



Dispute over land: To what extent may the high court share jurisdiction over same with the federal high court?

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Abstract

It is not in doubt that some people including legal practitioners, have the impression that once a suit borders on land, even with a statutory right of occupancy, such dispute is not within the jurisdiction of the Federal High Court but rather within the exclusive jurisdiction of the concerned State High Court to resolve. This assumption, may be based on their impression that the Land Use Act has conferred exclusive original jurisdiction on High Courts in respect of proceedings over such land. Furthermore also, such people as stated herein, may have their opinion on the exclusivity of High Court jurisdiction over landed matter hinged on the fact that disputes over land is not one of the items over which either the Constitution or the Federal High Court Act, confers jurisdiction on the Federal High Court, whether exclusive or otherwise. To such people therefore, only the High Courts, rather than the Federal High Court, have and should exercise exclusive jurisdiction over disputes relating to such land. The research question herein is; how valid and correct is this assumption in fact and law? This work, using the doctrinal methodology through examination of relevant primary and secondary sources of legal research materials, draws a conclusion that the Land Use Act does not make an absolute bar against initiating suits on land matters in any other court outside the High Courts, including the Federal High Court. Thus the choice of the court to adjudicate on land matters is determined by the nature of the subject matter of the proceedings and the parties involved therein.

Keywords: implementation, child adoption, legal implication

Introduction

The issue of jurisdiction is fundamental to a court's adjudication. This is the reason why the courts that are established by the Constitution, otherwise generally referred to as courts of record, most often, have their jurisdictional borders expressly spelt out in the Constitution and/or their establishing statutes. The essence of this, apart from being a signal to would-be litigants as to which court to approach, is to save the court from acting in vain. The proceedings conducted by a court that lacks jurisdiction are and remained a nullity, however well conducted and brilliantly decided ^[1].

The courts in view here are the High Courts ^[2] and the Federal High Court as regards their adjudicatory powers over land and incidental matters that are subject of a statutory right of occupancy granted or deemed granted by a State Governor. The principal statutory enactment over land matters in Nigeria is the Land Use Act 1978 ^[3]. This law has its constitutional basis by virtue of been an existing law under the Nigerian Constitution ^[4]. It is this law that specifically confers exclusive original jurisdiction on the High Courts in respect of some proceedings over lands, the subject of a statutory right of occupancy.

The Land Use Act confers exclusive original jurisdiction in respect of proceedings for a declaration of title and determination of the question as to the persons entitled to payment of compensation for improvements over such land on the High Court ^[5]. On the other hand however, the Constitution also emphatically confers exclusive original jurisdiction on the Federal High Court where there is a dispute involving the Federal Government or any of its

agencies' acts or omissions arising from any of their administrative or executive actions or omissions ^[6]. Thus the research question begging for answer in this paper is whether the exclusive jurisdiction given by the Land Use Act to the High Court over land as stated above can be applied to give a blanket exclusive original jurisdiction to the said Court over every issue touching land?

Our answer to this question is that a blanket interpretation and application of section 39(1) of the Land Use Act to mean all proceedings over every issue touching on land within the exclusive jurisdiction of the High Court would bring it into conflict with section 251 (1) (r) and the proviso thereto of the 1999 Constitution. This position has been affirmed by the Supreme Court in the case of Controller General of Prisons V Elema ^[7].

This paper in arriving at this conclusion, explored the doctrinal methodology approach of primary and secondary research materials in discussing among others, the issues of court's jurisdiction, adjudication on land matters by both the High Courts and the Federal High Courts, noting in particular, their respective areas of exclusive, original jurisdiction vis-a-viz land matters. Finally, the paper makes its conclusion and offers some useful recommendations towards improvement in this area of practice of law.

Meaning and Incidences of Court's Jurisdiction

1. Definition and Importance of Court's Jurisdiction

The word Jurisdiction could mean the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decisions ^[8]. The Court of Appeal defined jurisdiction thus:

Jurisdiction is the authority which a court has to decide matters which are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are prescribed by the Constitution or by the statute under which the court is constituted, and may be extended or restricted in a similar means ^[9].

The Supreme Court summarized the essence and importance of the jurisdiction of a court as follows:

The issue of jurisdiction is fundamental in any suit. It is the heart and a soul of a suit. It is the court's authority or power to hear an issue and/or the suit. Once a court lacks jurisdiction to hear a suit and it goes ahead to hear the suit as if it had jurisdiction, no matter how well the suit was decided the whole of the proceedings and judgment would amount to a nullity ^[10].

The authority of the court to hear cases in most instances is not absolute. Where the authority is in respect of adjudicating in disputes which may result in award of damages, declaration of rights, award of compensation, granting equitable remedies or orders of mandamus, certiorari, prohibition and habeas corpus, then in such circumstances, it is the civil jurisdiction of the court that is called to question. This civil jurisdiction is what this work is concerned with. Also, jurisdiction may be in respect of subject matter that the court can adjudicate upon ^[11], or the financial/ monetary limit of the court ^[12] or reference to the Constitution of the court whereby the law may for instance prescribe the number of judges that must sit in a given matter otherwise, the court cannot be competent to entertain such a case ^[13].

The law on jurisdiction may also be with respect to the geographical area of operation of the court whereby for instance, a court established as a state court will not have jurisdiction to entertain matters outside the state. Also, jurisdiction may be with respect to whether the case before the court was initiated by due process of the law or upon the fulfillment of a condition precedent to the exercise of the jurisdiction ^[14]. Furthermore, also, jurisdiction may be with reference to the capacity of the parties to an action. This means that every party to a suit must be a legal person and suing in the right and proper capacity in order for the action to be competent.

It is noteworthy that the authority of the court in some instances is clearly limited or out rightly ousted when such authority is curtailed or even completely ousted either for instance by a Military Decree in a Military Government or even by the establishing statute or law ^[15].

The issue of jurisdiction is therefore fundamental to adjudication such that the outcome of an issue that centers on jurisdiction determines whether or not the other issues will be considered or not. This fundamental nature of the court's jurisdiction makes the issue as a threshold matter such that if there is want of it, the proceedings thereafter would become a nullity however well conducted and even if the parties submit to the jurisdiction ^[16].

2. Sources of court jurisdiction

In Nigeria, all courts of record are created by either the Constitution or some other statutes or other enactments or laws in respect of non-courts of records. These courts therefore derive their sources of authority or jurisdiction

from either the Constitution or those statutes, enactments or law that created them. A few examples of the sources of the jurisdiction of the superior courts of record will suffice for our purposes here.

While section 230 (1) of the Constitution establishes the Supreme Court consisting of the Chief Justice of Nigeria and other Justices not exceeding twenty-one (21) in number, section 232 (1) (2) thereof makes provision for the original jurisdiction of the court in matters such as any dispute between the Federation and a state or between states, if and in so far as that dispute involves any question on which the existence or extent of a legal right depends ^[17]. On the other hand, section 233(1) and (2) of the same Constitution provides for the appellate jurisdiction of the court such as hearing and determining appeals from the Court of Appeal. The Court of Appeal on the other hand was established by section 237(1) of the same Constitution which shall consist of the president of the Court of Appeal, and such number of Justices of the Court of Appeal not less than forty-nine (49). It exercises original jurisdiction by virtue of section 239(1) of the Constitution such as determining whether any person has been validly elected to the office of president or vice-president under the Constitution by virtue of section 240 thereof. The Court of Appeal apart from serving as appellate court over the decisions of the High Courts and courts of record, as well as a court martial, also hears appeal from other Tribunal as may be prescribed by an Act of the National Assembly ^[18]. The court also hears and determines appeals from the Code of Conduct Tribunal, National and states Houses of Assembly Election Tribunal and the Governorship Election Tribunals ^[19].

Following the Court of Appeal in the hierarchy of courts of record for the purpose of this discourse is the Federal High Court. There is only one Federal High Court in Nigeria although sitting in different Judicial Divisions throughout the Federal Republic of Nigeria. While section 249 (1) of the Constitution establishes the Federal High Court, its jurisdiction is amply provided for in section 251 (1)(a)-(s)(2)(3). The exclusivity of the jurisdiction of the court over the subject matters listed in the said section 251(1)(a)-(q), such as taxation of companies, customs and exercise duties, copyright; patent, admiralty, arms and ammunition, drugs and poisons, mines and minerals, weights and measures etc are not in doubt.

It has been judicially settled however that even where the Federal Government or any of its agencies is involved, and whereby its administrative or executive actions or decisions such as to call for a declaration or an injunctive order(s), depending on the nature of the subject matter involved in the circumstances, the High Court of a state or of the Federal Capital Territory, may assume jurisdiction over a matter such as payment of compensation over lands arising from proceedings over such a land forming the subject of a statutory right of occupancy granted by a Governor ^[20]. Since this is the core discussion of this paper, further discussion on this is reserved till different segment of the paper.

The next and the last in the series of courts we want to consider in this segment of discourse is the High Courts. As we said earlier in the introduction above, reference to High Courts here encompasses both the High Court of the Federal Capital Territory, Abuja and the High Court of a state. These two courts, apart from their establishment sections and their territorial operation, are conferred with virtually

the same subject matters over which they exercise both original civil and appellate civil and criminal jurisdiction.

Thus while the High Court of the Federal Capital Territory is established by section 255 (1) and its jurisdiction is set out in section 257 of the Constitution, the High Court of a state on the other hand is established by section 270(1) and its jurisdiction or power is as set out in section 271(1) and (2) of the Constitution. The jurisdiction of the two courts is made subject to the provisions of the general exclusive original jurisdiction of the Federal High Court as spelt out in section 251 (1) of the Constitution and as well made subject to other provisions of the Constitution.

The original civil jurisdiction of the two courts include proceedings in which the existence or extent of legal right, power, duty, liability, privilege, interest, obligation or claim is in issue. The courts original criminal jurisdiction are to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or liability in respect of an offence committed by any person.

With respect to the appellate or supervisory jurisdiction of the two courts; it is noteworthy that same Constitution provides that the reference to civil or criminal proceedings in the respective section relating to each court provides that such proceedings includes a reference to the proceedings which originate in the court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction ^[21].

Other courts includes the customary Court of Appeal of the Federal Capital Territory Abuja ^[22] the customary Court of Appeal of a state ^[23] the Sharia Court of Appeal of the Federal Capital Territory, Abuja ^[24], the Sharia Court of Appeal of a State ^[25] and the National Industrial Court ^[26] all as courts of record. Other inferior courts such as the Magistrates Court are also established by their enabling enactment or laws and have their jurisdiction specified therein ^[27].

3. Conditions for exercise of court's jurisdiction

The competence of court to exercise jurisdiction in relation to an action before it depends on certain conditions.

Thus, a court is competent when:

1. *It is properly constituted as regards number and qualifications of the members of the bench, and no member is disqualified for one reason or another;*
2. *The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the courts from exercising its jurisdiction; and*
3. *The case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of its jurisdiction* ^[28].

The above stated conditions will enable a court to validly exercise powers within the scope of its jurisdiction. It is noteworthy that the courts have subsequently made the above decision of the Federal Supreme Court as the *locus classicus* on this point of discourse ^[29]. Also to be noted on this point is that it is trite law that it is the claim of the plaintiff/claimant at the trial court that determines the jurisdiction of the court ^[30].

4. When may objection to jurisdiction be raised?

Being a threshold matter, jurisdiction or lack of it can be raised at any stage of the proceedings. It could be from the outset, upon receipt of the originating processes or before judgment is delivered or even on appeal at the Supreme Court ^[31]. The issue can be raised by any of the parties or by the court itself *suo motu* ^[32].

5. How may objection to jurisdiction be raised

Being a matter of procedural law, the jurisdiction of a court may be challenged by any of the herein five (5) methods viz (i) By Notice of preliminary objection; (ii) By Motion on Notice supported with affidavit (iii) By raising the objection in the statement of defence. (iv) By the court raising it *Suo Motu*; and (v) raising it orally. These may be as provided by each state High Court Rules.

5.1 Raising objection by notice of preliminary objection

A notice of preliminary objection is normally prepared by the objector and directed to the respondent setting out the ground(s) of objection which are usually pure grounds of law without the need for a supporting affidavit. The presiding judge hears and delivers his ruling on the application. A written address which contained the argument is filled and attached.

5.2 Raising objection by motion on notice supported with affidavit

Here, an objector prepares a formal application by motion on notice served on the respondent together with an affidavit of facts and necessary annexure attached as exhibits where necessary together with a written address. The respondent may file and serve a counter affidavit if he is objecting. The motion is heard and a ruling is delivered.

5.3 Raising objection in a statement of defence

Here, the objector raises his ground(s) of objection in his statement of defence and the matter may proceed to trial since demurer has been abolished under most rules of courts. The judge when delivering his judgment considers the validity or otherwise of the objection raised.

5.4 Raising Objection *Suo Motu* by a Judge

When a Judge does this, he must give opportunity to the parties to address him on the points of objection he has raised before delivery his ruling.

2.5 Raising objection orally

A ground of objection, especially one touching on ground of law may be raised orally although a Judge may direct such to be reduced into writing.

Can the high court adjudicate over matter touching on land?

It is important to note that the Constitution does not specifically list land and related matters as subject matters in respect of which jurisdiction is conferred on the High Courts. We said earlier that High Court for our purpose here refers to both the High Court of the FCT, Abuja and High Court of a state. The Constitution makes the civil jurisdiction of these courts to be subject to the jurisdiction of the Federal High Court and other provisions of the Constitution when it provides thus;

Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue ^[33]

Specifically on land matters however, the Land Use Act, provides in section 39 (1) thus.

The High Court shall have exclusive original jurisdiction in respect of the following proceedings:

- a. *Proceedings in respect of any land the subject of a statutory right of occupancy, granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph, proceedings include proceedings for a declaration of title to a statutory right of occupancy;*
- b. *Proceedings to determine any question as to the person entitled to compensation payable for improvements on land under this Act* ^[34].

It has been held however by the Supreme Court that the above provision does not confer a *carte blanche* or unrestricted exclusive jurisdiction on the State High Court even where the land concerned is subject to statutory right of occupancy ^[35].

That this is because the Land use Act is specific in listing the kind of proceedings that fall within that exclusive jurisdiction namely; a declaration of title to a statutory right of occupancy and a determination as to the person entitled to compensation payable for improvement on land. Thus; the provisions of the Act cannot be applied to give a blanket exclusive, jurisdiction to the High Courts on every issue touching on land. This holding of the Supreme Court finds support on the settled rule of interpretation known as *expression unius est exclusive alterius* meaning that the express mention of certain thing excludes those not mentioned ^[36].

It is therefore conceded that the High Courts can by virtue of the Land Use Act, have and exercise exclusive original jurisdiction on some matters touching on land but subject to specified conditions including the following: (i) that the parties are not the Federal Government or any of its agencies; (ii) that the proceedings are for declaration of title to a statutory right of occupancy granted or deemed granted by the Governor of a state; (iii) that the matter for determination is as to the persons or who is entitled to compensation for improvements on lands under the Land Use Act; and (iv) satisfying specified conditions for the court's exercising its jurisdiction as earlier considered above in this paper. This is the answer to the question posed in this sub division of this paper.

Can the federal high court adjudicates over matters touching on land?

It can be said that the subject matters over which the Federal High Courts could exercise exclusive original civil, and by implication criminal jurisdiction are specific, explicit and clearly listed out in section 251(1) (a)-(q) of the Constitution. The question that may agitate in any prospective litigant's, scholar's or Judge's mind upon being confronted with an issue touching on land is that the Federal High Court would not be seized of jurisdiction since land and landed matters is not one of the subject matters listed over which the Federal High Court could exercise jurisdiction, talk less of exercising exclusive jurisdiction. The assumption of jurisdiction by the Federal High Court in matters touching on land may however be supported on the basis of the opening paragraph of section 251(1) of the Constitution itself which 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.

Navigating down however through the exclusive jurisdiction section of the Federal High Court which is provided in section 251(1) (r) as follows:

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; provided that nothing in the provisions of paragraphs (p),(q) and (r) of this subsection shall 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.

One may ask further questions based on this herein quoted paragraph as to what nature of actions or inactions that could result in seeking declaratory and/or injunctive orders of the Federal High Court either by or against the Federal Government and/or any of its agencies? The answer that naturally comes to one's mind may be that such orders could be consequent to any administrative or executive actions/inactions or decision of the Federal Government and/or any its agencies, resulting from any subject matter including land. One may at this junction ask whether this is possible or not? Our answer is a positive yes! Naturally following the above question is which court should exercise jurisdiction where the Federal Government and or any of its agencies is involved even when the subject matter of such action/or inaction touches on land matters? Naturally, the Federal High court could assume jurisdiction if for instance a plaintiff claims damages for a wrongful acquisition of its land by the Federal Government and/or any of its agencies. Consequent ancillary orders of declaration and injunction could flow along with the main reliefs.

The scenario immediately just captured herein was what happened in the recent case of Controller General of Prisons v Elema ^[37]. In this case, the Plaintiff sued the Federal Ministry of Internal Affairs and the Attorney General of the Federation at the Federal High Court of Benin City. The suit was sequel to the refusal of the Defendants/Appellants to pay the Plaintiffs/Respondents compensation for their land compulsorily acquired by the Appellants under the Public Lands Acquisition Law of Edo State and for their properties destroyed in the process of the said acquisition and occupation. The Federal High Court assumed jurisdiction and granted all the Plaintiffs'/Respondents' claims for general special damages as compensation. The Court of Appeal upheld the judgment of the lower court. The Appellant appealed to the Supreme Court and there raised the issue of jurisdiction of the Federal High Court over the subject matter of land for the first time. The Appellants contended in their jurisdictional objection that since the suit was in respect of land it was not within the jurisdiction of the Federal High Court.

In determining the appeal, the Supreme Court considered the cumulative provisions of sections 251(1) (p)(q) read in conjunction with sections 1(3), 44(1) and particularly section 251(1) (r) and the proviso thereto of the Constitution. Other statutory provisions considered by the

Supreme Court include sections 39(1) and 47(2) of the Land Use Act, 1978. A detailed consideration and implications or effects of each of the laws stated herein to the relevance of the judgment is reserved till the next sub-head of this paper. Suffices to conclude this segment of this paper however, that the Supreme Court made it abundantly clear that neither the Constitution nor any other law inclusive of the Land Use Act, constitutes an absolute bar against initiating suits on land matters in any other court outside the state High Court, inclusive of the Federal High Court. Thus in the case of *Controller General of Prisons v Elema* ^[38], the Federal High court assumed jurisdiction on dispute touching on land in view of the parties involved and the nature of the subject matter that constitutes the claims before the court which are discussed in further details in the next subhead of this paper.

To what extent is the power of adjudication over matters touching on land shared between the high court and the federal high court?

From the analysis carried out so far in this paper running through its various segments, it has been established that both the High Court and the Federal High court could exercise jurisdiction over matters touching on land. What determines the choice of the court to approach in each circumstance would however depend on the parties involved and the nature of the subject matter to be decided in a given suit.

As far as a State High Court is concerned, it is a court that can exercise unlimited jurisdiction as may be subject to the matters over which the Federal High Court is conferred with powers to exercise exclusive original, civil and criminal jurisdiction as provided in section 251(1) of the Constitution. The Land Use Act in purporting to consolidate the exclusive powers of the High Court over some land matters, in two of its sections, made vital provisions that ordinarily appeared to confer exclusive original jurisdiction on the court over some matters touching on land that is the subject of a statutory right of occupancy granted or deemed to be granted by the Governor of a state. The provisions of these sections of the Land Use Act together with their interpretations by the Supreme Court and what effects they have on the jurisdiction of the Federal High Court over adjudication on land matters will be discussed in this part of this paper as follows:

In land matters, the Land Use Act provides that:

1. *The High Court shall have exclusive original jurisdiction in respect of the following proceedings*
 - a. *Proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purpose of this paragraph, proceedings includes proceedings for a declaration of title to a statutory right of occupancy;*
 - b. *Proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act* ^[39].

The second significant referred section of the Land Use Act for purposes of our discourse provides as follows:

- (1)
- (a)
- (b)
- (c)

2. *No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or be paid under this Act* ^[40].

While the Supreme Court made it clear that section 39(1) of the Land Use Act does not constitute an absolute bar against initiating suits on land matters in any other court outside the State High Court, it, at the same time declared as unconstitutional, the provision of section 47(2) of the same Land Use Act. This holding of the Supreme Court was on the basis that the said section 47(2) of the Land Use Act contravenes section 1 (3), 44(1) and 251(1) of the 1999 Constitution which respectively provides:

- 1(3) *If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void* ^[41].
- 44(1) *No movable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purpose prescribed by a law that, among other things-*
 - a. *Requires the prompt payment of compensation thereof; and*
 - b. *Gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria* ^[42].

The Constitutional provisions quoted above automatically render section 47(2) of the Land Use Act ineffectual, being unconstitutional. It is therefore abundantly clear from the provisions of section 39(1) of the Land Use Act that, the High Court shall have clear exclusive original jurisdiction which it does not share with any court including the Federal High Court, in respect of the following proceedings:

1. Proceedings for a declaration of title to a statutory right of occupancy;
2. Determination of any question as to the persons entitled to compensation payable for improvements on land under the Land Use Act; and
3. That necessary conditions for exercise of the court’s jurisdiction are in place or observed ^[43].

With regards to the nature of possible powers that the Federal High Court may exercise over matters touching on land, the coast is now clear to discern this now that the Supreme Court has clarified that section 39(1) of the Land Use Act does not constitute absolute bar against initiating suits on land matters in any other court outside the State High Court. It justified this position when it stated thus:

A blanket application of section 39(1) of the Land Use Act to include all proceedings on any issue touching on lands within the exclusive jurisdiction of the High Court of a State, would bring it into conflict with section 251(1)(r) of the 1999 Constitution where the proceeding is questioning the validity of an executive or administrative action or decision by the Federal Government or its agency on an issue connected to land and with the proviso to section 251(1) where the proceedings is for damages against the Federal Government or its agency for actions or decisions concerning land. A statutory provision cannot be

interpreted or applied in a manner or given a meaning that brings it into conflict with a provision of the Constitution. Such an application or interpretation would be unconstitutional and void ^[44].

In deciphering the choice of Federal High Court by the plaintiffs such as in the case of *Controller General of Prisons v Elema* ^[45] where title is not in issue and the suit does not seek to determine the person entitled to compensation in respect of the improvements on land, the court will be guided by the nature of the parties to determine the appropriate venue. For instance, the Federal High Court shall exercise exclusive jurisdiction in respect of any action or proceeding for declaration or injunction affecting the validity or legitimacy of the acts or omission of any of the Federal Government's or any of its agencies' executive or administrative actions or proceedings calling for a declaration or injunction as the case may be.

The position taken above is reinforced further under the literal rule of interpretation and going by the ordinary and natural meaning of section 251(1) (p),(q),(r) together with the proviso thereof to the Constitution which provides that: *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-*

- (p) *The administration or the management and control of the Federal Government or any of its agencies;*
- (q) *Subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;*
- (r) *Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies;*

Provided that nothing in the provisions of paragraphs (p), (q) and (r) of this subsection shall 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 ^[46].

We can therefore not, but agree with the Supreme Court when it held that the provision of section 39 of the Land Use Act cannot apply to a case touching on land matter pending before the Federal High Court when the claim is not one for declaration of title to a statutory right of occupancy nor does it involve any dispute as to who is entitled to the compensation payable for improvements on the land acquired. In particular, the Federal High Court shall exercise exclusive original jurisdiction in respect of any action or proceedings for a declaration or injunction affecting the validity or legitimacy of the act of executive or administrative action or decision by the Federal Government or any of its agencies.

The Federal High Court shall have or exercise clear exclusive original jurisdiction over matters touching on land matters in respect of the following proceedings:

1. Proceedings or action seeking redress for damages, declaration, injunction or specific performance by or

against the Federal Government or any of its agencies arising from any of its executive or administrative actions or decision touching on land. This is as envisaged in section 251(1) (r) and the proviso thereto of the Constitution.

2. The proceeding by the Federal High Court mentioned in the number (1) above excludes or shall not involve declaration of title to a statutory right of occupancy or determination of persons entitled to payment of compensation for improvements on land under the Land Use Act; and
3. All the necessary conditions for exercise of the court's jurisdiction are in place or observed ^[47].

Summary, Conclusion and Recommendations

The summary based on the foregoing analysis are as follows:

1. Section 39(1) of the Land Use Act, grants limited exclusive original jurisdiction to the High Court over land matters in respect of proceedings for declaration of title to land subject to statutory right of occupancy and for determination of persons entitled to compensation payable thereon in the event of compulsory acquisition and damages consequent thereto;
2. By the combined reading of section 251(1)(p), (g), (r) and the proviso thereto of the Constitution, limited exclusive jurisdiction is also granted to the Federal High Court for the determination of the lawfulness or otherwise of any administrative or executive actions of the Federal Government or any of its agencies over land matters calling for redress such as actions for declaration, damages, injunction or specific performance by or against the Federal Government or any of its agencies; and
3. Section 47(2) of the Land use Act which purports to oust the jurisdiction of any court from proceedings pertaining to compensation paid or payable over land under the Act, contravenes the provisions of the Constitution as provided in section 1(3), 44(1) and 251(1) (r) and the provision thereto of the Constitution and is consequently held to be unconstitutional null and void ^[48].

Consequent therefore to the above analysis is the conclusion that both the High Court and the Federal High Court have their respective areas of unlimited original jurisdiction over matters touching on land depending on the subject matter for determination and the parties involved. This position is recognized by the Supreme Court ^[49].

In view of the above findings and analysis, the following recommendations have become imperative in the circumstance for improvements in this area of law and practice:

1. Section 47(2) of the Land Use Act, to the extent of its inconsistency with the provisions of the Constitution and having been held to be null and void ^[50], should be amended by deleting same from the statute book by the National Assembly.
2. While section 39(1) of the Land Use Act may still be saved as an existing law ^[51], it is recommended that necessary modifications to the law by way of amendment should be made thereon. This could be by adding a proviso thereto making it expressly subject to the provision of section 251(1) of the Constitution.

No doubt, the implementation of the above recommendations would serve as a clear guide and guard to litigants, legal practitioners and the courts in precisely deciding the court with jurisdiction over any given subject matter bordering on land and landed matters.

References

1. See *Madukolu v Nkemdilim* (1962) ALL NLR 1 at 587.
2. The Court as used here are both the State High Courts and High Court of the Federal Capital Territory, Abuja.
3. Cap L5 Laws of the Federation of Nigeria (LFN) 2004 herein after abbreviated as the L.U.A.
4. Section 315 and 318 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) herein abbreviated as (The CFRN 1999)
5. See section 39 (1) of the LUA; *Adetayo v Ademola* (2010) 15 NWLR (Pt. 1215) 169
6. See section 251 (1) (p) (q) (r) (s) of the CFRN 1999.
7. (2021) 12 NWLR (pt.1790) 234. See also *Adetayo v Ademola* (Supra) (Distinguished)
8. See *A.G Federation v A.G Abia State & 35 Ors* (2001) 7 SC (pt.1)100. See also *Miscellaneous Offences Tribunal v Okorofor* (2001) 9-10 SC 91 at 109-103.
9. See *Adams v Umar* (2009) 5 NWLR (Pt. 1133) 69 at 97 Paras D – E. See also *Boye V. Adeyeye* (2012) 12NWLR (Pt. 1314)361.
10. See *Emeka v Okadigbo* (2012) 12 NWLR (pt. 1331) 62 at 85 paras. D-F.
11. For instance see the matter stated in Section 251(1) (a-s) of the CFRN 1999 which are exclusively vested in the Federal High Court, such as patents and design, admiralty, customs, etc.
12. See for instance Section 28 of the Magistrate Court Law of Lagos State 2009 which limits the monetary jurisdiction of the Magistrates Court of the state to N10,000,000.00
13. See *Salihu v Minister of Defence* (2009) 1 NWLR (pt. 1123) 554.
14. See for instance Section 2 of the Supreme Court (Additional Original Jurisdiction Act) 2002 Cap. S.16 LFN 2004 which makes it mandatory for each House of the National Assembly not to institute an action under the Act, except with a resolution to that effect passed by simple majority of the Members of each House present and voting at the sitting where the resolution is put to vote.
15. See for instance section 47(2) of the LUA.
16. See *Madukolu v Nkemdilim* (Supra), *Gwabro v Gwabro* (1998) 4 NWLR (pt.544) 60
17. See *A.G Bendel v A.G (Fed) & 22 Ors* (1981) 10 SC 1, *A.G (Fed) v A.G (Abia) & Ors* (2002) FWLR (pt. 102)1
18. See section 240 of the CFRN 1999.
19. *Ibid* at Section 246
20. *Controller General of Prisonss v Elema* (supra), *Adetayo v Ademola* (supra)
21. See Sections 257(2) and 272(2) of the CFRN 1999 for the High Court of the FCT Abuja and High Court of a state respectively.
22. See particularly Sections 265(1) and 267(2) of the CFRN 1999.
23. See *Ibid* particularly at Sections 280(1) & 282.
24. See *Ibid* particularly at Sections 260(1) and 262.
25. See *Ibid* particularly at Sections 275(1) & 277
26. See *Ibid* particularly at Sections 254^A and 254^C.
27. See for example, Sections 1, 2 & 28 of the Magistrates Court Law of Lagos State (2009)
28. Per *Bairamin, F.J* (As he then was) at p. 595 of *Madukolu v Nkemdilim* (supra).
29. See *Waziri v The State* (1997) 3 NWLR (pt. 496) 692; *FBN PLC v Obanda & Sons Ent. LTD & Ors* (1998) 2 NWLR (pt 538) 410; *AG (Ogun) v Coker* (2002) 17 NWLR (pt 769) 304.
30. *Western Steel Works v Iron & Steel Workers* (1987) 1 NWLR (pt 49) 290; *Tukur v Govt of Gongola State* (1989) 4 NWLR (pt. 117), 179, *Kanada V Gov. of Kaduna State* (1986) 4 NWLR (pt 35) 36.
31. *Owoni boys Tech Services v John Holt Ltd* (1991) 6 NWLR (pt. 169) 550, *Controller General of Prisonss v Elema* (Supra).
32. *Ezomo v Oyakhire* (1985) 1 NWLR (pt 2) 195; *Oloba v Akereju* (1988) 3 NWLR (pt 84) 508; *Controller General of Prisonss v Elema* (supra).
33. See Section 272 (1) of the CFRN 1999. See also Section 257 (1) of the CFRN 1999 in respect of similar jurisdiction conferred on the High Court of the FCT, Abuja.
34. See Section 39(1) of the LUA, 1978.
35. See *Controller General of Prisonss v Elema* (Supra).
36. See *A.G (Fed). v Abubakar* (2007) All FWLR (pt. 375) 405 at 472; *Inakoju v Adeleke* (2007) 4 NWLR (pt 1025) 423 at 629 and *Controller General of Prisonss v Elema* (supra)
37. (Supra)
38. (Supra). See also *Adetayo v Ademola* (Supra) (distinguished)
39. Section 39(1) of the Land Use Act
40. Section 47(2) *Ibid*.
41. Section 1(3) of the CFRN 1999
42. Section 44(1) *Ibid*.
43. See *Madukolu v Nkemdilim* (Supra)
44. Per *Agim, J.S.C* at p.g 255 paras C-F of *Controller General of Prisons v Elema* (supra), see also *Adetayo v Ademola* (Supra) (Distinguished)
45. (Supra), See also *Adetayo v Ademola* (Supra) (distinguished)
46. See Section 251(1) (p),(q),(r) with the proviso thereof of the CFRN 1999.
47. See *Madukolu v Nkemdilim* (Supra)
48. See *Controller General of Prisons v Elema* (Supra)
49. *Ibid*. See also *Adetayo v Ademola* (Supra)
50. See *Kanada v Gov. of Kaduna State* (Supra) and *Controller General of Prisons v Elema* (Supra)
51. See Sections 315 and 318 of the CFRN 1999.