

Developing Definite Principles for Determining the Jurisdiction of the Federal High Court¹

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Abstract

The jurisdictional competence of the Federal High Court in civil matters is one of the most controversial and perhaps confusing to ascertain of all the superior courts. Two issues surround the controversy relating to the exclusive jurisdiction granted the Federal High Court under section 251(1) of the Constitution. They are: whether there are persons and subjects upon which the court exercises exclusive jurisdiction and whether there are subjects upon which the court share concurrent jurisdiction with other courts, notoriously, the State High Court, and lately, the National Industrial Court. This paper probes into these issues and posits that

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although, there are two vital means by which the jurisdiction of the Federal High Court is conferred; (to wit: by the Constitution and; by other statutes passed by the National Assembly); the adoption of relevant principles of law could help clear the doubts in respect of the jurisdiction of the Federal High Court (exclusive or concurrent). The paper identified four principles of interpretation: the principles of identification; categorisation, determination, and exclusion as capable of erasing any confusion in the determination of the jurisdiction of the Federal High Court.

1. Introduction

The Federal High Court was originally conceived as a revenue court, but with time, it came to be known as the Federal High Court (FHC) with an enlarged jurisdictional coverage. A historical analysis of the jurisdiction of the court has always been ideal to capture the evolving challenges in specifying what constitutes the jurisdiction of the Federal High Court.² Hence, analysing the jurisdiction of the court is not only tasking, but has been as puzzling to judges as to legal writers and legal practitioners. This work shall only consider the present jurisdiction of the FHC as granted by statutes without much emphasis on the jurisdictional challenges that have plagued the court in the past.³

2. The Jurisdiction of the Federal High Court

The civil jurisdiction of the court is as provided for by section 251 of the 1999 Constitution (as amended) and section 7 of the Federal

² See, *Abiola & Sons Bottling Company Nigeria Limited & Anor v First City Merchant Bank Limited & Ors* [2013] 10 NWLR (Pt. 1363) 501 at 525-526, *per* I.T. Muhammed JSC.

³ For a better appreciation, see note 2 above.

High Court Act.⁴ The jurisdiction conferred on the Federal High Court is construed to include jurisdiction to hear and determine all issues relating to, arising from or ancillary to such subject matter.⁵ It must also be understood that the specific and enumerated jurisdiction granted to the Federal High Court under the provisions of section 251(1) of the Constitution is meant to be exclusive to the court and not to be shared with any other court.⁶

Despite the fact that the courts in some instances have tried to reduce the controversy surrounding the interpretation of these provisions, it is obvious in the decisions of the courts, that something is amiss. At the centre of the controversy, are cases that have interpreted the provisions of section 251(1) of the Constitution or portions thereof to confer certain jurisdiction on the court which has been disputed as rather wanting or sweeping. Such cases and the pattern of interpretation or construction of the jurisdiction of the FHC are discussed on assumed premises highlighted as follows:

2.1 When determining the jurisdiction of the Federal High Court, particularly in paragraphs under section 251(1) of the Constitution relating to when the Federal Government

⁴ See, *Shell Nig. Gas Ltd v D.O. & G Ltd* [2011] 10 NWLR (Pt. 1256) 457 at 472-473, paragraphs G-A, *per* Mshelia JCA. See, Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010, section 27.

⁵ See Federal High Court Act, section 7(3).

⁶ *Ibid.*, section 8(1) and (2). Section 8(2) provides: “Notwithstanding subsection (1) of this section, the President may by order and to the extent set out in the said order vest in the High Court or any other court of a State or the Federal Capital Territory, Abuja jurisdiction either generally in relation to the causes and matters set out in the preceding section or specifically in relation to any particular cause or matter which may be specified in the said order.”

or its agencies are parties, the only relevant consideration is that the Federal Government or its agencies is a party to the action and no more

The position of the courts in this respect states that in the subsections under section 251(1), where jurisdiction of the court relates to the Federal Government or its Agencies, all that need to be determined is that a party falls within the description, irrespective of the subject-matter. The most significant pronouncement of this proposition is the case of *NEPA v Edegbero*,⁷ a case that has led to several commentaries, and has since continued to be the centre of several offshoot principles confounding all efforts at reconciling section 251(1) of the Constitution. In that case, the respondents, who were employees of the National Electric Power Authority (NEPA) had their employment terminated for participating in a strike action which took place in August 1994. They therefore brought an action praying for injunctive reliefs as well as asking for reinstatement and nullification of the termination of their employment. The suit was filed at the Niger State High Court. Relying on the provisions of section 230(1)(q), (r) and (s) of the 1979 Constitution, as amended by Decree No. 107 of 1993,⁸ the counsel for the Appellant, (the defendant at the trial court) contended that the trial court lacked the requisite jurisdiction to entertain the matter.

The trial court went on to hold that it has jurisdiction to hear and determine the matter and eventually found in favour of the Respondents, delivering judgement in their favour. An appeal to the Court of Appeal was dismissed and the decision of the trial court affirmed, prompting an appeal to the Supreme Court. At the Supreme Court, the tide turned against the respondents' conception that the State High Court had jurisdiction in the matter. Declaring the dispute to be within the exclusive jurisdiction of the

⁷ (2003) 1 MJSC 69; (2002) 18 NWLR (Pt. 798) 79.

⁸ Now, 1999 (as amended) section 251(1), (p), (q) and (r).

Federal High Court, the Supreme Court considered the claims to be within section 230(1)(s) of the 1979 Constitution (as amended)⁹ and held as follows:¹⁰

It is not in dispute that the Defendant- NEPA is a Federal Government Agency. It is also not disputed that the cause of action arose out of the administrative action or decision of the Defendant. In the light of all these, therefore, the action came squarely within the provision of section 230(1)(s) of the 1979 Constitution as amended. The action is one within the exclusive jurisdiction of the Federal High Court. *A careful reading of paragraphs (q), (r) and (s) of section 230(1) reveals that the intention of the law-makers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court actions which the Federal Government or any of its agencies is a party.*¹¹

This case seems to suggest that once the Federal Government or its agencies are involved in matters relating to issues under section 230(1)(q), (r) and (s) of the 1979 Constitution, (now section 251(1)(q), (r) and (s) of the 1999 Constitution), the Federal High Court has exclusive Jurisdiction.¹²

Granted that under the provisions so interpreted a party has to be the Federal Government or its Agency, the claim must fall within the frame of subjects covered by the said sections also. That is to say, under section 251(1)(p), the action must relate to: “the administration or the management and control of the Federal Government or any of its agencies.” Under section 251(1)(q), it must relate to: “...the operation and interpretation of this

⁹ The 1999 Constitution (as amended), section 251(1)(r).

¹⁰ *Per Ogundare JSC*, in the lead judgement at 95 of the reported judgement.

¹¹ Emphasis supplied.

¹² *Olutola v Unilorin* (2004) 15 NWLR (Pt. 905) 416 at 462.

Constitution in so far as it affects the Federal Government or any of its agencies.” And under section 251(1)(r), it must relate to action or proceeding for: “a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

The court’s concentration on the party alone without a look at the nature of claim in *NEPA v Edegbero* case triggered an interpretation of the decisions in the later cases that have perhaps overreached the decision in *NEPA v Edegbero*. In *Okoyode v FCDA*,¹³ the Court of Appeal proclaimed:

By party jurisdiction, it means where the parties are agencies of the Federal Government irrespective of whatever the claim whether for declaration or injunction or damages, it is Federal High Court that has jurisdiction.

In *Nwude v Chairman, EFCC*,¹⁴ it was asserted further:

By virtue of Section 251(1) of the 1999 Constitution, where the Federal Government of Nigeria or any of its agencies is a party to a suit, *it is no longer necessary to examine the nature of the reliefs or claims sought in the case in order to determine the jurisdiction of the court.*¹⁵ It is sufficient that once one of the parties be it the plaintiff or defendant is the Federal Government or any of its agencies, only the Federal High Court has jurisdiction to determine the matter.¹⁶

¹³ (2005) 27 WRN 97 at 118.

¹⁴ (2005) 36 NWLR 141.

¹⁵ Emphasis supplied.

¹⁶ See also *FGN v Oshiomole* (2004) 3 NWLR (Pt. 860) 305 CA.

In *NNPC v Orhiowasele*,¹⁷ the Supreme Court still expressed that rather confusing sentiment when it held that:

The Federal High Court has exclusive jurisdiction over the eighteen items, (a) to (s), but for the Federal High Court to have jurisdiction to adjudicate, the cause of action must be or arise from one of the items in (a) to (s) and one of the parties must be the Federal Government or an agency of the Federal Government.

This progressive decline of a statement of any determinant principle for the interpretation of the jurisdiction of the Federal High Court calls for a theoretical analysis of the provisions of section 251(1) of the Constitution. The challenge with this line of decisions and why it has been difficult identifying what is wrong with those authorities is the fact that in most of the cases, the *res* have been rightly decided but the principle of law somehow remained wanting, or rather wrongly stated.

Indeed, *NNPC v Orhiowasele*, taken literally, attempts to canonise the relevance of the Federal Government or its agencies as party to all the provisions of section 230(1) of the 1979 Constitution, (now section 251(1) of the 1999 Constitution) before the jurisdiction of the Federal High Court can be triggered. Nothing, with respect to their Lordships, could be so withdrawn from the sacrosanct provisions of that law.

The foregoing decisions highlight the difficulties and challenges the Supreme Court had had keeping up with the decision in *Edegberro's case*, which, one must acknowledge, if viewed from the angle of what it decides as regards the *res*, would always be right. However, a review of the principle of law by which the court came to its conclusion, which is most relevant for judicial precedence, is certainly necessary. The mere fact that the

¹⁷ [2013] 13 NWLR (Pt. 1371) 211 at 226, Rhodes-Vivours JSC at paragraphs B-E.

court's name is Federal High Court does not mean that all matters within its jurisdiction must relate to the Federal Government.

One major challenge with this line of decisions is that whereas, it could be deciphered from the provisions of section 251(1) that there are sub-sections therein where the sole determinant of jurisdiction is the claim of the claimant, there seems to be no sub-section therein, under which the party to the suit is the sole criteria for the exercise of jurisdiction. Even if it had been conceived, it was not manifest in any of the provisions. Accordingly, party as a sole determinant of every one or any one of the items under section 251(1) appear to be superfluous.

Accordingly, the decisions under this line of interpretation are uncertain as far as the statement of the legal principle is concerned. Another challenge in analysing these decisions is the incongruous utilisation of principles of law by the learned jurists determining the cases. Whereas the lead judgement and the concurring opinions always agree on the decision reached, case by case analysis have shown that in many cases, the principles of law by which that is achieved always vary.

It is our conclusion however, that party alone does not determine jurisdiction under any of the items stipulated in the provisions of section 251(1). As has been rightly stated by Mohammad, JSC in *Adetayo v Ademola*:¹⁸

On the face of the provisions of the Constitution it appears that impression has been created that the Federal High Court has exclusive jurisdiction to the exclusion of all other courts in Nigeria in any civil cause or proceedings in which the Federal Government or any of its agencies is a party. However, a very close, careful and proper interpretation or construction of the provisions,

¹⁸ (2010) All FWLR (Pt. 533) 1806 at 1828; (2010) 15 NWLR (Pt. 1215) 169 at 190, paragraphs E-G; 191, paragraphs B-C.

would show that this is not necessarily the true position. This is because in my view, it is the facts and circumstances of each case that determines.... The need to examine the parties in the litigation as well as the subject of the litigation is strongly advised for close scrutiny.

2.2 Cases stating that statutory provisions contained in Acts of the National Assembly could act as limitation to the exclusive jurisdiction conferred by section 251(1), of the Constitution

The cases in this line, although few, appeared to have concluded that provisions in statutes could act to limit the jurisdiction of the Federal High Court. Such cases are of the proposition that where a statute has provided for the exclusive of the jurisdiction of the Federal High Court or for the concurrent sharing of the said jurisdiction, then, such a jurisdiction is by necessary implication circumvented. In *Salim v CPC*,¹⁹ the Supreme Court stated:

This court would take the stand it took in *Ucha v Onwe (supra)* because of the brand new provision of section 87(9) of the Electoral Act, 2011 (as amended). I would like to quote it here for clarity and it is thus:

Notwithstanding the provisions of the Act or Rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress

It is therefore to be said in view of this novel provision that the previous all embracing interpretation

¹⁹ [2001] 6 NWLR (Pt. 1351) 501 at 520-522, paragraphs D-D, *per* Peter Odili, JSC in the lead judgement.

of section 251 of the 1999 Constitution is given once the Federal Government or its agencies are involved would have to be given a broad view in the co-existing situation of the provisions of Section 87(9) Electoral Act and the *sui generic* nature of the subject matter. *In that whole picture therefore section 251 would be applied subject to this specified legislation in the factors at play.*²⁰

The position of the court in the above decision is to the effect that statutes may limit the provisions of section 251(1) of the Constitution. The court was of the opinion that the wide interpretation accorded section 251(1) “would be applied subject to...specified legislation....” While we agree that it has been possible for the jurisdiction granted under section 251(1) of the Constitution to be limited by law, it is doubtful if it could be done by specific legislation, not having the force of constitutional powers. This is anchored on the reasoning that constitutionally guaranteed powers and rights cannot be derogated from by any law except as permitted by the Constitution, as the Constitution remains the ground norm.

Accordingly, when it is needful, expedient or assumed necessary to change, alter or tamper with powers and rights granted by the Constitution, the Constitution may be amended to meet with the realities. In such cases, jurisdictional powers as granted the Federal High Court under section 251(1) of the Constitution may be restricted, proscribed, suspended or curtailed.

In *National Union of Electricity Employees v Bureau of Public Enterprise*,²¹ the Supreme Court was of the opinion that:

It is trite law that the jurisdiction of the State High Court as conferred by the Constitution can only be curtailed or abridged or even eroded by the Constitution itself and

²⁰ Emphasis supplied.

²¹ (2010) Vol 2-3 MJSC 48.

not by an Act or law respectively of the National Assembly or State House of Assembly, meaning that where there is conflict in that regard between the provisions of the Constitution and the provisions of any other Act or law of National Assembly or House of Assembly respectively the Constitution shall prevail....

The court extensively reasoned that the jurisdiction of the court can only be restricted, curtailed or abrogated by the provisions of the 1999 Constitution and not by any Act of the National Assembly.

Accordingly, while laws made by the National Assembly may enlarge the provisions of the Constitution as regards the jurisdictional powers of the Federal High Court, the National Assembly cannot effectively make law to override the exclusive jurisdiction granted under section 251(1) of the Constitution, without an amendment to the Constitution. This, in our view, is the reason for the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, which amended the Constitution and introduced a new section 254C to the Constitution. Section 254C(1) in part provides “Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution....” It is our view that this provision has effectively limited the jurisdictional powers of the Federal High Court under section 251 of the Constitution.

The quest to understand the principle behind the decision under consideration would perhaps drive one to ask if the Act construed in that matter actually “restrict” or rather “enlarge” the jurisdiction of the Federal High Court. A thorough analysis of the decision in that case reveals that the position of the court was still influenced by the position that once the Federal Government or her agencies are involved in a case, the Federal High Court has exclusive jurisdiction. Nonetheless, to our minds, the provision enlarged, rather than restricted the jurisdictional powers of the

Federal High Court, and thus is in agreement with section 251(1) of the Constitution.

2.3 Cases stating that there are instances where the Federal High court will not have jurisdiction even though the party or issue falls within section 251(1), but not the cause of action

In *Society Bic. S.A. v Charzin Ind. Ltd*,²² it was held that the Federal High Court does not have jurisdiction in cases found on tort of libel, the court further stated that the subject of litigation must come within the ambit of the court for it to effectively assume jurisdiction.²³ Also, in *Fregene v Chevron (Nig) Ltd*,²⁴ the court, adopting with approval the *dicta* of Nweze, JCA (now JSC) in the case of *Oladipo v NCSB*,²⁵ came to the conclusion that the Constitution vested exclusive jurisdiction over only eighteen enumerated major items.²⁶ By this, the court concluded that the Federal High Court is actually a court of enumerated jurisdiction. That is, a court whose jurisdiction is not only determined by statute but also delineated in relation only to the enumerated subjects. Once it can be conceded that the Federal High Court is a court of enumerated jurisdiction as regards subject matter, it becomes quite easy to align with the reasoning that not all cases involving the Federal Government or its agencies fall under the jurisdiction of the Federal High Court.

In *Oladipo v NCSB*,²⁷ relying on the decision in *Adelekan v Ecu-Line NU*,²⁸ the court came to the conclusion that the Federal High Court has no jurisdiction to entertain or adjudicate on matters

²² [2014] 4 NWLR (Pt. 1398) 497 at 540, paragraph E-H *per Rhodes-Vivour JSC*.

²³ *Id.*, at page 541, paragraphs E-H.

²⁴ [2013] 5 NWLR (Pt. 1349) 237 at 248-249, *per Shoremi JCA*.

²⁵ (2009) 12 NWLR (Pt. 1156) 563 at 585.

²⁶ See, Tobi JSC in *Olutola v Unilorin* (2004) 15 NWLR (Pt. 905) 416 at 462.

²⁷ (2009) 12 NWLR (Pt. 1156) 563 at 585.

²⁸ (2006) 12 NWLR (Pt. 993) 33 at 52.

bordering on tort. In *N.B.C.I. v Dauphin (Nig.) Ltd*,²⁹ it was held that the Federal High Court has no jurisdiction to entertain any case that arises out of the tort of negligence.

In *Adetayo v Ademola*,³⁰ asserting that section 251(1) of the 1999 Constitution lacks any ambiguity, the court came to the conclusion that the court lacks jurisdiction in a case where the subject is the declaration of title to land and injunction in respect thereof. Accordingly, it was the opinion of the court that even though a matter is connected with mines and minerals under section 251(1) of the Constitution, the Federal High Court would still not have the jurisdiction to adjudge a matter of dispute on compensation over land.³¹

2.4 Cases stating that there are instances where both the Federal High Court and the State High Court have concurrent jurisdiction

There are cases and instances in which the power of the Federal High Court to adjudicate on a case is shared concurrently with the High Court. This might have been permitted for easy accessibility, expansion of forum and choice of preference for litigants. Such instances include the following:

2.4.1 Banker/customer relationships

Two lines of interpretation appear to have emerged in the interpretation of section 251(d) of the Constitution, especially as it regards the proviso thereto. One favours the position that in banker/customer relationship, it is the State High Court that has jurisdiction, while the other propounding that both the Federal High Court and the State High Courts have jurisdiction to

²⁹ [2014] 16 NWLR (Pt. 1432) 90 at 122, paragraphs A-C.

³⁰ (2010) 15 NWLR (Pt. 1215) 169.

³¹ *Nkuma v Odili* (2006) 6 NWLR (Pt. 977) 587; *Omotesho v Abdullahi* (2008) 2 NWLR (Pt. 1072) 526.

adjudicate in bankers/customers relationship disputes. In *MGS & L Ltd v WBS Ltd*,³² the Supreme Court stated that:

In summary, I hold that the nature of the transaction between the parties in this matter is based on simple contract. *It is the State High Court and not the Federal High Court that has jurisdiction to hear and determine the case.*³³

This was also the decision in *Federal Mortgage Bank of Nigeria v Nigeria Deposit Insurance Corporation*.³⁴ In *South Trust Bank & Ors v Pheranzy Gas Ltd & Ors*,³⁵ relying on the Supreme Court decision in *NDIC v Okem Enterprises*,³⁶ the Court of Appeal held as follows:

The Supreme Court while considering the import of the proviso in S. 251(1)(d) in the case of *NDIC v Okem Enterprises Ltd* (2004) 10 NWLR (Pt. 880) 107 held that by the proviso both the Federal High Court and the State High Court has jurisdiction in dispute between an individual customer and his bank. It is now firmly established by the Supreme Court, that in a banker/customer relationship of this nature, the Federal High Court has jurisdiction to entertain the matter.

It is apposite to analyse the proviso to section 251(1) (d), which provides:

³² [2013] 1 NWLR (Pt. 1336) 581 at 607 paragraphs B-H, *per* Galadima JSC.

³³ Emphasis supplied.

³⁴ (1999) 2 NWLR (Pt. 591) 333 at 362-363, paragraphs H-A, *per* Ogundare JSC

³⁵ [2014] 16 NWLR (Pt. 1432) 1 at 33, paragraphs C-H, *per* Iyizoba, JCA in the lead judgment.

³⁶ *NDIC v Okem Enterprises* (2004) 4 SC (Pt. 2) 77.

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank.

This proviso has removed from the confines of section 251(1)(d) any power or jurisdiction of the Federal High Court in respect of banker/customer transaction. Jurisdiction in respect of it was not also granted anywhere within the provisions of section 251. The implication therefore is that, except the Federal High Court could rely on any other statute, it obviously lacks jurisdiction and none is donated to it to hear causes relating to bankers/customers transaction.

Even though some case law enunciations do suggest a sharing of the jurisdiction to entertain matters bordering on bankers/customers transaction concurrently between the Federal High Court and the State High Court; a thorough analysis of the proviso will clarify that what the proviso did was to expressly make inapplicable to bankers/customers transaction, the provisions of section 251(1)(d). If that is the case, that means the Federal High Court has no jurisdiction, limited, perceived, concurrent or otherwise and shares no form of jurisdiction with the State High Court in respect of bankers/customers transaction, as the proviso expressly states that paragraph 251(1)(d) does not apply thereto. We are therefore of the view that the proviso to section 251(1)(d) excludes the Federal High Court from exercising jurisdiction in matters relating to transactions between banks and their customers.

Accordingly, the decision of the Supreme Court in *ADH Ltd v AT Ltd*,³⁷ to the effect that bankers/customers relationship is excluded from the jurisdiction of the Federal High Court represents the true and correct interpretation and analysis of the

³⁷ [2006] 10 NWLR (Pt. 989) at 635 at 650-652, paragraphs H-B. See, *ITPP Ltd v UBN Plc* [2006] 12 NWLR (Pt. 995) 483.

provision if no extraneous consideration is brought to aid the interpretation of section 251(1)(d).

2.4.2 Fundamental human rights

It has been acknowledged that in fundamental right cases, both the Federal High Court and the State High Court have jurisdiction. This assertion is based on section 46(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999, which has been interpreted to grant both the Federal High Court and the State High Court jurisdiction over fundamental human right cases. In *Jack v UNAM*,³⁸ the appellant who was in the employment of the respondent was dismissed for misconduct. Aggrieved, she commenced action at the High Court of Benue State claiming for an order quashing the letters of suspension and dismissal given to her, an order reinstating her, payment of her accrued salaries and allowances, and general damages for breach of contract.

The case went on to hearing and judgement was given in her favour. The Respondent accordingly appealed to the Court of Appeal, contesting that the High Court of Benue State had no jurisdiction to entertain the matter. The Court of Appeal allowed the appeal on the ground that respondent herein was an agency of the Federal Government and as such, the case ought to be heard by the Federal High Court. It was based on this that the Appellant then appealed to the Supreme Court. The Supreme Court considered the provisions of sections 42 and 230(1)(s) of the 1979 Constitution, (which is now sections 46 and 251(1)(r) of the 1999 Constitution), and eventually the court held:³⁹

³⁸ [2004] 5 NWLR (Pt. 865) 208. See further, for cases following this decision, *Muse v EFCC* [2015] 2 NWLR (Pt. 1443) 237.

³⁹ See also, *Governor of Kwara State & Ors v Lawal & Ors* [2007] 13 NWLR (Pt. 1051) 347 at 373, *per* Ogunwumiju JCA in the lead judgement at paragraphs D-E, relied on this decision to hold that: “the Federal High Court has concurrent jurisdiction with the State High Court in matters of fundamental rights enforcement under section 46 of the 1999 Constitution.”

As I have already stated, the High Court of Benue State has concurrent jurisdiction with the Federal High Court in matters of the enforcement of a person's fundamental rights provided for in Chapter IV of the 1979 Constitution.

This position is however not consistent. In *Inah v Okoi*,⁴⁰ the court held that the phrase "Subject to the provisions of this Constitution" commencing section 42 (now section 46) of the Constitution is an expression limiting the jurisdiction granted there under. Accordingly, where based on the same Constitution jurisdiction on certain subjects have been restricted, it would not be absolutely exercised by the High Courts, be it Federal or State. This position seems be the correct implications of that section. In *Tukur v Government of Gongola State*,⁴¹ the Supreme Court has expressed the view that the Federal High Court cannot entertain a fundamental human rights case based on chieftaincy matter, as the jurisdiction of the Federal High Court does not cover such issues.

Section 251(1) of the Constitution provides for the exclusive jurisdiction of the Federal High Court but not the limiting factor for same, where concurrent powers can be exercised by the court. Even though it is correct that the powers of the State High Court and that of the Federal High Court can be limited under section 46 of the constitution, it is our contention that as regards the powers of the Federal High Court, section 251(1) is not a limiting factor.

By virtue of section 254C(1)(d) of the Constitution (as amended):

Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred

⁴⁰ [2002] 9 NWLR (Pt. 773) 563 at 588.

⁴¹ [1989] 4 NWLR (Pt. 117) 517.

upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

.....

- (a) Relating to or connected with any dispute over the interpretation and application for the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.

This provision is a limitation to the powers granted to the High Court under section 46. Accordingly, by virtue of section 254C(1)(d) of the CFRN, 1999 (as amended), the Federal High Court and the State High Courts no longer have jurisdiction in cases of fundamental human rights in respect of which jurisdiction has been granted to the National Industrial Court. The position also goes for the provisions of section 251(1) of the Constitution in respect of issues that have been removed from the jurisdiction of the Federal High Court by virtue of section 254C(1) of the CFRN, 1999 (as amended). However, on all other fundamental human right issues, it is our view that the Federal High Court still share concurrent jurisdiction with the State High Court.

In *Aniakor v Nigerian Police Force*,⁴² the appellant filed an action against the respondent for the enforcement of his fundamental rights, seeking declaratory, injunctive and monetary reliefs. The brief facts of the case were that the appellant, who was a passenger in a commercial bus, was at *Wuse* Market thoroughly battered, beaten by the agents of the respondents and detained at the *Wuse* Police station. The Federal High Court declined jurisdiction on the basis that the police was carrying out its duty

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[2014] 15 NWLR (Pt. 1429) 155.

purely in relation to a state matter and accordingly it was the High Court of the Federal Capital Territory that has jurisdiction. On appeal to the Court of Appeal, the appeal was allowed on the ground that:⁴³

[E]ven though jurisdiction is vested in the High Court of a State, by virtue of section 46 of the 1999 Constitution, to entertain issues of contravention of Chapter IV of the Constitution (Fundamental Rights), the jurisdiction is ousted and donated to the Federal High Court, once such matters fall under section 251 of the 1999 Constitution.

This decision seems to have proceeded on a partially questionable premise, that is, the jurisdiction to entertain human rights cases under section 46 is granted to only the State High Court. This can, with respect, only be achieved by reading into the provision. That section provides for “High Court in the State,” not “High Court of the State.” We are of the view that there can be two types of High Court in a State, the Federal High Court and the State High Court. Any other interpretation of that provision will not only be restrictive, but also substitutive. While not contending that the Federal High Court has jurisdiction in that case, one could easily and certainly be persuaded by the view that the jurisdiction of the Federal High Court in that instance was derived from section 46 of the Constitution, but made exclusive by section 251 of the Constitution. In cases where apart from the fundamental rights reliefs, there are other auxiliary claims, which the court has no jurisdiction to entertain, it may be desirable to approach the State High Court.

Accordingly, while both sections 251 and 254C(1)(d) constitutes limitations to the powers of the State High Court under section 46, the only limiting factor to section 46 of the Constitution

⁴³ *Ibid, per* Yahay JCA in the lead judgement.

as it affects the Federal High Court, in our opinion, is section 254C(1)(d) as regards the powers of the National Industrial Court.

It is on this note that the principles enunciated in the cases of *Aniakor v Nigerian Police Force*, *Tukur v Government of Gongola State*, and *Jack v UNAM* seem insufficient when thoroughly analysed. While *Aniakor v Nigerian Police Force* proceeded on the belief that section 46 of the Constitution grant only the State High Court jurisdiction in fundamental human right cases under that provision; *Tukur v Government of Gongola State* asserts that the jurisdiction of the Federal High Court in fundamental human rights cases is necessarily limited to its exclusive jurisdiction under section 251 of the Constitution. On its part, *Jack v UNAM* concluded that the jurisdiction of both the Federal High Court and the State High Court is concurrent on all issues relating to fundamental rights.

The mere fact that the Constitution grants to the Federal High Court exclusive jurisdiction as regards enumerated items under section 251(1) of the Constitution does not diminish the legal reality that both the Constitution and Acts of the National Assembly can still grant the Federal High Court concurrent or any other form of jurisdiction independent of those specified under section 251(1). That compellingly appears to be the purport of that very section when it provides that "... in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly...."⁴⁴ This is a further reinforcement of our position.⁴⁵

2.4.3 Reference of questions of law as to interpretation or application of the Constitution

Section 295(1) of the 1999 Constitution (as amended) provides for reference of questions of law as to interpretation or application of the Constitution and made no distinction whatsoever on when the

⁴⁴ The 1999, section 251(1).

⁴⁵ *MTN Comm. Ltd v Abia State Government* [2016] 1 NWLR (Pt. 1491) 475 at 501-502, paragraphs F-D, *per* Mbaba JCA.

reference could go to either of the courts, hence the courts share that power concurrently.

2.5 Pre-election matters

The jurisdiction to entertain pre-election matters is not donated by the Constitution to the Federal High Court; rather, it is donated by the provisions of the Electoral Act, section 87(9) therein. The provision expressly grants jurisdiction in pre-election matters to both the Federal High Court and the State High Court. It must be established that the power is not contained in section 251 of the Constitution. Consequently, section 87(9) of the Electoral Act constitutes a jurisdictional enlargement of the powers granted the Federal High Court under section 251 of the Constitution.

In *Gbileve & Anor v Addingi & Anor*,⁴⁶ the 2nd Appellant, Action Congress of Nigeria (ACN), a political party that later merged with others and emerged as All Progressive Congress (APC) conducted its primaries for the nomination to elective offices on the 12th of January 2011. The 1st Respondent won the primary as a candidate for Bukuru Constituency in the State House of Assembly general election. The primary was conducted by the three officers sent by the 2nd Appellant from its National headquarters and was duly monitored by the 2nd Respondent, INEC. The head of the aforesaid electoral team announced the results of the primary and a press release was issued the next day confirming the 1st respondent's emergence as the winner.

The State secretariat of the 1st appellant nevertheless went on radio, announced the 1st appellant as the winner of the primary election and proceeded to issue him with the certificate of return. It was based on these facts that the 1st respondent filed a suit at the Federal High Court, and moved the court to determine five questions and to grant seven reliefs, two of which were against INEC. The suit was resolved based on affidavit evidence and

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[2014] 16 NWLR (Pt. 1433) 394.

judgement was given in favour of the 1st respondent. The court ordered that the 1st respondent's name be returned as the lawful aspirant of the 2nd respondent and that she should be issued with a certificate of return.

The appellant's appeal to the Court of Appeal was dismissed. On appeal to the Supreme Court, the Supreme Court dismissed the appeal. Part of the contention of the appellants was that the claims against INEC were ancillary claims, and as such, it was the High Court of Benue State and not the Federal High Court that has jurisdiction. The Supreme Court disagreed with this position and held that the High Court of Benue State did not have jurisdiction in the case but the Federal High Court, because of the reliefs sought against INEC. The court held:⁴⁷

The High Court of Benue State did not have any justification to hear and determine all issues arising from the conduct of the party primaries by virtue of section 87(9) of the Electoral Act 2010 (as amended) including granting an injunction to restrain INEC from recognising and acting on the name of the 1st appellant as the candidate who won the party primaries to stand for election for the Benue State House of Assembly in respect of the Bukuru Constituency.

This decision was given in January 2014; in May 2014, another decision, with similar facts and emanating from the same constituency, Bukuru Constituency, was decided. That was the case of *Jev v Iyortyom*.⁴⁸ Except that in this case, the primary election was for the House of Representative, the facts are similar such that there is no need for repetition. The question as to the jurisdiction of the Federal High Court to hear the matter also fell

⁴⁷ *Per Aka'ahs* JSC at p. 420, paragraphs A-D.

⁴⁸ [2014] 14 NWLR (Pt. 1428) 575 at 611-612, paragraphs D-B, *per* Okoro JSC, reading the lead judgement.

for determination. In resolving that issue, the court held as follows:⁴⁹

As was rightly submitted by the learned senior counsel for the 1st respondent, beyond the items in section 251 of the Constitution upon which the Federal High Court exercises exclusive jurisdiction, *section 87(9) of the Electoral Act, 2010 (as amended), an Act of the National Assembly, confers additional jurisdiction on the Federal High Court to hear and determine disputes, complaints and grievances arising from the conduct of a primary election of a political party.*⁵⁰ This special jurisdiction conferred is, by law, to be exercised concurrently with the State High Court and the FCT High Court. *For me, all the arguments of the learned senior counsel for the appellants as to “main relief,” “ancillary relief” are not part of section 87(9) of the Electoral Act.*⁵¹

In *Kakih v PDP & Ors*,⁵² the applicant was dissatisfied with the primary election held by the 1st respondent to select its candidate for the election into the office of the Governor of Benue State in which the 4th respondent was declared a winner. He brought an action claiming that no ward congresses were conducted and that the primary election was not conducted in compliance with the 1st respondent's constitution. His major reliefs were against the 1st and 4th respondents, and there were ancillary reliefs against the 2nd and 3rd respondents, INEC and WAEC respectively, which are federal government agencies. The appellant's case was dismissed by the trial court; an appeal to the Court of Appeal was also dismissed. The appeal to the Supreme Court suffered the same fate. The Supreme Court held:

⁴⁹ *Ibid.*

⁵⁰ Emphasis supplied.

⁵¹ Emphasis supplied.

⁵² [2014] 15 NWLR (Pt. 1430) 374.

As I have earlier on observed by the community reading of sections 31(5) and 87(10) of the Electoral Act 2010 (as amended) no jurisdiction is conferred on the Federal High Court to hear and determine the instant case. While the two sections of the Electoral Act vest jurisdiction in the Federal High Court or High Court of a State as regards pre-election complaints, the Act does envisage that the nature of the complaint may determine the jurisdiction of the court.

I agree with the learned counsel for the 1st-4th respondents that the lawmakers could not have vested the State High Court with the jurisdiction of the Federal High Court, if the Federal High Court were to assume jurisdiction for every complaint brought in respect of pre-election matters. The provisions of S. 251 of the Constitution is clear. Any matter that does not fall within the purview of any of the items listed therein must find jurisdiction in any other court and certainly not in the Federal High Court.

A perpetual challenge to interpreting the jurisdiction of the Federal High Court is the ironic refusal to concede that section 251(1) of the Constitution only grant *exclusive* jurisdiction to the Federal High Court as regards subject-matters specified thereunder. The power of both the Federal High Court and the State High Court to entertain pre-election matters was donated to them by the Electoral Act and not section 251(1) of the Constitution. A resort to section 251(1) for the interpretation of the jurisdiction granted by the Electoral Act in that respect is therefore unnecessary, futile, and capable of complicating the simple and literal construction of section 87(9) of the Electoral Act.

A thorough and proper appreciation of section 251(1)(r) of the Constitution, reveals that there is no way that it can accommodate the jurisdictional powers granted to both the Federal

High Court and the State High Court under the Electoral Act. This is because; the cause of action under the Electoral Act covers complaints “that any of the provisions of the Electoral Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election.” On the other hand, the cause of action under section 251(1)(r) must relate to “the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.”

The *Federal Government* and a *political party* are mutually exclusive, and as such, the jurisdictional competence granted under section 87(9) of the Electoral Act is independent of the jurisdictional powers granted under section 251(1)(r) or any other paragraph under section 251(1) of the Constitution.

As rightly observed in *Jev v Iyortyom*, “section 87(9) of the Electoral Act, 2010 (as amended), an Act of the National Assembly, confers additional jurisdiction on the Federal High Court to hear and determine disputes, complaints and grievances arising from the conduct of a primary election of a political party.” The court then held further that “the arguments of the learned senior counsel for the appellants as to ‘main relief,’ ‘ancillary relief’ are not part of section 87(9) of the Electoral Act.” This we believe is the correct position of the law. It is based on same that we are of the opinion that both the Federal High Court and the State High Court have concurrent jurisdiction in such instance envisaged under section 87(9) of the Electoral Act.

3. Definite principles for interpreting the jurisdiction of the Federal High Court:

The analysis made so far, expose the challenges inherent in determining the nature of the jurisdiction of the Federal High Court. The discussions so far have shown that the patterns of interpretation have not yielded the much desired and perhaps needed elucidation that section 251 of the Constitution requires.

The reason for this, it would appear, is that there has been no conscious effort at systematically delineating the characteristic features and nature of the jurisdiction granted by section 251 of the Constitution over subjects, causes and persons. Furthermore, there is no legal barometer invented for evaluating the provisions of section 251(1) of the Constitution.

Due to the challenges posed by the decisions analysed above, which obviously have not followed any laid down principle for a consistent interpretation of the provisions, four theories appear relevant to aid in determining the jurisdiction of the Federal High Court under section 251(1), they are the principles of identification, categorisation, determination and exclusion.

The principles simply project an interpretation following a pattern of identifying and categorising the items under section 251(1), after which each issue falling under each item is determined and finally, the court excludes matters that the Constitution has not granted the Federal High Court jurisdiction over. The principles are discussed below:

3.1 The Principle of Identification

Section 251(1) of the Constitution provides:

Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.

This provision can be conveniently broken into three major segments. Firstly, irrespective of any other provisions of the Constitution, the jurisdiction of the Federal High Court in respect of causes and matters under section 251(1) shall be exclusive.⁵³

⁵³ See, section 254C(1).

Secondly, the provision did not confine the jurisdiction of the Federal High Court to only causes and matters covered by section 251(1) of the Constitution, hence, jurisdiction can still be granted to the Federal High Court under the Constitution on other issues. Examples may be found in sections 46, 251(4) and 272(3) of the Constitution. Lastly, the jurisdiction of the Federal High Court under section 251(1) is in “addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly.”

The purport of the principle of identification therefore postulates that the source of the jurisdiction of the Federal High Court in each given case must first be identified to appreciate the form and extent of jurisdiction it has in the cause. This is because, that is what ultimately determines whether the jurisdiction will be concurrent or exclusive. If the jurisdiction derives from the enumerated paragraphs under section 251(1), then, the Federal High Court has exclusive jurisdiction in such matters.

If the jurisdiction derives from other provisions of the Constitution or of a statute, the provision or statute determines whether the jurisdiction is exclusive or concurrent. For example, the jurisdiction of the Federal High Court in Admiralty matters provided for under the Admiralty Jurisdiction Act is exclusive. The jurisdiction of the Federal High Court as regards winding up of companies under Companies and Allied Matters Act (CAMA) is also exclusive. Under section 46, the jurisdiction in fundamental human rights as granted therein is concurrent. The same is true of section 87(9) of the Electoral Act.

However, there are instances, where it would appear that by the nature of the cause of action and the claim of the parties, the court would have the latitude to determine whether the matter can only be heard by the Federal High Court or not. Such instances appear to be contained in section 251(4) and section 272(3) of the Constitution. The law is silent in both cases as to whether the Federal High Court has exclusive jurisdiction or not, and in such

instances, there may be room to determine jurisdiction based on claims and parties.

3.2 The Principle of Categorisation and Itemisation: The *Ediru Theory of Categorisation and Itemisation*

The principle of identification is relevant to all causes in which the Federal High Court has jurisdiction, but the remaining three principles are relevant to instances where the jurisdiction of the Federal High Court is to be exercised in pursuance to section 251(1) of the Constitution.

By the principle of categorisation, to discover whether the Federal High Court has exclusive jurisdiction, the items under section 251(1) needs to be categorised. This principle was well enunciated and articulated by Ediru.⁵⁴ Since Ediru appeared to have propounded that theory, it is herein after referred to as the *Ediru theory of categorisation*. Because of the controversies surrounding the interpretation of the provisions of section 251 of the Constitution, Ediru⁵⁵ had pointed out that the examination of each paragraph of section 251 is necessary for a proper understanding of the provisions. He proposed a systematic way of categorising the provisions and how to discover the imports. In his postulations, that section of the constitution will be better appreciated if the provisions there under are grouped into three, that is, the cause of action items, cause of action and status of parties items and cause of action, status of parties and reliefs-sought items. In the first group are sub-sections (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o); those in subgroup two are (a), (b), (p) and (q); in the last group is (r).

In provision falling under the first category, all that the court need do is to determine if the claim of the claimant falls

⁵⁴ Moses Ediru: "The Continuing Reverberation of the existing approach to determining the exclusive jurisdiction of the Federal High Court," *Nigerian Bar Journal*, volume 7 No. 1 (August 2011), pp. 1-30.

⁵⁵ *Id.*

under any of the claims specified there under to determine the court's jurisdiction, once the claim falls under any of the said paragraphs, then the Federal High Court has exclusive jurisdiction.

Under category B, the cause of action and the status of the parties are necessary to determine the exclusive jurisdiction of the Federal High Court. In the third and last group, the cause of action, the status of parties and the nature of the reliefs sought are necessary to determine whether the Federal High Court has exclusive jurisdiction.

The *Ediru theory of categorisation and itemisation* for determining the jurisdiction of the Federal High Court highlights several purposeful hints to the interpretation of section 251(1) of the Constitution, paramount of which is that, no uniform interpretation is applicable to section 251(1) of the Constitution, and accordingly no sweeping or singular principle of law can be effective in analysing the provision of the section. In addition, he posited that each item listed in section 251 of the Constitution has to be analysed to ascertain if the cause of action in each particular case fall there under.

The principle is a perfect recipe for decoding the constitutional competence of the Federal High Court under section 251(1) of the Constitution; except for the fact that it places section 251(1)(d) under group A, determined by subject matter alone. Even though this is correct, the proviso thereto is determined by reference to the subject matter and the parties in the action. Accordingly, while what falls under the jurisdiction of the Federal High Court under section 251(1)(d) falls under Ediru's category 'A,' what does not constitute part of the court's jurisdiction under the proviso would be determined by subject-matter and party.

However, with the incessant tinkering with the provisions of the Constitution, even though the principle preserves its credibility as a fountain for any basic and analytical juridical discuss on section 251(1) of the Constitution, other theories must

be called to aid to effectively determine what cause falls under section 251(1) of the Constitution.

3.3. The Principle of Determination

Having categorised the items, the next step is to determine if the actions falls within the specific provisions of each item. For items under category A, the court will determine whether the cause of action falls within the specific causes under the items, for group B, a determination of the cause of action and parties is necessary, while in group C, the cause of action, the parties and the reliefs are necessary. This may be done as follows:

For example, under paragraph 251(1)(a), to determine what falls within the jurisdiction, such a suit must relate to the revenue of the Government of the Federation and, the said Government or any organ thereof or a person suing or being sued on behalf of the said Government must also be a party. Under this provision, to determine the subject-matter jurisdiction, the action must relate to and is restricted to the “revenue of the government of the Federation.”⁵⁶ Then, the parties necessary to give jurisdiction to the court must be the “Government (of the Federation) or any organ thereof or a person suing or being sued on behalf of the said Government (of the Federation).

In *N.P.A. v Eyamba*,⁵⁷ the Court of Appeal extended the meaning of government revenue to include expenditure deductible from the “purse of the appellant who admittedly is an agent of the Federal Government.” Based on this, and relying on its earlier decision in *FHA v John Shoy International Ltd*,⁵⁸ the Court of Appeal concluded that where expenses are to be paid under a contractual obligation from the purse of the Government of the

⁵⁶ Where the revenue accrued to the state government, the state high court has jurisdiction. See *Wilbros (Nig) Limited v Attorney-General of Akwa Ibom State* (2008) 5 NWLR (Pt. 1081) 484.

⁵⁷ (2006) All FWLR (Pt. 320) 1022.

⁵⁸ (2004) 1 NWLR (Pt. 908) 637 at 650.

Federation or its organs or agencies, it is the Federal High Court that will have jurisdiction.

This position is rather extraneous, and imputed to that provision what was not intended. The restrictive nature of section 251(1)(a) of the Constitution does not admit of Federal government's expenses but only its income.

Under section 251(1)(b) for the Federal High Court to have jurisdiction, the matter must be connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation. Accordingly, for a person, both natural and artificial to be covered by that provision, such a person must be subject to Federal taxation. Where the tax accrues to the state or local government, the Federal High Court will not have jurisdiction.⁵⁹ In this case, the parties need not be Federal Government or its agencies, but the subject matter must be subject to "federal taxation."

Under section 251(1)(c), the matter must be connected "with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties."

Under section 251(1)(d), for the Federal High Court to have jurisdiction, such a matter must be "connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures."

⁵⁹ *Shittu v NACB Ltd & 2 Ors* (2001) 10 NWLR (Pt. 721) 298 at 313-318, *Wilbros (Nig) Ltd. v A-G, Akwa Ibom State, supra*, at 495.

For the court to have jurisdiction under section 251(1)(e), the cause of action must have arisen “from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.” Here, the cause must arise from the operation of the CAMA. Where the action relates to breach of contract and has nothing to do with the operation of the CAMA, jurisdiction is not granted by the section.⁶⁰ In addition, where the action is founded on a contractual relationship between a company and her employees, the Federal High Court cannot assume jurisdiction under this provision.⁶¹ This, to our mind, would depend on the cadre of employee and the form of the contract.

Under section 251(1)(f) the court will have jurisdiction in relation to “any Federal enactment relating to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards.”⁶² The powers of the Federal High Court herein granted include determining cases of passing off as has been validly held by the Supreme Court in *Omnia (Nig) Ltd v Dyktrade Ltd*.⁶³ The subsection covers “federal enactments” relating to the itemised subjects therein.⁶⁴

⁶⁰ *Osun State Government v Dalami (Nig) Ltd* (2007) All FWLR (Pt. 365) 438 at 453, SC.

⁶¹ *Fagbola v Kogi Chamber of Commerce, Industry, Mines and Agriculture* (2006) All FWRL (Pt. 324) 1911, CA.

⁶² *Microsoft Corp v Franike Asso. Ltd* [2012] 3 NWLR (Pt. 1287) 301 at 321, *per* Pemu JCA.

⁶³ [2007] 15 NWLR (Pt. 1058) 576 at 603-606, paragraphs B-G, *per* Mukhtar JSC.

⁶⁴ *Daewoo Nig. Ltd v Uzoh* (2008) All FWLR (399) 456 CA, *Patkun Industries Ltd v Niger Shoes Manufacturing Co. Ltd* (1988) 5 NWLR (Pt. 93) 138 and *Ayman Enterprises Limited v Akuma Industries Ltd* (2003) FWLR (Pt. 166) 563 SC.

Under section 251(1)(g), the jurisdiction of the court relates to any “admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea.”⁶⁵

Admiralty jurisdiction applies to all ships, irrespective of the places of residence or domicile of their owners; and all maritime claims, wherever arising.⁶⁶ However, once the goods carried by a ship have been discharged in the harbour or delivered to the point of destination of the cargo, it will no longer be covered by the admiralty jurisdiction of the Federal High Court. It should be stated further that since the subsection under consideration covers civil matters concerning or relating to ports, if such goods are goods subject to pre-shipment inspection, they will still be subject to the jurisdiction of the Federal High Court under the Pre-Shipment Inspection of Imports Act.⁶⁷

⁶⁵ *Rivway Lines Ltd. v Rhein Mas Und See* (1993) 7 N.W.L.R. (Pt. 308) 692 at 707, paragraphs B-C, *per* Sulu-Gambari JCA. See also, *A.S.N. v E.T.B.* (2001) 34 W.R.N. 123 at 133, *per* Galadima, J.C.A.; *Aluminium Manufacturing Co. v NPA.* (1987) 3 N.S.C. 82 at 89; (1987) 18 N.S.C.C. (Pt. I) 224 at 245, *per* Oputa, J.S.C.; *Satyan 1 v I.M.B. Ltd.* (2002) 5 N.W.L.R. (Pt. 760) 397 at 413, *per* Aderemi, J.C.A.; *Pan Atlantic & Nicana v Savannah Bank of Nig. Ltd.* (1984) 2 N.S.C. 285 at 297-298, *per* Ademola, J.C.A.; On what determines the jurisdiction of the Federal High Court in admiralty matters, *P. & C. H.S.C. Ltd. & Ors. v Migfo (Nig.) Ltd. & Anor.* [2009] 11(pt. 1153) 569 at 611, Okoro, J.C.A., at paragraphs B-G.; On the nature of claim to confer jurisdiction in admiralty matters, the Court of Appeal in *Iroegbu v MV Calabar Carrier & Ors.* [2008] 5 NWLR (pt. 1079) 147 at 161, Dongban-Mensem, J.C.A., at paragraphs F-H.

⁶⁶ *Shell Pet. Dev. Co. v Isaiah* [1997] 6 NWLR (pt. 508) 236 at 246-247, paragraphs C-H, *per* Katsina-Alu, J.C.A.

⁶⁷ Cap P26, Laws of the Federation of Nigeria (LFN), 2004; see also, *Cotecna international Limited v Ivory Merchant Bank Limited* (2006) All FWLR (Pt. 315) 26.

Under section 251(1)(h) the subject must be “diplomatic, consular and trade representation.” In *Dimitrov v Multichoice (Nig) Ltd*,⁶⁸ the contention was whether the waiver of immunity by the plaintiff would amount to being treated as ordinary citizens of Nigeria and upon which their action can be cognisable at the State High Court. The court held that:

I agree with the submission of learned Counsel for the appellants that where a foreign envoy or foreign consular officer submits to the Nigeria jurisdiction, it is the Federal High Court that will exercise exclusive jurisdiction over the matters because diplomatic and consular matters are reserved under section 251(1)(h) for that court and the High Court of a state cannot share the jurisdiction with the Federal High Court.

Under section 251(1)(i), the subject must relate to “citizenship, naturalisation and aliens, deportation of persons who are not citizens of Nigeria, extradition, immigration into and emigration from Nigeria, passports and visas.” Interpreting this section in the case of *Orhiunu v FRN*,⁶⁹ the court was of the opinion that the provisions of that section is explicit and self explanatory. In that case, the court held that extradition is within the exclusive jurisdiction of the Federal High Court as well as every other cause listed under the subsection.

In *Lufthansa Airlines v Odiese*,⁷⁰ the issue before the court was whether an action for damages in detinue for a passport is maintainable in the State High Court or falls within the exclusive jurisdiction of the Federal High Court. The court in resolving the issue stated as follows:

⁶⁸ [2005] 13 NWLR (Pt. 943) 576 at 595, paragraphs D-G, *per* Akaahs JCA.

⁶⁹ [2005] 1 NWLR (Pt. 906) 39 at 54-55, paragraphs E-H, *per* Galadima JCA.

⁷⁰ [2006] 7 NWLR (Pt. 978) 34 at 74-75, paragraphs H-G, *per* Garba JCA.

It cannot seriously, and no attempt was made in this appeal, be disputed that the submission by the respondent of his passport to the appellant for the purpose of obtaining a German transit visa and the acceptance of appellant to secure that visa on behalf of the respondent was a purely contractual relationship between them. It would be absurd to contend that any claim which arises out of such a transaction should only or can only be heard by Federal High Court because the subject of the relationship happens to be a passport as used in the provisions of the Decree. I am not prepared to accept such a wild card because in my respectful view, the provisions of the Decree cannot be extended to cover issues that are clearly outside their purview or contemplation. The provisions of any statute, in the current standing of the law, cannot be extended to cover extraneous matters in order to suit particular situation. See: *Mobil v Monokpo* (2001) MLR (Pt. 49) 1516, (2001) 17 NWLR (Pt. 744) 212, *Fawehinmi v Inspector General of Police (supra)*, *Shola v State* (2005) 11 NWLR (Pt. 937) 460 at 497 and *Ngige v Achuku* (2005) All MLR (Pt. 247) 1545 at 1563; (2005) 2 NWLR (Pt. 909) 123.

Under section 251(1)(j) the subject-matter must relate to “bankruptcy and insolvency.”⁷¹

Under section 251(1)(k), the subject is aviation and safety of aircraft. In *Cameroun Airlines v Otutuizu*,⁷² the Supreme Court states that in aviation related causes of action, by virtue of section 251 (1) of the Constitution; it is the Federal High Court that has exclusive jurisdiction.

⁷¹ See also section 142 of the Bankruptcy Act, Cap B2, LFN, 2004.

⁷² [2011] 4 NWLR (Pt. 1238) 512 at 537, paragraphs F-G, *per Rhodes-Vivour, JSC.*

Section 251(1)(k), the subject must relate to arms, ammunition and explosives; while section 251(1)(m) relates to drugs and poisons.

Under section 251(1)(n) the subject relates to mines and minerals (including oil fields, oil mining, geological surveys and natural gas).⁷³ This jurisdiction does not however include claims for compensation in regard to land acquisition.⁷⁴

Under section 251(1)(o), the subject must relate to weights and measures.

Section 251(1)(p) granted jurisdiction over the administration or the management and control of the Federal Government or any of its agencies. Section 251(1)(q) relates to the operation and interpretation of the Constitution in so far as it affects the Federal Government or any of its agencies. Subsection (q) is however subject to the provisions of the Constitution. Section 251(1)(r) relates to any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies. Section 251(1)(p), (q) and (r) shall not prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performance where the action is based on any enactment, law or equity.

3.4. The Principle of Exclusion

With the incorporation of the National Industrial Court into the Constitution by virtue of the third amendment, a fourth and crucial principle would be that of exclusion. Any issue falling under the jurisdiction of the National Industrial Court which is presently subsumed under section 251 of the Constitution must be excluded in determining the jurisdiction of the Federal High Court.

⁷³ See, *SPDC Ltd v Isaiah* (2001) 11 NWLR (Pt. 723) 168; *SPDCN Ltd v Benigho* [2010] 6 NWLR (Pt. 1190) 407.

⁷⁴ *Nkuma v Odili* [2006] All FWLR (Pt. 313) 24.

4. Conclusion

The interpretation of statutory provisions in respect of the jurisdiction of the Federal High Court has been trailed by much debates, inconsistencies and lack of standardised principles for effective resolution of jurisdictional issues affecting the Federal High Court. The principles discussed in this paper are potential resolution to the interpretative deficiencies that have plagued and effectively inhibited the proper determination of the extent of the jurisdiction of the Federal High Court, especially under section 251 of the Constitution. The principles enunciated in this article could aid in systematically interpreting laws relating to the jurisdiction of the Federal High Court in such a manner as to avoid confusion and inconsistencies.