

An Appraisal of Judicial Powers under the Nigerian Constitution

DR. M.E. Nwocha

LL.M, Ph.D; Senior Lecturer and Head of Postgraduate Studies,
Faculty of Law, Ebonyi State University, Abakaliki, Nigeria.
Corresponding Author: DR. M.E. Nwocha

Abstract: This Paper titled “An appraisal of judicial powers under the Nigerian Constitution” is an examination of the legal basis and, for that matter, sources for judicial authority in Nigeria. It has traced the creation of courts and their jurisdictions under the Constitution of the Federal Republic of Nigeria, 1999 and other relevant statutes. It has discussed the reasons why only the courts and no other authority or institution can exercise judicial powers in Nigeria. It has equally examined and evaluated the practical application of judicial powers by courts in the country and has used case law and the statutes profusely in the analysis. The Paper has further examined the basic duties of courts and the contentious question of *stare decisis*, its limits and frontiers in Nigeria. Among other things, the Paper has discovered that the exercise of judicial authority is the sole privilege of the courts which are ranged in a hierarchal order; that the Supreme Court is at the apex of the hierarchy; and that vertical *stare decisis* is the unchallenged and pervasive doctrine in the procedure of courts. The Paper is in four parts. Part one is the introduction; Part 2 discusses the judicial powers and jurisdiction of courts in Nigeria; Part 3 deals on the exercise of judicial powers in Nigeria; and Part 4 is the conclusion.

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I. INTRODUCTION

The legal basis for the exercise of judicial powers in Nigeria finds its original source under the Constitution of the Federal Republic of Nigeria, 1999. Section 6 of that Constitution creates the superior courts of record and empowers them to exercise judicial authority which it has, on the one hand, directly enumerated and on the other, empowered the National Assembly or the State Houses of Assembly to determine. The 1999 Constitution of Nigeria equally demarcates courts according to superiority of powers. This is not unexpected since it is the norm in most national judicial systems to demarcate courts in the order of hierarchy. This compartmentalization is not just a matter of convenience but a compelling necessity. For, among other things, it preserves the legal tradition of judicial precedent or *stare decisis*¹. Many arguments have often been advanced for the usefulness of the doctrine of judicial precedent in the administration of justice, the most important being that it guarantees certainty and consistency in the judicial process, and so avoids the chaos that would have been the result of an unsystematic and unguided interpretation of statutes by the courts. However, judicial precedent has never completely removed the confusion occasioned by conflicting judgments by courts even at the apex level. Therefore this Paper presents an analysis of the nature and dimensions of judicial powers in Nigeria, their legal source and basis and the intricate relationship among the classes of courts in the country.

II. JUDICIAL POWERS AND JURISDICTION OF COURTS IN NIGERIA

Hierarchy of Courts is often a creation of statutes which also secure to each hierarchy commensurate powers and jurisdiction.² Nigeria Courts are principally of two categories, namely; superior courts of record made up of the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the State, the Sharia Court of Appeal of the State, the Customary Court of Appeal of the State and the National Industrial Court; and other courts lower in hierarchy which are not courts of record such as Magistrate Courts, District Courts, Area Courts, Customary Courts, Sharia, Courts Juvenile Courts and Courts Martial or Military Courts³.

¹ The *Black's Law Dictionary* (9th ed.) edited by Bryan A. Garner defines judicial precedent as “A decided case that furnishes a basis for determining later cases involving similar facts or issues.” Vertical *stare decisis* are the doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction.

² In Britain the apex court is the Privy Council of the House of Lords, in the U.S.A, India, Nigeria and most other countries it is the Supreme Court.

³ These later ones are often described in popular parlance as inferior Courts. See further S. 6 of the 1999 Constitution. However, their decisions are only persuasive to their respective co-ordinate courts and as such are not subject to *stare decisis*.

The Supreme Court⁴ is the highest Court in Nigeria and its verdict is final beyond which appeal cannot lie to any other court. Section 235 of the 1999 Constitution provides that except in so far as the powers of the President of Nigeria or of the Governor of a State in relation to prerogative of mercy is concerned, no appeal shall lie to any other body or person from any determination of the Supreme Court. The Supreme Court has both original and appellate jurisdictions. By section 232 (1), the Supreme Court shall to the exclusion of any other Court have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question whether of law or fact on which the existence or extent of a legal right depends. By this section, the Supreme Court shall further have original jurisdiction if and when the same is conferred upon it by an Act of the National Assembly provided that no original jurisdiction shall be conferred upon the Court with respect to any criminal matter. Pursuant to the powers conferred on it by this section of the 1999 Constitution, the National Assembly through the Supreme Court (Additional Original Jurisdiction) Act, 2002, created additional original jurisdiction for the Supreme Court. By section 1 of the Act, the Supreme Court shall to the exclusion of any other Court have original jurisdiction in any dispute between:

- (a) The National Assembly and the President;
- (b) The National Assembly and any State house of Assembly; and
- (c) The national Assembly and the States of the Federation, 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.

Section 1 (2) of the Supreme Court Act forbids original jurisdiction on criminal matters to the Supreme Court while section 233 of the Constitution confers appellate jurisdiction on it. Rules of procedure of the Supreme Court are made by the Chief Justice of Nigeria in compliance with Section 236 of the 1999 Constitution.⁵

The Court of Appeal⁶ is the second highest court after the Supreme Court. Like the Supreme, it has both original and appellate jurisdictions. And like it too, the Court of Appeal has no original criminal jurisdiction. Presently, the Court sits in fifteen Divisions and the Headquarters is at Abuja.⁷ Subject to the provisions of the Constitution, the Court of Appeal shall, to the exclusion of any other Court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether:

- (a) Any person has been validly elected to the office of President or Vice-President under the Constitution; or
- (b) The term of the President or Vice-President has ceased; or
- (c) The office of the President or the Vice-President has become vacant.⁸

Again, by Section 240 of the 1999 Constitution, the Court of Appeal shall subject to the provisions of the Constitution have jurisdiction to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court; The High Court of the Federal Capital Territory, Abuja; High Court of a State; Sharia Court of Appeal of a State; Customary Court of Appeal of a State; and from decisions of a court martial or other tribunal as may be prescribed by an Act of the National Assembly. The President of the Court of Appeal makes rules regulating the practice and procedure of the Court of Appeal.⁹ Section 249 of the 1999 Constitution establishes the Federal High Court while section 251 outlines its jurisdiction. Section 251 (2) goes further to state that for the purpose of exercising any jurisdiction conferred upon it by the constitution or as may be conferred by an Act of the National Assembly, the Federal High Court shall have all the powers of the High Court of a State.¹⁰ Section 28 of the Federal High Court Act,¹¹ provides that the Court shall have appellate jurisdiction to hear and determine appeals from the decisions of Appeal Commissioners established under the Companies Income Tax Act to the extent that the Act is applicable as a Federal Law; the decisions of the Immigration and Prison Service Board established under the Immigration and Prison Service Act; the decision of Magistrates Courts in respect of civil or criminal causes or matters transferred to such Courts pursuant to the Federal High Court Act; and the decisions of any other body established by or under any other federal enactment or law in respect of matters concerning which jurisdiction is conferred by the Federal High Court Act. The Chief Judge of the Federal High Court makes rules for the practice and procedure of the Federal High Court.¹²

The National Industrial Court is by section 7 (1) of the National Industrial Court Act 2006, empowered to have and exercise exclusive jurisdiction in civil causes and matters relating to labour including trade unions

⁴ S. 230 of the 1999 Constitution establishes the Supreme Court of Nigeria.

⁵ See also S. 9, Supreme Court Act, Laws of the Federation of Nigeria (LFN), 2004.

⁶ Created by S. 237 of the 1999 Constitution.

⁷ The Divisions are Abuja, Benin, Calabar, Enugu, Ibadan, Illorin, Jos, Kaduna, Lagos, and Port Harcourt, Sokoto, Yola, Owerri, Akure, Ekiti,

⁸ S. 239 (1) 1999

⁹ S. 248 1999 Constitution; see also S. 8 of the Court of Appeal Act, CAP C 36, LFN 2004.

¹⁰ See also sections 1-8 of the Federal High Court Act, CAP. F12, LFN 2004. The Federal High Court sits in Judicial Divisions created throughout the Country.

¹¹ *Op. cit.*

¹² S. 254 of the 1999 Constitution; S. 44 Federal High Court Act

and industrial relations; and environment and conditions of work, health, safety and welfare of labour together with matters incidental thereto; matters relating to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action; matters relating to the determination of any question as to the interpretation of any collective agreement, any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute, the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement; and matters relating to any trade union Constitution and any award or judgment of a Court. Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, no appeal shall lie from the decisions of the Court to the Court of Appeal or any other Court except as may be prescribed by the Act or any other Act of the National Assembly. And an appeal from the decision of the Court shall lie only as of right to the Court of Appeal on questions bordering on fundamental rights as contained under Chapter IV of the 1999 Constitution. Section 12 of the Act makes provisions to regulate the practice and procedure of the Industrial Court. The High Court of the Federal Capital Territory¹³ is established for the federal capital territory of Abuja, and has jurisdiction, among other things and in compliance with section 257 of the 1999 Constitution, to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person. The Chief Judge of the High Court of the Federal Capital Territory makes rules regulating the practice and procedure of the High Court of the Federal Capital Territory in due compliance with section 259 of the 1999 Constitution.

The Sharia Court of Appeal of the Federal Capital Territory Abuja¹⁴ exists principally to determine questions of Islamic law and its jurisdiction¹⁵ is outlined in section 262 of the 1999 Constitution. For the purpose of exercising any jurisdiction conferred upon it by the 1999 Constitution or any Act of the National Assembly, the Sharia Court of Appeal shall be duly constituted if it consists of at least three Kadis of the Court.¹⁶ And subject to the provisions of any Act of the National Assembly, the Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, is empowered to make rules for regulating the practice and procedure of the Sharia Court of Appeal of the Federal Capital Territory, Abuja.¹⁷ The Customary Court of Appeal of the Federal Capital Territory, Abuja,¹⁸ is established essentially to determine questions of customary law. According to the jurisdiction conferred on it by section 267 of the 1999 Constitution, the Customary Court of Appeal of the Federal Capital Territory, Abuja, shall in addition to such other jurisdiction as may be conferred upon it by an Act of the national Assembly, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. For the purpose of exercising any jurisdiction conferred upon it by the 1999 Constitution or any Act of the National Assembly, the Customary Court of Appeal shall be duly constituted if it consists of at least three Judges of the Court.¹⁹ And subject to the provisions of any Act of the National Assembly, the President of the Customary Court of Appeal of the Federal Capital Territory, Abuja, is empowered to make rules for regulating the practice and procedure of the customary Court of Appeal of the Federal Capital Territory, Abuja.²⁰ Section 270 of the 1999 Constitution of Nigeria provides that there shall be a High Court for each State of the Federation which shall consist of a Chief Judge of the State, and such number of Judges of the High Court as may be prescribed by a law of the House of Assembly of the State. Section 272 of the Constitution stipulates the jurisdiction of the State High Court. For the purposes of exercising any jurisdiction conferred upon it under this Constitution or any other law, a High Court of a State shall be duly constituted if it consists of at least one Judge of the Court.²¹ And subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State is empowered to make rules to regulate the practice and procedure of the High Court of the State.²²

The Sharia Court of Appeal of a State is established under section 275 of the 1999 Constitution²³ for any State of the Federation that elects to operate the Court which also is granted jurisdiction by section 277 of the Constitution.²⁴ For the purpose of exercising any jurisdiction conferred upon it under the Constitution or any

¹³ Created under S. 255 of the 1999 Constitution of Nigeria

¹⁴ Established under S. 260 of the 1999 Constitution of Nigeria; S.3 Sharia Court of Appeal Act.

¹⁵ See further section. 9-13 of the Sharia Court of Appeal Act

¹⁶ S. 263, 1999 Constitution; S. 4 of the Sharia Court of Appeal Act.

¹⁷ S. 264, 1999 Constitution; S. 24, Sharia Court of Appeal Act.

¹⁸ Established under S. 265 of the 1999 Constitution.

¹⁹ S.268, 1999 Constitution.

²⁰ S. 269, 1999 Constitution.

²¹ S. 273, 1999 Constitution.

²² S. 274, 1999 Constitution.

²³ See also S. 3 of the Sharia Court of Appeal Act, CAP 550, LFN, 1990

²⁴ See also Sections 9-13 of the Sharia Court of Appeal Act

other law, a Sharia Court of Appeal of a State shall be duly constituted if it consists of at least three *Kadis* of the Court.²⁵ And subject to the provisions of any law made by the House of Assembly of the State, the Grand *Kadi* of the Sharia Court of Appeal of the State shall make rules regulating the practice and procedure of the Sharia Court of Appeal.²⁶ The Customary Court of Appeal of a State is established under section 280 of the 1999 Constitution for any State of the Federation that requires the Court which shall consist of a President of the Customary Court of Appeal of the State and such number of Judges of the Customary Court of Appeal as may be prescribed by the House of Assembly of the State. A Customary Court of Appeal of a State has both appellate and supervisory jurisdiction in civil proceedings involving questions of customary law. It 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. For the purpose of exercising any jurisdiction conferred upon it by the Constitution or any law, a customary Court of Appeal of a State shall be duly constituted if it consists of at least three Judges of the Court. And subject to the provisions of any law made by the House of Assembly of the State, the President of the Customary Court of Appeal of the State may make rules regulating the practice and procedure of the Customary Court of Appeal of the State.

III. EXERCISE OF JUDICIAL POWERS IN NIGERIA

It is clear from the foregoing that judicial powers or judicial authority in Nigeria is exercisable only by the courts which are either created directly by the constitution or created under the authority of the constitution.²⁷ In the exercise of judicial powers, the court must consign itself to the jurisdiction conferred on it by the constitution or the enabling statute. Any court stepping out of its statutory jurisdiction would be engaging in an exercise in futility and its ultimate decision is bound to be a nullity. In *Opara vs. Amadi*,²⁸ the court laid out the conditions precedent for a court to have jurisdiction to entertain a matter. These conditions include that the court must be properly constituted as regards numbers and qualification of the members of the Bench, and no member is disqualified for one reason or another; the subject-matter of the case is within its statutory jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. The court further held that any proceeding conducted without jurisdiction no matter how brilliantly handled would amount to a nullity if the court had no jurisdiction to entertain the matter. Again, in *Aladejobi vs. NBA*,²⁹ the court described jurisdiction as the power and authority of a court to hear and determine a judicial proceeding including the power to render particular judgment in a cause of action. It went further to hold that *such authority of the court is controlled or circumscribed by the statute creating the court itself or it may be circumscribed by a condition precedent created by a legislation which must be fulfilled before the court can entertain the suit*. The Supreme Court of Nigeria has in a long line of cases settled the pre-eminence and indispensable position of jurisdiction in the exercise of judicial authority.³⁰ as the court in *APGA vs. Anyanwu*³¹ summarized:

The law is by now well settled that jurisdiction is the lifeblood of any adjudication and where it is lacking it would render any proceedings, no matter how well conducted, liable to be set aside for being a nullity. Jurisdiction is so fundamental that once the court's jurisdiction to hear a matter is challenged, it must be dealt with and resolved first before any other step in the proceedings. It is because it is so fundamental that it can be raised at any time, in any manner and at any stage of the proceedings.

²⁵ S. 278, 1999 Constitution; S. 4 Sharia Court of Appeal Act.

²⁶ S. 279, 1999 Constitution.; S. 24 Sharia Court of Appeal

²⁷ Section 6 (4) of the Constitution authorizes the National Assembly or the House of Assembly of a State to in addition create courts of subordinate jurisdiction to a High Court. This is the legal basis for the creation by State Houses of Assembly of such courts as the Magistrates courts, Area courts, District courts, customary courts and so forth. All of these courts however, being inferior, are not courts of record. In *Nwaogu vs Atuma* (2013) 54.3 NSCQR 1782, the Supreme Court held that the constitutional function of courts of record is well circumscribed and defined. That it is simply an arbiter and that it is for the parties to present their case and it is for the court to decide the matter as presented by them; again, in *Asika vs. Atuma* (2013) 56 NSCQR 189, the court held that it is the primary function of courts to interpret laws and documents.

²⁸ (2013) 54 NSCQR 1568.

²⁹ (2013) 55 NSCQR 179

³⁰ See for instance: *NNPC vs SELE* (2013) 53.3 NSCQR 975; *Egwumi vs. State* (2013) 53.3 NSCQR 1126. *Godwin Ugwuanyi vs. NICON Insurance Plc* (2013) 53.3 NSCQR 673; *F.H.A vs Kalejaiye* (2010) 44 NSCQR 213; *Kalango vs. Governor of Bayelsa State* (2009) 37 NSCQR 42.

³¹ (2014) 57 NSCQR 364.

Once the question of jurisdiction is settled and the court assumes jurisdiction, its first duty is to protect and safeguard the constitution of the Federal Republic of Nigeria and its supremacy. In *Okorochoa vs. PDP*,³² the Supreme Court laid emphasis on this duty when it stated that:

The court must do all it can to jealously guard its powers and the supremacy of our constitution as the *grundnorm*, which is above all other authorities. The court as the custodian of the constitution must not therefore be seen to ridicule the very institution that puts it in place.

The court has a further duty to be totally neutral in its adjudication. It must maintain its role as an impartial umpire throughout the trial and must neither help the case of the prosecution nor of the accused. In *Magaji vs. Nigerian Army*,³³ the Supreme Court stated the duty explicitly that *tribunals or courts of law, by their special place in the adjudicatory process should not condescend to the nitty-gritty of the dispute or flirt with the evidence in a way to compromise its independent and unbiased position in the truth searching process*. There is also a duty on the courts to consider and evaluate evidence before it. Courts apply the law to facts presented before it by parties. It cannot act on any fact outside the evidence led before it or on extraneous materials not constituting admissible evidence.³⁴ The court must evaluate every bit of evidence adduced before it and rule on them one way or another. It must also consider the totality of evidence before coming to judgment. In *Isah vs. State*,³⁵ the Court of Appeal while highlighting the need for the court to consider every evidence led before it stated that when a defence however weak, foolish, unfounded, conflicting, farfetched or false is raised by a person charged with a crime, it is the duty of the trial judge to consider such defence fairly even though it is not specially put forward as it is enough if such defence arose from the totality of the evidence led on both sides.

The practicalities of trial in a Nigerian court necessitates that a court may need to exercise some form and level of discretion for there to be a fair determination of the issues before it. There are many occasions that may give rise to this, namely, the question of bail of an accused person, applications for interim or interlocutory injunction, applications for equitable remedies such as judicial review, certiorari, mandamus and prohibitive orders and sentencing after conviction of an accused. When it becomes incumbent on a court during trial to exercise its discretion one way or the other, the Judge must not allow his personal feelings to influence his action but must impassionately exercise such discretion judiciously and judicially so as to attain the best ends of justice. Judicial discretion must be exercised bonafide not arbitrarily and must not be influenced by any private or irrelevant consideration.³⁶

The language of the court is another important issue in Nigeria. The language of the court in Nigeria is English language particularly as it concerns the superior courts created or authorized to be created under section 6 of the constitution. This comes against the background of Nigeria being a culturally heterogeneous country with more than a hundred native tribes and distinct languages and cultures. Under such circumstances, no one language or set of languages can be preferred against the others. Nigeria therefore, like most colonized nations, has had to fall back on its colonial past to adopt the language of its colonizers, the British, as its *lingua franca*. English language is therefore now generally accepted and spoken in official circles in the country as a unifying medium of communication. And, ultimately, English has become the official language of the superior courts in Nigeria. Notwithstanding the foregoing, section 36(6) (a) of the constitution provides that every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence. By section 36 (6) (e), such person shall obtain, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.³⁷ In *Onyia vs. State*³⁸ the Supreme Court captured the situation when it held that:

It is not disputed and it is in fact settled law that the language of the superior courts of record in Nigeria is English. Also not disputed is the fact that in Nigeria we have very many languages and dialects which languages and dialects though may be the language of the relevant customary or area courts, do not qualify as the language(s) of the superior courts of record in this country.

³² (2014) 57 NSCQR 272

³³ (2008) 3 NCC 490

³⁴ See *Salako vs. State* (2008) 3 NCC 39.

³⁵ (2008) 3 NCC 577

³⁶ *Duwin Pharm. vs. Beneks Pharm.* (2008) 33 NSCQR 239; Section 14 Evidence Act, CAP E. 14, Laws of the Federation of Nigeria, 2011; Section 162, Administration of Criminal Justice Act, 2015.

³⁷ In practice the courts do provide these interpreters who are usually court officials; see the case of *Nwachukwu vs State* (2007) 12 SCM (pt. 2) 462; see also A.M. Adebayo (2012) 1999 Constitution of Nigeria Annotated with Cases. Lagos: Princeton Publishing Co. p. 18.

³⁸ (2008) 18 NWLR (Pt.1118) 142

There is yet another significant element of the operation of courts in Nigeria that begs attention. And that is judicial precedent or *stare decisis*. This is a decided case that furnishes a basis for determining later cases involving similar facts or issues, or in other words, a doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction.³⁹ The Nigerian constitution has entrenched this doctrine within the Nigerian legal system when section 287(1) of the constitution mandates all courts, institutions and authorities to enforce without question decisions of the Supreme Court. In the same token, section 287(2) mandates courts lower than the Court of Appeal to enforce its decisions; and section 287(3) mandates all courts lower than or subordinate to the High court to enforce the decisions of the High court. In *Nnakire vs State*,⁴⁰ the Supreme Court elucidated this doctrine thus:

... the principle of *stare decisis* is well entrenched in our system of judicial adjudication where lower courts in the hierarchy are bound by *ratio decidendi* of higher courts. See *Emoga vs. State* (1977) 9 NWLR (pt. 579) 38 wherein this court held that both the Court of Appeal and the High Court are bound by the decision of the Supreme Court; that the refusal to do so was greatly erroneous. This rule is designed to ensure uniformity in making decisions, foster stability and enhance the development of a consistent and coherent body of law so as to ensure equality of treatment for litigants. In *Africa Newspapers vs. Nigeria* (1985) 2 NWLR (pt.6) 137; this court at page 141 held and emphasized that no discretion is given the Judges of the lower courts to depart from the decision of higher courts in the hierarchy even where such were erroneous. I also need to add that this court had in *Cardoso vs. Daniel* (1986) 2 NWLR (pt. 20) 1 at 5 held that subordinate courts are also bound by their own decisions. They cannot, for any reason therefore, ignore or refuse to follow the decision of the Supreme Court. Hence, the confirmation that courts are jealous of the principle of judicial precedent and will not tolerate interference therewith.

Following from the above, there have been a litany of cases that have echoed the supremacy of the Supreme Court and the finality of its decision.⁴¹ In *Okorochoa vs. PDP*,⁴² the Supreme Court took the opportunity to pronounce on the import of section 287(1) of the constitution and emphasized that any breach of this constitutional provision ought to be viewed with all seriousness as such amounts to sabotage of the sacred constitutional grundnorm.

Notwithstanding the capacity of *stare decisis* to generate uniformity, consistency, certainty and predictability in judicial decisions; the doctrine suffers some setbacks within the Nigerian judicial system. There are many occasions that the Supreme Court which decisions other courts are bound to follow has made conflicting decisions leading to a confusion as to which particular decision the lower courts were to follow. At other times the Supreme Court has reversed its earlier decisions. This inconsistency from the apex court constitutes a big blow to the doctrine of *stare decisis*. The Supreme Court itself has given a guide to mitigate this inconsistency that equates the principle of *distinguishing*. In *Ugwuanyi vs. NICON Insurance Plc*,⁴³ the court held that:

Cases remain authorities only for what they decided. Thus an earlier decision of this court will only bind the court and subordinate courts in a subsequent case if the facts and the law which inform the earlier decision are the same or similar to those in the subsequent case. Where, therefore, the facts and/or the legislation which are to inform the decision in the subsequent case differ from those which informed the court's earlier decision, the earlier decision cannot serve as a precedent to the subsequent one.

It is clear from the foregoing that in Nigeria, for the courts to comply with section 287 of the constitution and follow decisions of higher courts in the manner of *vertical stare decisis* the facts and issues must not only be the same, the legislation(s) that informed the earlier decision must also be the same. Secondly the deciding authority is the *ratio decidendi* as opposed to the *obiter dictum* of the earlier case. But beyond this,

³⁹ B. A. Garner (ed.) (2009) *Black's Law Dictionary*, 9th ed. Minesota: West Publishing Co. p. 1295, 1537.

⁴⁰ (2013) 55 NSCQR 1

⁴¹ *Amachi vs. INEC* (2008) 33 NSCQR 332 ratio 27

⁴² (2014) 57 NSCQR 272

⁴³ (2013) 53. 3 NSCQR 673 ratio 17; also *Oshiomole vs. Airhiavbere* (2013) 53. 3 NSCQR 1200 ratio 6.

courts in Nigeria do apply principles of law established in earlier decisions to subsequent cases. These principles that may be generated from entirely different laws and facts are considered as universally applicable to any set of circumstances relating to court proceedings.

IV. CONCLUSION

This work has examined the content and exercise of judicial powers in Nigeria. In Nigeria, judicial powers are a creation of the constitution. Section 6 of the constitution creates the courts and mandates them to exercise jurisdictions that have also been specified. Judicial powers cannot be exercised by any other authority or institution but by the courts only.⁴⁴ Jurisdiction is vital to any judicial proceedings and the courts in Nigeria are fully conscious of this. Courts also exercise some discretion in the course of the proceedings which discretion must be exercised judicially and judiciously. There is also the issue of *stare decisis* in Nigerian courts which derives its legal basis from section 287 of the Nigeria constitution. Under this doctrine, courts are to follow the previous decisions of higher courts if the facts and issues are the same. In Nigeria, the Supreme court has added that the applicable law must be the same in both cases. We find, however, that in spite of this requirement, Nigerian courts have had to resort in some cases to principles of law established in previous decisions even though the law and facts are quite different from the present one. Aside of the constitution, there are other statutes, subsidiary legislations, and rules of court that have helped to create the rich content of judicial powers in Nigeria.

REFERENCES

- [1]. Adebayo A.M. (2012). 1999 Constitution of Nigeria Annotated with Cases. Lagos: Princeton Publishing Co.
- [2]. Administration of Criminal Justice Act, 2015.
- [3]. Constitution of the Federal Republic of Nigeria, 1999
- [4]. Court of Appeal Act, CAP. C 36, LFN, 2004.
- [5]. Evidence Act, CAP. E. 14, Laws of the Federation of Nigeria, 2011; Section 162.
- [6]. Federal High Court Act, CAP. F12, LFN, 2004.
- [7]. Garner B. A. (ed.) (2009) Black's Law Dictionary, 9th ed. Minesota: West Publishing Co.
- [8]. High Court Rules of Ebonyi State, 2008.
- [9]. Sharia Court of Appeal Act, CAP. 550, LFN, 1990
- [10]. Supreme Court Act, CAP. S 14, Laws of the Federation of Nigeria (LFN), 2004.

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⁴⁴ In *Agala vs Enwere* (2010) All FWLR (Pt. 532) 1609, the Supreme Court held that by section 6(1) & (5) of the constitution of Nigeria, it is the courts and not to non-judicial bodies that the judicial powers of the Federal Republic of Nigeria is vested.