

**CAPTURING ALL FINANCIAL SERVICES  
UNDER A SPECIALISED COURT FOR  
INVESTMENT GROWTH IN NIGERIA**

**Bolarinwa Levi Pius and Professor Mrs M.T. Okorodudu-  
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### **ABSTRACT**

*The tripartite operations of financial market: capital, banking, and insurance markets are sacred pillars of every economy in the world. In Nigeria, whenever litigations ensue due to their value chain services, different courts are approached not considering the symbiotic or similar facts of the matters. It is an incontrovertible fact that banking, insurance, and the capital market trade in common financial products; hence the same court ought to assume jurisdiction over disputes arising from their activities. However, reverse is the case: capital market disputes are brought before the Investment and Securities Tribunal while the Federal High Court has jurisdiction over banking and insurance disputes. This has led to conflict of jurisdiction within our financial jurisprudence. This article aims at examining the common objectives of the insurance, banking, and capital market institutions; and advocates for capturing the litigations evolving from the three institutions before a common court, the Financial Services Court.*

Keywords: Financial Service Dispute, Financial Services Court, Investment and Securities Tribunal, Investment, Insurance.

### **1.0. INTRODUCTION**

The phrase “financial service” is defined as “activities of banking, insurance, investment, trusteeship, and executorship.”<sup>1</sup> It is also conceptualized as:

The economic service provided by the finance industry, which encompasses a broad range of businesses that manage money, including banks, credit card companies, insurance companies, accountancies companies, consumer-finance companies, stock

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\* Bolarinwa Levi Pius is a Ph.D student at the Department of Business Law at the Obafemi Awolowo University, Ile-Ife, Osun State. He can be contacted via email: [levibolarinwa@gmail.com](mailto:levibolarinwa@gmail.com) or call 08182928678.

\*\* Professor M.T Okorodudu-Fubara is a lecturer at the Department of Business Law at the Obafemi Awolowo University. She is the former dean of the Faculty of Law at the University.

<sup>1</sup> L.B. Curzon, *Dictionary of Law*, 5<sup>th</sup> ed. (Financial Times, 1998), p. 156.

brokerages, investment funds, individual managers and some government sponsored enterprises.

Also, the word “investment” is defined as “application of money in the purchase of some property from which interest or profit is expected and which property is purchased in order to be held for the sake of the income which it will yield.”<sup>2</sup> Financial Services Court is defined as a court with specialised jurisdiction to which all financial services cases (insurance, banking and capital market) fall within its adjudicatory forum. Judges who adjudicate on financial services litigations ought to be specialists in financial services jurisprudence considering their cognate experience.<sup>3</sup>

The tripartite transactions among insurance, banking, and capital markets are mutually exclusive, deriving economy of scale to enhance their core statutory objectives and functions towards a common boosting of the economy of any jurisdiction where they function. The traditional roles of banking, insurance, and capital market as entrenched in their various statutes symbiotically affect one another. Brief narratives of the 2008 global/subprime recession and repercussion on Nigerian capital market recession clearly define mutual crises that follow. The world suffered from this lack of common regulatory and statutory infrastructures to tackle those challenges in mutually inclusive ways.

The 2008 global recession evolved from the United States (US). The financial crisis was triggered by the bursting of the housing bubble and the ensuing subprime mortgage crisis in the US. Banking, insurance, and capital market institutions were major players in the recession because they trade in common products: securitization.

Hence, common sense and logic of business suggests that those found culpable in plunging the entire world into an avoidable recession should be sued and prosecuted in the same court since the products of crime and torts were in order to avoid duplicity of adjudicatory

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<sup>2</sup> *Ibid*, at 200.

<sup>3</sup> M.B. Zimmer, “Overview of Specialized Courts” (2009) 2(1) *International Journal for Court Administration*. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2896064](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2896064) (accessed 14 January 2021).

forum. The same global crises infected the Nigerian financial services sectors (banking, insurance, and capital markets). The action of the former Central Bank of Nigeria (CBN) Governor, Alhaji Sanusi Lamido Sanusi, in sacking the Chief Executive of Banks, and banning the Nigerian banks from trading in securities products, caused a burst in the superficial securities trading on the floors of the Nigerian Stock Exchange. As a result of the value chain trading, insurance, the capital market, and banks were all affected. Hence, the global recession of 2007/2008 became evidenced in Nigeria.

Further, the above narrative led to both civil and criminal litigations as the sacked Chief Executives filed civil actions to challenge their sack by the CBN Governor, while the Federal Government of Nigeria, through the Office of the Attorney General, prosecuted the bank Chiefs to recover the money embezzled and on criminal misappropriation of customers' money kept with the banks on trust. However, different courts were approached by the aggrieved parties on the same subject matters leading to jurisdictional crises; and since 2007 the cases filed in court are yet to be resolved. This article takes a look at the genre of courts established to settle financial services litigations, the duplicity of judicial fora on the same subject matter jurisdiction and the consequences on economic growth and investors' confidence.

## **2.0. GENRE OF FINANCIAL SERVICES MATTERS AS CAPTURED IN THEIR ESTABLISHMENT STATUTES**

In allusion to the above conceptualisation of the phrase financial services, they include:

The economic service provided by financial companies, which encompasses a broad range of businesses that manage money, including banks, credit card companies, insurance companies, accountancies companies, consumer-finance companies, stock brokerages, investment funds, individual managers and some government sponsored enterprises.<sup>4</sup>

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<sup>4</sup> *Ibid.*

All the items mentioned above as economic services approximately apply to the advanced economies such as the United Kingdom (UK) and the US. However, in the context of this article having Nigeria as focus, they are narrowed down to economic services provided by insurance, banking and securities market institutions. It is expedient to look at these items in consonance with the establishment Acts of the tripartite institutions: banking, insurance and capital market.

## **2.1. Banking Litigation Prone Items**

The banking institution in Nigeria is under the joint regulation of the CBN and National Deposit Insurance Commission (NDIC). The principal legislative piece governing banking activities is the Bank and Other Financial Institutions Act (BOFIA).<sup>5</sup> The legal framework and strategy for operating a banking business in Nigeria has continued to evolve with more pragmatic changes in recent times due to the influence of electronic banking and the complexity created by investment and non-banking financial businesses. The CBN Governor under the joint provisions of BOFIA and Central Bank of Nigeria Act 2007 has major supervisory roles over banks and their activities in Nigeria. In fact, the CBN Governor has power to grant and withdraw the operation license of banks in Nigeria.<sup>6</sup>

For administrative and statutory convenience, the Constitution of the Federal Republic of Nigeria (CFRN) 1999<sup>7</sup> has remitted the banking institution under the Exclusive Legislative List.<sup>8</sup> The banking items are sundry captured in the Constitution, but can be inferred from the sanctions of various financial laws thus:

- a. issue connected with and pertaining to banking;
- b. banks and other financial institutions;
- c. action/issue between one bank and another; and

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<sup>5</sup> Decree No. 25 of 1991.

<sup>6</sup> BOFIA, s. 3-4.

<sup>7</sup> (Promulgation) 1999 No. 24.

<sup>8</sup> Constitution of the Federal Republic of Nigeria (CFRN) 1999, Second Schedule Legislative Powers, Part I Item 6.

- d. any action by or against CBN arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures.

## **2.2. Insurance Litigation Prone Items**

Insurance by its conceptualization is a means of protection from financial loss. Insurance is trading in financial products as regulated by its enabling law. Insurance in Nigeria started as far as the colonial period. At that time, the insurance companies were of European origin. The likes of the Royal Exchange Assurance Agency were synonymous with insurance in Nigeria. The pioneer National Insurance Decree was signed in 1976. As it is today, transition to democracy has given us the Insurance Act<sup>9</sup> that is currently regulating the institution. The regulatory body for the institution remains the National Insurance Commission (NIC) which has the powers to either grant or refuse operation of insurance companies in Nigeria. The insurance items are sundry captured in the Constitution,<sup>10</sup> but can be inferred from the sanctions of insurance and some financial laws thus:

- a. issues of life insurance policy;
- b. health insurance;
- c. accident/motor insurance;
- d. issues involving the insurance companies and the NIC;
- e. issues involving client and insurance companies;
- f. issues involving one insurance company and another; etc.

## **2.3. Securities Market Litigation Prone Items**

The capital market is defined as a place where medium and long-term finance can be raised.<sup>11</sup> It is a network of specialised financial institutions, series of mechanisms, processes and infrastructure that, in various ways, facilitate the bringing together of suppliers and users of medium and long-term capital for investment in economic developmental projects. Since its establishment during the colonial era,

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<sup>9</sup> Insurance Act 2004, Cap. 117.

<sup>10</sup> CFRN 1999, Second Schedule Legislative Powers, Part 1 item 33.

<sup>11</sup> S. S. Akingbohunbe, "The Role of the Financial Sector in the Development of the Nigerian Economy" (1996), Paper presented at a workshop organized by Centre for African Law and Development Studies.

the Nigerian capital market has undergone several reforms aimed at better equipping it in order to effectively play its central role as one of the key players in the revitalization and globalization of the Nigerian economy. The market is regulated by the Nigerian Securities and Exchange Commission (SEC), and the statute coordinating the securities market is the Investment and Securities Act (ISA) 2007. Securities matters are within the Exclusive Legislative List of the Nigerian Constitution 1999. According to the principal Act, the ISA, captures the under listed items under the judicial forum of the Investment and Securities Tribunal (IST). The items are:

- a. a decision or determination of the Commission in the operation and application of this Act, and in particular relating to any dispute involving:
  - i. issues between capital market operators;
  - ii. issues between capital market operators and their clients;
  - iii. issues between an investor and a securities exchange or capital trade point or clearing and settlement agency;
- b. issues between capital market operators and self-regulatory organizations;
- c. a capital market operator and the Commission;
- d. an investor and the Commission;
- e. an issuer of securities and the Commission; and
- f. disputes arising from the administration, management, and operation of collective investment schemes.

### **3.0. GENRE OF COURTS ESTABLISHED TO ADJUDICATE ON FINANCIAL SERVICES LITIGATIONS**

Every sovereign nation has an established legal instrument upon which its affairs are coordinated and administered. In Nigeria, the 1999 Constitution is the *grundnorm* from which all the institutions of government derive their powers and functions. The Nigerian courts are among the institutions that derive their validity from the Constitution. The Nigerian Federal High Court and IST are the dual

adjudicatory courts empowered by their established Acts to adjudicate on financial services matters.

However, there is an overriding argument that the IST is not recognized by the Nigerian Constitution. The intention of the drafters of the Constitution was to identify all the categories of superior courts in Nigeria as highlighted in section 6. However, the National Assembly created a legislative problem by removing capital market matters from adjudicatory forum of the Federal High Court and put such matters in the IST, a specialised securities court created from that legislative piece. The golden fact remains that the Nigerian Constitution does not recognize the IST among the superior courts.<sup>12</sup> The majority submission of securities experts is that the Federal High Court is still the appropriate judicial forum to litigate securities matters.

### **3.1. Epistemology of the Federal High Court<sup>13</sup>**

The Federal Revenue Court (as Federal High Court was then called) was established by the Federal Revenue Act 1973 (1973 No.13). The Court was renamed the “Federal High Court” by section 228(1) and 230(2) 1979 Nigerian Constitution. Although during the constitutional conference leading to Independence, the need to establish a High Court for the determination of causes and matters within the Exclusive Legislative List was noted, as is the custom in countries with the Federal System of Government. No step was however taken in that regard until the promulgation of the Federal Revenue Decree in 1973.

Section 7 of the Federal High Court (Amendment) 1991 has been amended and re-arranged as section 251(1)(a) to (s) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to read Civil Causes and Matters. The new section now vests exclusive jurisdiction over securities matters, insurance matters and banking

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<sup>12</sup> *Supra* n 8.

<sup>13</sup> The FHC was established by s. 249(1) CFRN 1999 (formerly, s. 228(1) of the 1979 Nigerian Constitution) as the successor court to the Federal Revenue Court, established by s. 1(1) of the Federal Revenue Court Act 1973, now restyled as the Federal High Court Act 1973.

matters in the Federal High Court. The relevant sections are reproduced thus:

Sections 251(1)(e);

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 – arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operations of companies incorporated under the Companies and Allied Matters Act.

Section 257(1);

Subject to the provision of section 251 and any other provision of the constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory, Abuja shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of legal right, power, duty, liability, privilege, interest, obligation or claim is in issue.

Section 272(1);

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 or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

It is clear from the above provisions of sections 251(1)(e), 257(1), and 272(1) of the Constitution that there are three High Courts in Nigeria. These are the Federal High Court, the High Court of the Federal Capital Territory Abuja, and the State High Courts; and subject to section 251 of the Constitution, the High Courts have unlimited

jurisdiction. Therefore, section 284 of the ISA, which sought to give exclusive jurisdiction to the IST regarding matters mentioned therein may be said to be in direct conflict with the 1999 Constitution and will therefore be found to be ultra vires. Since it has been indicated, and rightly too, that the Constitution is supreme and any law that is inconsistent with its provisions is void to the extent of the inconsistency, section 284 of ISA needs to be reviewed.

#### **4.0. DELAY OVER CONFLUENCE OF FINANCIAL MATTERS LITIGATIONS**

As a Court of original jurisdiction, financial services disputes are litigated at the Federal High Court. Section 251(1) of the Constitution gives the Federal High Court exclusive jurisdiction over matters of revenue, company taxation, customs and excise, banking, insurance, securities/capital market, aviation, shipping, operation of companies, etc. The section also confers exclusive jurisdiction on the Federal High Court in respect of matters involving the Federal Government or any of its agencies. In *NEPA v BOT*,<sup>14</sup> the Court held that in an action against an agency of the Federal Government, the proper court with jurisdiction is the Federal High Court. Matters evolving from insurance, securities market, and banking (with exception of simple contracts) are remitted before the Federal High Court.

However, there seems to be conflicting decisions suggesting that in matters of simple contract, even where a Federal Government agency is involved, the Federal High Court will not have jurisdiction.<sup>15</sup> Another bludgeoning issue is to what extent is the jurisdiction of the IST consistent with that of the Federal High Court. As it stands today in the 1999 Constitution, the Federal High Court is among the superior courts of record and the only court that hears matters listed in the exclusive legislative list as clearly canvassed.<sup>16</sup>

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<sup>14</sup> (2008) 1 NWLR (Pt. 1068) at 240. See also *NDIC v FMBN* (1997) 2 NWLR (Pt. 490) at 755.

<sup>15</sup> *Onuora v Kaduna Refining and Petrochemical Co. Ltd.* (2005) 6 NWLR (Pt. 921) 393; *Jack v Unam* (2004) 5 NWLR (Pt. 865) 208.

<sup>16</sup> S. 6(5)(c); s. 251(1) (a-s) CFRN 1999; It is obvious that insurance, banking and capital market activities are financial in nature and are captured under the judicial forum of the Federal High Court.

## **5.0. DIAGNOSIS OF OVERLOADED JURISDICTION OF THE FEDERAL COURT ON FINANCIAL MATTERS**

The Nigerian Federal High Court is saddled with many subject matter jurisdictions clearly espoused under the Exclusive Legislative List of the Second Schedule of the 1999 Constitution. There are about seventy (70) items remitted to the adjudicatory forum of the Federal High Court. The spate of inflow of disputes both criminal and civil into the Federal High Court docket is alarming and over bloating without any corresponding improvement in administration of justice system.

The high rate of commercial criminal and civil disputes, securities crimes inclusive, entering the docket of the Federal High Court daily is tearing apart the federal adjudicatory architectures and infrastructures. Hence, there are genres of securities, insurance, banking cases that litter the Federal High Court docket waiting for years for the wheel of justice to turn to them. Most of the time, the purpose of such tripartite securities, insurance, and banking litigations would have been defeated by the exigency of market culture and transactions governing the market forcing the litigants to abandon their cases and recant huge investment losses. The Federal High Court in Nigeria has lost its utopian vision of speedy dispensation of financial justice. The Court is too overloaded with mountains of financial matter litigations and jurisdictions. The implications of lack of specialized financial court to shed the Federal High Court from overloaded civil and criminal jurisdictions in financial matters are:

### **5.1. Loss of Hard-Earned Financial Investments by Investors**

Banking, insurance, and securities transactions in Nigeria, like every other jurisdiction, are proportionate to time and space. Transactions at the floors of the Nigerian Stock Exchange, where financial (service) products involving banking, insurance, and securities transactions confluence, react to exigency of time. Foreign exchange trading, equity trading, buying and selling of securities in insurance and banking are traded with consciousness of time. Futures, forward contracts, options and franchise are traded proportionate to timing. Hence,

fraudulent trading, insider abuse and other genre of securities crimes that need urgent investigations and prosecution of erring companies or individuals on time because of the peculiarity of the market are often remitted in the docket of the Federal High Court to drag for years before they are decided.

The civil litigations involving the same issues keep suffering the same fate. These crimes and commercial torts take months or years before they are finally resolved, and the implication is that investors seeking justice are already frustrated with losses procured. This is as a result of the complex civil and criminal administrative procedures, frustrations by counsel, deficient cognate knowledge and skills of judges in financial transactions, and unforeseen bureaucratic forces during litigations.

## **5.2. Lack of Synchronised Financial Matters Jurisprudence in Nigeria**

Jurisprudence is a philosophy or epistemology of law. It is an organic growth or development of each branch of laws with the purpose of using such telepathic experience as guiding principles, promoting knowledge in that branch of law. Unlike every advanced jurisdiction of the world, Nigeria does not have comprehensive and distinct data for decided cases on financial matters. Nigeria only has terse securities, banking, and insurance historical narratives without corresponding or sequential law reports specially devoted for Financial Law Reports. There are lacunae of subject matters financial service law reports to aid facts and evidence in similar/confluence cases. Most of the time, Nigerian lawyers consult foreign and advanced jurisdictions to import their decided cases to support their cases. This is promotion of a neo-colonial financial tort and crime dispensation. Even the few decided financial cases decided by the Federal High Court are scattered among general law reports and become difficult to locate simply because they are negligible to be separately collated in a distinct law report.

### **5.3. Further Decline in World Bank Ease of Enforcing Contract in Nigeria**

Currently, enforcing financial contracts of various species in Nigeria is poor and creates uncertainty in the minds of investors because of jurisdiction controversy between the IST and the Federal High Court. It becomes sadder that the IST does not have criminal jurisdiction, its judicial forum over financial torts is rent in controversies, and it lacks constitutional recognition. The ISA creating the IST lacks judicial tones and characteristics. The World Bank Ease of Enforcing Contract continues to see Nigeria as one of the dangerous and insecure jurisdictions for financial investors to commit their investments. This is because financial/securities (crime) cases take longer time in the High Court docket and that the specialized court on the financial investment subject matter, IST, does not have criminal jurisdiction to decide the genre of financial investment crimes and civil torts. It is a business norm/axiom that investors, and even countries, rely on the World Bank Index to choose where to commit their portfolios. As it is, Nigeria is a doubt.

### **5.4. Increase in Financial Crimes and Torts**

It is a truism in Nigeria that administration of criminal and civil justice grinds slowly and is sometimes subjects to manipulations of the wheel of justice by influential offenders/felons. In fact, litigants indulge in civil procedure lacunae and frivolous injunctions and needless adjournment to frustrate timely dispensation of justice. On daily routine in Nigerian financial markets, insider abuses, price riggings, stock stealing, Ponzi schemes in banks, rigging of insurance customer benefits and superficial increase in the values of stocks are perpetuated with impunity. This is because the wheel of justice is slow, uncoordinated, and easily manipulated. Many times, the purpose would have been defeated before the cases were decided. This is because the appropriate court that has subject matter jurisdiction, the Federal High Court, does not bother about the exigency of the market and thought in the mind of investors.

### **5.5. Repatriation/Capital Flight of Investment Portfolios from Nigeria**

This is becoming obvious as the investors who were already in the market are gradually repatriating their investments to other jurisdictions to continue their business. The release being heard at intervals regarding the outflow of investments from the shore of Nigeria is alarming as investors continue to doubt the certainty of enforcing their contracts and getting justice in court against those felons who aim at defrauding them.

### **6.0. RECOMMENDATIONS**

The mechanics of combustible, near apocalyptic, and high-octane corporate operations at the global stage demand specialized judicial institutions to adjudicate litigations that ensue afterwards. The financial services institutions opt for a utopian adjudicatory forum to enhance virile and quick dispensation of the financial justice system. This will in turn promote enforcement of contracts in such democratically judicial order. Hence, the recommendations suggested are geared towards promoting a good architecture for the Financial Services Court in Nigeria.

#### **6.1. Advocacy for Creation of a Specialised Financial Court Clothed with Criminal and Civil Jurisdictions**

Definition and clarification of financial terms are exigent for the purpose of laying sound advocacy for constitutional recognition of a financial court among the list of superior courts in the *grundnorm* and consequential legislative piece establishing the financial court in Nigeria. What are “finance”, “financial matters”, and “financial court”? Finance could be a register that is concerned with the allocation (investment) of assets and liabilities over a space of time, often under conditions of risk and uncertainty. The phrase “financial matters” could be conceptualized as issues involving or relating to finance. Inferentially, a Financial Services Court is an epistemology of judicial

forum that adjudicate on banking, insurance, investment, trusteeship, and executorship matters.<sup>17</sup>

## 6.2. Epistemology of Financial Services Court in Nigeria

In the UK there is the Financial Services and Market Tribunal (FSMT); in India, it is the Securities Appellate Tribunal (SAT); and it is the Hong Kong Market Misconduct Tribunal (MMT) in Hong Kong, among others. The Tribunal combines the rule of law applicable in traditional law courts with the responsiveness, flexibility, speed, and cost effectiveness associated with the specialized courts. In the UK, the legislative piece, Financial Services and Markets Act (FSMA) 2000, created the FSMT and clothed it with an adjudicatory forum over insurance, investment business, and banking matters.

The FSMA 2000 has resulted in a single, cross-sectorial regulator; the Financial Services Authority (FSA). It adjudicates on the whole UK financial services sectors. This Act is the culmination of an evolutionary process which began with self-imposed so-called “self-regulation” (in particular, of the London Stock Exchange in the 19<sup>th</sup> century) and led to self-regulation within a statutory framework under the Financial Services Act 1986.

Hence, the Nigerian financial services adjudicatory architecture needs a radical copy of the UK system to develop a viable jurisprudence for such an important pillar of the nation’s economy. This article suggests a single, one-stop, cross-sectoral value chain financial services adjudicatory architecture that will divest the Federal High Court from its current overloaded jurisdiction which has been causing unnecessary delay in adjudication of financial services matters in Nigeria. The proposed value chain financial services adjudicatory architecture is captured thus:

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<sup>17</sup> *Supra* n I.

**6.2.1. Legal Supports**

- a. Constitutional Imprimatur for Cross-Sectorial Specialised and Superior Financial Services Court in Nigeria

In order to provide for a sound architectural Financial Services Court to adjudicate on banking, insurance, and securities matters, there is a need for the recognition of the proposed Financial Services Court in the 1999 Constitution as a superior court. Particularly, section 6(5) of the Constitution needs to be tinkered with by including the Financial Services Court among the list of superior courts in Nigeria having exclusive criminal and civil jurisdictions over all financial services matters. Also, financial services matters must be unambiguously defined in the Interpretation Section of the 1999 Constitution as “matters arising from activities of banking, insurance and capital market”.

Similarly, the provisions of sections 251(1)(e), 257(1), and 272(1) of the Constitution needs urgent amendment by removing banking, insurance, and capital market subject matter jurisdiction from adjudicatory forum of the Federal High Court and placing same under the criminal and civil adjudicatory forum of the proposed Financial Services Court. Hence, this constitutional recognition will automate seamless operation of the proposed Financial Services Court Act making Financial Services Court as the only exclusive court to adjudicate on issues arising from financial activities in Nigeria.

- b. The Statutory, Practical and Functional Architecture for Proposed Specialised Financial Services Court in Nigeria

The legal infrastructure and regulatory deficit confronting efficient and quick dispensation of financial services litigations are hereby architecturally redressed. The Nigerian National Assembly needs, as a matter of urgency, to enact the Financial Services Court Act as a follow up to the proposed amendments of the Nigerian Constitution to allow the Financial Services Court to commence operation according to its mandate. The new legislative piece should confer on the Financial Services Court all the powers, functions, duties,

privileges, and rights being enjoyed by the Federal High Court. One of the hallmarks of an independent judiciary is financial autonomy and total adherence to the principle of separation of powers as espoused by Montesquieu.

As an abstract principal, judicial independence ranks high in our constellation of democratic values, alongside the freedom of speech, the sanctity of the home, and the right to counsel. And well it should, since all other rights would be diminished, perhaps even forfeited, in the absence of judges capable of resisting the will of government or the pressure of popular sentiment. It is the independent judge, loyal only to the rule of law, who protects our constitutional liberties, who ensures fairness, and who stands guard against the excesses of those in power.

As Justice Jackson observed at the height of the Cold War and the depth of the McCarthy era:

Severe substantive laws can be endured if they are fairly and impartially applied. Indeed, if put to the choice, one might well prefer to live under Soviet substantive law applied in good faith by our common-law procedures than under our substantive law enforced by Soviet procedural practices.<sup>18</sup>

In other words, freedom rests upon the application of the law, at least as much as it does upon the precise content of the law. In turn, application of the law rests upon the existence of judges who are unconstrained by other forces. The concrete story of judicial independence is acted out more in the trenches than in the pages of the law journals or political science texts. Real-life intrusions on judicial independence come in many forms and at every level. Although these intrusions occur most often when a judge does something notably unpopular or controversial, it would be a mistake to believe that judicial independence is threatened only by demagogues. Rather, the dangers may come from any number of directions, some more subtle than others.

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<sup>18</sup> *Shaughnessy v United States ex rel. Mezei*, 345 US 206, 224 (1953) (Jackson, J., dissenting).

c. **Exigency for Legislative Passage of Administration of Civil Justice (Procedure) Act**

It is a common legal pontification that justice delayed is justice denied. Nigerian administration of civil justice is too slow that civil litigations drag for years before they are disposed of. Various stakeholders in the administration of justice such as litigants, defendants, their counsel, and corrupt judges leverage on the weak justice system to frustrate quick disposal of financial services justice. Nigeria has continued to decline in the rung of Enforcement of Contract Index being released by the World Bank on yearly basis. Hence, there continues to be exodus repatriation of investment portfolios into other jurisdictions with efficient enforcement of contracts.

However, this can be addressed by fixing the statutory lacunae of frivolous injunctions, judicial industrial actions, justice buying and provocative adjournment of cases. The quick passage of the Administration of Civil Justice (Procedure) Act will fix the lacunae. Most importantly, corporate transactions and businesses must not be tied down by intrigues being played out by players in the court of justice to frustrate financial services litigations. The proposed Act should block all judicial administrative intrigues and look into advanced economies to import their viable jurisprudence and replicate them in our laws. This Justice Act would immensely complement the efficient and quick mandate of the Financial Services Court. The result of the workings will open Nigerian business ecosystem to massive investment portfolios and the economy would grow.

**6.2.2. Regulatory Supports**

a. **Substantial and Tenacious Application of the 2015 Administration of Criminal Justice Act (ACJA) to Securities Matters**

Nigeria is currently operating new a criminal law with substantial justice guaranteed that, if faithfully complied with, quick administration of securities crime cases will be secured. For the purpose of clarity, this article examines some salient provisions in the Act that will enhance the Financial Services Court and all the prosecutorial

institutions to dispense justice within a time frame. The objective of the Act is explained in section 1 thus:

The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.

The purpose of the Act as captured above is a deliberate shift from punishment as the main goal of our criminal justice to restorative justice which pays attention to the needs of the society, the victims, vulnerable persons and the rights and interest of a defendant. This is the quest of financial services market investors that justice is evenly distributed to boost influx of their investment pools.

b. Establishment of the Administration of Criminal Justice Monitoring Committee

The Act establishes the Administration of Criminal Justice Monitoring Committee (the Committee) in section 469(1). The body is charged with the responsibility of ensuring effective application of the Act. It comprises nine members with representatives drawn from the Judiciary, Federal Ministry of Justice, Police, Prisons, Legal Aid, Nigeria Bar Association, civil society organization and National Human Rights Commission with the Chief Judge of the Federal Capital Territory as the Chairman and a Secretary appointed by the Attorney-General of Federation. The Committee has the responsibility of ensuring effective and efficient application of the Act by the relevant agencies. In doing this, the Committee shall among other things ensure that criminal matters are speedily dealt with; congestion of criminal cases in courts is drastically reduced; congestion in prisons is reduced to the barest minimum; and persons awaiting trial are, as far as possible, not detained in prison custody. This will guarantee speedy dispensation of financial services crime cases by the proposed Financial Services Court because the Monitoring Committee serves as a “One-Stop Justice Clearing House”. Case management becomes seamlessly attractive

and investors will have values for their investments as contract enforcement is improved upon

c. **Transparency in Dispensation of the Administration of Financial Services Crime Justice**

Investors who are suspects of alleged securities crimes are equally guaranteed justice throughout the trial at the securities court. In order to encourage accountability and transparency, the ACJA introduced in section 10 a provision which mandates a law enforcement officer to take inventory of all items or properties recovered from a suspect. The inventory must be signed by the police officer and the suspect. However, where the suspect refuses to sign, it will not invalidate the inventory. A copy of the inventory shall be given to the suspect, his legal practitioner, or such other person as he may direct. This section further provides that where the suspect is not charged but is released on the ground that there is no sufficient reason to charge him, any property taken from him shall be returned to him, provided the property is neither connected to nor proceeds of crime. It is interesting to note that the ACJA makes provision for the procedure on seizure of property during arrest or investigation.<sup>19</sup> This is to also show to the world that Nigerian criminal trial system is attractive to foreign and domestic investors.

d. **Jurisprudence of Police Criminal Registry on Financial Services Crime Activities**

Section 16 of the ACJA makes provision for the establishment, within Nigeria Police, a Central Criminal Record Registry of all arrests made by the police. The registry is to be located at the Police Headquarters and at every state police command. The Act further states that every state including the Federal Capital Territory is to ensure that the decisions of the court, like the would-be Financial Services Court, in all criminal trials are transmitted to the Central Criminal Records Registry within thirty-days after delivery of judgment.

This will enhance transparency and effective policing in the markets. The object is to reveal the character and integrity of all the players in

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<sup>19</sup> S. 337, ACJA 2015.

financial services markets as criminal data of bad eggs can easily be assessed at the police command of each state. This article also suggests that such data relating to financial services markets be captured in the central website of the regulatory agencies of the Nigerian financial services markets (insurance, banking, and securities). Another benefit of this to the Nigerian financial services markets is that it grows the organic evolution of financial services jurisprudence as various stakeholders such as academics, legal minds, technocrats and investors themselves can assess legal information, judgment and criminal data, and process them to get their needed results. Even agencies of government such as the Nigerian Bureau of Statistic (NBS), the Securities and Exchange Commission, the Central Bank of Nigeria, the Ministry of Finance, the National Insurance Commission, the Nigerian Deposits Insurance Commission, and the Nigerian Stock Exchange can accurately process securities market information and project their result.

e. Time Limit for Issuance of Legal Advice

Section 376 of the ACJA makes provision for time limit for the issuance of Department of Public Prosecution's legal advice. The Attorney-General of the Federation shall, within fourteen days of receipt of a police case file, issue and serve a legal advice indicating whether or not there is a *prima facie* case against a defendant. Where no *prima facie* case exists, the Attorney-General of the Federation shall serve a copy of the legal advice on the police, court, and the suspect; and the suspect shall be released if he is in custody.

f. Witness Protection

The peculiarity of the financial services markets makes it expedient, like the practice in advanced democratic economies, to protect the financial services informants who have voluntarily chosen to offer necessary information to the government security enforcement agencies in order to proscribe the activities of financial services markets felons/fraudsters. Therefore, section 232 of the ACJA permits the trial of some offences in camera, particularly sub-section (2) which states "offences relating to economic and financial crimes... shall be conducted in camera".

**g. Trial of Corporation**

This is another remarkable feature of the ACJA and will be highly appreciated by the Financial Services Court because most of the trials that the court addresses are corporate crimes. Hence the trial procedures are captured. Section 477 makes provisions for the trial of a corporation with its representative appearing on its behalf. “Corporation” in the Act means a corporate body, incorporated in Nigeria or elsewhere. Section 478 of the Act provides that a corporation can take its plea to a criminal charge or information either orally or in writing through its representative. However, when the corporation appears or fails to enter any plea, the court shall order a plea of not guilty to be entered and the trial shall proceed accordingly.

More so, any requirement of the Act that says anything must be done in the presence of the defendant, or shall be read or said or explained to the defendant, shall be construed as a requirement that the thing was done in the presence of the representative or read or said or explained to the representative. Section 484 of the Act expressly provides for application of the provisions of the Act to a corporation as they apply to an adult. The same section also expressly provides that a corporation may be charged jointly and tried with an individual for any offence.

**6.3. Powers, Functions, Training, Rights and Privileges of the Court and its Judges**

If the Financial Services Court ultimately becomes a new Court, the Nigerian 1999 Constitution just needs, by way of amendment, to include it among the list of superior court to cater for the needs of its Judges to enhance their independence and impartiality. The protection ranges from non-prosecution for any judgment delivered in the capacity of their functions, financial autonomy, regular and substantial/attractive salaries, adequate promotion in consonance with the judicial guidelines, and, above all, the principle of separation of power which is embossed in the 1999 Constitution. Upon inclusion of the Nigerian Financial Services Court among the superior courts in Nigeria under the regulatory surveillance of the National Judicial Council, rights, powers, privileges of its judges should be fully

guaranteed. This will contribute to ensuring investors' confidence is also secured. Constant training of judges in financial services matters should be a mandatory routine of the National Judicial Institute (NJI).

## **7.0. CONCLUSION**

This article has detailed the essence and benefits of establishing the Financial Services Court with civil and criminal jurisdictions in Nigeria. The major benefits are that investors' confidence is secured; our criminal and civil financial services jurisprudence becomes synchronized and accessible; ease of doing business in Nigeria becomes guaranteed to the investors; and Nigeria can have comprehensive Criminal Financial Services Law Reports and Civil Financial Services Law Reports. Particularly, the essence of subject matter law reports aids easy citation of decided cases to aid evidence. Also, subject matter law reports enhance academic ratiocination, analyses, debates and practical discussions to grow the financial services jurisprudence.