UNRAVELLING THE AMBIGUITY: ANALYSIS OF INHERENT POWER AND JURISDICTION OF COURT

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INTRODUCTION:

Generally, the word 'jurisdiction' is often used to denote power, authority or domain. However, in legal parlance, jurisdiction has a deeper connotation. Jurisdiction refers to the authority of a court or tribunal to hear and decide cases within a specific geographical area, subject matter, or type of dispute. It is a fundamental concept in legal practice that ensures proper administration of justice and prevents conflicts of authority among courts. However, in practice, we have seen both young and old lawyers' indiscriminate use of the concept's 'jurisdiction' and 'inherent power' in a manner suggestive of being interchangeable.

However, jurisdiction and the inherent power of a court, though related, are distinct concepts. Jurisdiction relates to a court's competence to entertain a matter, while inherent power refers to power incidental to the effective exercise of an existing jurisdiction. The distinction is fundamental, yet the two concepts are often used interchangeably, even by experienced legal practitioners and judges, with significant consequences. A proper understanding of the distinction is therefore essential to the effective practice of law.

As shall be unveiled later, the two concepts have distinct incidences, particularly in terms of origin and delineation. In this discourse, I hope to illuminate this area and do justice to the topic .

MEANING OF JURISDICTION:

Jurisdiction is a simple and commonly used term in legal proceedings. It is a court or tribunal's authority to adjudicate or preside over a matter. In legal parlance, jurisdiction has been defined in numerous

ways, almost beyond numbering. In some instances, jurisdiction has aptly been described as the "lifeblood" of litigation. I view it as the spinal cord of litigation. In the case of ***Uba v. Etiaba***[1]**,** the Court of Appeal, Per **Muntaka-Coomassie, J.C.A., had this to say**:

> "Jurisdiction is defined as a term of comprehensive import embracing all kinds of judicial action. It is basically the legal right by which Judges exercise their authority including the power to hear and determine the subject matter in controversies between parties to a suit. It is the basis, foundation and conduct of access to court in adjudication under the Nigerian Legal System."

Similarly, in the case of ***Ahmed v. Ahmed***[2]**,** the Supreme Court held as follows:

> "Before going any further in the discourse of this question of jurisdiction, I must reiterate that it is settled law that jurisdiction is the power from which courts do derive their authority to entertain matters placed before them for adjudication. It is a matter that is statutorily based; usually jurisdiction of courts of record is as provided in the Constitution or Acts of the National Assembly and the jurisdiction of courts can only be removed or whittled down by express statutory provisions….."

The above authorities underscore the significance of jurisdiction in the determination of disputes by the courts, the import of which is that without jurisdiction, a court cannot entertain any matter commenced before it. The importance of jurisdiction in the adjudication processes demands an excursion into its relevance and value in our judicial

[1] (2008) 6 NWLR Pt. 1082 154 at 182, paras. G – H

[2] [2013] 15 NWLR (Pt. 1377) p. 274 at 331, paras. E – G.

ecosystem. As remarked above, without jurisdiction, a court labours in vain.[3]

Two further Supreme Court decisions reinforce the definition offered above. In ***A-G Lagos State v. Dosunmu***[4], the Court described jurisdiction as:

> "the authority of a court to proceed to hear and determine the particular case before it. Jurisdiction exist where the Court has cognizance of the class of cases involved…"

In ***Utih v. Onoyivwe***[5], the Court famously observed that jurisdiction is the "blood that gives life to the survival of an action in court," a metaphor that continues to be quoted by the appellate courts. These formulations, when read alongside ***Uba v. Etiaba***[6] and ***Ahmed v. Ahmed,***[7] show a settled judicial understanding that jurisdiction is the *statutory competence* of the court to adjudicate, never an attribute the court generates for itself.

It is also useful to note the tripartite architecture of Section 6 of the 1999 Constitution[8]. Section 6(1) and (2) vest "judicial powers" in the courts. Section 6(6)(a) then provides that those judicial powers "shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law". Section 6(6)(b), read with Sections 232, 233, 239, 251 and 254C, uses only the word "jurisdiction." The drafters plainly recognised the three distinct concepts. Applying the presumption against surplusage articulated in ***A-G Ondo State v. A-G Federation,***[9] "inherent" and "jurisdiction"

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[3] EFCC v. AG Benue (2022) LPELR-58696(CA) Per M. S. HASSAN, JCA (P. 27, paras. C-D); Josiah Cornellius Ltd & Ors v. Ezenwa (1996) LPELR 1632 (SC).

[4] (1989) 3 NWLR (Pt. 111) 552 at 566, Paras. H, Per Oputa, J.S.C

[5] (1991) 1 NWLR (Pt. 166) 166 at 206, paras. A – B

[6] ibid. (n 2)

[7] ibid. (n 3)

[8] Constitution of the Federal republic of Nigeria, 1999 (as amended)

[9] (2002) 9 NWLR (Pt. 772) 222

therefore cannot be collapsed into a single composite noun without doing violence to the constitutional text.

SOURCES OF JURISDICTION:

Jurisdiction is conferred on a court by an enabling legal instrument, as opined earlier. Accordingly, a court may only exercise jurisdiction over a matter where the relevant legal instrument expressly or impliedly vests it with the requisite authority. Put differently, the competence of a court to entertain an action must be derived from the law. The implication of this is that parties cannot confer jurisdiction on a court[10] and neither can a court implicitly derive its power from any other source. The jurisdiction of a court is ordinarily expressly prescribed by its enabling law. In Nigeria, the Constitution is the primary source of jurisdiction for virtually all superior courts of record, subject to other applicable statutes conferring or regulating specific aspects of their jurisdiction[11]

However, to each of the constitutional sources is a rider that such other matters as may be conferred by the Act of the National Assembly or the Law of the House of Assembly of a State. For illustration, Section 26 of the National Drug Law Enforcement Agency Act[12] confers exclusive jurisdiction on drug matters on the Federal High Court, while some State Laws, on Local Government election outcomes, vest the appellate

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[10] K.S.I.E.C. v. P.D.P. (2005) 6 NWLR (Pt. 920) 25 @ 51 – 52 paras F – C.

[11] Sections 232 and 233 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution) provide for the jurisdiction of the Supreme Court. Sections 239 and 240 of the Constitution provide for the jurisdiction of the Court of Appeal. Section 251 of the Constitution provides for the Jurisdiction of the Federal High Court. Section 254C provides for the jurisdiction of the National Industrial Court. Section 257 of the Constitution stipulates the jurisdiction of the High Court of the FCT. Section 262 of the Constitution stipulates the jurisdiction of the Sharia Court of Appeal of the FCT. Section 265 provides for the jurisdiction of the Customary Court of Appeal of the FCT. Section 272 of the Constitution provides for the Jurisdiction of State High Courts. Section 277 of the Constitution provides for the jurisdiction of the Sharia Court of Appeal of a State. Section 282 of the Constitution provides for the jurisdiction of Customary Court of Appeal of a State.

[12] Cap. N30, Laws of the Federation of Nigeria, 2004.

jurisdiction exclusively in the State High Courts. The net effect of the above is simply that the jurisdiction of a court is only ascertainable through the enabling law.

The proposition that jurisdiction flows from statute is fortified by ***Osadebey v. A-G Bendel State***[13] *and* ***Onuoha v. Okafor***[14] where the Supreme Court held that a court cannot assume jurisdiction that the Constitution or a valid statute has not conferred on it. The corollary is that parties cannot by consent (unlike in arbitration) confer jurisdiction on a court. This principle was affirmed in **Amuda v. F.R.N.**[15] This buttresses my central point in this paper. If jurisdiction cannot even be conferred by the litigants who invoke the court, still less can it be self-conferred by the court under the guise of an "inherent" attribute?

A separation-of-powers argument reinforces the same conclusion. Section 4 of the Constitution reserves the power to create courts and confer jurisdiction to the National Assembly and the State Houses of Assembly. If a court could clothe itself with jurisdiction as an inherent feature of its existence, it would, in substance, be legislating its own competence and arrogating to itself a power the Constitution assigns to the legislature. Inherent powers, by contrast, raise no such concern. They are exercised only within the boundaries of an already conferred jurisdiction and to give effect to the adjudicative function of a court otherwise properly seized of the matter.

Beyond this derivation, the further hurdle to be crossed is the means of determining the jurisdiction of the court, beyond the primary import of the vesting instruments. This forms our next pre-occupation.

DETERMINANT OF JURISDICTION

[13] (1991) 1 NWLR (Pt. 169) 525 at 572, paras. B – C Per Belgore, J.S.C, as he then was.

[14] (1983) 2 SCNLR 244

[15] (2021) 7 NWLR (Pt. 1774) 130 at 163, paras. C – D , Per. Eko, J.S.C, as he then was.

Jurisdiction plays a vital role in ensuring the integrity, efficiency, and fairness of the justice system. To determine whether a court has jurisdiction, certain factors must be considered as spelt out by our courts. The starting point in this regard must, as a matter of necessity, be by reference to the *locus classicus* case of ***Gabriel Madukolu v. Johnson Nkemdilim***[16]**,** where Bairamian, F.J. stated the law as follows:

> "A Court is competent when:
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> (1) it is properly constituted as regards members of the bench and no member is disqualified for one reason or another; and
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> (2) the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising jurisdiction; and
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> (3) the case comes before the court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.
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> Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the adjudication."

A cursory look at the above requirements may suggest simplicity. However, cases demonstrate that a failure to properly appreciate the import of the principles may fatally result in the nullification of the outcome of a proceeding. Regarding the first requirement, the law establishing a court often specifies its composition. In virtually all instances, the required composition is usually an odd number, such as one, three, five or seven[1]. A defect in the composition of the court impairs the validity of any judgment delivered.[17] The further caveat is

[16] (1962) 1 All NLR (Pt. 4) p. 857.

[17] In *Adeleke v. Oyetola* [2020] 6 NWLR (Pt. 1721) 440, the petition was before the Osun State Governorship Election Tribunal. The panel of Judges that sat to hear the petition were Sirajo, J., Chairman; Obiorah, J. member 1 and Gbolagunte, J.,

that none of the members must be disqualified. For example, a Judge or Justice who participated in proceedings at the lower court cannot be a member of the appellate panel. Such Judge or Justice is automatically disqualified, and any judgment delivered by a panel so constituted is liable to be set aside[18]

It is also the law that the subject matter of litigation must be within the jurisdiction of the court before it can entertain an action brought in respect thereof. For instance, an action relating to items contained in Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is within the exclusive jurisdiction of the Federal High Court. So also, matters falling within Section 254C of the Constitution are within the exclusive jurisdiction of the National Industrial Court. Accordingly, commencing such an action in any other court is in excess of that court's jurisdiction.

With respect to the mode of commencement of an action, which is the third prerequisite, while the law establishing a court and conferring jurisdiction on it is substantive in nature[19], the law stipulating the mode of commencement of an action is procedural and requires compliance with the prescribed mode of initiating and conducting the

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member 2. In a considered judgment delivered on 22 March 2019, Obiorah, J. and Gbolagunte, J. found merit in the petition, while Sirajo, J. dissented. Dissatisfied with the majority judgment of the tribunal, the 1st and 3rd respondents appealed to the Court of Appeal. In a judgment delivered on 9 May 2019 by a majority of 4 to 1, the Court of Appeal upheld the majority judgment of the tribunal. Mbaba, J.C.A. dissented. The Court of Appeal, in the majority decision held that the judgment delivered by Obiorah, J. who did not sit with the other Judges on the Governorship Election tribunal to hear the proceedings of 6 February 2019 was a nullity, because his absence at one of its sittings certainly affected the competence of the tribunal. The Supreme Court, in upholding the Court of Appeal decision, held that the position of the law is that any defect in the competence of a court is fatal, no matter how well the case is conducted and decided, as the defect is extrinsic to the adjudication process.

[18] *Adeleke v. Oyetola* [2020] 6 NWLR (Pt. 1721) 440 at 513, paras. A – B.

[19] See the Supreme Court in Olaleye-Ote v. Babalola [2012] 6 NWLR (Pt. 1297) 574 at 592, paras. D-E

proceedings. Again, where there is a lacuna in compliance, it will impair the jurisdiction of the court. However, where there is a waiver, this can be condoned.[20] For instance, where a party entitled to object to non-compliance fails to raise the objection timeously or at all, the right to object may be deemed waived, particularly when it relates to procedural matters, the court will not decline jurisdiction.[21]

The last prerequisite is that due process must always be observed in the adjudicatory process; otherwise, the proceedings as well as the outcome may be affected. Thus, a court may set aside its own orders or judgments where the judgment was given without jurisdiction or where the procedure adopted deprived the decision or judgment of the character of a legitimate adjudication, as held in ***Tomtec Nigeria Ltd v. Federal Housing Authority***[22].

The general principle is that, in determining its jurisdiction, a court need only concern itself with the originating process, such as the Writ of Summons or Originating Summons, except where the substantive issue has been heard along with the jurisdictional question.[23] In the case of ***Ahmadu & Ors v. NCC & Ors.***[24] where the Court, in pointing out processes which the court is empowered to look at when determining the question of jurisdiction and when to raise a notice of preliminary objection, noted as follows:

> "I agree with the 1st and 2nd Respondents' Counsel that the Apex Court has settled that objection on the jurisdiction of a Court can be taken at any time in any of the following situations: (a) on the basis of the statement of claim, or (b) on the basis of evidence received, or (c) by motion supported by affidavit setting out the

[20] *U.B.N. Plc. v. Edamkue* [2005] 7 NWLR (Pt. 925) 520 at P. 536, paras. B- C;

[21] See Heritage v Bentworth [2018] 9 NWLR (Pt. 1625) 420 at 434, paras. A-B

[22] (2009) 12 S.C [Pt. III] 162 at 190-191, Lines 14 to 16, Onnoghen J.S.C

[23] *Julius Berger Nig. Plc. v. Toku Rainbow Community Bank Ltd* [2019] 5 NWLR (Pt. 1665) 219 at pp. 254 - 255.

[24] (2023) LPELR-61077(CA) per Senchi, JCA (Pp. 50-51 paras. E)

facts relied on as was the case in the instant case; (d) on the face of the writ of summons, where appropriate, as to the capacity in which the action was brought, or against who the action was brought. See the case of NNONYE V. ANYICHIE (supra)."

As already indicated, the importance of jurisdiction is further underscored by the fact that it may be raised, whether before the court of first instance or an appellate court, and at any stage of the proceedings.[25] As important as jurisdiction is, and notwithstanding that it may be described as the power of a court to entertain a case; the enquiry will then be, is there a distinction between "jurisdiction" and "inherent powers" such as to uphold the gravamen ? or is it possible for a practitioner to properly speak of "inherent jurisdiction"? This is one knotty issue that this paper seeks to address, while urging the courts not to conflate the two concepts, as doing so may raise serious constitutional concerns.

The principle in ***Madukolu v. Nkemdilim***[26] has been consistently applied by the Supreme Court. Useful modern restatements include ***Dangana v. Usman***[27]; ***A.G. Lagos State v. Eko Hotels Ltd***[28]; ***A.G. Lagos State v. Eko Hotels Ltd.***[29]; **and** ***Skye Bank v. Iwu***[30]. Each of the cases reaffirms that the three Madukolu conditions are cumulative; failure to satisfy any one of them deprives the court of jurisdiction and renders its proceedings nullity.

It is worth adding that a defect in jurisdiction is fatal at any stage. The Supreme Court held in ***Skenconsult (Nig.) Ltd. v. Ukey***[31] ***and Macfoy v. UAC***[32] ***cited in Rossek v. ACB Ltd.***, *held* that anything done without

[25] Boko v Nungwa [2019] 1 NWLR (Pt. 1654) 395 at 430, para. D.

[26] Ibid. (n 18)

[27] (2013) 6 NWLR (Pt. 1349) 50

[28] (2006) 18 NWLR (Pt. 1011) 378

[29] (2012) 13 NWLR (Pt. 1318) 423

[30] (2017) 16 NWLR (Pt. 1590) 24

[31] (1981) 1 SC 6

[32] (1962) A.C. 152

jurisdiction is void *ab initio* and can be set aside without further proof. It is precisely the *gravity* of these consequences that makes it dangerous to speak of "inherent jurisdiction" and mislabeling a court's exercise of inherent *power* as inherent *jurisdiction which* would import the *Madukolu* nullity doctrine into acts that are, in truth, valid procedural steps of a court that already has jurisdiction.

THE MISNORMER CALLED INHERENT JURISDICTION

As noted earlier, jurisdiction is conferred on courts by the Constitution or other enabling laws.[33] Having said this, there is a recurring misnomer in the use of the expression "inherent jurisdiction" by the courts and legal practitioners. It is the thesis of this paper that there is no such thing as inherent jurisdiction; rather, courts possess inherent powers. This terminological error is replete in our law reports, of which a few examples will suffice. For instance, Mukhtar, J.C.A. (as His Lordship then was), in the case of ***Universal Oil Ltd. v. N.D.I.C. stated as follows:***[34]

> "An inherent jurisdiction of Court is that power which a Court of law exercises for the purpose of doing substantial justice in any matter with which it is seized (sic) under certain peculiar circumstances. The inherent jurisdiction supplements the statutory powers of the Court and is dictated by need for the Court to fulfill itself in order to meet the ends of justice."

The Supreme Court is not spared when it comes to the practice of referring to the concept of inherent jurisdiction of a court. In ***APC v. Nduul***[35], the unguarded deployment of terminologies led the apex Court to make the following statement of law:

> "Generally, every court of record has **inherent jurisdiction** on an application and in appropriate cases and circumstances to set

[33] *Akilu v. Fawehinmi (No. 2)* [1989] 2 NWLR (Pt. 102) 122 at 198, para. C.

[34] Suit No. CA/L/465/2001; [2008] 6 N.W.L.R. (Pt. 1083) 254 at 266.

[35] [2018] 2 NWLR (Pt. 1602) 1 at 23, paras. B-D.

aside its judgment or decision, where the judgment or decision is null and void ab initio or where there was a fundamental defect in the proceedings, which vitiates and renders same incompetent and invalid."[36]

The use of the phrase 'inherent jurisdiction' belies the imperative of the genesis of jurisdiction generally. In my view, the combination of the words 'inherent' and 'jurisdiction' is a contradiction in terms. As indicated above, jurisdiction is always statutory. It must be derived from a particular law for a court entertaining the subject matter. However, there is what is known as the inherent power of the court. This is derived from the provisions of Section 6 (6) of the Constitution[37]. This is the power vested in every adjudicatory tribunal to do substantial justice. Inherent power is not usually specified in any of the enabling instruments establishing the courts, but it is a power exercisable by a court simply because it is a court of law. Every duly constituted court is vested with these powers by virtue of its existence, to the extent that it may be regarded as the "fundamental right" of the court, which

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[36] For such other cases in which the apex Court unguardedly used the expression 'inherent jurisdiction', see *Dingyadi v. I.N.E.C.* (2011) 10 NWLR (Pt. 1255) 347 at 403, paras. F-C; *Ajayi v. Omorogbe* (1993) 6 NWLR (Pt. 301) 512 where at p. 534, paras. A-B the court defined 'Inherent jurisdiction' as "*the power resident in all courts of superior jurisdiction, which is necessary for the proper and complete administration of justice and essential to their existence.*"; *Gombe v. P. W.* (Nig.) where the apex Court held as follows: *"An inherent power or inherent jurisdiction is not and has never been known to be a distinct or separate jurisdiction. No inherent power can add to the jurisdiction of any court ofrecord where no jurisdiction to entertain a case has been vested by the constitution or statute law. Inherent power is only exercisable to enhance statutory jurisdiction in a cause or matter within the jurisdiction of the court. [Akilu v. Fawehinmi (No.2) (1989) 2 NWLR (Pt.102) 122 at 197 referred to]. (P. 422, paras. D-E)"*

[37] The inherent power of the court in Nigeria is conferred by Section 6(6)(a) of the Constitution of the Federal Republic of Nigeria which provides as follows:

> "The judicial powers vested in accordance with the foregoing provisions of this section –
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> (a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law."

is inalienable.[38] The doctrine of inherent power is a product of English common law, with its roots dating back to Baron Alderson's landmark decision in ***Cocker v. Tempest (1840)***[39]. In this pivotal case, Baron Alderson remarked:

> "The power of each court over its own processes is unlimited; it is a power incident to all courts, inferior as well as superior; were it not so, the court would be obliged to sit still and see its own process abused for the purpose of injustice."

By this, it is important for the courts as well as practitioners to constantly bear in mind that jurisdiction of court can never be inherent. The practice of bringing applications under the 'inherent jurisdiction' of courts must stop, while the courts too must resist the temptation to imbibe such practice. Even by the very wording of the Constitution, it is described as inherent power. A court can exercise inherent power without jurisdiction over the subject matter in deserving cases, particularly in instances bordering on the integrity of the court. It is technically incorrect to describe jurisdiction as inherent, as same has consequences. Inherent power is the intrinsic authority vested in a court to regulate the proceedings before it. However, inherent power cannot be invoked to supersede or override statutory provisions or rules.[40]

The above thesis is supported by the use of the terminologies 'judicial powers', 'inherent powers' and 'jurisdiction' as contained in the Constitution. Whereas Sections 6(1) and (2) of the Constitution provide

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[38] *Covalent Oil & Gas Services Ltd. v. Ecobank (Nig.) Plc.* [2021] 10 NWLR (Pt. 1784) 252 P. 278, paras. B-C

[39] De Jersey, "The Inherent Jurisdiction of the Supreme Court" (1985) 15 Queensland Law Society Journal 325, 326. The Nigerian case of *Universal Oil Ltd. v. N.D.I.C.* [2008] 6 NWLR (Pt. 1083) 254 is also instructive on this point.

[40] International Journal of Innovative Legal & Political Studies 11(2):1-13, April-June, 2023, SEAHI PUBLICATIONS (2023) www.seahipaj.org accessed on 28/1/25.See Adigun v A.G Oyo State [1987] 2 NWLR (Pt. 56) 197 at 235, Para F-H ; Umar v Aliyu [2011] 5 NWLR [2011] 5 NWLR (1241) 600 at 611, Para E – G.

for the judicial powers of the Federation and the State respectively as vested in the courts to which they relate under Section 6(5) thereof, the fact that jurisdiction is purely statutory is first recognised by Section 6(5)(j) where the word 'jurisdiction' is first introduced in the Constitution by providing for the existence of "such other courts *as may be authorised by law to exercise jurisdiction* on matters with respect to which the National Assembly may make laws. Section 6(5)(k) provides in similar terms for "such other courts as may be *authorised by law to exercise jurisdiction* at first instance or on appeal on matters with respect to which a House of Assembly may make laws."

Exercise of jurisdiction as shown in the provisions above is made pursuant to such laws as may confer such jurisdiction on the court. On the other hand, judicial powers are established by Section 6(1) and (2) and the extent of which, by Section 6(5)(a), shall be, *notwithstanding anything to the contrary in this Constitution*, to all *inherent powers and sanctions* of a court of law. By the above, it is clear that the framers of the Constitution were careful in the use of the word 'jurisdiction' as only derivable from a statute, while the use of the term 'judicial powers' embraces both statutory powers as conferred by statute and the inherent powers which are beyond the provisions of a statute.

The above position is further strengthened by Section 232(1) of the Constitution which confers original jurisdiction in any dispute between the Federation and a State or between states on the Supreme Court; Section 232(2) of the Constitution which confers residual original jurisdiction on the Supreme Court as may be conferred on it by an Act of the National Assembly; Section 233(1) which confers appellate jurisdiction on the Supreme Court from the decisions of the Court of Appeal and such other cases as may be prescribed by an Act of the National Assembly[41]; Section 239(1) which confers original and exclusive jurisdiction on the Court of Appeal in disputes arising from presidential

[41] Section 233(2)(f) of the Constitution.

election and appellate jurisdiction from the decision of the Federal High Court, the National Industrial Court, etc.[42]

The use of the word 'jurisdiction' in expressly conferring the power to hear and determine specific cases on the courts mentioned in the Constitution or as may be established by other laws means that jurisdiction is a matter of statute and cannot be inherent. On the other hand, the inherent power of a court forms part of its innate nature and is incidental to, and attaches to, the court by virtue of its being a court. It is the power imbued in the court by virtue of its being an institution established to dispense justice. Whereas a court may exist without being established by statute, it would not cease to be a court simply because it is not expressly established by statute. An example is the customary court that predated the current statutorily established customary courts, which dispensed justice in accordance with the dictates of natural law and the customs of the people. Another example would be the common law courts prior to its being statutorily regulated by legislative provisions. All such courts would enjoy the characteristics and powers inherent in a court by virtue of being courts, without more. It is this that which is referred to as the inherent powers of a court.

The above was recognised to a large extent in the decision of the Supreme Court in ***Adigun & Ors. v. Attorney-General Oyo State (No. 2)***[43] where the Oputa, JSC stated the law as follows:

> "Simply put, the inherent power of any court is that power which is itself essential to the very existence of the court as an institution and to its ability to function as such institution - namely as an institution charged with the dispensation of justice, such as the power to punish for contempt, the power to grant an adjournment in the interest of justice etc. An inherent power has

[42] With respect to the jurisdiction of the Federal High Court, National Industrial Court, the Sharia Court of Appeal, the Customary Court of Appeal and the High Court of a State, the Constitution expressly uses the word 'jurisdiction' which is meant to be constitutionally or statutorily conferred.

[43] [1987] 2NWLR (Pt. 56) 197 at 235

> to be inherent in the sense that it forms an essential and intrinsic element in the whole process of adjudication. It is innate in a court, and is not a subject of specific grant by the Constitution or by legislation. That is why inherent powers of the courts cannot be taken away or abridged by legislation for he who gave, he only can take away. This explains section 6(6)(a) of the 1979 Constitution which merely recognised and stated the obvious - that the inherent powers of a court of law exists "notwithstanding anything to the contrary in this constitution' for such powers were not granted by the constitution … The inherent powers of courts differ considerably from the appellate powers, Inherent powers of courts are general powers; the power vested in any court to hear and determine an appeal is rather a specific and special power; inherent powers are not conferred by legislation, appellate powers are. No court has inherent power to hear an appeal. Any appellate power is traceable to a specific statute. That statute will then define the limit of the appellate jurisdiction it conferred, the persons who can appeal and procedure for such an appeal."

The above position of the law and particularly the dictum of Oputa, JSC, was quoted with approval by the same Supreme Court in the case of ***Umaru v. Aliyu***[44] where the Supreme Court held that while it has appellate jurisdiction as specifically conferred by the Constitution, same cannot be extended to confer on it the jurisdiction to hear appeals arising from election petitions in governorship elections by virtue of its inherent powers as the Supreme Court.

Although the Supreme Court, in the cases mentioned above, sought to distinguish between the inherent powers and jurisdiction of a court of law, it did not go so far as to deter from the use of the phrase 'inherent jurisdiction', which has become a fad among lawyers and courts of law. My position is that there cannot be inherent jurisdiction, as nothing is

[44] [2011] 5 NWLR (Pt. 1241) 600 at 610 – 611, paras. G-D

inherent in the jurisdiction of a court, which must be statutorily conferred. The language of the Constitution in Section 6 and the specific provisions conferring jurisdiction on the various courts are sufficient witnesses to this position. Whereas the provisions relating to inherent powers are specific as to the nature of such powers, being part of the same package established under the "judicial powers" of courts, it is certain that such inherent powers only co-exist with the statutory jurisdiction of courts to enable them to function and perform their duties effectively and cannot be regarded as part of the jurisdiction of the court. Given the aforesaid, I posit that the expression, "the court has jurisdiction to determine whether it has jurisdiction," is wrong. The court can only have inherent powers to determine whether it has jurisdiction, and not inherent jurisdiction to do so.

The above is based on the fact that whether the court has jurisdiction must be traced to the particular statute conferring the jurisdiction. It may be territorial or subject matter. There can never be jurisdiction to determine whether a matter is subject to its jurisdiction. There can only be inherent power to determine whether a matter is subject to its jurisdiction. Where a court, having exercised its inherent power to determine the issue, finds that it has no jurisdiction, it declines jurisdiction, not the inherent power by which it arrived at the conclusion that it has no jurisdiction.

The position canvased in this paper is fortified by the following decisions of the Supreme Court which call for particular emphasis. In ***Nnonye v. Anyichie***[45], the Supreme Court accepted the proposition (relying on the English cases) that "there is no such thing as inherent jurisdiction," only inherent powers exercisable within a properly conferred jurisdiction. And in **Atake v. *A-G Federation***[46], the Supreme Court explained that inherent powers are the powers a court needs to

[45] (2005) 2 NWLR (Pt. 910) 623

[46] (1982) 11 SC 153

function effectively as a court; for example, to preserve the res, to prevent abuse of its process, and to enforce its orders. They are consequential to jurisdiction, not a source of it.

Two doctrinal analogies from adjoining fields make the same point. First, under section 14 of the Arbitration and Mediation Act[47] (and formerly section 12 of the Arbitration and Conciliation Act[48]), an arbitral tribunal enjoys *kompetenz-kompetenz*, the power to determine its own jurisdiction, but only because the statute expressly confers that power. If even a private forum requires legislative empowerment to rule on its own jurisdiction, *a fortiori* a court of record, being a creature of statute, cannot claim it as an inherent attribute. Second, the doctrine of abuse of process, illustrated in ***Saraki v. Kotoye***[49] allows a court to dismiss proceedings without ever adjudicating the merits, proof positive that inherent *power* is exercisable even where the court would have no *jurisdiction* to entertain the substance. The two concepts cannot therefore be the same.

My analysis points to a practical reform agenda that would translate the doctrinal clarity urged herein into daily practice. First, a Practice Direction from the Chief Justice of Nigeria could formally standardise the terminology, requiring courts and counsel to distinguish between substantive jurisdiction, procedural jurisdiction, and inherent power. Second, the Rules of the superior courts already speak the correct language: Order 49 rule 6 of the Federal High Court (Civil Procedure) Rules 2019, Order 55 of the High Court of Lagos State (Civil Procedure) Rules 2019, and Order 60 of the National Industrial Court Rules 2017 all preserve the "inherent power" of the court and none uses the phrase "inherent jurisdiction." These provisions vindicate my position at the level of subsidiary legislation and could be relied upon in future advocacy.

[47] Arbitration and Mediation Act, 2023

[48] Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004

[49] (1992) 9 NWLR (Pt. 264) 156

A brief comparative note is also apt. Section 173 of the Constitution of the Republic of South Africa, 1996[50] expressly confers on the superior courts an "inherent power to protect and regulate their own process," not any inherent jurisdiction. Section 151 of the Indian Code of Civil Procedure[51] preserves the "inherent powers" of the court "to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court." Article 159 of the Kenyan Constitution 2010[52] speaks in the same register. Several jurisdictions across the Commonwealth thus converge on the position urged in this paper i.e, jurisdiction is conferred; power is inherent.

Finally, the *consequences* of persisting with the phrase "inherent jurisdiction" are practical, not merely semantic. They include: (i) courts wrongly striking out matters on the basis that they lack "inherent jurisdiction" where they in fact possess statutory jurisdiction and are merely being asked to exercise a procedural power; (ii) counsel and courts confusing appealability, since orders founded on jurisdiction attract the *Madukolu* nullity doctrine while orders founded on inherent power are simply reviewable for error; and (iii) confusion over waiver and functus officio, since jurisdiction is waivable in limited respects whereas inherent power (being held for the administration of justice, not for the parties) is not waivable at all.

It is in this context that I shall now discuss the power to punish for contempt as an example of an instance in which a court can still act notwithstanding that it has no jurisdiction. Other examples abound, such as the power to preserve the *res* and grant an adjournment even where the court has not been able to determine whether it has

[50] Constitution of the Republic of South Africa, 1996
[51] The Indian Code of Civil Procedure, 1908, Act no. 5 of 1908
[52] Kenyan Constitution, 2010

jurisdiction. However, we shall consider only the power to punish for contempt in this paper.

DOES A COURT NEED JURISDICTION TO PUNISH FOR CONTEMPT?

This discussion is informed by the confusion that I have observed, not only in the courts but also among legal practitioners, regarding the issue of contempt. I have seen practitioners argue in court that because a matter is on appeal, the lower court cannot entertain contempt proceedings as it has purportedly lost jurisdiction. I have equally witnessed arguments concerning the prioritisation of applications for rulings or judgments and those initiated for contempt of court. In all these instances, I have observed, largely, a demonstration of ignorance by the parties concerned. The decisions of the courts in this regard have equally not been helpful, as the courts often fall into the same error of determining the foundation of their authority to punish for contempt. The foregoing has therefore necessitated this intervention in order to assist all stakeholders in clarifying the true position of the law.

At this juncture, it is crucial to note that the inherent powers of a court extend to ensuring compliance with its orders and punishing non-compliance. Where an individual disobeys a court order or makes derogatory comments about the court, such a person may be held in contempt of court. The power of a court to punish for contempt need not derive from any legislation or enabling law. The power is inherent. It is part of those powers contemplated by Section 6(6)(a) of the Constitution, which provides for judicial powers to extend, *"notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of law."* By this, we mean that a court need not possess jurisdiction to act in these instances. It is also immaterial whether the contempt was committed in or outside the courtroom.

The point that the power to punish for contempt is inherent (and not derived from a separate jurisdictional grant) is reinforced by ***Awobokun***

v. Adeyemi[53] and ***Deduwa v. The State***[54], where the Supreme Court emphasised that every superior court of record possesses, *as an incident of its existence*, the power to punish contempt committed in the face of the court, subject always to compliance with the fair-hearing guarantee in section 36 of the Constitution. *Section 36 therefore operates as an internal discipline on the exercise of inherent power*, most obviously through the Form 48 and Form 49 procedure and confirms that inherent power, though not derived from statute, is nevertheless not unbounded.

A related, and often overlooked, point concerns waiver and *functus officio*. Jurisdiction to determine the subject-matter of a suit is exhausted once judgment is delivered, the court becomes *functus officio*. But the inherent power to enforce the judgment, to correct clerical slips[55] and to punish contempt of the order made survives that exhaustion. This is only intelligible if inherent power is a category distinc*t* from jurisdiction, exercisable in aid of the administration of justice long after the court's adjudicative jurisdiction over the merits has been discharged.

WHAT THEN IS A CONTEMPT OF COURT?

Contempt of court refers to any behaviour or action that disrespects, disobeys, or interferes with the authority or proceedings of a court, including disobeying court orders, making derogatory comments, disrupting proceedings, refusing to comply with summons or subpoenas, and interfering with witnesses or court staff. Contempt can be categorized into civil, criminal, and direct contempt, and courts have the power to punish it with fines, imprisonment, or other sanctions to maintain their authority and ensure the administration of justice.

[53] (1968) NMLR 289
[54] (1975) 1 NMLR 26
[55] Asiyanbi v. Adeniji (1967) 1 All NLR 82

In ***Sode v. L.S.D.P.C.,***[56] the Court, while explaining the nature of contempt vis-a-vis the inherent powers of the court held as follows:

> "Undoubtedly, words are incapable of giving exact definition of what "contempt of court" means. But generally, contempt of court may be described as that conduct which tends to bring into disrepute, scorn or disrespect the authority and administration of the law or such act which tends to interfere with and/or prejudice litigants and/or their witnesses in the course of litigation in the citadel of justice. Sometimes such conduct that strikes at the foundation of the dignity of the court is referred to as civil contempt or criminal contempt. But as was observed by the Supreme Court in the case of *Awosanya* v. *Board of Customs* (1975) 1 ALL NLR (Pt. 1) 106, a clear distinction between the two is often difficult to draw. It does not inure to the benefit of any society that is governed by the rule of law to allow the authority and dignity of the court to be eroded by unbecoming acts or behaviour. ***Hence the power to punish for contempt is inherent in courts of superior jurisdiction and is quite independent of statutes.*** Such power is considered necessary for the proper administration of justice. It is not there to be used for the vindication of the judge as a person or for his personal aggrandisement. Such inherent powers to punish for contempt are created, maintained and retained for the purpose of preserving the honour and the dignity of the court. It follows therefore that a judge exercising such powers must always realise that he holds same on behalf of the court for the advancement of justice and the good of the public. However, such powers to punish for contempt must be sparingly used if the dignity of the court itself is to be well protected. If courts are to do justice they need power to administer it without interference or affront and also to enforce their orders and to punish those who insult or obstruct

[56] [2000] 7 NWLR (Pt. 663) p. 152 at 159, paras D-H.

them directly or indirectly in the performance of their duly or misbehave in such a manner as to weaken or lower the authority of a court of law. However, it must be remembered that the usefulness of the powers depends on the wisdom and the restraint with which such powers are exercised."

The foregoing also speaks to the fact that a court is naturally and inherently inclined to take steps to uphold its sanctity irrespective of whether the same is expressly provided by statute or otherwise. This also underscores the principle of courts' inherent powers. The source of the confusion used to rest on the apex Court's decision in ***Muhammed v. Olawunmi***[57] wherein the entry of appeal puts a halt to proceedings before the lower court. Even as at then and as remarked above, the entry of appeal in such circumstances can only deny the lower court the jurisdiction to entertain the appeal in respect of the subject matter and not contempt. Besides, the law has moved away from ***Muhammed v Olawunmi***[58] presently, as the proviso to Order 4 Rule 11[59] now enables the lower court to proceed with an appeal notwithstanding the entry of appeal once the continuous hearing will not impact the appeal[60]. An example is an interlocutory appeal on jurisdiction, which will not debar the court from continuing with the substantive hearing. The approach has been statutorily adopted by the new Supreme Court Rules, 2024, by Order 7 Rule 2(2), which provides that "The proceedings in any matter before the Court below or any Tribunal shall not be stayed in any form to await the outcome of an interlocutory appeal to this Court."

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[57] *Mohammed v. Olawunmi* [1990] 2 NWLR (Pt. 133) 458.

[58] Ibid.

[59] Court of Appeal Rules, 2021.

[60] Order 4 Rule 11(2) of the Court of Appeal Rules, 2021 states that nothing shall be construed as requiring the lower court to order stay of proceedings, or adjourn sine die, proceedings relation to matters or proceedings in the lower court that are not impacted by or to which the appeal entered in the Court of Appeal does not relate.

Beyond even the new rules, the Appellate Court has admonished lower courts to proceed equally in such instances. In the case of ***League Management Co. Ltd & Anor v. Abubakar & Anor.***[61] the Court of Appeal held that:

> ***"…..Where the appeal is against an interlocutory decision contained in a Ruling, the fact of entry of the appeal in the Court of Appeal will not deny the lower Court the jurisdiction to continue with the substantive suit.*** For example, where a trial Court makes an order of interlocutory injunction and the party dissatisfied appeals against the order and the appeal is entered in the Court of Appeal, it would not remove the jurisdiction of the lower Court to continue with the hearing of the substantive suit, the subject matter of the appeal that was entered is the Ruling on interlocutory injunction, and not the substantive suit."

Furthermore, in the recent decision of the Supreme Court in ***BPS Engr. & Constr. Co. Ltd. v. FERMA (Supra)***[62], per Nweze, J.S.C. held:

> ***A party who appeals against an order will be held liable for contempt if he refuses to obey the order of which he is appealing against or which he wants stayed or suspended pending appeal."***

Beyond all the foregoing, the crux of our discussion is that a court faced with the dilemma of contempt proceedings and an application for stay must prioritise the contempt proceedings. In addition, such a court must appreciate that it requires no jurisdiction to deal with the contempt proceedings. The point I am making, therefore, is simply that the fact that a court loses jurisdiction does not automatically deprive it of the power to try contempt. All that such a court requires to

[61] (2017) LPELR-43424(CA)

[62] [2023] 7 NWLR (Pt. 1884) 461 at 491, paras A-C and E-F

determine such applications on contempt is the inherent power, as opposed to jurisdiction.

Thus, where a party is in contempt of the court's proceedings, and the issue of jurisdiction is also in contention, the law enjoins the court to accord priority to contempt proceedings. In ***BPS Engr. & Constr. Co. Ltd. v. FERMA (Supra)***,[63] per Ogunwumiju, J.S.C. held:

> *"The appellant cannot apply mechanical and abstract general principles of law to the effect that jurisdiction of the court is a threshold matter and deliberately refuse to consider exceptional circumstances as in this case where the court had invoked its disciplinary jurisdiction to determine the motion for a restorative mandatory injunction aimed at preserving the res of the substantive appeal.*
>
> *My Lords, as a general rule of law, where an issue of jurisdiction is raised, the court ought generally to take it first; however, where an act (as the facts presented in this appeal) which would impugn the integrity/majesty of a court and likely to bring the court to odium, ridicule and disrespect is done, then it is not just desirable but essential that the issue of jurisdiction be put on hold and the offending act immediately thrashed out as there is the overriding duty of the court to guard jealously its powers. This accords with the view of this court in John Ebhodaghe v. Mike Okoye (supra)where this court held per Oguntade J.S.C. as follows at page 501, paras. D-G of the NWLR on the jurisprudence of prioritizing the motion to protect the integrity of the court above the substance of the cause of action or appeal".*

Also, In ***Ebhodagbe V. Okoye,***[64] the Supreme Court per part-Acholas JSC held as follows:-

[63] At 485, paras D-H.

[64] Ebhodaghe v. Okoye (2004) 18 NWLR (Pt. 905) 472 at 494 – 495, Paras. H – B.

> "While it is a settled law that when an issue of jurisdiction is raised by a party the court ought generally to take it first. Where however due to combination of factors and act which would impinge on the majesty of a court and likely to bring the court to Odium or disrespect is done, it is, I dare say, not just desirable but essential for the court to first look into the matter of contempt before proceeding on the issue of jurisdiction. ... In other words at all times it is the duty of the court to guard jealously its powers and should give first consideration to the proceedings in contempt of its court even when the court is faced with the question of its competence to adjudicate on a matter from which contempt arises".

Similarly in the case of ***Adejugbe v. Aduloju***[65]**,** Agim, J.S.C. held:

> *"Every court has the inherent duty to protect its authority and its processes from being trampled upon and castrated by any person particularly parties in cases before it.* ***When such an affront and contempt arises, it must be promptly addressed before any further step is taken in the proceedings.***

It is also instructive to note that contempt proceedings are distinct and separate from the substantive suit. In essence, contempt proceedings are sui generis, with their own special procedures. They are also not dependent on any subsisting suit. At the risk of repetition, may I assert again that contempt proceedings rest not on jurisdiction but on the inherent power of the court and must be given pride of place in all situations.

CONCLUSION

In conclusion, it is my hope that, henceforth, practitioners will be able to distinguish jurisdiction from the inherent powers of a court and not continue to muddle them up. As I opined earlier, the distinction goes

[65] [2022] 3 NWLR (Pt. 1816) 131 at 163-164, paras G-B.

beyond semantics and attracts different legal consequences. An appreciation of the difference will also enable practitioners to determine the priority of applications before the court, particularly where contempt proceedings are involved. Finally, every court is vested with inherent powers by virtue of its being a court, as opposed to jurisdiction, which must emanate from the Constitution or statute. It is therefore my expectation that greater clarity will henceforth prevail in this area of the law.