

An Examination of the Jurisdiction of the Administrative Proceedings Committee of the Corporate Affairs Commission Vis-A-Vis the Exclusive Jurisdiction of the Federal High Court

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Abstract

The Companies and Allied Matters Act has been recently amended to create an enabling environment to ease doing of business in Nigeria. The amendment included the creation of an Administrative Proceeding Committee of the Corporate Affairs Commission to be headed by the Registrar General of the Commission; a body with quasi-judicial functions to hear matters that have to do with the administration of the Companies and Allied Matters Act. This body was created by the provision of Section 851 of the Companies and Allied Matters Act, 2020. The section further provides that if parties are dissatisfied with the decision of the committee, they may appeal to the Federal High Court. The provision of S851 of the Companies and Allied Matters Act clearly raises the question of conflict with the exclusive jurisdiction of the FHC as enshrined in Section 251(1)(e) Constitution of the Federal Republic of Nigeria to hear matters that border on the operation of the Companies and Allied Matters Act or any other enactment replacing same to the exclusion of any other Courts. This work argued that the exclusive jurisdiction of the FHC not only excludes other courts and tribunals from exercising same, but is also original in nature and the jurisdiction of the FHC cannot be converted to an appellate jurisdiction without an amendment of the constitution. The work is divided into five parts as follows: Introduction, supremacy of the constitution, exclusiveness and originality of the jurisdiction of the FHC, the Administrative Proceedings Committee of the Corporate Affairs Commission in contradistinction with the Administrative Proceedings Committee of Securities and Exchange Commission and rounds up with Observations, recommendations and conclusion.

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1. Introduction

This work seeks to examine the provision of section 851 of the Companies and Allied Matters Act, 2020 in light of the provision of Section 251(1)(e) of the Constitution of the Federal Republic of Nigeria, 1999. The Constitution is the *grundnorm*¹ and is the basis for validity of any other legislation that may be enacted by the National Assembly or any State Legislative body. Therefore, any law that is inconsistent with the Constitution is void to the extent of that inconsistency.² The agitation to create an enabling business environment in Nigeria resulted in the amendment of the Companies and Allied Matters Act in 2020 as well as the review of the Companies Regulation to bring about a better administrative regime for the Corporate Affairs Commission. Part of the innovation in the 2020 amendment of the Companies and Allied Matters Act (CAMA) is the creation of an Administrative Proceeding Committee of the Corporate Affairs Commission under Section 851³ of the new law. The jurisdiction of the Committee was spelt out under S851(4) as follows:

(4) The Administrative Committee shall-

- (a) provide the opportunity of being heard for persons alleged to have contravened the provisions of this Act or its regulations;
- (b) resolve disputes or grievances arising from the operation of this Act or its regulations; and
- (c) impose administrative penalties for the contravention of the provisions of this Act or its regulations in the settlement of matters before it.⁴

The section goes ahead to state that the decisions of the Committee shall be subject to the confirmation of the Board⁵ and that parties dissatisfied with the decisions of the Committee may appeal to the Federal High Court.⁶ The Companies Regulations, 2021 further

¹ J.O. Rachuongo, *Kelsen's Grundnorm in Modern Constitution-Making: The Kenya Case*, Law and Politics in Africa, Asia and Latin America, (1987) Vol. 20 No. 4 pp 416-430. Hans Kelsen's grundnorm theory is the basis of modern constitutional law and it posits that the grundnorm, which is the constitution is the basis of validity for any other law and in modern democracy, the constitution is the grundnorm and the basis of validity for any other law.

² Ibid

³ See Section 851 Companies and Allied Matters Act which established the Administrative Proceedings Committee of the Corporate Affairs Commissions, stated the composition of the Committee and the functions or jurisdiction of the Committee.

⁴ Section 851 (4) CAMA, 2020

⁵ See Section 851 (11) CAMA, 2020

⁶ See Section 851 (12) CAMA, 2020

complements the provision of Section 851 CAMA by making rules to guide making complaints before the Committee, exchange of pleadings, hearing, timelines for activities and the venue for hearing among others under regulations 38 to 45 of the Companies Regulations.⁷

The Companies Regulations find its authority from the Companies and Allied Matters Act⁸. Thus the Regulation must be read in conjunction with the Act and cannot make a provision that is inconsistent with the CAMA. From a joint reading of the provision of Section 851 and Regulations 38 to 45, it is clear that the Administrative Committee of the Corporate Affairs Commission is meant to operate as a quasi-judicial body with jurisdiction similar to that of the Federal High Court.

The Constitution of the Federal Republic of Nigeria created the Federal High Court under section 249⁹ and proceeded to clearly provide for the exclusive jurisdiction of the Federal High Court under S251 of the Constitution. Specifically, Section 251(1)(e) gives the Federal High Court original and exclusive jurisdiction to entertain matters that border on the administration and operation of the Companies and Allied Matters Act. The section provides as follows:

Notwithstanding anything to the contrary contained in this constitution..., the Federal High Court shall have and exercise Jurisdiction to the exclusion of any other court in civil causes and matters-... (e) arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act;¹⁰

By virtue of the provision of Section 251(1)(e), the jurisdiction of the Federal High Court to entertain matters that has to do with the operation of the Companies and Allied Matters Act is exclusive and cannot be shared with any other Court or tribunal.¹¹ Therefore the

⁷ See Regulations 38 to 45, Companies Regulations, 2021.

⁸ See Section 8(1) of the Companies and Allied Matters Act, 2020; where the functions of the Commission are outlined and includes the regulation of the administration of the Companies and Allied Matters Act and the regulation of the formation, management, dissolution or winding up of bodies registered under the Act.

⁹ See Section 249, Constitution of the Federal Republic of Nigeria, 1999

¹⁰ See Section 251 (1)(e) Constitution of the Federal Republic of Nigeria, 1999

¹¹ In civil procedure, exclusive jurisdiction exists where one Court has the power to adjudicate a case to the exclusion of all other Courts. It is the opposite situation from concurrent jurisdiction, in which more than one Court may take jurisdiction over the case. See <https://definitions.uslegal.com/e/exclusive-jurisdiction> accessed 27th September, 2021.

question which this work sets out to answer is what are the effects and implications of the provision of Section 851 CAMA in the light of Section 251(1)(e) of the Constitution?

2. The Principle of the Supremacy of the Constitution

The provisions of the Constitution are sacrosanct and as the *grundnorm*, no law is supposed to be inconsistent with its provisions. Any enactment that is inconsistent with the provisions of the Constitution is therefore considered void and unenforceable to the extent of that inconsistency.¹² The supremacy of the Constitution as clearly captured in Section 1 of the Constitution is the guiding principle for the governance of Nigeria as a sovereign state and every authority, government, agency or law in Nigeria only derives its legitimacy, validity and/or enforceability as the case may be from the provisions of the Constitution.

The application of this inconsistency rule was done in several cases, too numerous to mention as a settled principle of law. For example in the case of *Mohammed V FRN*¹³ the inconsistency of Section 8 of the Indian Hemp Act and with section 251(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999 was dealt with; the Court held in that case, that Section 8 of the Indian Hemp Act is inconsistent and offensive to the provision of the constitution with respect to the exclusive jurisdiction of the Federal High Court and therefore void. The same principle of the Supremacy of the Constitution and the application of the inconsistency rule was applied by the Court in the case of *Value Line Securities Investment Ltd V Anakwube*¹⁴ where an inconsistency was found between provision of Section 242 of the Investment and Securities Act, 2007 and the Section 236(1) of the CFRN with respect to the jurisdiction of State High Courts.

Suffice it to submit therefore, that the supremacy of the constitution is sacrosanct and any law that is inconsistent with the provisions thereof is void to the extent of that inconsistency in spite of the good intention or purpose of such law.

3. The Exclusiveness and Originality of the Jurisdiction of the FHC

Section 251 of the Constitution provides for the exclusive jurisdiction of the Federal High Court, and the Federal High Court is generally a Court of original Jurisdiction. Therefore, the exclusive

¹² See Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999.

¹³ (2013) LPELR-10151 (CA)

¹⁴ (2015) LPELR- 24486 (CA)

original jurisdiction of the Federal High Court is provided for under section 251 of the Constitution. The exclusivity of the jurisdiction vested on the Federal High Court by the constitution simply means that the court does not share that jurisdiction with any other Court or Tribunal¹⁵ and it is also original¹⁶ in nature by virtue of the fact that it is the Court that tries such matters as the Court of first instance. In reality, the Federal High Court does not have an appellate jurisdiction, because it was not originally created to entertain appeals from any Court or Tribunal.

Section 851(12) of CAMA, 2020 provides that: ‘Parties dissatisfied with the decisions of the Administrative Committee may appeal to the Federal High Court.’¹⁷ The subsection actually attempted to create an appellate jurisdiction for the Federal High Court for matters that emanating from the decisions of the Administrative Proceedings Committee of the Corporate Affairs Commission. Although Section 252 (2) of the Constitution empowers the National Assembly to add to the powers of the Federal High Court, that does not translate to empowering the National Assembly to increase or amend the jurisdiction of the FHC as there is a clear distinction between the powers of a Court and the jurisdiction of a Court.¹⁸ In fact the provision clearly stated that the purpose of the additional power is to enable the Court to be more effective in the exercise of its jurisdiction, the subsection clearly provided as follows:

... powers additional to those conferred by this section as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction.¹⁹

Powers is what is envisaged by the subsection and not jurisdiction; but be that as it may, what Section 851(12) attempted to do is not to add

¹⁵ Exclusive jurisdiction refers to the power of a court to adjudicate over a matter to the exclusion of all other courts and it is usually decided on the basis of the subject matter dealt with by a particular court <https://findanyanswer.com/goto/142608> accessed on the 12th October, 2021.

¹⁶ Original jurisdiction refers to the right of a court to hear a matter for the first time. *ibid*

¹⁷ See Section 851 (12) CAMA 2012

¹⁸ Jurisdiction is the scope or authority over a subject matter which the Court may deal with. On the other hand, a court needs jurisdiction to exercise its power- a court cannot exercise its powers outside of its jurisdiction. The power that a court can exercise within its jurisdiction depends on the circumstances of each case and the scope or the limits of its powers. See G.K. Ganesan, ‘What is the Difference Between Power and Jurisdiction?’ November 12, 2019 <https://www.gkg.legal/difference-between-power-and-jurisdiction/> accessed on the 12th October, 2021.

¹⁹ Section 252(2) Constitution of the Federal Republic of Nigeria, 1999

to the power of the Court, but to alter or amend the jurisdiction of the Court with respect to operation of the Companies and Allied Matters Act from an original jurisdiction to an appellate jurisdiction with respect to the administration of the Companies and Allied Matters Act and that cannot be done without an amendment of the constitution. There is a lot of difference between a Court with original jurisdiction and an appellate Court, as the appellate Court does not generally have the opportunity to receive and evaluate the evidence of witnesses, but only reviews the decisions of the lower Court of Tribunal.²⁰

It is a well settled fact that courts are created or creations of statutes based on the constitution and the jurisdiction of courts are clearly spelt out in the law that created them. In this case, the Federal High Court is a creation of the Constitution of the Federal Republic of Nigeria, the *grund norm* of Nigeria as a sovereign state and its jurisdiction is clearly spelt out in the constitution. The poser is this, can we jettison or ignore the provisions of the constitution with respect to the jurisdiction of the Federal High Court in respect of matters that borders on the administration of the Companies and Allied Matters Act which is clearly included in the exclusive jurisdiction of the Court in order to give effect to the provisions of the Companies and Allied Matters Act? It was aptly submitted that when a court lacks jurisdiction, a party cannot invoke any statutory provision or principle of common law to clothe such a court or tribunal with jurisdiction. Absence of jurisdiction is irreparable in law.²¹

4. The Administrative Committee of CAC in Contradistinction with the Administrative Committee of SEC

It does appear that the Corporate Affairs Commission is trying to take a cue from the Securities and Exchange Commission (SEC). The Securities and Exchange Commission has an Administrative Proceeding Committee known as the Administrative Proceeding Committee of Securities and Exchange Commission with a quasi-judicial jurisdiction to hear certain matters. The Administrative Proceedings of SEC was established in the year 2000 pursuant to Sections 29(7) ISA, 1999 and

²⁰ The exercise of original jurisdiction over a subject matter is distinct and different from appellate jurisdiction. A court exercising original jurisdiction has the matter brought before it for the very first time; it receives and evaluates the evidence in the matter first hand. An appellate court on the other hand reviews the decision of a lower court and does not receive fresh evidence unless under special circumstances. See <https://www.lawcornell.edu>

²¹ Adekunle C.O. and Onakoya O.S., *The Federal High Court of Nigeria: An Examination of its Territorial Jurisdiction vis-à-vis Service of Court Process*, The Jurist (2016) Vol 21. pp 184-204.

Section 259 ISA, 1999.²² The composition of the Administrative Proceedings Committee of the SEC is similar to that of the Administrative Proceedings Committee of CAC in the they are both headed by the Director General and Registrar General respectively. However, the parties over whom the Administrative Proceeding Committee SEC are clearly spelt out to include the following:

1. Capital Market Operators,
2. Capital Market Operators and their Clients and
3. The Commission and Capital Market Operators²³

In summary, the jurisdiction of the Administrative Proceeding Committee of the Securities and Exchange Commission has to do with the securities dispute and contractual issues between capital market operators, or capital market operators and their clients.²⁴ Some concern might be raised on the likelihood of conflict between the jurisdiction of the Investments and Securities Tribunal and the Federal High Court in matters relating to the challenge of the decisions of the Securities and Exchange Commission, an agency of the Federal Government, a matter that falls under the exclusive original jurisdiction of the Federal High Court.²⁵ However, appeals from the decisions of the Administrative Proceeding Committee of SEC lies at the Investment and Securities Tribunal (IST)²⁶ and from there to the Court of Appeal and then to the Supreme Court. The Companies and Allied Matters Act on the other hand makes room for appeals from the Administrative Proceedings Committee of the CAC to the Federal High Court, it seems that this provision of section 851 CAMA attempts to respect to exclusive jurisdiction of Federal High Court by allowing appeals from the Administrative Proceeding Committee of the CAC to lie at the Federal High Court. Nevertheless, that does not resolve the conflict in the jurisdiction of the Administrative Proceeding Committee of the CAC with that of the FHC as the jurisdiction conferred on the FHC under Section 251(1)(e) CFRN is original in nature and not appellate, thus the conflicts still subsist.

²² About the Administrative Proceedings Committee (proshareng.com) accessed on www.proshareng.com on 12th August, 2021

²³ Ibid

²⁴ There has been a contention that the jurisdiction of the IST conflicts with that of the State High Courts in the case of *Value Line Securities Investment Ltd V. Anakwube* (2015) LPELR- 24486 (CA).

²⁵ See Section 251(1)(p) of the Constitution of the Federal Republic of Nigeria, 1999

²⁶ See Section 284 of the Investments and Securities Act, 2007

5. Observations, Recommendations and Conclusion

It was observed that the Companies and Allied Matters Act, 2020 sought to bring about several innovations to ease doing of business in Nigeria and also the ease of resolution of disputes that may arise from the operation of a company and the operation and administration of the Companies and Allied Matters Act by having a fast track quasi-judicial body to attend to certain matters with dispatch. However, attention was not given to the provision of the Constitution as it has to do with the exclusive original jurisdiction of the Federal High Court. The attempt to create the Administrative Proceeding Committee of the Corporate Affairs Commission offends the principle of the supremacy of the constitution and may not serve the purpose for which it was intended. Therefore, the following recommendations are suggested to achieve a speedy disposal of disputes that may arise from the operation of the Companies and Allied Matters Act.

1. That an Alternative Dispute Resolution (ADR) center be established by the Corporate Affairs Commission where parties to a dispute arising from the operation of the Act may wish to submit the matter for resolution. That will not offend the Constitution of the Federal Republic of Nigeria as ADR is done of the free volition of the parties and not mandatorily required as of law like in the case of Section 851 CAMA.
2. That the Constitution be amended to alter the jurisdiction of the Federal High Court to include hearing appeal that emanate from the decisions of the Administrative Proceeding Committee of the CAC.
3. That in addition to recommendation no. 2 above, the Administrative Proceeding Committee of the Commission should be constituted by independent individuals and not the Registrar General or other members of the Board of the Commission or the staff of the Commission solely as it will offend the principles of natural justice²⁷ that is *nemo judex in causa sua*.

In conclusion, the amendment and the intention of the amendment is good, but it will not see the light of day because of its inconsistency with the provisions of the Constitution. Therefore, it will be better for the Commission to take proactive steps to come up with an alternative arrangement that can effectively achieve what was intended by the amendment.

²⁷ Strachan Partners, *A Critique of the Administrative Proceeding Committee* SP. Newsletter 013., 24th August, 2020 Concerns were raised on the violation of the principles of natural justice by the constitution and composition of the Administrative Proceeding Committee.