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The organogram shows the hierarchy of the courts from top to bottom with the Supreme Court being the last court of reference and the ultimate court in Nigeria

8.3.1 Supreme Court

The Supreme Court of Nigeria is the apex court in Nigeria established by section 230 of the 1999 Constitution. The Supreme being the apex court in Nigeria also enjoys the privilege of being the final court in the determination of any and all cases in the national court system of Nigeria, section 235 of the Constitution provides that cases determined by the Supreme Court either appellate or original jurisdiction are final. The constitution reads:

“Without prejudice to the powers of the President or of the governor of a state with respect to prerogative of mercy, no appeal shall lie to any other body or person from any determination of the Supreme Court.”⁸

Sections 232 and 233 of the Constitution grants the appellate and original jurisdiction of the Supreme Court. The Supreme Court may exercise original jurisdiction in

- a. Matters between the Federation and State 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
- b. Matters between States 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
- c. Any other matter given to it by an Act of the National Assembly that does not involve any criminal matter.

The guidelines of the exercise of the Supreme Court appellate jurisdiction to hear and determine appeals from the Court of Appeal

- a. where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal;
- b. decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;

⁸ Section 235 1999 Nigerian Constitution

- c. decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;
- d. decisions in any criminal proceedings in which any person has been sentenced to death by the Court of Appeal or in which the Court of Appeal has affirmed a sentence of death imposed by any other court;
- e. decisions on any question –
 - i. whether any person has been validly elected to the office of President or Vice-President under this Constitution,
 - ii. whether the term of office of office of President or Vice-President has ceased,
 - iii. Whether the office of President or Vice-President has become vacant; and (c) such other cases as may be an Act of the National Assembly.

8.3.2 Court of Appeal

The Court of Appeal is the second court in the Nigerian hierarchy of courts established by section 237 of the 1999 Constitution.

Sections 239, 240 and 241 of the Constitution grant the appellate and original jurisdiction of the Supreme Court. The Court of Appeal may exercise original jurisdiction in

- i. hearing and determining any question as to whether –
 - a. any person has been validity elected to the office of President or Vice-President under this Constitution; or
 - b. the term of office of the President or Vice-President has ceased; or
 - c. The office of President or Vice-President has become vacant.

The court exercises appellate jurisdiction by section 240, to hear and determine appeals from the Federal High Court, the High Court of the Federation Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a Court Martial or other Tribunals as may be prescribed by an Act of the National Assembly. The matters include:

- a. final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;
- b. where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings;
- c. decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;
- d. decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;
- e. decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death;
- f. decisions made or given by the Federal High Court or a State High Court - (i) where the liberty of a person or the custody of an infant is concerned, (ii) where an injunction or the appointment of a receiver is granted or refused, (iii) in the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise, (iv) in the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability, and (v) in such other cases as may be prescribed by any law in force in Nigeria.

8.3.3 Federal High Court

The Federal High Court is the lowest federal court in Nigeria established by virtue of section 249 of the 1999 constitution.

The jurisdiction of the Federal High Court as couched in section 251 of the Nigerian Constitution includes jurisdiction to the exclusion of any other court in civil causes and matters

- a. relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;
- b. connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation;
- c. connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria Customs

Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties;

- d. connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures: Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank;
- e. arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act;
- f. any Federal enactment relating to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards;
- g. any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea;
- h. diplomatic, consular and trade representation;
- i. citizenship, naturalisation and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passports and visas;
- j. bankruptcy and insolvency;
- k. aviation and safety of aircraft.
- l. arms, ammunition and explosives;
- m. drugs and poisons;

- n. mines and minerals (including oil fields, oil mining, geological surveys and natural gas);
- o. weights and measures;
- p. the administration or the management and control of the Federal Government or any of its agencies;
- q. subject to the provisions of the Constitution, the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies;
- r. any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;

8.3.4 State High Court

The State High Court is the highest state court in Nigeria established by virtue of section 255 the Nigerian Constitution for the Federal Capital Territory and section 270 for other States of the Federation.

The jurisdiction of the State High Court as couched in section 257 and section 272 includes

- a. 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.
- b. The reference to civil or criminal proceedings above includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction

8.3.5 Sharia Court of Appeal

Section 260 and 275 respectively provide for the establishment of the Sharia Court of Appeal.

The jurisdiction of the Sharia Court of Appeal provided in section 262 and 277 includes

- a. appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Personal Law
- b. any question of Islamic Personal Law regarding a marriage concluded in accordance with that Law, including a question relating to the validity or dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship or the guardianship of an infant;
- c. where all the parties to the proceedings are Muslims, any question of Islamic Personal Law regarding a marriage, including the validity or dissolution of that marriage, or regarding family relationship, a founding or the guarding of an infant;
- d. any question of Islamic Personal Law regarding a *waqif*, gift, will or succession where the endower, donor, testator or deceased person is a Muslim;
- e. any question of Islamic Personal Law regarding an infant, prodigal or person of unsound mind who is a Muslim or the maintenance or the guardianship of a Muslim who is physically or mentally infirm; or
- f. where all the parties to the proceedings, being Muslims, have requested the court that hears the case in the first instance to determine that case in accordance with Islamic personal law, any other question

8.3.6 Customary Court of Appeal

Section 265 and 280 respectively provides for the establishment of the Customary Court of Appeal.

The jurisdiction of the Customary Court of Appeal provided in section 267 and 282 includes exercising appellate and supervisory jurisdiction in civil proceedings involve questions of customary law. A Customary Court of Appeal of a State shall also exercise such jurisdiction and decide such questions as may be prescribed by the House of Assembly of the State for which it is established.

8.4 THE ROLE OF THE JUDICIARY IN NIGERIA

The relevance and role of the judiciary in Nigeria cannot be over emphasized. The following are some of the roles or functions of the Judiciary.

1. **Interpretation of the Law/Constitution:** It is the role and function of the Judiciary to interpret the Constitution and to also determine the extent and scope of power conferred on each branch of government under the Constitution. In other words, the Judiciary could be said to be the guardian of the Constitution and of the democratic process.
2. **Ensures Exercise of Power by Other Organs of Government:** The Judiciary ensures that every exercise of power by other organs of the government is in accordance with the tenets of the rule of law. In *Military Governor of Lagos State v. Ojukwu*⁹, the Court held that the Nigerian Constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to the law.
3. **Supervisory Role:** The Judiciary has the function of Supervising and reviewing the actions of other arms of government. They are also saddled with the responsibility of declaring any of the actions of those actions of the other arms of government which is ultra vires, null and void.
4. **Adjudication of Disputes:** The Judiciary adjudicates on disputes between states, between the state and the individuals, between individuals and Corporations or Corporate entities. In all, the Judiciary have tones of roles to play in the Administration of Justice in Nigeria. They are therefore a vital arm of the government and should not be neglected.
5. **Punishment of Offenders:** When a person is found guilty of an offence, the court is empowered to sanction them in accordance with the provisions of the law in question.¹⁰

⁹ (1986) 1NWLR (pt.18) 621

¹⁰ <https://bscholarly.com/problems-of-the-judiciary-in-nigeria> - accessed 16 August, 2021.

8.4.1 Judicial Precedent

Judicial precedent is a distinguishing characteristic of English law. A judicial decision has binding authority in subsequent cases. Much of the unwritten and Common law of England is to be found laid down in the judicial decisions contained in the volumes of law reports which date back to the close of the 13th century. In the judicial systems that are based on Roman law particularly on the continent of Europe no distinction is made between a law report and any other scholarly legal writings. Both may be relied upon by judges and both are of persuasive effect for the courts on the continent.

This legal principle of binding precedents came to be established as a result of the works of the judges and the judicial systems of those countries. The centralized judicial system enabled law to be developed by the courts in a systematic and homogenous way.

The doctrine (judicial precedent) is understood in two different ways:

- a. In its loose sense; and
- b. In its strict sense.

In its loose sense the doctrine means that the preceding judicial decisions may be reported, cited before the courts in support of propositions, may be referred to by judges, may even be followed by judges depending on their power of persuasion on a particular judge as to their correctness. In its strict sense, the doctrine means that the judicial decisions go beyond the aforesaid roles to being binding on subsequent courts which in turn must decide subsequent cases by applying the previous decisions. Those who have supported the doctrine have done so in its loose sense and those who have assailed it have done so in its strict sense. Thus, critics and supporters alike realise the value of the doctrine in the determination of subsequent cases.

The doctrine is said to ensure not only certainty in law but a systematic and orderly development of the law in the sense that the predictability of judicial decisions is as important as anything else. On the other hand, the rigidity that the doctrine introduced is also likely to result in injustice being occasioned in individual cases. Here it is cited as being responsible for restricting or retarding the proper and satisfactory development of the law.

The doctrine does however recognize certain methods by which erroneous decisions may be identified. A higher court to which an appeal is made may reverse or overrule the wrong decision of the subordinate court and the same court or a court of coordinate jurisdiction may refuse to follow the earlier decision by distinguishing it on one or more grounds.

Judicial precedent may be either authoritative or persuasive. An authoritative precedent is one which the judge is bound to follow whether or not he agrees with the correctness or aptness. The decisions of the superior courts are absolutely authoritative and binding on the subordinate courts. A persuasive precedent on the other hand is one that may be cited and even referred to by the judges, but the subsequent judge is free to follow it or not depending on whether he is persuaded by the justice, correctness or appropriateness of it. A decision of a court of coordinate jurisdiction is not binding and such decisions may either not be followed or may be distinguished on some ground. The distinguished decision does not lose its authority so far as the subordinate courts are concerned.

8.5 FUTURE OF NIGERIAN COURTS

The incidence of the SARS-COV 2 pandemic has brought to the fore, the importance of innovative changes in the court system in Nigeria, and its operation. In recent times, there have been numerous conversations around remote justice delivery and the digitalization of the judiciary, in the form of virtual hearings and digitalization of the administrative operations of the courts which are but a few innovations touted over the years. Nigeria, though being renowned for its identity as a front-runner in the African judicial and economic ecosystem, is still to find footing and a healthy environment, as well as putting in place, a legal framework guiding the operation of the courts in these circumstances.

Numerous questions have been raised on the legitimacy of innovative measures, such as the adoption of virtual court proceedings; movement from physical administration of court activities; questions on the negative impact of virtual proceedings on the rights of individuals (e.g the right to fair hearing); potentially expensive nature of adopting virtual structures i.e the cost implications accruing from the need to put in place relevant infrastructure for the virtual operations of the courts; what crimes can be sufficiently proven at remote court proceedings are amongst a long list of questions that have come along with the introduction and use of technology in the courts.

Despite the uncertainty and fears however, there is glowing acclaim to the relevance of remote justice delivery and virtual proceedings in a bid to cure the health hazards of physical and in-person proceedings. The approach has been to regulate and control participation in the court process, while managing this with the requirements of virtual proceedings and the existing essentials of fair hearing. These steps include requiring limited numbers of lawyers who appear on behalf of litigants and also scheduling court proceedings for specific times and ensuring only lawyers whose matters are to be heard, show up at varying times before the court. Though remote proceedings were only visibly deployed in a few states, such as Lagos, Borno¹¹ and the Federal Capital Territory¹² immediately following the lockdown, and the early stages of the pandemic era, they have over time been sustained, leading to relaxed operation of the judicial process and a reinvention of the methods of carrying out judicial administration. There is a renewed assurance however, that these innovative measures will be sustained and their application, expanded, this is so despite the introduction of vaccines and reduction of case fatality and innovations leading on from the new nature of work; and while the Government seeks to adjust to the pandemic, the importance of taking a guide from more advanced and proactive climes seems necessary, hence the guidelines and directives for deploying of remote and virtual proceedings.

Though arguably a fore-runner in institutional and strategic development, Lagos state quickly adopted the process, with the first being judgement delivered by Justice Mojisola Dada of the Lagos State High Court¹³, being the first in the attempt to adapt remote proceedings into the judicial system, particularly due to the restrictions and lockdown in place, as a result of the COVID-19 pandemic. Though not without its challenges, particularly relating to internet infrastructure and technological know-how, the session was regarded as a very successful attempt at deploying virtual and remote court procedure, while attesting to the benefits of such innovative methods in justice delivery.

¹¹ The Vanguard "Borno sets up virtual courtroom, as Lagos begins Skype hearings May 4" (28 April 2020) <https://www.vanguardngr.com/2020/04/borneo-sets-up-virtual-courtroom-as-lagos-begins-skype-courtroom-may-4/>

¹² The Punch Newspaper "FCT Begins Virtual Proceedings" (6 May 2020) <https://punchng.com/fct-judiciary-begins-virtual-proceedings/>

¹³ The convict was charged on a two-count of murder and stealing, with charge no ID/9006C/2019

8.6 CONCLUSION: REPOSITIONING FOR THE FUTURE

The continuing debate on this subject raises numerous questions on whether the courts and the judiciary can adapt quickly and assimilate this innovation into the existing structure; also, is the existing structure sufficiently armoured to withstand the barrage of challenges that come with the process of innovative justice delivery?

Clearly, the controversy on the deployment of these innovations, has not prevented the courts from considering the subject. While it is understood that the role of the courts is the interpretation of laws, and by extension, formulating legal principles that guide human conduct this may be connected to the wide acceptance which the subject has garnered globally, and in the wake of the pandemic. Clearly, despite the judgement of the Lagos State High Court earlier referred, which spurred a raft of critical comments on the constitutionality of remote proceedings in Nigeria, there is clearly a reception for the subject in Nigeria¹⁴, the challenge however is with infrastructure and acceptance. This precedent, delivered by Justice Mojisola Dada of the Ikeja Judicial Division, can be described as one which throws into the spotlight, the attitude of the judiciary to innovation in Nigeria.

In the opinion of C.A Oputa JSC (Rtd), the common objective of the Judiciary is “to do justice to all manner of men without fear or favor, affection or ill will”¹⁵, he further notes that

In exercising their interpretative jurisdiction, judges should therefore be able to ‘open the door to the law above law’, able to react with creativity and depth in the application of any law to the resolution of issues in dispute; able to choose between competing values and concepts which the words of the relevant law suggest and can carry... the respect for law, the development of an orderly society, peace and prosperity in our country – all these are largely

¹⁴ Many other states such as Edo and Ogun have in turn set the machinery in place to deploy remote proceedings; The Supreme Court also considered the constitutionality of virtual proceedings in *Attorney General of Lagos State v. Attorney General of the Federation & Anor* Suit No. SC/CV/260/2020, and though the court struck out the suit citing that the suit was preemptive, it shows the desire and willingness of the judiciary to accept the unfolding innovation before it

¹⁵ C.A Oputa J.S.C (Rtd) *Our Temple of Justice* (Justice Watch; 2014) p. 25-40

dependent on the success of our judiciary in being creative and in playing...¹⁶

There is a necessity however, that the debate on this subject will positively impact the growth of the Nigerian judicial system, by demanding a revision to existing justice delivery models. More particularly, while innovation is essential, legality and recognition are vital issues which must be addressed in order to extinguish potential queries and questions on the validity of the process in obtaining justice, particularly when the application of the technology relates to the rights of disputing parties before the court; for example, provisions under the constitution which require the protection of the right to fair hearing and obtaining evidence before the courts¹⁷.

Furthermore, the influence of the pandemic on human resource and the workforce of the judiciary is an important aspect of the discourse. The digital transformations that have sporadically evolved has necessitated redefining resource recruitment and the nature of work. Digital transformation has generally been suggested to have both a negative and positive impact on work. The negative effects include amongst others, loss of jobs, difficulty in adapting to new ways of getting work done and slow assimilation of new methods and processes into existing models. This would subsequently delay effective human resource engagement and require extensive adjustments to institutional culture, recruitment and responsibilities of staff who are engaged for the judicial process. It is pertinent to note however, that this does not necessarily lead to a loss of jobs, but would demand a scaling and reskilling of staff to deal with current realities in the model of work, putting in place, the necessary machinery to attain the desired standard in the deployment of technology in the operations of the judiciary.

¹⁶ *Ibid*

¹⁷ This is particularly regarding public hearing of matters before the courts, the guidelines required open access to the public in order to follow through with the process of obtaining justice. See National Judicial Council, 'Covid-19 Policy Report: Guidelines for court sittings and related matters in the Covid-19 period' <https://njc.gov.ng/30/news-details> accessed 3rd May 2021; Also see Lagos State Judiciary Remote Hearing Of Cases (Covid-19 Pandemic Period) Practice Direction <https://www.aellex.com/wp-content/uploads/2020/05/LAGOS-STATE-JUDICIARY-COVID-19-PRACTICE-DIRECTION.pdf> accessed 4th May 2021