 2(1)(b) and Section 41 of the Land Use Act 1978. The reverse is not true; Area and Customary Courts, as the case may be, do not have jurisdiction where the land situates in urban area. They have jurisdiction only where land situates in rural area.<sup>69</sup>

## CONCLUSION

It is difficult to subscribe to the view that the jurisdiction of State High courts as it stands under Section 236 of the Constitution can be circumscribed an Edict. And a Decree too, except it is a post-1979 Decree the jurisdiction of the High Courts would have to be expressly ousted, otherwise the State High Courts would be deemed to have concurrent jurisdiction with any Tribunal or Special Court set up by such Decree.

The reasoning of Karibi-Whyte J.S.C. in his dissenting judgement in the *Savannah Bank* case is indeed very convincing, but the majority judgement of the court is the law. This may appear to negate the objective for which the Federal Court (and in other trial Courts) was set up, but it is a reasonable interpretation of the 'unlimited jurisdiction' given to State High Courts by the Constitution.

A possible way out of the problem is that the ball now seems thrown from the Judiciary to the Court of the Executive. It is therefore strongly urged that the Military Government should take the bull by the horns by amending 1979 Constitution to exclusively earmark the jurisdiction of the Federal High court, otherwise the Federal High Court will become a Court without jurisdiction. Also, it is hoped that the Constitution Assembly (currently sitting at Abuja) with legislative responsibility for considering, reviewing and approving the Draft of the 1979 Constitution will recommend an amendment of Section 236 of the Constitution so that the running question of the plenitude and amplitude of the State High Courts may be answered once and for all. This is a consummation devoutly to be wished.

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67. *Ibid*, at p.378

68. *Ibid*, at p. 380.

69. *Salati v. Shehu* (1986) 1NWLR (pt. 15) 198.