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# RECENT DEVELOPMENTS IN INTER-STATE CONFLICT OF LAWS IN NIGERIA

BY

YEKINI A.O<sup>\*</sup>

## Abstract

*The development of private international law has stagnated in Africa for some time now. This is reflected in the neglected and undeveloped state of the subject, and the near absence of Africa in international processes, academic forums, writings, and institutions that have significance for the subject!... Prof. Richard Frimpong Oppong*

## 1 INTRODUCTION

Nigeria, a country in the western part of sub-Saharan African was formed in 1914 after the amalgamation of the Northern and Southern protectorates by the then colonial master, Lord Lugard<sup>2</sup>. The country is acclaimed to be the most populated black nation on the earth with a population of about 160 million people. Nigeria is constituted by different tribes and it is said that there are about 250 ethnic groups in Nigeria<sup>3</sup>.

Before the advent of colonialism, the various ethnic groups have their respective legal system well standardised. In the Northern part of the country, the Shariah legal system is in full operation. In the various communities of the Southern

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<sup>1</sup> Oppong R.F.: 'Private International Law in Africa: The Past, Present and Future' 55 *American Journal of Comparative Law*, (2007) pp. 677

<sup>2</sup> Fredrick John Dealtry Lugard was a British soldier, mercenary, explorer of Africa and colonial administrator, who was Governor of Hong Kong (1907-1912) and Governor-General of Nigeria (1914-1919).

<sup>3</sup> Agbede, I.O.: *Themes on Conflict of Laws*, Ibadan, Shaneson, 1989, p.6



part of the country as well, the customary legal system- customary law, are established. In other words, even before the advent of colonial masters, Nigeria has been operating a pluralistic legal system. With the advent of the conquistadors, the indigenous legal systems vis-a-vis the Shariah and customary laws were relegated to the background and replaced with the English style of justice delivery<sup>4</sup>.

Precisely in 1863, the modern legal system we have now in the country was introduced with the promulgation of the Supreme Court Ordinance of that year. The Ordinance established the courts system and imported imperial laws into the country. Hence, the legal pluralism was then more pronounced as the courts then have multiplicity of legal systems to administer. The trend continued till the country got her independence in 1960<sup>5</sup>.

## 2. WHAT IS CONFLICT OF LAW

Conflict of laws is the body of rules that apply to cases arising between private persons or states engaged in private transactions with contacts with two or more legal units<sup>6</sup>. In the words of Agbede, it is the department of law which comes into play whenever an issue before the court contains a foreign element<sup>7</sup>. In other words, conflict of laws could be described as the set of laws or rules that guide the court in the resolution of private transactions where any question of foreign law arises. It basically seeks to answer three basic questions<sup>8</sup>:

- a. Which court(s) has jurisdiction
- b. Which choice of law is applicable
- c. Enforcement of foreign judgment

## 3. SOURCES OF CONFLICT OF LAWS IN NIGERIA

It is pertinent we have a brief touch on the sources of conflict of laws in Nigeria as this is the foundation of the discourse. The first point of call when we generally

<sup>4</sup> Obilade A.O: 'Reform of Customary Court Systems in Nigeria under the Military Government' *Journal of African Law*, Vol. 13, No. 1 (Spring, 1969), pp. 28-44

<sup>5</sup> Agbede, I.O. 'Conflict of Laws in a Federation', in *The Nigerian Law Journal*, vol. 7, 1973

<sup>6</sup> Abiru, H.A.O. 'The Concept of Territorial Jurisdiction' in *Law and Development in Nigeria: Essays in Honour of Chief Femi Okunnu, SAN, CON*, Lagos, Ecowatch Publication Limited, 2004, p.1

<sup>7</sup> Agbede, I.O. "Themes on Conflict of Laws", supra, p.2

<sup>8</sup> Agbede, I.O. 'Conflict of laws in a Federation', supra, p.49; Richman, W.M. *Understanding Conflict of Laws*, 3<sup>rd</sup> ed., San Fransisco, Matthew Bender & Company, Inc, 2002., p.1



discuss the sources of Nigerian law is the received English Law. The received English Laws were introduced into the country's corpus juris by virtue of the aforementioned ordinance. Hence, the common law of England, the doctrine of equity and the statute of general application in force on or before 1900 were all applicable in Nigeria<sup>9</sup>. Although there used to be controversy on the content of the received laws, the dominant view and judicial practice has it that it is the laws, including common law of England before 1900 that are binding in Nigeria<sup>10</sup>. Therefore, all the common law rules of conflict of laws are applicable in the country by virtue of this reception laws. It is on this basis that some cases like **Adegbola v Folami**<sup>11</sup> and **Cole v Akinyele**<sup>12</sup> were decided. It must be stated that it is true this channel that the principles of conflict of laws or what is referred to as private international law came into the country.

The indigenous legislations- laws enacted by the Nigerian parliaments are also a prominent source of conflict of laws. Apart from the Constitution of the Federal Republic of Nigeria, the indigenous statutes are the next most authoritative source of law. The legislature can alter the application of the content of the received English law. The can use statute to alter any case law as well. In other words, they command a high among the various sources.

Various statutes govern conflict of law situations in the country. Virtually all the state High Court Laws have conflict of law rules enshrined in them<sup>13</sup>. The various rules of court as well as regulate some aspect of conflict situations<sup>14</sup>. **The Sheriffs and Civil Processes Act (SCPA)**<sup>15</sup> also regulate some aspect of inter-state conflict of law situations. Again, it is worthy of note that Customary Court Laws of various states prescribe what rule the courts should follow where the parties are not indigenous to the situs of the court<sup>16</sup>.

<sup>9</sup> Agbede, I.O.: **Themes on Conflict of laws**, supra, p.8

<sup>10</sup> Obilade, A.O. *Nigerian Legal System*, London, Sweet & Maxwell, 1979; Park, A.E.W. *The Sources of Nigeria Law*, London, African University Press, 1963; Okanny, M.C. *Nigerian Commercial Law*, Onitsha, Africana-Fep Publishers Ltd., 1992

<sup>11</sup> (1921) 3 NLR 89

<sup>12</sup> (1960) 5 FSC 84

<sup>13</sup> For instance s.22 of the High Court Law of the Eastern Nigeria which is applicable in all the Eastern states of the federation; s.10 of the High Court of Lagos State Law, CAP H3, Laws of Lagos State 2003.

<sup>14</sup> ORDER 12 RULE 13 Uniform Procedure Rules; ORDER 8, High Court of Lagos State (Civil Procedure) rules, 2004, ORDER 8, Borno State High Court ( Civil Procedure) Rules, 2006;

<sup>15</sup> CAP S6, Laws of the Federation of Nigeria (LFN), 2004

<sup>16</sup> for instance: **Customary Court Law of Lagos State, 2011**



Case laws have provided us with enormous propositions of laws as it affects conflict of laws. Various decisions of the courts in Nigeria on conflict of laws rules form part of the body of laws that govern conflict of laws situations in the country. The judgments constitute the position of the law in respect of any decided matter<sup>17</sup>.

Lastly, public international law is another vital source. Various customary international laws and treaties regulate conflict of laws. These customary international laws and treaties would be given consideration whenever the court is faced with any question that borders on conflict of laws<sup>18</sup>.

#### 4. INTER-STATE CONFLICT OF LAWS IN NIGERIA

Nigeria is a federal state<sup>19</sup> comprising of thirty-six constituent states and a Federal Capital Territory<sup>20</sup>. Each state of the federation has a government which has been empowered by the constitution to make laws for the good governance of the state. A High Court is established for each state as well<sup>21</sup>. It is usual for citizens to interact together throughout the country without any barrier. Hence, a person resident in Lagos can freely move to any other part of the country to transact business and or enter into any other legal relation.

Consequently, it is possible that parties who are resident Lagos may enter into a transaction in Enugu probably when they were there on vacation. Where a party decides to sue on the contract in Lagos, the question is- will the Lagos High Court has jurisdiction over the contract entered in Enugu and if the court decided in the affirmative, can the Lagos High Court apply Enugu law in the circumstance. This kind of scenario where the question of a foreign element arise in a matter before a forum court is what is referred to as conflict of laws- and in this our scenario, an inter-state conflict of law situation. We shall discuss the inter-state conflict of laws situation in Nigeria under the following headings:

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<sup>17</sup> note 11 and 12 for example

<sup>18</sup> Agbade, I.O. *Themes on Conflict of laws*, supra p.19

<sup>19</sup> Adamolekun, L.: 'Federalism in Nigeria: Toward Federal Democracy' in *Publius*, Vol 21, No. 4, (Autumn, 1991), pp. 1-11

<sup>20</sup> 1999 Constitution of the Federal Republic of Nigeria

<sup>21</sup> *Ibid* s.272



- a. Choice of jurisdiction
- b. Choice of law
- c. Enforcement of judgment

### **Inter-state Jurisdiction of Courts**

The word jurisdiction has been defined as the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties<sup>22</sup>. In **Bronik Motors Limited & Anor v. Wema Bank limited**, it has been defined as 'the power to hear and determine the subject matter in controversy between parties to a suit'<sup>23</sup>.

Jurisdiction is conferred on court by an enabling statute. In this regards, one need to examine the enabling statutes to know what they say about the jurisdiction of the various High Courts. The starting point in addressing the issue of jurisdiction of courts in Nigeria is the constitution. It has been said that jurisdiction is conferred on a court by statute and not the wish of the parties. The Constitution provides that:

**Subject to the provisions of section 251 and other provisions of this constitution, the High Court of a State shall have 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<sup>24</sup>.**

Again, the constitution provides that:

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<sup>22</sup> Abiru, H.A O. *supra*, p.2

<sup>23</sup> (1983) 6 S C 158

<sup>24</sup> S. 272 (1), 1999 Constitution



**For the purpose of exercising any jurisdiction conferred upon it under this constitution or any law, a High court of a State shall be duly constituted if it consists of at least one Judge of that Court<sup>25</sup>. (emphasis mine).**

Following from the above quotation, it means that the constitution has given the legislatures additional powers to confer jurisdiction on the State High Courts. For this purpose, we shall consider the provision of High Court Law of Lagos State which has similar provision with the High Courts of states carved out of the former Western Region and the Northern State on the one hand and the High Court Law of Eastern Nigeria which is generally operates in the eastern states.

S.10 of the High Court of Lagos State Law<sup>26</sup> provides as follows:

**The High Court shall, in addition to any other jurisdiction conferred by the Constitution of the Federation or by this or any other enactment, possess and exercise, within the limits mentioned in, and subject to the provisions of, the Constitution of the Federation and this enactment, all the jurisdiction, powers and authorities which are vested in or capable of being exercised by the High court of Justice in England.**

It therefore means that the High Court of the state and by extension other High Courts in the federation with similar provisions have similar powers and jurisdiction exercised by the High Court of Justice in England.

### **Jurisdiction of the High Court of Justice in England**

The jurisdiction of the English Court is generally governed by the writ rule for actions *in personam*. By this rule, the court will be seized of a matter if a claimant was able to serve the writ on the defendant. This is based on the principle of

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<sup>25</sup> *Ibid*, S. 273

<sup>26</sup> CAP H3, Laws of Lagos State 2003



effectiveness<sup>27</sup>. That is to say, an English court will have jurisdiction if the long arm of the sovereign (exercised through the court) could reach such defendant.

In other words, it means that such defendant must be in the territory of the sovereign, i.e England. Where a defendant is in the jurisdiction of the court and the writ is served on him, he is duty bound to obey the call of the sovereign. He is subjected to the jurisdiction of the court even if the cause of action did not arise in the jurisdiction<sup>28</sup>.

For actions in rem, an English court will not exercise jurisdiction where the *res* is not within the territorial jurisdiction of the court. It is a recognized principle of international law that that a sovereign cannot exercise any power beyond its territorial jurisdiction as this would amount to a violation of the territorial integrity of the of the state<sup>29</sup>.

This informs the reason why an English court would hardly grant leave to serve its writ outside the English territory except in rare circumstances even in *in personam* actions. Where such is even granted, it is the notice of the writ that is served and not the writ itself<sup>30</sup>.

The other instance where the English court would assume jurisdiction is where the defendant submit to the jurisdiction of the court. A defendant in this instance may submit by entering an unconditional appearance or unconditionally accepting service<sup>31</sup>

Having said this, let us now consider how the High Court in Lagos and other states with similar provision could exercise powers of the High court of England. It must be noted that Nigeria operates a federal system of government and the constitution has created a legislature and High Court for each state. The legislatures and Courts have constitutional competence to legislate and adjudicate matters in

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<sup>27</sup> The principles of effectiveness means that a Judge has no right to pronounce a judgment if he cannot enforce it within his own territory; J. O'Brien: *Conflict of Laws*, 2<sup>nd</sup> ed., London, Cavendish Publishing Ltd., 1999, pp 181-198; Tallack v. Tallack (1927) Probate p. 211,

<sup>28</sup> Collins, L.A.: 'Some Aspects of Service out of the Jurisdiction in English Law', *The International and Comparative Law Quarterly*, Vol. 21, No. 4 (Oct., 1972), pp. 656-681

<sup>29</sup> Shaw, M.N.: *International Law*, fifth ed., (Cambridge, Cambridge University Press, 2003)

<sup>30</sup> L.A Collins, L.A. *supra*

<sup>31</sup> Abiru, H.A.O. *supra*, pp18-19



the respective states. To that extent, Lagos laws are foreign laws in Ogun State despite the fact that both states share boundary and vice versa. In essence a Lagos High court can not ordinarily make an order that will be operative or enforced in Ogun because the judicial powers for Ogun State resides in the High court of Ogun State.

Therefore, *in personam* actions, the High Court of these states will have jurisdiction as of right where the defendant is present within the jurisdiction of the court or where he submits to the jurisdiction of the court. As stated by Shuaib J. in **Orido v. Bata. I (No. 2)**<sup>32</sup>, 'an action *in personam* is directed against the person at fault and is dependent entirely upon the Plaintiff being able to properly and effectively to serve a summon on the defendant particularly when the parties are in different jurisdiction.

#### \* PRESENCE

Where a defendant resides within the jurisdiction of the court, the court will assume jurisdiction once the writ is served on him irrespective of where the cause of action arises. In **Barzasi v Visioni Limited (No.1)**<sup>33</sup>, Wheeler J. while asserting that he has a jurisdiction over a contract arising from Kaduna quoted thus:

**The English courts have (with very few exceptions) jurisdiction to enter-tain an action relating to a contract, wherever made, in all cases where the parties are effectively before the court, as where personal or substituted service of the writ has been effected on the defendants in England or when leave has been given to serve the writ or notice of the writ out of the juris-diction or when the parties have voluntarily submitted to the jurisdiction.**

Therefore, one can safely conclude that where a court is called where the a party is in the jurisdiction of the court, the court can exercise jurisdiction over him.

<sup>32</sup> Suit No: FHC/L/CS/795/2002 (Unreported )

<sup>33</sup> 1973 NMLR 54



\* **SUBMISSION**

In England, where the defendant is not within the territorial jurisdiction of the court, the court may be prepared to grant leave to serve the notice of the writ abroad where justice of the case demands. Where the defendant submits to the jurisdiction of the court, the court is automatically conferred with such. A defendant in this instance may submit by entering unconditional appearance or unconditionally accept service<sup>34</sup>.

In Nigeria, where a defendant is outside the jurisdiction, such situation is governed by the **Sheriffs and Civil Processes Act**. Where a claimant intends to pursue a matter against a defendant who is not within the jurisdiction of the court, the claimant must come under the SCPA which governs inter-state service of processes in Nigeria.

The law requires that the writ to be served must be endorsed and the defendant must be given no less than thirty days to appear<sup>35</sup>. Where the defendant appears, the court shall assume jurisdiction depending on whether the appearance is conditional or unconditional. Where a defendant fails to appear, the court will not have jurisdiction over such defendant except in the following cases<sup>36</sup>:

- a. In an action relating to land, the land must be located within the jurisdiction of the court
- b. In contractual matters, the contract must be made within jurisdiction or the breach must occurred within jurisdiction
- c. In tortuous or contractual, the defendant was within jurisdiction when the liability occurred.

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<sup>34</sup> Collins, L.A supra

<sup>35</sup> S.99 SCPA, supra. One other issue created by the Supreme Court which is has no basis in the SCPA is the requirement to obtain leave to serve a writ outside jurisdiction. This is the position in **Nwabueze v Obi-Okoye** (1988) 4 NWLR (pt. 91) 644; **British Bata Shoes v Melikan** (1956) SCNLR 321; **NPA v Panalpina World Transport** (1974) NMLR 82. The Supreme Court in my view misconstrued the English **Order 11, rule 1 (f), of the Rules of the Supreme Court** which provides that leave is required before a defendant could be served outside jurisdiction. However, outside jurisdiction referred unto in that rule is outside the territory of England. What s.96 (2) says is that a writ issued by state A may be served in state B as if it was issued in that state B. The only requirement imposed by the SCPA is that such a writ must be endorsed.

<sup>36</sup> Sec. 101 of the SCPA, supra



## \* EASTERN STATES

The High Court of Eastern states have similar provisions in their various High Court laws regarding the jurisdiction of the High Courts. A typical law provides that the High Court shall have power to:

**Hear and determine any suit for specific performance or any suit founded upon a breach of contract if the contract was made within jurisdiction of the court though the breach occurred elsewhere or if the breach occurred within the jurisdiction though the contract was made elsewhere or if the contract ought to have been performed within the jurisdiction or if the defendant or one of the defendants resides within the jurisdiction<sup>37</sup>.**

A critical look at the provision would reveal that the courts can entertain matters even though the cause of action arises in another jurisdiction so far one can find the defendant within jurisdiction<sup>38</sup> except in contractual cases that the cause of action must have a connection with the jurisdiction. The provisions of SCPA are applicable to the eastern states as it is a federal legislation.

## 5. THE JUDICIAL ATTITUDE OF NIGERIAN COURTS

What has been the judicial attitude of courts in Nigeria in relation to the jurisdiction of the High Court of a state in conflict of jurisdiction situations? There may be need to review a number of decisions of the courts to reveal this.

Starting from the apex court decision in **Dairo v Union Bank of Nigeria**<sup>39</sup>, the Supreme Court decided that upon the transmission of Nigeria from unitary

<sup>37</sup> Section 22 of the High Court Law Cap 61, Laws of Eastern Nigeria 1963 edition Vol. IV

<sup>38</sup> It should be noted that the defendant must be resident or carrying on business in the State. It is not just enough to find the defendant in the state as it is applicable in other part of the country where the English Transient rule is allowed. The transient rule simply means that, it does not matter if the defendant has just passing by or having a short stay in jurisdiction. Once the writ is served on him, the court will have jurisdiction over the matter. For a detail discussion on Transient Rule, examine Ehrenzweig, A.A. 'The Transient Rule of Personal Jurisdiction: The "Power" Myth and Forum Conveniens', *The Yale Law Journal*, Vol. 65, No. 3 (Jan., 1956), pp. 289-314; Collins, L.A. *supra*; Strauss, A.L.: 'Beyond National Law: The Neglected Role of the International Law of Personal Jurisdiction in Domestic Courts', *Harvard International Law Journal*, Vol. 36 Number 2, 1995

<sup>39</sup> [2007] Vol. 11 M.J.S.C 74



form of government to federalism a High Court of a state only has jurisdiction over causes and matters that arise in the state. In fact, the Supreme Court has this to say:

It is worthy of note that the Benson's case (*supra*) was decided in 1967. I think I am entitled to take judicial notice that by 1967, this country was experiencing its 1st Military Rule which was by Decrees and Edicts in addition to adopted laws of general application applicable in the Courts and Nigeria was just broken into 12 States from the then Regional Governments. So there were still some hang-overs and fusions of laws, rules and practices of the regions into the newly created States. This continued for some time. However, in 1979, a Constitution for the whole Federation was enacted into law which demarcated the territorial jurisdiction of each State with its Local Governments. The 1979 Constitution provided for the demarcation to each of the States including new ones. Lagos and Ogun States are by that exercise two different States, each with its separate geographical entity and Local Governments... Thus, if a cause of action arises in any of the States of the Federation within the period when the 1979 Constitution started to be in application, and except where jurisdiction is taken away by the same Constitution, jurisdiction must reside in the respective Court of that State

One would wonder if what the Supreme Court was saying is that Conflict of Laws rules are not recognised in Nigeria simply because Nigeria is a federal state. Nigeria has been a federal state even before **Benson v Ashiru** referred to by the apex court was decided. In fact, Nigeria has 12 states during that period and there were High Courts established for each states then as well.

Very recently, a number of court of Appeal decisions towed the line of reasoning of the Supreme Court. In **Ogunde V Gateway Transit Ltd**<sup>40</sup>, the appellant was injured in an accident along Oworonsoki - Apapa Express way in Lagos which

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<sup>40</sup> [2010] 8 NWLR (PT. 1196) 207



was caused by the first respondent's Coaster Commercial bus. The appellant sustained injuries as a result of the accident. She was taken to the National Orthopaedic Hospital Igbobi, Lagos where she was admitted for about 15 months. After her discharge from Hospital, her legs were noticeably deformed. Thereafter, the appellant commenced a civil action against the respondent at the Ogun State High Court, Abeokuta. The court of appeal held as follows:

**No doubt, the High Court Ogun State has the legal capacity to adjudicate on torts such as negligence as alleged in the present case but it lacks the geographical jurisdiction to entertain this matter because the cause of action arose in Lagos State**

In **Ngige v Capital Bancorp Limited & Anor**<sup>41</sup>, the court of appeal held that a Lagos High Court has no jurisdiction over a contractual matter that arose in Onitsha, Anambra State despite the fact that all the parties are resident in Lagos.

In **Nigerian Bottling Company v Nwaneri**<sup>42</sup>, the court of Appeal held that a Lagos High Court has not jurisdiction to entertain a tortuous claim that emanated in Imo state despite the fact that both parties are resident in Lagos.

Again, in **First Bank of Nigeria v Abraham**<sup>43</sup>, the Court of Appeal held that a Lagos High court has no jurisdiction over a loan agreement that was negotiated in London despite the fact that both parties were in Lagos. Invariably, the court is asking them to go to London which is the proper venue.

It is submitted with respect that the courts have misconstrued the purport of the constitutional provision establishing the High Courts of the state. The courts in my opinion are taking the concept of territorial jurisdiction too far.

It is an established principle of constitutional interpretation that the constitution should be given a literal interpretation except where such will result in absurdity. The limit sought to be introduced by the courts with due respect is absent in that provision. What the constitution has said is '*any civil proceeding in which*

<sup>41</sup> (1999) 7 NWLR (pt. 609) 71

<sup>42</sup> (2000) 14 NWLR (pt. 686) 30

<sup>43</sup> (2003) 2 NWLR (pt. 803) 31



the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue' (emphasis mine).

It is my view that should the framers of the constitution intended to limit the proceedings to matters arising in the state, then that would have been clearly spelt out since it is universally known that in civil proceedings a High court can exercise jurisdiction over any subject matter is covered in the enabling statute and the parties are properly before the court. It is in this view that I share the view of Hon. Justice Abiru that there is no provision in the constitution that forbids the High court of a state from adjudicating over cause of action arising from another state<sup>44</sup>.

Another interesting point is that the constitution has only provided the general jurisdiction of the High Court of the states i.e all civil and criminal proceedings save the ones stated in s.251. The framers did not intend to make this jurisdiction in s.272 to be exclusive. Infact, it is envisaged that some other laws could as well confer jurisdiction on the High courts. In this regard, the same constitution has provided that a law of the state could also confer jurisdiction in addition to those ones stated under s.272<sup>45</sup>.

What is more, the courts do not take cognisance of the fact that the matters decided in those cases are actions *in personam*. The court is exercising powers over persons within its jurisdiction as it will be against logic and common sense that a court does not have power over a person in his territorial jurisdiction.

I am not the only one in this line of thought, the following cases- **Benson v Ashiru**<sup>46</sup>, **Barzasi v B. Visioni Ltd**<sup>47</sup> and **Prof. Albert Ogunsola v ANPP**<sup>48</sup> all supported the conclusion that the issue of choice of jurisdiction of courts over matters that are outside its territory is one of private international law and there has been no legislation on the limits of the territorial jurisdiction of the various states High Court.

<sup>44</sup> Abiru H.A.O. supra, p.10

<sup>45</sup> S 273

<sup>46</sup> (1967) NMLR 363

<sup>47</sup> supra

<sup>48</sup> (2003) 1 NWLR (pt. 826) 462



## 6. INTER-STATE CHOICE OF LAW JURISDICTION

It is used to be thought that a court cannot enforce or apply the law of another state whether within or beyond Nigeria. As a corollary to the previous discussions, where parties before a court are 'foreigners'<sup>49</sup> or the cause of action arises outside jurisdiction of a court, once the court is able to assert jurisdiction, such court can apply any foreign in the same manner as it would do if the forum law had been applicable.

In Nigeria, of choice of law problem is not much pronounced because most of the laws in the country are uniform. In any case, where a forum court has to apply a foreign law for cases which arose outside jurisdiction or where the parties have specifically provided that a foreign law should be applicable, then all the court need to do is to call for expert opinion on such foreign laws. This is provided in s.58 of the Evidence Act<sup>50</sup> as follows:

**Where there is a question as to foreign law, the opinions of experts who in their profession are acquainted with such law, are admissible evidence thereof, though such experts may produce to the court books which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.**

This situation at best could only be applicable to laws of foreign countries. Every court in Nigeria must take judicial notice of all the laws of various governments in Nigeria<sup>51</sup>. In other words, the High Court of Lagos state need not call an expert in Ogun State laws where dispute bordering on the application of Ogun State laws are before it.

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<sup>49</sup> i.e where they do not reside in the jurisdiction of the court

<sup>50</sup> CAP E14, LFN 2004

<sup>51</sup> S.74 of Evidence Act



## 7. ENFORCEMENT OF INTER-STATE JUDGMENT

The judicial powers of a state are vested in the High Court of the state<sup>52</sup>. Therefore, the judgment of a High Court has territorial limitation. In other words, the Judgment of High Court of Kano State cannot without any supporting legislation be enforced in Kaduna.

Where a claimant obtains a judgment and wishes to enforce it in another state, this raises a question of conflict of laws as the judgment is said to be given an extra territorial effect. In Nigeria, this situation is governed by the Sheriffs and Civil Processes Act as well. The provision of the law is stated as follows:

**Any person in whose favour a judgment is given or made in a court of any State or the Capital Territory may obtain from the registrar or other proper officer of such court a certificate of such judgment in the form and containing the particulars set forth in the Second Schedule or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such court.**<sup>53</sup>

In other words, where a judgment creditor wishes to enforce the judgment obtained against a judgment debtor in another state, he shall apply to registrar of the forum court asking that a certificate of judgment be given. Once this is issued, the Judgment Creditor will then take the certificate to the court outside jurisdiction where the certificate is to be enforced.

Upon receipt of the judgment certificate by the registrar of the 'foreign' court, the registrar enters it in the judgment book of the 'foreign' court and it is deemed to be the judgment of the court. The Judgment creditor is required to file an affidavit before execution can be levied, stating the judgment sum, whether he has been able to execute part of the judgment and, if so, the exact sum he has so executed<sup>54</sup>

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<sup>52</sup> S. 6 1999 Constitution

<sup>53</sup> S. 104 SCPA

<sup>54</sup> S. 107 SCPA



The same situation is applicable to foreign judgments obtained in countries outside Nigeria. This international situation is governed by the **Foreign Judgments (Reciprocal Enforcement) Act**<sup>55</sup>

The Act provides that:

- (1) The Minister of Justice if he is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgment given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgment given in the superior courts in Nigeria, may by order direct-
  - (a) that this Part of this Act shall extend to that foreign country; and
  - (b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part of this Act .<sup>56</sup>

A judgment creditor may apply to a superior court in Nigeria within six years to have any foreign judgment registered. Once the judgment meets the requirements stipulated by the law<sup>57</sup>, it will then have the same effect as if it were a judgment of that court.<sup>58</sup>

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<sup>55</sup> CAP F35 L.F.N. 2004. Also Reciprocal Enforcement of Judgment Ordinance, Cap. 175, Laws of the Federation of Nigeria, 1958 which governs judgment obtained in United Kingdom and part of Her majesty's dominion and territories. On the relationship between these two legislations, examine: Ijohor, T.A: 'The Status of the Reciprocal Enforcement of Judgment Act of 1922' in **Confluence Journal of Private and Property Law**, vol.3, Part 1, 2009

<sup>56</sup> S.3, **Foreign Judgments (Reciprocal Enforcement) Act**

<sup>57</sup> The judgment must be a judgment of a superior court of record, It must be for a liquidated sum, there must also be reciprocal laws enabling us to execute judgment in that country as well, The judgment of that foreign country must be a final judgment that finally decides the right of the parties

<sup>58</sup> Nigerian courts in their usual manner have virtually rendered the whole essence of Judgment (Enforcement Procedure) Act vis-a-vis reciprocity, nugatory. The courts have continued to validate and enforced judgments obtained from foreign court that do not a reciprocal law with Nigeria. You may examine for instance: **Teleglobe America, Inc. V 21st Century Technologies Limited** [2008] 17 NWLR [PT. 1115] 108



## 8. CONCLUSION / RECOMMENDATION

I have been able to point out the nature of inter-state conflict of law situations in Nigeria. One would be amazed by the ignorance of the subject matter in Nigeria even among the superior courts. While some judges especially at the lower court have been getting it right, it is disheartening that their efforts at putting the law in the right perspective are being thwarted by the appellate courts.

The implication of the strict territorial principle being applied by our courts most especially the Court of Appeal is that conflict of laws is not a recognised aspect of law in Nigeria. This is because the whole essence of the subject is the jurisdiction of a court over matters that have foreign element or question. As a matter of fact, there would not have been anything like enforcement of foreign judgment if conflict of law was not recognised because that is a subject of conflict of law.

This attitude of our courts will no doubt affect the development of the subject matter. Apart from this, maintaining a rigid concept of territorial jurisdiction by the courts will work a great hardship on litigants. It would not be impossible that parties resident in Lagos who negotiated a contract in Borno State probably while being there on a holiday would have to travel to Borno state every now and then should a problem arise from the contract.

The courts are advised to avail the ease brought about by legal jurists of yester years. The courts should also no forget that Nigeria is not the only federal state in the world. Others States like USA and Australia and Canada that practice federalism and have a national constitution with various High Courts in different states apply conflict of law rules.

The Supreme Court should in the interest of justice reconsider its decision in **Dairo v. Union Bank of Nigeria** whenever the opportunity arise because being a decision of the apex court, it will continue to bind lower courts.

