

FORUM SHOPPING; ABUSE OF COURT PROCESS: LAWYERS AND JUDGES' INVOLVEMENTS, ITS EFFECT ON JUSTICE DELIVERY

By

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Abstract

The court is the creation of law; same also are its processes and procedures. Therefore every event of the court shall be as provided by the creating law hence; anything orchestrated by the court antithetical with the dictates of the creating law amounts to irregularity. This paper x-rayed the foregoing through the need for courts to abide by the doctrine of judicial precedent, maintain, respect and observe the limit of its jurisdiction. It also touched on the role of the Lawyer and the Judge to keep the processes of court the sacred.

Introduction

Forum shopping is encapsulated by Black's Law Dictionary as the practice of choosing the most favourable jurisdiction or court in which a claim might be heard. A plaintiff might engage in forum shopping, for example, by filing a suit in a jurisdiction with a reputation for high jury awards or by filing several similar suits and keeping one with the preferred judge.¹

Legal practitioner means a person entitled in accordance with the provisions of this Act to practise as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings.² Precisely, the Legal Practitioners Act further provided in its section 2(1) as follows: "Subject to the provisions of this Act, a person shall be entitled to practise as a barrister and solicitor if, and only if, his name is on the roll."

Black's Law Dictionary defines a Judge as a public official appointed or elected to hear and decide legal matters in court; a judicial officer who has the authority to administer justice.³

In *Saraki v Kotoye*⁴, noble Justice Karibi-Whyte gave an elucidating exposition on the nature and concept of abuse of judicial process thus:

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¹Black's Law Dictionary (11th ed., B.A. Garner ed., U.S., Thomson Reuters, 2019) 798

²Section 24, Legal Practitioners Act, Cap L11, Laws of the Federation Nigeria (LFN), 2004

³ (n1), 1005

The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognised that the abuse may lie in both a proper or improper use of judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same issues...

The multiplicity of actions on the same matter between the same parties even when there exists a right to bring the action is regarded as abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of the right per se.⁵

To every activity and event, there are processes, protocols and procedures. The maintenance, respect and observance of these are akin to due process. Adherence to ascribed rules and procedures of engagements enthrone legitimacy. Anything to the contrary breeds abuse and defeats the purpose of the said protocols, outlined for such event. Similarly, the events and activities of the proceedings of the court are not exempted, that is why its creating law provided articulately the court's processes, proceedings and protocols, and its mode of ritual. Therefore, any habit, attempt or behaviour that is irregular with the protocol ascribed to its ritual, is tantamount to the abuse of such outlined habitude.

The court and its activities are revered. This is because; rights of litigants are placed for determination before it. These rights are delicate, and require just adjudication; else, it may suffer abuse and desecration. This revered hallowed chamber, is within the watch of the Judge to maintain and protect against any profanation; the defiance of this sacred duty, has a repercussion on the rights of its worshippers. This is "in view of the fact that all courts must jealously guard its judicial process from being ridiculed and scandalised..."⁶

The ability to sustain the custom of the courtroom, defines the integrity of the Judge. Revered Justice Rhodes-Vivour, JSC in *Ezenwo v Festus*⁷ aware of the said situation admonished that: "once a court is satisfied that processes before it are an abuse of its processes and orders

⁴[1992] 9 NWLR (Pt. 264) 156

⁵ At 188 paras E-G

⁶*Ezenwo v Festus* (No. 1) [2020] 16 NWLR (Pt. 1750) 325, 341 para C per Rhodes-Vivour

⁷ (No. 1)[2020] 16 NWLR (Pt. 1750) 324

which in effect are a direct challenge to its integrity it should with all urgency exercise its inherent jurisdiction and dismiss the abusive action or process.”⁸

Not heeding to foregoing hallowed premonition were the courts involved in the case of the former Peoples Democratic Party chairman, Prince Uche Secondus. Recall that, on Monday 23 August, 2021 Justice Okogbule Gbasam of the Degema Judicial Division presiding over a vacation court in Port Harcourt, Rivers State in an ex-parte application with Suit No. PHC/2138/CS/2021 filed by Mr. Ibeawuchi and three others, listing Secondus and PDP as respondents granted the following orders: restraining Secondus from performing the functions of national chairman of the PDP, including calling, attending or presiding over any meeting of the party, restraining him from participating in any activity of the party whatsoever whilst on suspension as a member of the party.⁹

In another twist, the Kebbi State High Court per Nusirat Umar in an ex-parte application dated 25 August, 2021 in Suit No. KB/HC/M.170/2021 granted leave to Mr. Secondus to return to office as the national chairman of the PDP, an order of interim injunction staying the suspension of Mr. Secondus,¹⁰ as ordered by the court above.

Reverting the foregoing and upholding the former, is another ex-parte order from the High Court of Cross Rivers State per Edem Kooffreh upon an ex-parte application in Suit No. HC/240/202; restraining the second defendant (PDP), its members, officers and agents from recognising the first defendant (Secondus) as its national chairman or from according to him any of the powers, rights or privileges due to the holder of the office of the National chairman of the PDP.¹¹

Discernably, all the orders of the courts emanated from courts of coordinate/equal jurisdiction through ex-parte application. The Judges displayed inelegance in the discharge of their judicial duties, by discountenancing the provisions of the constitution creating them. The reoccurring events amounted to forum shopping, hence, an abuse of court proceedings.

⁸At 341 para F. See also, *Lasisi Kode v Alhaji Suara Yusuf* [2001] 3 SCM, 62; [2001] 4 NWLR (Pt. 703) 392; *Prince E. Ojo v O. Lawale* [2008] 6-7 SC (Pt. II) 54 reported as *Ojo v A.G. Oyo State* [2008] 15 NWLR (Pt. 1110) 309

⁹<https://www.vanguardngr.com/2021/08/court-in-rivers-suspends-secondus-/amp/> accessed 22 September, 2021

¹⁰<https://www.premiumtimesng.com/news/top-news/481488-twist-as-another-court-restores-secondus-as-pdp-chairman.html> accessed on 22 September, 2021

¹¹<https://www.google.com/amp/s/punchng.com/cross-river-court-restrains-secondus-from-resuming-as-pdp-chair/%3famp> accessed on 22 September, 2021

Not happy with the emerging abuse of the court processes Olumide Akpata¹² voiced:

Regrettably, we have begun to receive worrying news of recurring contradictory decisions by our courts based on the apparently indiscriminate grant of orders and counter-orders. Examples include the orders relating to the nomination of candidates by political parties for the forthcoming gubernatorial election in Anambra State.

An equally embarrassing situation is also playing out in respect of the Peoples' Democratic Party leadership crisis that has seen no fewer than three different rulings, all by courts of coordinate jurisdiction, in circumstances that leave a lot to be desired.¹³

Rhodes-Vivour JSC described the aforesaid thus:

An abuse of process of court is a term used to describe proceedings which are frivolous, vexatious, oppressive or not filed in good faith. An abuse of legal procedure or improper use of legal process. There is usually an element of malice in it. The common feature in an abuse of process is the improper use of the judicial process by a party to interfere with due administration of justice.¹⁴

The desperation of a party to undo his opponent to his advantage, sets in motion the habit to get purported justice at all cost. This habit orchestrate the want to shop and purchase justice. Lawyers and Judges should, resist the temptation of serving a medium in aiding this desecration of the sacred processes and procedures of the court.

Status of Courts and the Essence of Judicial Precedent

Section 6(3) of the 1999 Constitution provides thus: "The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (i) of this section shall be the only superior courts of records in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record." The courts established in subsection (5) are as follows:

- (a) the Supreme Court of Nigeria;
- (b) the Court of Appeal;
- (c) the Federal High Court;

¹² The Nigerian Bar Association President, speaking at a virtual conference organised by the Nigerian Bar Association (NBA) section on Public Interest and Development Law (NBA-SPIDEL)

¹³ <https://www.google.com/amp/s/punchng.com/counsel-advocates-punishment-of-lawyers-abusing-judicial-processes/%3famp> accessed 11 October, 2021

¹⁴ *Ezenwo v Festus*, supra, 341 para D-E

- (d) the High Court of the Federal Capital Territory, Abuja;
- (e) a High Court of a State
- (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja;
- (g) a Sharia Court of Appeal of a State;
- (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja;
- (i) a Customary Court of Appeal of a State
- (j) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
- (k) such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

Deductively, the Supreme Court just like the name implies, is the apex court within the jurisdiction of Nigeria, followed by the Court of Appeal. Please note that the Federal High Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; a Sharia Court of Appeal of a State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Customary Court of Appeal of a State are courts of coordinate jurisdiction in the sense that they have equal power and are of equal stage.

Included in the above is the National Industrial Court (NIC). Operating within the ambit of section 6 (5) (j) the National Assembly altered sections 6, 84(4), 240, 243, 287(3), 289, 292, 294(4), 216, 318 and the Third Schedule of the 1999 Constitution to include the NIC. By the Third Alteration Act, 2010 the Constitution was amended, recognised and granted the NIC jurisdiction as a superior court of record. Precisely, the inclusion of the new section 254A-254F to the 1999 Constitution accommodated the NIC. This event gave the NIC coordinate/equal jurisdiction with courts mentioned in the above paragraph, aside the Supreme Court and the Court of Appeal and gave it special jurisdiction to entertain labour matters.

These courts are courts of equal jurisdiction because they cannot sit on appeal against their various decisions and orders or against its earlier decision. Validating this Uwa JCA in *APC v Umah*¹⁵ asserted; “this court cannot sit on appeal over its earlier decision, the decision subsists and we are bound by it...”¹⁶

¹⁵[2021] 10 NWLR (Pt. 1785) 586

¹⁶At 603 para G

Practically, a party who is aggrieved with a decision of a court has as a right; right of appeal to a higher court, except in the instance of the decision of the Supreme Court, and the court that made the decision or order. However, in the instance of the Supreme Court, where it is conspicuous that a matter was decided *per incuriam* as a result of mislead by the counsel or litigant, it can sit on appeal on its decision. The rationale behind this was artistically articulated by astute Justice Oputa, JSC in the case of *Adegoke Motors Ltd v Adesanya*¹⁷ as follows:

Justices of this court are human beings capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court can do incalculable harm through its mistakes. When therefore it appears to learned Counsel that any decision of this Court has been given *per incuriam*, such Counsel should have the boldness and courage to ask that such decision shall be overruled. This Court has the power to overrule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to preserve an error.

In the event of any obvious factual *per incuriam* decision by the Supreme Court, the aggrieved party is entitled a right of appeal, any rejection of such appeal is an abuse of the processes of the Court. It is noteworthy that, welcoming an appeal on its earlier judgment does not guarantee that such decision must be overruled. Facts and evidence must be established to convince the Court of the obvious *per incuriam* in its appealed decision. It is a duty inherent in the court to satisfy the rights of parties and not abort same on technical grounds.

It is notorious a fact that equity has not attained menopause, therefore; the application of technicality on a subject matter curable by the midwifery of equity is an abuse of court process.

Further, the Federal High Court, the State High Courts and the High Court of the Federal Capital Territory, Abuja are courts of coordinate or equal jurisdiction and/or power, while all the States High Courts and the High Court of the Federal Capital Territory, Abuja are courts of coordinate and concurrent jurisdiction. They are of coordinate jurisdiction in the sense that they are of equal power and cannot sit on appeal over their decisions; and are of concurrent

¹⁷[1989] 13 NWLR (Pt. 109) 250, 274, paras G-B

jurisdiction because their powers and/or jurisdictions are within the entertainment of cases with the same subject matter.

Exceptionably, on the issue and subject matter of Fundamental Rights, the Federal High Court, High Courts of the States and the High Court of the Federal Capital Territory, Abuja are courts of coordinate and current jurisdictions. This statutory tie was created by section 46(1) of the 1999 Constitution as follows: "Any person who alleges that any of the provision of this Chapter has been is being or likely to be contravened in *any state*¹⁸ in relation to him may apply to a *High Court in that State*¹⁹ for redress." [Italics mine for emphasis]. Further, subsection (2) of the said section 46 says:

Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that State of any right to which the person who makes the application may be entitled under this chapter.

It is noteworthy that, the National Industrial Court of Nigeria exercises both coordinate and concurrent jurisdiction on matters of fundamental rights with the Federal High Court, and the High Courts of the States and that of the Federal Capital Territory, Abuja. Section 254D(1) of the 1999 Constitution of Nigeria provides that: "For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court."

In substantiating the foregoing section 243(2) of the aforementioned Constitution, stipulates that: "An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction."

Opinionatedly, since the 1999 Constitution of Nigeria that created the National Industrial Court ascribed to it a special and exclusive jurisdiction on labour matters, it flows therefore that the exercise of its jurisdiction on matters of fundamental rights shall be on the breach of the said rights occasioned in labour environment.

¹⁸ That is the State where the right holder resides at the time his right is violated or in apprehension of violation or where the said right violated or in apprehension of violation resides. The right referred to here, could be that to his person or to his property.

¹⁹ A High Court in that State means either the State High Court; the Federal High Court or the High Court of the Capital Territory, Abuja cited in the state or the vicinity where the right profanation, occasioned. By the foregoing, where two or all of the courts so mentioned exist in the said State or the vicinity where the right defilement took place, the choice of court to institute an action for right restoration and/or damages is at the discretion of the claimant/plaintiff as the case may be.

Further, Justice Danjuma JCA in *Titiloye v OSBIR*²⁰ opined:

Lest, I be misunderstood, there is no doubt that the trial court like all other High Courts of the States and the Federal Capital Territory and the Federal High Court have concurrent and exclusive original jurisdiction to hear and determine actions founded on fundamental rights violations and their enforcement pursuant to the fundamental rights enforcement rules pursuant to rules made thereunder.²¹

Note also that, the Sharia Court of Appeal of the Federal Capital Territory, Abuja and that of States- operational in the northern part of Nigeria are of coordinate and concurrent jurisdiction. Likewise, Customary Court of Appeal of the Federal Capital Territory, Abuja and that of states- operational in the southern part of Nigeria. Notably, the former attend to and are governed by Islamic laws while the latter attend to and are governed by customary laws.

Acting on the dictates of section 6(5) (k) State Houses of Assembly in the South have made laws creating Customary Court and Magistrate Court, while their counterparts in the North have through law created Sharia Court, Area Court and District Court.

As a matter of law, practice and procedure, appeals lie from the Magistrate court and the District court to the High Courts, while appeals from the Customary Court routes to Customary Court of Appeal; and that from the Sharia Court lies toward the Sharia Court of Appeal. Any habit exhibited by any court in contradistinction of the above is an abuse of the dictates of the creator law. Appeals from the National Industrial Court, all the High Courts, Customary Courts of Appeal and Sharia Courts of Appeal shall lie to the Court of Appeal, while that from the Court of Appeal goes to the Supreme Court.²²

The above illustrated practice depicts hierarchy of courts in Nigeria and it is christened *judicial precedent* or *stare decisis*. Section 287 of the 1999 Constitution documented this practice and made it supreme and authoritative. All courts are bound by this writ. Section 287 provides:

- (1) The decision of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court.

²⁰[2020] 4 NWLR (Pt. 1715) 445

²¹ At 472 paras E-F

²² See sections 233(1) and (2), 240 and 241(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended).

- (2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts of subordinate jurisdiction to that of the Court of Appeal.
- (3) The decisions of the Federal High Court, a High Court and all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other courts, respectively.

Thereupon, Ikyegh, JCA in *Skye Bank Plc v Mrs. Jadesola Kudus*²³ explaining the above held thus:

Stare decisis, a Latin expression, means standing by things decided or to quote from the apt definition in Black's Law Dictionary (Eighth Edition) at page 1443: "The doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points arise again in litigation..."²⁴

Solidifying the above is Uwa JCA in *APC v Umah*²⁵, when he opined: "the doctrine of *staredecisis* is sacrosanct and must advisably be maintained. The essence is to retain consistency in the decisions of our courts and this would certainly avoid conflicting decisions."²⁶

Jurisdiction of the Court

The Black's Law Dictionary defined jurisdiction as a court's power to decide a case or issue a decree.²⁷

Chiefly the Supreme Court in the case of *Egharevba v Eribo*²⁸ defined jurisdiction thus:

Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It is the power of the court to decide matter in controversy and presupposes the existence of a duly constituted court, with control over the subject matter and the parties. Jurisdiction also defines the power of the court to inquire into facts, apply the law, make decisions and declare judgment. It is the legal right by which Judges exercise their authority. Jurisdiction is equally to court what a door is to a house. That is why the question of a court's jurisdiction is called a threshold issue, because it is at the threshold of the temple of justice.

²³[2011] LPELR-4962

²⁴At 31 paras E-F

²⁵ibid

²⁶At 604 para B

²⁷Black's Law Dictionary (11th ed., B.A. Garner ed., U.S., Thomson Reuters, 2019) 1017

²⁸ [2010] 9 NWLR (Pt. 1199) 411

Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the proceedings are and remain a nullity however well-conducted and brilliantly decided they might have been. A defect in competence is not intrinsic but rather extrinsic to adjudication.²⁹

The court is built on the solid foundation of jurisdiction; the absence of it disrobes the court the power to entertain matters before it. Jurisdiction is the ritual robes of every court; it is the armour of the court, the capacitor and motherboard; take it away from the court, it remains powerless, incapacitated and ineffectual.

The law establishing the court entitles it jurisdiction by stating the subject matter within its competence. The law assigns to it subject matters, parties and territories it has powers over and can host, the neglect to this writ renders the action of the court incompetent. Jurisdiction is a recipe to the court, and because of its intrinsic determinant significance to the power of the court to sit over cases, it can be raised at any time, even for the first time on appeal. Concomitantly, Adekeye JSC in *Egharevba v Eribo*³⁰ opined:

The issue of jurisdiction being fundamental can be raised and challenged at any stage of the proceedings in the lower court, in the Court of Appeal or even for the first time in the Supreme Court. The issue of jurisdiction being so pivotal can be raised suo moto by the court so long as the parties are accorded the opportunity to react to the issue.³¹

More so, x-raying this concept is Amadi³² who in his erudition articulated thus:

Its scope of operation and the powers it can exercise are usually stipulated by the statute that established or created the court. Having been created, there are ancillary powers the court can exercise, which are inherent to it. The authority of the court to exercise power, whether expressly donated by the establishing statute, or inherent in the court is what is regarded as the jurisdiction of the court. Jurisdiction of the court may be defined by territory, the subject matter in contest, the parties before the court, or the manner in which the court is constituted. Jurisdiction is such an important concept of law that whatever decision the court reaches in the absence of jurisdiction is *ab initio* a nullity. Owing to its pervading importance, the question of jurisdiction can be raised at any time of the proceedings, and at an appellate court, for the first time.

Navigating further seminal Amadi observed:

²⁹ At 434-435 paras G-B

³⁰ *ibid*

³¹ At 435 paras D-E

³² Jerry Amadi, *Modern Civil Procedure Law and Practice in Nigeria* (2nd ed. Vol. 1, Pearl Publishers International, Port Harcourt, 2020) 29

There are numerous factors to consider before a would-be claimant, applicant or petitioner, as the case may be, should commence legal proceedings. It may be difficult to enumerate these factors but the important ones include- who to be sued; whether a pre-action notice is required; whether the action is premature or whether it has been caught by statute of limitation; whether there is a reasonable cause of action; whether the party intending to sue has *locus standi*; whether the would-be defendant or respondent, as the case may be, enjoys immunity from legal actions; whether the action will constitute an abuse of court process; which court has the jurisdiction to entertain the matter; whether there are rules of law or equity that may inhibit the action; for instance, the doctrine of standing by, or laches and acquiescence, and whether any condition precedent for the commencement of action has been fulfilled.

As a matter of fact, all the above matters are intricately related to the jurisdiction of court. Where any of the matters listed above is absent or present, as the case may be, it could rob the court of the requisite jurisdiction to adjudicate on the matter.

The court is said to be competent and robed with jurisdiction when the conditions that qualify it are present and are adhered to. The forerunner case in this regard is *Madukolu v Nkemdili*³³ where the Federal Supreme Court per Bairamian FJ averred:

...I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when-

- (1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and
- (2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and
- (3) the case comes before the court initiated by due process of law, and upon the fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.³⁴

Jurisdiction is to the court what the carburetor; ignition and spark plug are to engines.

Territorial Jurisdiction

³³ [1962] 2 NSCC 374; [1962] ANLR (Pt. II) 581

³⁴ At 379-380 lines 45-5

This means jurisdiction over cases arising in or involving persons residing within a defined territory. Territory over which a government, one of its courts, or one of its subdivisions has jurisdiction.³⁵

Territorial jurisdiction according to Ngwuta JSC in *Dariye v FRN*³⁶ “implies a geographical area outside which the court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the court by the law creating it.”³⁷ As the name implies, territorial jurisdiction refers to the place of instituting action.³⁸ Justice Augie JSC while discussing kinds of jurisdiction in *Audu v APC*³⁹ said:

There is also “territorial jurisdiction” which is the focus of this appeal, and it is the territorial limit a court has power to decide. A territory is a geographic area under the jurisdiction of a governmental authority. The word “territorial” means relating to a particular territory, district or locality, therefore, jurisdiction over a territory relates to the geographic area over which a court has authority to decide cases – bussinessdictionary.com. So, territorial jurisdiction refers to the geographical area in which matters brought before a court for adjudication arose. Courts are usually not seized of matters that occur outside their territory.⁴⁰

Further, for a court to be competent and capable to entertain a case before it, it shall be soaked of jurisdiction; particularly territorial jurisdiction where required; for jurisdiction is the bragging right of the court and the lack of it makes it numb of the power to adjudicate. Note that a court may have jurisdiction over a subject matter but may be ineffective to adjudicate on such matter because it arose from a different jurisdiction. Therefore, the court lacked jurisdiction over such subject matter for want of territorial jurisdiction. Thereupon, of statutory significance is section 9 of the Robbery and Firearms (Special Provisions) Act which sets out that: “Offences under this Act shall be triable in the High Court of the State concerned.”

In this crusade is noble Justice Uwa JCA who in *Ogunde v Gateway Transit Ltd*⁴¹ maintained: “No doubt, the High Court of Ogun State has the legal capacity to adjudicate on torts such as negligence as alleged in the present case but it lacks the geographical

³⁵Black’s Law Dictionary (11th ed., B.A. Garner ed., U.S., Thomson Reuters, 2019) 1020

³⁶[2015] 10 NWLR (Pt. 1467) 325

³⁷At 352 para C

³⁸(n 32) 45

³⁹[2019] 17 NWLR (Pt. 1702) 379, 395 para C

⁴⁰At 395 paras D-F

⁴¹[2010]8 NWLR (Pt. 1196) 207

jurisdiction to entertain this matter because the cause of action arose in Lagos State...”⁴² In *Dairo v UBN*⁴³ the court stated:

Just as the subject matter of a case has to come within a court’s jurisdiction, the court’s territorial jurisdiction and the composition of the court are other essential aspects of jurisdiction to giving competence to the proceedings before the court – It is the nature of the subject matter or parties or the territorial limits over which a court can exercise jurisdiction that restricts the exercise of jurisdiction of a court.

Invariably, jurisdiction is a question of law and statute; that is why parties cannot by agreement confer jurisdiction on the court. Not even, the Lawyer can confer jurisdiction on the court, nor the Judge or Court can confer jurisdiction on himself or itself.⁴⁴ Therefore, the court owes itself, the parties before it, the public and the law creating it the duty to protect its integrity and reserves the legal obligation to decline matters it lacks territorial jurisdiction on, for the absence of that makes the court incompetent and ineffective and any proceeding, order or judgment midwived in such condition will be a stillbirth.

This presupposes that, where a matter is filed in a wrong jurisdiction, the court lacks the competence to determine it, because “jurisdiction whether territorial or otherwise is statutory and it is conferred on the court by the law creating it.”⁴⁵ Deciding on this *Tobi JSC in Rivers State Govt. and Anor v Specialist Konsult (Swedish Group)*⁴⁶ declared: “Why was the action filed in the High Court of Lagos State when there is no nexus between the Contract and Lagos State? A court in one State does not have jurisdiction to hear and determine a matter, which is exclusively within the jurisdiction of another State.”

The abuse of territorial jurisdiction is the hub of forum shopping. Litigants go to jurisdictions convenient for them to file matters, with the hope and confidence to get court orders and decisions in their favour. This shopping only flourishes with the partnership of the litigants, the Lawyer and the Judge. The break in chain of this partnership by any of the parties declines the viability of this market. The attitude of wildering this practice should be the

⁴²At 232 para A

⁴³[2007] 16 NWLR (Pt. 1059) 99

⁴⁴The law is settled that the jurisdiction of a court of record, in its broad and substantive sense, cannot be conferred by the rules of court. The rules of court are only made, pursuant to the powers conferred on the heads of courts by the Constitution to make rules, to regulate practice and procedure in their respective courts. The rules do not confer jurisdiction on the court to entertain causes or matters. Rather, the jurisdiction of courts in Nigeria is either conferred or vested by the Constitution or the enabling statute establishing the court- see *Mailantarki v Tongo* [2018] 6 NWLR (Pt. 1614) 69 per Eko JSC

⁴⁵*Musa v Umar* [2020] 11 NWLR (1735) 213, 264 paras E-F, per Galumje JSC

⁴⁶[2005] 7 NWLR (Pt. 923) 145

helmet of the court, because in dissuading this practice, the court builds and gains public confidence and dispenses justice, dispassionately.

Ex-parte or Interim Injunction

This is a kind of injunction among other commonly known injunctions such as; interlocutory and mandatory injunctions.

An injunction is an order of a court to a party before it to do or refrain from doing a particular conduct or act.⁴⁷ The Supreme Court in *AIC Ltd v NNPC*⁴⁸ said, as an equitable remedy, injunctions can only be granted in support of a right known to law or equity. An injunctive order is preemptory in the sense that it conveys a commanding or mandatory instruction by way of order from the court to the party not to perform the particular act or to do anything that will be prejudicial to the *res* or subject matter of the litigation.⁴⁹

Injunctive orders are discretionary rights of the courts, so it can be granted or refused. This order can only be granted only in times of emergencies, of which when not granted, the damage it ought to protect cannot be remedied by monetary compensation. The court shall be convinced of this fact. The aim of an injunction is thus to protect an established right and is usually granted where monetary compensation will be inadequate remedy.⁵⁰

Speaking on an interim injunction Akolokwu viewed it thus:

An interim injunction is a temporary court order prohibiting someone from doing some specific act or commanding someone to undo some wrong or injury. This injunction is granted pursuant to a motion ex-parte that is, granted to the party seeking it without notice to the other party or the defendant in the suit. The order once granted, subsists pending the hearing and determination of the motion on notice.⁵¹

This type of injunction has been described as a non-permanent injunction which is to last until a definite date fixed for the hearing of the suit by the parties.⁵² In the event of an application for an ex-parte order, the court shall consider the following: that there exists a legal right on the applicant, that the situation is one of extreme urgency because the said right is faced with imminent danger and going through the normal court proceedings will occasion

⁴⁷Grace O. Akolokwu, *Understanding Equity* (Osia Digital Press, 2010) 109

⁴⁸[2005] 11 NWLR (Pt. 937) 568

⁴⁹(n47)

⁵⁰*A.G. Kwara v Alao* [2000] 9 NWLR (Pt. 671) 84

⁵¹(n47), 113

⁵²*Onwuzulike v Nwokedi* [1989] 2 NWLR (Pt. 102) 229, 232

irreparable and serious damage, that where the injury is allowed to happen on the applicant's rights monetary compensation will be insufficient, that the applicant shall indemnify the defendant where the application turns to be frivolous and malicious or where the defendant suffers damage upon the grant of the order, and that the balance of convenience is on his side to instigate the grant of the said order.⁵³

It is necessary to note that, upon the grant of an interim injunction, same can be extinguished or discharged on the following grounds: where the applicant failed to make full disclosure of all material facts even though the omission was due to error of judgment; where the order was granted on a suppression or misrepresentation of facts; where the order was irregularly granted; where there has been delay in complying with an undertaking to amend the writ by adding a party as plaintiff; where the default has been made in giving security for costs; where the plaintiff had not used his administrative powers that might resolve the differences in question for instance in a chieftaincy matter; where there had been delay in complying with the undertaking as to damages; where the plaintiff deliberately delays the hearing of the motion on notice; upon the provision of order 9, rule 12(2) of the Federal High Court (Civil Procedure) Rule 2000 that if a motion to vary or discharge an ex-parte order is not taken within fourteen (14) days of its being filed, the ex-parte order shall automatically lapse; where a court *suo moto* calls upon the party at whose instance the ex-parte was made to show cause why the order should not be discharged if the court is satisfied that it was led to make the ex-parte order in the believe of the applicant's good faith.⁵⁴

The Involvements and Roles of the Lawyer and the Judge in Forum Shopping and its Effect on Justice Delivery

In line with the Rules of Professional Conduct for Legal Practitioners, a Lawyer shall uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner.⁵⁵ The law has sieved what constitutes the duties of a lawyer, in fostering justice. Thus, anything to the opposite is irregular with the wordings of the law, thereby constitutes an abuse.

⁵³See *A.G. Abia v A.G. Federation* [2005] 10 NWLR (Pt. 940) 469, *Odutola v Lawal* [2002] 1 NWLR (Pt. 749) 638, *Unibiz (Nig) Ltd v CBC Ltd* [2003] 6 NWLR (Pt. 816) 412-413 per Kutigi JSC, *Mobil Oil (Nig) Ltd v Assan* [2003] 6 NWLR (Pt. 816) 313 and *ACB v Awogboro* [1991] 2 NWLR (Pt. 176) 711

⁵⁴(n 47) 117-118

⁵⁵Rule 1, Rules of Professional Conduct, 2007

This abuse occurs in facets. It may be in the manner of a Lawyer filing frivolous appeals and concealing certain facts connected to the subject matter, thus, misleading the court to give in his favour, judgments or orders that are also frivolous. However, the opponent litigant can approach the same court, show facts to prove that the order made was as to hidden material facts by the litigant on the other side, and have the order extinguished. Significant in this instance is the case of *FRN v Ozekhome*.⁵⁶ Again, is in the event of a Lawyer filing two conflicting appeals in two courts of unequal jurisdictions as demonstrated by the counsel to the 1st and 2nd Respondents in *Ezenwo v Festus*.⁵⁷ To this the court per Oputa, JSC in *Ajide v Kelani*⁵⁸ held:

A party must be consistent in stating his case and consistent in proving it. He will not be allowed to take one stance in his pleadings; then turn summersault during trial; then assume nonchalant attitude in the Court of Appeal; only to revert to his case as pleaded in the Supreme Court. Justice is much more than a game of hide and seek. It is an attempt, our human imperfections notwithstanding, to discover the truth. Justice will never decree anything in favour of so slippery a customer as the present Defendant/Appellant.⁵⁹

In addition, Eko JSC in *Ezenwo v Festus*⁶⁰ enjoined:

I cannot agree more with the tribunal that the prevarication of the 1st respondent, as the 1st petitioner, was an abuse of Court's process and that he intended thereby, in the words of Oputa, JSC, to be "so slippery a customer," and consequently leading the tribunal into collision course with the Court of Appeal.⁶¹

In another circumstance, a Judge can abuse the rules betrothed to him to protect by deciding on a matter with the same subject matter before his brother, i.e. court of coordinate jurisdiction. Discreditably, they go to the extent of sitting on appeal, on matters already decided by another court of equal power. Dissuading the court from such practice, Ejiwunmi, JSC in *NIMB v UBN Ltd* urged:

Where a court was clearly aware that another court of coordinate jurisdiction is seised of a case with same parties and the same subject matter before it, as found

⁵⁶[2021] 9 NWLR (Pt. 1782) 448

⁵⁷ibid

⁵⁸[1985] 3 NWLR (Pt. 12) 248

⁵⁹At 269 para C-D, followed by Eko JSC in *Ezenwo v Festus*, ibid, 339, para H-A

⁶⁰ibid

⁶¹*Ezenwo v Festus*, ibid, 340, paras A-B

in this case, it is an abuse of process for that court to continue with the hearing of the case and proceed to make orders as was done in this case.⁶²

The ill accompanied with an abuse of court process or the barter of forum shopping, do not occur only where there is no right of action. In wide range of events, are where rights of action exist. In harnessing such rights, parties in a bid to be advantaged abuse the door to due process, hence, hijacking justice. In the words of Justice Karibi-Whyte; “surely, where the party exercising the right of action has the right to do so, his malice and motive will not destroy the right.”⁶³ Additionally, multiplicity of actions on the same matter between the same parties, even when there exists a right to bring the action has always been regarded as an abuse of court’s process.⁶⁴

Forum shopping has made justice a commodity that the highest bidder wins the hassle. The practice of forum shopping has left bare due process, disregarding territorial jurisdiction- because parties go to the jurisdiction convenient for them to acquire “Justice”. Reiterating, Eko JSC in *Mailantarki v Tango*⁶⁵ recounted forum shopping as “a rather reprehensible practice of choosing the most favourable territorial jurisdiction or Court in which a matter or cause may be entertained and adjudicated upon.”

Parties to forum shopping see the court as a market square where their pockets become their bragging right. Accessories and principal partners to this hoax are the Lawyers and the Judges. The Lawyer prepares the frivolous application, and the Judge grants same. Where there is diligence and adherence to due process, forum shopping will lose its meaning.

Monday Ubani speaking at a virtual conference organised by the Nigerian Bar Association Section on Public Interest and Development (NBA-SPIDEL), observed that: “The behaviour of the legal practitioners involved is very embarrassing to the legal profession. This is because these practitioners make it appear that judgments can be marketed and bought with money.”⁶⁶

The integrity of the judiciary, determines the confidence of the public. The court and the Judge need to guard and guide this jealously. Where procedures of courts are ignored, the

⁶²ibid, 340 paras C-D

⁶³*Saraki v Kotoye*, ibid 189 para E-F

⁶⁴*Ezenwo v Festus*, ibid, 340, para D, per Eko, JSC. See also, *Okorodudu v Okorodudu* [1977] 3 SC, 21, *Oyegbola v Esso W.A. Inc.* [1966] 1 All NLR, 170; [1966] 2 SCNLR, 92, *Saraki v Kotoye* (supra)

⁶⁵ [2018] 6 NWLR (Pt. 1614) 69, 87

⁶⁶<https://www.google.com/amp/s/punchng.com/counsel-advocates-punishment-of-lawyers-abusing-judicial-processes/%3famp> accessed 11 October, 2021

doctrine of judicial precedent will be dethroned, for forum shopping to be enthroned, thereby impeding justice. No irregular process breeds justice. Unsettled with the concept, Pat-Acholonu JSC in *NIMB Ltd v UBN Ltd* observed:

The theory of justice we adhere rests on the premise that there must be certainty and parties to the legal duel should be in a position to know where they stand at a certain time. A system of law where Judges of the same degree i.e. of coordinate jurisdiction make contradictory and inconsistent orders in respect of the same subject matter involving the same parties i.e. each relying on his whims, caprices, prejudices and sometimes a vaunting ego makes nonsense and mockery of the law. The beauty or what I might describe as the romance of law is that just as *stare decisis* exercises a restraining influence on our Courts, so too do coordinate jurisdiction do not sit on appeals on each other, attracts respect for the law.

Conclusion

Worried about the incessant conflicting court orders from courts of coordinate jurisdictions in political matters, eminent jurists have urged the National Judicial Council and Legal Practitioners Disciplinary Committee to sanction erring Judges and Lawyers involved in the shameful acts to save the justice system from disrepute. Speaking at a virtual conference organised by the Nigerian Bar Association Section on Public Interest and Development (NBA-SPIDEL), the jurists warned that unless urgent steps are taken to curb the malaise, the justice sector risked losing public confidence. Again, Monday Ubani⁶⁷ raised the concern that the conflicting orders are clearly of grave concern to the Bar and Bench, more so, when members of the public are raising alarm that the judiciary has become complicit with politicians to truncate our political and democratic system.⁶⁸

The duty to discipline judicial officers which rests on the National Judicial Council as stipulated in the third schedule, Part 1, Section 21(g) of the 1999 Constitution of the Federal Republic of Nigeria as amended needs to be on alert always. Consequently, any judge found guilty by the National Judicial Council, will be recommended for prosecution, as seen in the case of Hon. Justice Kabiru .M. Auta of High Court of Kano State and many other similar cases. Speaking on how the Nigerian Bar Association intends to tackle this issue, Monday Ubani said, “We will look at the processes that have been filed by these lawyers, as well as

⁶⁷ Chairman, Nigerian Bar Association Section on Public Interest and Development

⁶⁸ <https://guardian.ng/features/law/jurists-urge-sanction-against-lawyers-judges-issuing-frivolous-e-parte-orders/> accessed 11 October, 2021

the orders given by the court, before we can make recommendation to the Nigerian Bar Association President.”⁶⁹

The activities of forum shopping largely have political litigants as the actors. Judges and lawyers should not let the litigants and politicians in particular to destroy the court and its sacredness. The Lawyers and Judges are co-worshippers in the temple of justice (the court). They should be sanctimonious with their worship not to trade the rights of the litigants. Justice should be priceless and its habitat sacred, only that with clean hands should gain from its yields. The unclean seeking for justice should be a taboo to the Judge who is the housekeeper of the tabernacle of Justice and a sacrilege to the Lawyer who is a high priest in the same tabernacle.

⁶⁹<https://www.google.com/amp/s/punchng.com/counsel-advocates-punishment-of-lawyers-abusing-judicial-processes/%3famp> accessed 11 October, 2021