

Criminal Jurisdiction of Securities Court in Nigeria: Panacea to Delayed Market Justice

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Abstract

A near-utopian adjudicatory architecture is an eminent pillar for assessing enforcement of contract in any jurisdiction as captured by the World Bank Index of Ease of Enforcing Contract. Nigeria is one of the climes with securities court for adjudicating capital market disputes even though is clogged with adjudicatory forum controversy with the Federal High Court. The essence of establishing the Investment and Securities Tribunal (IST) is to fastrack quick dispensation of securities disputes to enhance pool of investment opportunities into the Nigerian market. However, the IST can only adjudicate on civil securities matters: it does not have jurisdiction on genre of securities crimes which fall within the exclusive judicial forum of the High Court. It has been keenly observed that securities investors are lamenting delays in adjudication of securities crimes which litter the High Court dockets and this is seriously declining investors' confidence and the growth of securities market in Nigeria. This article aims at examining the consequences of delay in adjudication of securities crimes by the Federal High Court on the investors and the Nigerian economy. The article therefore advocates for constitutional imprimatur by listing the IST among superior court in Nigeria clothed with both civil and criminal jurisdictions to enhance the peculiarity of securities torts and crimes adjudication; phase out the delays often experienced at the High Court by remitting securities crime cases at the IST.

Index terms— criminal jurisdiction, securities court, panacea and market justice

1 I. Introduction

he Nigerian regular court system has been plagued with a lot of problems namely delay in the administration of justice owing to the technicalities of civil and criminal procedure inherited from the United Kingdom; lack of specialization of courts and judges; the adversarial system and attendant rules of evidence; inadequate case preparation by lawyers; and the penchant of incessant adjournments by litigants and their lawyers. The net effect of all these among others is that justice is often delayed. It is said justice delayed is justice denied. These problems result in frustration and apathy of litigants to the judicial system and hinder the development of the law. Commercial cases, particularly genre of securities cases, suffer the worst impact as the pillar of the nation's economy, capital market, collapsed due to delayed justice occasioned at the regular courts. The wheels of commerce demand quick examination of legal disputes and prompt resolution. It is not uncommon to see cases linger on for three or more years under the regular court system.

Conflicts are generally an inevitable part of human interactions, whether commercial, matrimonial, socio-political or industrial. The expectation of the parties and the demands that they make upon one another are constantly changing. It is, thus, inevitable those occasional conflicts would ensue in the course of these interactions, and that the need for some kinds of civilized mechanisms for dealing with them remains a desideratum. This is particularly the case with respect to the capital market, with its combustible mix of

3 B) APPOINTMENTS OF THE FEDERAL HIGH COURT JUDGES

complex financial transactions and the near-apocalyptic competitiveness of investors. With some always looking for opportunities to abuse the capital market and defraud others, especially ignorant investors, it does not require any gift of clairvoyance to perceive the perpetual vulnerabilities of the system, despite sophisticated regulations aimed at dealing with market malpractices *ex ante*.

It cannot be disputed that in Nigeria, the increase in population in some major cosmopolitan cities and growing small towns has not been met with corresponding increases in the number or size of court buildings. Also, the remuneration offered to those on the bench is poor, which has made it difficult to attract competent judicial officers. The performance of some of them leaves a lot to be desired. Some are lazy, while others are not committed, and cases are adjourned at the slightest excuse.

It is expected of a judge to be knowledgeable and well grounded in the Laws, since that is the instrument through which he is expected to dispense justice. Accordingly, a Judge is expected to be versed in the kind of law he is expected to administer. For the judge, he is expected to be learned in the law applicable within his sphere of jurisdiction as at the time of his appointment. Furthermore, a judge should as a matter of challenge and necessity be made to undertake continuing Legal Education as he is not expected to know all especially at the time of his appointment as a judge and this is within the coordination of National Judicial Institute (NJI). The Judge must master the Penal and Criminal Code Laws, the provisions of the Evidence Act, the applicable procedure to his court and the rules of common law. Little knowledge will be a disservice to a judge no matter the grade. Learned counsel of various post call experience will appear before him and he must be prepared intellectually to meet the expectation of all. According to Honourable Justice A. O. Obaseki, "The judgment seat in any court of law cannot be allowed to be occupied by any anyone not versed in the art and science of judging. The resolution of any dispute between two persons even in the simplest of societies is not allowed to be undertaken by any person or tribunal ignorant of or untutored in the norms or rules and custom regulating the relationship and dealing among members of the society Judging is a science in that it is governed by laws, rules and regulation with which it must comply in order to be acceptable in the society It is an art in that its arrangement is dictated by logical reasoning in a legal climate and environment?" An ignorant judicial officer is not only going to be in perpetual *cul-de-sac* in attempting to function in that capacity, but will also spell doom for the fate of the innocent man who is at the mercy of his judgment. This concern is well said in a Latin maxim which says "ignorantia iudices est calamitas innocentium" i.e. the ignorance of the judge is a calamity for the innocent. It is therefore essential that the system for appointing a judicial officer must be careful to take proven competence into consideration before such appointment.

The legal and institutional framework that will adequately support a securities market in this era of near apocalyptic and combustible market scheming and filibustry include a complex network of rules, laws and regulations which require interpretation and enforcement from time to time. The need has earlier been stressed for an active and professionally skilled judiciary such that securities laws, regulations and policies are enforced with firmness to secure investor confidence and maintain the integrity of the markets.

In delineating the jurisdiction of the courts, it is expedient to consider whether the continuous remit of securities crime in the Federal High Court is morally, legally and practically sustainable amidst perennial delays of justice in genre of securities crimes. This article critically examines that amidst proposal for constitutional recognition of the Investment and Securities Tribunal among superior court having exclusive criminal and civil jurisdiction in securities disputes. This article's call for efficient securities court with both criminal and civil litigations is *sine qua non* to quick dispensation of securities matters. Any jurisdiction that exemplifies this gains the merit and advancement of World Bank Ease of Enforcing Contract and attracts pool of investors' portfolios into the Nigerian market. This article will give the narratives of both the Federal High Court and Investment and Securities Tribunal, consider their conflict of jurisdiction, examine the criminal jurisdiction of the High Court over the genre of securities crimes and will finally front the advocacy for exclusive criminal jurisdiction and jurisprudence of the Investment and Securities Tribunal over securities crimes and that same be constitutionally and statutorily reflected.

2 a) Epistemology of the Federal High Court

The word "epistemology" simply connotes theory of knowledge about a particular field or taxonomy of idea on interpretations, analyses or logical schema about a study. The science of epistemology is a way of investigating our human ways of knowing, with particular reference to how words obtain their various species of meanings.

3 b) Appointments of the Federal High Court Judges

Appointments of the Nigerian Federal Judges are constitutionally provided for under Section 250 (1-5). The person for the Office of the Chief Judge of the Federal High Court is recommended from the National Judicial Council (NJC), being the regulatory body for the nation's Judiciary, to the Presidents for appointment subject to the confirmation of the National Assembly. This procedure is wisely provided for to avoid abuse of powers and stifling of the nation's Judiciary by the Executive. All other Judges of the Federal High Court are recommended by the National Judicial Council (NJC) for appointment by the President without the confirmation of the National Assembly.

4 c) Salaries Structure of the Federal High Court Judges

The salaries of the Federal Judges are paid to the regulatory head of the Judiciary, that is, the National Judicial Council under the Chairmanship of the Chief Justice of Nigeria for onward disbursement to the Federal Judges. Judicial funds and salaries are got from the Appropriation Act and are drawn from the Consolidated Revenue Fund. The philosophy behind this is to guarantee the independence of the Judiciary from the Executive as espoused in the context of separation of powers among the three organs of Government. As it is today, the Nigerian Federal Judges are financially and functionally independent from the Executive so as to enhance impartiality, equity and natural justice in dispute resolution.

5 d) Jurisdiction of the Federal High Court on Securities Matters

The Court has been capyutred in detail under the genres of courts as established and alluded to under Section 6 of the 1999 Constitution. Generally, the FHC has exclusive trial jurisdiction over any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the CBN, CAC, and SEC as federal agencies. 1 Specifically, the FHC has exclusive jurisdiction in civil and criminal causes and matters arising from the operation of BOFIA and (or) connected with or pertaining to banking, including a banker customer dispute. ?? The Court also has exclusive jurisdiction in civil and criminal causes and matters arising from the operation of CAMA or any other enactment regulating the operations of companies incorporated under CAMA. ?? In effect, the FHC has a disjunctive exclusive criminal and civil jurisdictions over matters arising from CAMA on the one hand, and (or) matters arising from other laws (such as the Investments and Securities Act (ISA) that regulate the operations of companies. 4

6 Skenconsult (Nig.) Ltd v Ukey 5

This is supported by the Court of Appeal in the case of SEC vs Prof. A. B Kasunmu (SAN) & Anor supports this interpretation. It is a Nigerian authority for the proposition that the FHC has exclusive jurisdiction on matters arising from CAMA. Then position of the Constitution has not changed, even though, the case was decided when CAMA, then known as the Companies Act of 1968, was the only law regulating incorporation of companies and dealings in companies' shares. The grundnorm retains its touchstone of validity today as far as the appropriate judicial forum for securities disputes is the Federal High Court.

6 "It is pertinent to say that the Federal High Court is a creature of the constitution. S.249 of the constitution established this court. The scope and extent of the court's jurisdiction and powers are spelt out in section 251 and 252 of the same constitution. It is therefore the same constitution that can oust or limit its jurisdiction and curtail its powers?.. it is my view that S.242 of the Act which is now deemed to be an Act of the National Assembly and not a where the Court quoted with approval and support to the judgment of the trial court (the Federal High Court):

1 CFRN 1999, s 251(1) (r). 2 ibid s 251(1) (d).

3 ibid s 251 (1) (e); FHC Act 1973, s 7(1) (c)(ii). ?? This interpretation of section 251 (1) (e) of the CFRN, 1999, is consistent with section 18 (3), of the Nigerian Interpretation Act, which provides to the effect that '[t]he word "or" and the word "other" shall in any enactment, be construed disjunctively and not as implying similarity.' 5 [1981] NSCC 1. This is a leading authority on this point. On the facts, the respondent, a director of the appellant company litigated a boardroom dispute over the management of the appellant company, before the defunct Bendel State High Court (with the creation of the Edo and Delta states from the old Bendel State, now Delta state and Edo state High Courts). On a final appeal to the Supreme Court of Nigeria, Nnamani JSC, applying section 7 (1)(c)(1), of the Federal Revenue Court Act No. 13 of 1973, (the predecessor provision to section 251(1)(e) of the CFRN 1999 and section 7(1) (c)(ii) of the FHC Act) held that (at page 13 -14) that the Federal High Court, the predecessor to the FHC, was the competent forum for the trial of the case. 6 (2009) 10 NWLR (pt.1150) 509 constitutional provision and in so far as it has provided that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the tribunal constituted under the Decree is empowered to determine is inconsistent with the provision of S.6(6) (b) of the aforesaid constitution which provision has conferred on this court judicial powers on all matters between persons or between governments or authority and to any person in Nigeria and to all actions and proceedings relating thereto, for the determination of any question as to civil rights and obligations of that person. That section to the extent that it purports to oust the jurisdiction of this court is invalid".

The above judicial imprimatur identifies the Federal High Court as the right judicial forum to initiate securities matter

7 e) Epistemology of Investments and Securities Tribunal

The Investments and Securities Tribunal (IST), the current adjudicatory successor in the Nigerian capital market, is an independent specialized judicial body and a creature of Section 224 of the Investments and Securities Act 1999. The essence of the IST is hinged on the technical and specialized nature of the capital market as well as the nature of the transactions and participants 7 It has jurisdiction, original and appellate, to interpret and

9 G) DEFINITION OF FUNDAMENTAL ELEMENTS OF SECURITIES CRIME COURT

adjudicate on all capital market and investments civil disputes. By legislative amendments, Section 224 of the earlier Act has now been replaced by the extant Section 274 of the Investments and Securities Act 2007 8

The IST is vested with the onerous responsibility of interpreting the ISA and adjudicating on conflicts and controversies in capital market transactions. The concept of IST, though novel, is not peculiar to Nigeria . It reads:

There is established a body to be known as the Investments and Securities Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act. 9 . In the U.K. there is the Financial Services and Market Tribunal (FSMT), in India, the Securities Appellate Tribunal (SAT), and the Hong Kong Market Misconduct Tribunal (MMT) 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.

8 f) The Legal, Practical and Functional Architectures of the Investment and Securities Tribunal

The legal infrastructure administering the Investment and Securities Tribunal is Investment and Securities Act and it has no provision, intervention or regulation of Judiciary over the IST. In fact, the Nigerian Constitution which establishes superior courts with their functions, structures, powers and regulations does not list the Investment and Securities Tribunal among genre of courts in Nigeria. Even the character, spirit and letter of the Tribunal establishment Act places the Tribunal under full control of the Executive in terms of appointments of panel Members, structures of the Tribunal, powers and salaries of the Tribunal members.

The fact that the National Judicial Council (NJC), a constitutional body that superintends over the judiciary in Nigeria has nothing to do with the IST is justified by the requirements of the Act; the membership of the IST consists of ten (10) persons to be appointed by the Minister as follows: 10 (a) Full time Chairman who shall be a legal practitioner of not less than fifteen years with cognate experience in capital market matters;

(b) our other full time Members, three of whom shall be Legal Practitioners of not less than 10 years experience and one person who shall be knowledgeable in capital market matters, who shall devote themselves to issues relating to adjudication and shall not exercise any administrative functions;

(c) Five other part time members who shall be persons of proven ability and expertise in corporate and capital market matters;

The status of the IST chairman is that of a full time presiding officer of the IST 11 and, as provided in the ISA 1999 must be a legal practitioner not less than fifteen years standing, and with cognate experience in capital market matters. He is the Chief Executive and Accounting Officer of the IST and is responsible for the overall control, supervision and administration of the IST. 12 Four out of the members are also full time, three of which must be legal practitioners of not less than ten years' experience and the fourth full time member must be knowledgeable in capital market matters. The yardstick for measuring "knowledge in capital market matters" is, however, still ambiguous. These four full time members must devote themselves to adjudicative functions only. The other five members who are appointed on part time basis must be persons of proven ability and expertise in corporate and capital market matters. ???4 It is submitted that the word "proven" used by the law makers in this provision is a relative term left to be the discretion of the Minister of Finance, who still has the sole authority and onerous power to hire and fire. 15

9 g) Definition of Fundamental Elements of Securities Crime Court

Although the IST has been performing its statutory functions, it is not without jurisdictional controversy with the Federal High Court. Hence, stakeholders have been radically campaigning for constitutional imprimatur and urgent legislative activism to recognize the IST among the superior courts in Nigeria and establish Investment and Securities Tribunal Act in the very similitude of the Federal High Court and National Industrial Court which differently exercise both civil and criminal jurisdictions in their various genres of cases they are constitutionally empowered.

In this article an attempt has been made to define and clarify some basic legal concepts and/or terms necessary for proper understanding of the key terms for ease of its critical appreciation. The legal concepts such as, "Criminal", Securities Court, Panacea and Jurisdiction" need foundational light.

Much emphasis is laid on the concept of "Jurisdiction", being the heart of this Study. Jurisdiction permeates every aspect of judicial action. Competency of jurisdiction is very paramount to all judicial setting is an activity necessary for all successful litigation. It is through its observance that fabric of all legal systems is protected. The foregoing hypothesis is also justificatory of the structure of the Nigerian legal system in a way it sees valid and competent jurisdiction as basic fundamental. It is the authority by which the courts and judicial officers take cognizance of decided cases ??6 In the words of Oputa JSC, . Courts are created by the authority of the state as the fountain of justice. Consequently, all judges derive their authority from the state by way of statutes, charter, patent, and order in Council. In the case of superior courts of record, no matter is deemed to be beyond their jurisdiction. 17 Jurisdiction is a radical and crucial question of competence either the court has jurisdiction to hear the case or it has not. If it has no jurisdiction to hear the case, the proceedings are and remain a nullity

the underlying reason why the issue of whether a court has jurisdiction should be first settled before that court proceeds to the hearing of a case on the merits is because, however well conducted and brilliantly decided they might otherwise have been. The reason is that a defect in competence is not intrinsic to but rather it is extrinsic to adjudication.

Jurisdiction is an aspect of our procedural law which forms or accounts for a large percentage of defenses in both civil and criminal cases that come before the courts. Jurisdiction or lack of it is therefore the bedrock of every adjudication. According to Black's law Dictionary 18, jurisdiction is "a court's power to decide a case or issue". In furthering the conceptual understanding of jurisdiction and its fundamental impact in litigation, additional authorities need be considered. The word 'jurisdiction' has been defined. It appears that this definition is terse. It is therefore best to gather the meaning from its judicial interpretation. The Supreme Court, per Karibi-Whyte JSC (as he then was) held in *National Bank of Nigeria Ltd Vs Soroye* as follows:

By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute or charter or commission under which the court is constituted and may be rescinded or restricted by similar means. If no restriction is imposed the jurisdiction is said to be unlimited. The limitation may be either as to kind and nature of the actions and the matters of which the particular court has cognizance or as to the area of which jurisdiction extends or it may partake of both these characteristics.

10 21

Text writers have also provided valuable contribution to the search for definition of this term. I.D. Uzo Esq that:

The word jurisdiction means the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision. The legal right by which judges exercise their authority? it is the power and authority of court to hear and determine a judicial proceeding and power to render a particular judgment in question. It is the right and power of a court to adjudicate concerning the subject matter in a given case? 'Criminal Jurisdiction' denotes a term used in constitutional law and public law to describe the power of courts to hear a case brought by a state accusing a defendant of the commission of a crime. It refers to 'Securities Court' is a specialized court that adjudicates on securities or capital market matters or cases. Like in Nigeria where the nomenclature given to the court is Investment and Securities Tribunal (IST) a court's power to hear a case of which circumstances relate to an alleged crime. It is guided by law of criminal procedure to regulate what cases each classification of court within the judicial system shall adjudicate upon.

'Securities Crimes' are conceptualized as 'offences or criminal practices committed by filtering, stealing, defrauding or manipulating securities stocks, transactions, securities ideas to one's advantage. Securities crimes ranges from stock frauds, insider abuse/trading, cyber/internet securities illegal activities, proceeds of ill-gotten wealth from species of securities stocks, wiring of ill-gotten securities proceeds into foreign accounts. Securities crimes are getting more complex, near apocalyptic and pyromonic that to define securities-based crimes remains exhaustive. Because of the complexity of securities transactions, complex antisocial and criminal activities have become notorious among the market felons and inordinate ringleaders. The urgent message in restoring amity, trust and integrity back to the market is to keep legislating proactive laws to counter these harmful securities tradings and institutionalizing enforcement infrastructures such as specialized superior securities court with wide civil and criminal jurisdictions to adjudicate securities matters, training judges in securities terms and practices, and ensuring complete independence of the court.

11 h) Jurisdictional Impotence of the Investment and Securities Tribunal over Securities Crimes

, in UK, there is the Financial Services and Market Tribunals (FSMT), and in India, the Securities Appellate Tribunal (SAT). However, there are few jurisdictions in the world have securities courts of which Nigeria is one. In clarifying the term of securities court being advocated in this article, it means a court welding exclusive criminal and civil jurisdictions in securities matters and independently seen to be an unbiased judicial forum.

The spirit, letter and operational principle of the Investment and Securities Tribunal is that it shall adjudicate over civil matters. It has no capacity or jurisdiction to entertain genre of securities crimes. As it stands today in Nigeria securities crimes cases are remitted to the Federal High Court being the only court constitutionally recognized and statutorily empowered to decide on them. There is no constitutional support or imprimatur for the creation, powers or functions of the IST; rather the 1999 Constitution only recognizes the exclusive jurisdiction of the Federal High Court to adjudicate on all the civil disputes conferred on the IST by its established Act.

The 1999 Constitution expressly provides in section 251 (1) that Federal High Courts shall have exclusive jurisdiction in all civil matters in respect of which jurisdiction is conferred on the court by section 251 (1) of the Constitution. Furthermore, in section 251 (2) (3) the Constitution confers criminal jurisdiction on the Federal High Court in respect of:

? Treason.

? Treasonable felonies and allied offences; and ? Exclusive jurisdiction in all criminal causes and matters arising from matters over which section 251 (1) of the Constitution confers exclusive civil jurisdiction on the court.

13 A) LOSS OF HARD EARNED SECURITIES INVESTMENTS BY INVESTORS

It is evident that the Federal High Court exercises Criminal Jurisdiction. By virtue of section 7 (3) of its enabling law the Court has been conferred with criminal jurisdiction in respect of matters within its civil jurisdiction. Under section 7(2)(3) of the Federal High Court Act, the Federal High Court has jurisdiction to try offences under the Second Schedule of the Exclusive Legislative List of the 1999 Constitution of which capital market is among. The Federal High Court also has jurisdiction to try offences under the criminal and penal codes provided the offences are "in relation to offences to which proceedings may be initiated at the instance of the Attorney General of the Federation".

The offences captured in the current Administration of Criminal Justice Act passed in 2015 are within the jurisdiction of the Federal High Court.

The constitutional logic and flow is that 'capital/securities market disputes' is among civil causes over which section 251 (1) of the Constitution confers exclusive civil jurisdiction on the (Federal High) court. Therefore by constitutional interpretation or equivalence, the Federal High Court shall exclusively exercise criminal jurisdiction over 'capital/securities market disputes'. Since 1999 when the current Constitution came into force, the Federal High Court has been exercising criminal jurisdiction over capital/securities market crimes. The 1999 Constitution uses the same qualifying words/clause in conferring both civil and criminal jurisdiction over securities matters on the Federal High Court.

The danger is that securities crime cases continue to litter the docket of the High Court due to so many factors such as shortfall in cognate securities litigation judges, judiciary strikes. This has continued to erode investors' confidence considering the exigencies of the market.

It is sad from the foregoing to note that the Investment and Securities Tribunal has been a shadow of itself as it is impotent to exercise jurisdiction on matters of securities crime, even its civil jurisdiction over the subject matter is fraught with jurisdiction controversies with the Federal High Court. Argument of the apologists that the law which establishes the Investment and Securities Tribunal was a document hurriedly prepared by the Military Government of Abdulsalaam Abubakar at the twilight of its exit could not stand the reality of time and space between 1999 and now. The securities pundits, legal scholars and cognate experts in securities market have continued to beg the question of why the democratic economy as Nigeria continues to refuse addressing a legislative Bill to amend the Constitution by removing capital market/securities matters, both civil and criminal in nature, from the adjudicatory superintendence of the Federal High Court and remitting same in the Investment and Securities Tribunal. Similarly, question has been raised on why the Tribunal has not been independently established as a specialized court under the constitutional and regulatory supervision of the Nigerian Judicial Council (NJC), the apex judicial regulatory body.

The Investment and Securities Act which establishes the Tribunal has been faulted by the academics and radical judgments of the activist-judges as instrument of Executive manipulation and scheming of the Nigerian capital market. The Investment and Securities Tribunal is classified in the Act as a parastatal/board of the Federal Government of Nigeria, whereas to the illusion of the Tribunal, it is a special court with exclusive jurisdiction over matters of securities market. Investors continue to repatriate their investments to well ordered judicial architectures where their safety is guaranteed and principle of separation of power is entrenched.

12 II. Implications of Remitting Matters of Securities Crimes in the Federal High Court

The Nigerian Federal High Court saddles 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 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 High Court daily is tearing apart the federal adjudicatory architectures and infrastructures. Hence, genre of securities crime cases litter the Federal High Court docket waiting for years for wheel of justice to turn to them. Most of the times, the purpose of such securities crime litigations would have been defeated by the exigency of market culture and transactions governing the market forcing the litigants to abandon their cases and recount huge investment losses. The Investment and Securities Tribunal in Nigeria has lost its utopian vision of impartiality and independence; and in fact, statutorily it has no criminal jurisdiction on securities matters. The implications of lack of specialized securities court with criminal jurisdiction in Nigeria are:

13 a) Loss of Hard Earned Securities Investments by Investors

Investments and securities transactions in Nigeria, like every other jurisdiction, are proportionate to time and space. Particularly, transactions at the floors of the Nigerian Stock Exchange react to time. Foreign exchange trading, equity trading, buying and selling of securities 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 company or individual 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. These crimes take months or years before they are finally resolved and

the implication is that investors seeking justice are already frustrated and losses procured. This is as a result of complex criminal administrative procedures, frustrations by counsel, deficient cognate knowledge and skills of judges in securities/capital market transactions, and unforeseen bureaucratic forces during litigations.

14 b) Lack of Synchronized Criminal Securities 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 jurisdictions of the world, Nigerian does not have data for decided securities crime cases. Nigeria only has terse securities historical narratives without corresponding or sequential law reports specially devoted for Criminal Securities Law Reports. There are lacunae of subject matter securities law reports to aid facts and evidence in similar cases. Most of the times, Nigerian lawyers consult foreign and advanced jurisdictions to import their decided cases to support their cases. This is promotion of neo-colonial securities crime dispensation. Even the few decided securities crime 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.

15 c) Further Decline in World Bank Ease of Enforcing Contract in Nigeria

Currently, enforcing securities contract in Nigeria is poor and creates uncertainty in the minds of investors because of jurisdiction controversy between the Investment and Securities Tribunal and the Federal High Court. It becomes sadder that the IST does not have criminal jurisdiction; in fact lacks constitutional recognition. The Investment and Securities Act 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 jurisdiction for securities investors to commit their investments. This is because securities (crime) cases take longer time in the High Court docket and that the specialized court on the subject matter, Investment and Securities Tribunal does not have criminal jurisdiction to decide genre of securities crimes. It is a business norm/axiom that investors, even countries rely on the World Bank Index to choose where to commit their portfolios. As it is, Nigeria is a doubt.

16 d) Increase in Securities Crimes and Felons

This is a direct experience anywhere that when administration of criminal justice is slow or subject to manipulations by the offenders/felons, crimes are on the increase. On daily routine in Nigeria securities market, insider abuses, price riggings, stock stealing 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 should have subject matter jurisdiction, the Investment and Securities Tribunal is not clothed with it and the Federal High Court that determine such securities crime cases do not border about the exigency of the market and thought in the mind of investors.

17 e) 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 interval 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.

18 III. Advocacy for Criminal Jurisdiction

and Jurisprudence for the Investment and Securities Tribunal

The 'heart' of this article is to epistemologically and culturally examine the visibility and viability of the criminal jurisdictional status of the Investment and Securities Tribunal in the mirror of securities peculiarity and speedy dispensation of securities crimes which have been suffering series of delays in the docket of the Federal High Court in Nigeria. Several stakeholders have been canvassing for a specialized criminal judicial forum to try offenders of securities transactions. In fact, the pioneer Chairman of the Investment and Securities Tribunal, Mrs Ngozi Chianakwalam touched on the exigency of criminal jurisdiction for the Tribunal in an interview she granted to the Channel TV when she resumed the Chairmanship of the Tribunal, she said among other things ??6 This article shares the same telepathy with the pioneer Chairman of the Investment and Securities Tribunal, Mrs Ngozi Chianakwalam, that the Nigerian : "Right now, the position of the law is that after judgment, the person who wants to enforce the law has to go to the Federal High Court and register the judgment there. This is part of what the new Work Group would look at and part of what would be in the amended Act. This means

that IST should be able to enforce its judgment. If someone commits contempt of Court before us, there is not much we can do. You cannot really try the person but in a regular Court, if anyone commits contempt of Court, you should be able to summarily try the person. Some people were even talking about having criminal as well as civil jurisdictions but I don't know how that would work out now. However, these are part of the things that we are looking at and we would look at everything holistically."

Criminal justice architecture in any jurisdiction determines the degree of inflow of domestic and foreign investments into such clime. In Nigeria, a specialized capital market court with both criminal and civil jurisdiction will promote influx of investments and raise investors' confidence in Nigeria. It will equally list Nigeria among jurisdictions with ease of enforcing contracts. Although, advanced jurisdictions of the world do not clothe their securities courts with criminal jurisdiction because they supposedly have quick dispensation of civil and criminal justice in their regular courts. This article still advocates to them to clothe their securities court with criminal jurisdiction as it will enhance uniqueness of judgment and peculiarity of securities market.

securities court is over ripe to have and exercise criminal jurisdiction on its subject matter civil jurisdiction. Looking at the implications simplified above caused by the dangers of leaving securities crime cases to judicial forum of the Federal High Court, if criminal jurisdiction, is given to the IST, it will attract inflow of investors' portfolios and double the current benefits to the Nigerian economy. Similarly, securities jurisprudence in Nigeria will witness robust outlook among the comity of nations.

There will be open window for criminal securities research, critical analyses of decided securities cases among the academics to appreciate the merits and demerits of such judgment and this will rob on the entire securities market. Synchronized securities law reports will galvanize investors' confidence in the Nigerian securities market.

19 a) Operational Architecture of Proposed Criminal Securities Court

It is a truism that the structural foundation of any building determines how solid and far it will go. This article hereby examines how the structure of proposed criminal securities court should be amidst the administration of criminal justice in Nigeria. This is very important since, if the proposal is considered by the Nigerian Government, Nigeria would be the trailblazer with a specialized criminal securities court. Therefore, the court is expected to have strong legislative and regulatory firepower to command independence and be integrated with the Nigerian Judiciary:

20 b) Constitutional and Statutory Imprimaturs of the Court

The supremacy and sovereign province of the Constitution is the fundamental safety of any nation, institution and territory. This is a universal principle of any democratized nation and advanced securities economies. This becomes a mandatory submission in the clarity of the 1999 Nigerian Constitution particularly Section 1 27

In taking the IST from the crisis of superficial and quixotic exclusive jurisdiction solely conferred on it by the Investments and Securities Act without constitutional imprimatur, there is a need for constitutional amendment particularly of Sections 6 (5) and 81 of the 1999 Constitution as amended to include the Investments and Securities Tribunal (IST) as among the superior courts having both criminal and civil jurisdictions and being conferred all the rights, functions, privileges and benefits enjoyed by the Federal High Court outlined in Section 81 of the 1999 Constitution and affirms:

This constitution is supreme and if any other law is inconsistent with the provisions of the constitution, the constitution shall prevail and that other law shall to the extent of its inconsistency be void. ??? Sub section(1) and (3) be regulated by the National Judicial Council, the apex judicial regulatory body.

21 c) Powers of the Investments and Securities Tribunal

The powers of the Investments and Securities Tribunal (IST) have been a subject of crisis between the Tribunal and the Federal High Court (FHC) as exhaustively canvassed above. The crisis was as a result of lacuna created in the 1999 Nigerian Constitution; that is the Constitution does not recognize the Investments and Securities Tribunal but the Federal High Court in exercising those powers on matters relating to securities market. Hence, this proposed constitutional amendment becomes necessary to succinctly define the powers of the Investments and Securities Tribunal like that of the Federal High Court. The proposed constitutional amendments in resolving the adjudicatory powers on securities matters in favour of the Investments and Securities Tribunal are captured thus: S. 254J (1) For the purpose of exercising any conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the Investments and Securities Tribunal shall have all the powers of a Federal High Court;

(2) Notwithstanding subsection (1) of this section, the National Assembly may make provisions conferring upon the Investments and Securities Tribunal, powers additional to those conferred by section as may appear necessary or desirable for enabling the Tribunal to be more effective in exercising its jurisdiction.

22 d) Criminal Jurisdiction of the Investment and Securities

Tribunal and its Appeal Section 243 of the 1999 Constitution (as amended) provides for both criminal and civil appeal and the genre of courts from which they can proceed to the Court of Appeal. It is the desire of this Thesis to equally advocate for the constitutional empowerment of the Investments and Securities Tribunal (IST) to adjudicate on genre of criminal activities bordering on securities matters. It should be couched as follows: S. 243 Any right of appeal to the Court of Appeal from the decisions of the Federal High Court, the National Industrial Court, the Investments and Securities Tribunal or a High Court in civil or criminal matter.

Similarly, from Section 243, new Subsections should also by way procedural architecture be provided after Subsection (4) as Subsections (5) (7) thus: Sub. 5 An appeal shall lie from the final decisions of the Investments and Securities Tribunal as of right to the Court of Appeal on capital market disputes as it relates to matters upon which the Investments and Securities Tribunal has jurisdiction; Sub 6 An appeal shall only lie from the decisions of the Investments and Securities Tribunal to the Court of Appeal as may be prescribed by an Act of the National Assembly Provided that where an Act or law prescribes that an appeal shall lie from the decisions of the Investments and Securities Tribunal to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal Sub 7 Without prejudice to the provisions of 254 (c) of this Constitution, the decision of the Court of Appeal in respect of an appeal arising from any civil jurisdiction of the Investments and Securities Tribunal shall be final.

It follows from the proposed amendment that there is a need to consequentially confer on the Act establishing the Investments and Securities Tribunal (IST) criminal jurisdiction on issues covering genre of crimes bordering on securities matters. The implication is that, the IST being a securities court, can painstakingly consider the issues because of the laurel of expertise; and that will further boost the confidence of investors given the innovation to our criminal jurisprudence in securities matters.

23 e) Statutory Appraisal

Similarly, there is a need for comprehensive repeal and re-enactment of the Statute establishing the Investment and Securities Tribunal. The current IST is made a stooge and a board/parastatal of the Executive without any judicial input. The panel members of the Tribunal are 'hire and fire' by the political class, and may not necessarily be lawyers. They are only constituted based on technical expertise in securities market; even, there are no criteria for such expertise. The current Investment and Securities Act (ISA) does not comprehensively capture the activities of the IST.

However, this article advocates for urgent sponsor of a Bill that will transmute into law establishing the Investment and Securities Tribunal Act like the Federal High Court Act, and specially clothed with exclusive criminal and civil jurisdictions on securities matters. Also, the powers, functions, rights and privileges of its judges must be succinctly captured.

24 f) Substantial and Tenacious Application of the 2015 Administration of Criminal Justice Act to Securities Matters

Nigerian is currently operating new criminal law with substantial justice guaranteed that if faithfully complied with, quick administration of securities crime cases will be secured. For purpose of clarity, this article examines some salient provisions in the Act that will enhance Securities Court and all the prosecutorial institutions dispense justice within time frame. The objective of the Act is explained 28 "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 securities market investors that justice is evenly distributed to boost influx of their investment pools.

25 g) 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 of 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 securities crime justice because the Monitoring Committee serves as One Stop

27 K) PLEA BARGAIN OPTION IN SECURITIES CRIME PROCEEDINGS

Justice Clearing House. Case management becomes seamlessly attractive and investors will have values for their investments as contract enforcement is improved upon h) Transparency in Dispensation of the Administration of Securities 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 Act 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 a proceed of crime. It is interesting to note that the ACJ Act makes provision for the procedure on seizure of property during arrest or investigation 29 i) Jurisprudence of Police Criminal Registry of Securities Crime Activities

. This is to also show to the world that Nigerian criminal trial system is attractive to foreign and domestic investors.

Section 16 of the Act makes provision for the establishment, within Nigeria Police, a Central Criminal Record Registry of all arrest 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 this subject, securities 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 market. The object is to reveal the character and integrity of all the players in securities market as criminal data of bad eggs can easily be assessed at the Police and that this article also suggests that such data relating to securities market be captured in the central website of the regulatory agency of the Nigerian capital market, the Securities and Exchange Commission (SEC). Another benefit of this to the Nigerian securities market is that it grows the organic evolution of securities 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 Nigerian Bureau of Statistic (NBS), Securities and Exchange Commission CBN, Ministry of Finance and Nigerian Stock Exchange can accurately process securities market information and project their result.

26 j) Quarterly Returns of Securities/Capital Market Cases and other Criminal Proceedings to the Chief Judge

The Act in section 110(3) specifically states that where a suspect is arrested without a warrant is brought before a magistrate court on a charge sheet or upon receiving a First Information Report and the trial does not commence within 30 days or completed after 180 days after arraignment, the court shall forward the particulars of the charge and reasons for failure to commence or complete the trial. This provision seeks to curb unnecessary delay in criminal trial and it is quite commendable. Moreso, section 110(4) to (7) stipulates that every court seized with criminal jurisdiction shall ??9 See section 337 of the Administration of Criminal Justice Act, 2015 forward the charges, remand and other proceedings dealt with in each court to the Chief Judge every quarter. In reviewing the returns, the Chief Judge shall ensure that:

(a) Criminal matters are speedily dealt with; (b) Congestion of cases in courts is drastically reduced; (c) Congestion of prisons is reduced to the barest minimum; and (d) Persons awaiting trial are, as far as possible, not detained in prison custody for a length of time beyond that prescribed in section 293 of the act.

Copy of the above returns shall also be made available to the Administration of Criminal Justice Monitoring Committee.

27 k) Plea Bargain Option in Securities Crime Proceedings

By virtue of Section 270 of the Act, the Prosecutor before the Nigerian securities court, Investment and Securities Tribunal, may with the consent of the victim or his representatives consider, offer or accept a plea bargain from a defendant. The prosecutor must ensure that the acceptance of such plea bargain is in the interest of justice, the public interest, public policy and the need to prevent abuse of legal process. In determining whether it is in the public interest to enter into a plea bargain, the prosecution must weigh all relevant factors, including: i. The defendant's willingness to cooperate in the investigation or prosecution of others; ii. The defendant's history with respect to criminal activity; iii. The defendant's remorse or contrition and his willingness to assume responsibility for his conduct; iv. The desirability of prompt and certain disposition of the case; v. The likelihood of obtaining a conviction at trial, the probable effect on witnesses; vi. The probable sentence or other consequences if the defendant is convicted; vii. The need to avoid delay in the disposition of other pending cases; and viii. The expense of trial and appeal. ix. The defendant's willingness to make restitution or pay compensation to the victim where appropriate.

28 1) Speedy trial of Securities Crime Cases before the Securities Court

The Act in section 396 makes provision for day-to-day trial of criminal cases. Where day-to-day trial is impracticable after arraignment, parties shall only be entitled to five adjournments from arraignment to final. The interval between each adjournment must not exceed fourteen days. Where it is impracticable to conclude a criminal proceeding after the parties have exhausted their five adjournments each, the interval between one adjournment to another shall not exceed seven days. The court may award costs in order to discourage frivolous adjournments because of the peculiarity and exigency of the market. The provision further states that a Judge of the High Court /Investment and Securities Tribunal, Nigerian Securities Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge/Investment and Securities Tribunal's Judge for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude same within a reasonable time. This provision is intended to address the problem of trial de novo.

The ACJ Act in sections 306 and 396 abolished stay of proceeding and interlocutory appeals by merging all preliminary objections with the substantive case in respect of criminal cases instituted in federal courts. This revolutionary intervention of the Act is occasioned by unending trial of politically exposed persons in corruption cases such as the case of 2007/8 capital market recession. Section 109(5) mandates Courts to make quarterly returns of the particulars of all criminal cases, including charges, remand and other proceedings dealt with in a Court to the Chief Judge. In reviewing the returns, the Chief Judge shall have regard to the need to ensure that: Section 349(7) of the Act states that a legal practitioner engaged in a matter shall be bound to conduct the case until final judgment, unless allowed for any special reason to cease from acting by the Court.

Furthermore, section 382 provides that where an information is filed in the court, the Chief Judge shall within fifteen working day of its filing assign it for trial. Upon the assignment, the court shall within ten working days issue notice of trial to the witnesses and defendants and a reproduction warrant properly endorsed by the Judge where the defendant is in custody. The Chief Registrar is to ensure prompt service of the notice and information not more than three days from the date they are issued.

29 m) Time Limit for Issuance of Legal Advice

Section 376 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 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 custody.

30 n) Witness Protection

The peculiarity of the securities market makes it expedient, like the practice in the advanced democratic economies, to protect the securities informants who have voluntarily chosen to offer necessary information to the government security enforcement agencies in order to proscribe the activities of capital market felons/ fraudsters. Therefore, Section 232 of the Act permits the trial of some offences in camera. One of the items listed relates to the one within the jurisdiction of the Investment and Securities Tribunal/Securities Court, particularly sub-section 'c' which says: "(c) offences relating to economic and financial crimes? shall be conducted in camera"

31 o) Trial of Corporation

This is another remarkable feature of the Act and highly appreciated by the securities court because most of the trials that appear before it 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.

32 p) Powers, Functions, Rights and Privileges of the Court and its Judges

The Nigerian 1999 Constitution has enough provisions to cater for the needs of the Judges to enhance their independence and impartiality. The protection ranges from non persecution 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 is embossed in the 1999 Constitution. Upon inclusion of the Nigerian securities court among the superior courts in Nigeria under the regulatory surveillance of the National Judicial Council, rights, powers, privileges of its judges are fully guaranteed and investors' confidence is also secured.

33 q) Leading Examples to other Jurisdiction

From the above, this article sincerely advocates for the advanced jurisdictions' creation of securities court with both civil and criminal jurisdictions to enhance speedy trial of securities matters and development of their securities jurisprudence.

34 IV. Conclusion

This article has detailed the essence and benefits of establishing securities court with civil and criminal jurisdictions in Nigeria. The major benefits are that investors confidence is secured, our criminal jurisprudence becomes synchronized and accessible, ease of doing business in Nigeria becomes guaranteed to the investors, Nigerian can then have comprehensive Criminal Securities Law Reports. 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 discuss to grow securities crime jurisprudence.^{1 2 3}

¹Joseph Abugu, "Special Jurisdiction: Relevance in the Nigerian Capital Market". Discussion Paper at 2009 Work Relationship Day (WRD) IST, Lagos Zonal Office, pg 8. 8 Act No.29 of 2007.⁹ The composition of the Tribunal as specified in section 275 (1) of the ISA 2007, is as follows: (a) a full time chairman who shall be a legal practitioner of no less than fifteen years with cognate experience in capital market matters; (b) four other full time members, three of whom shall be legal practitioners of no less than ten years experience and one person who shall be knowledgeable in capital market matters; and (c) five other part time members who shall be person of proven ability and expertise in corporate and capital market matters.

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³www.channel.com/2013/03/12/ngozi-chianakwalam-resumes-aschair-of-investment-and-securities-tribunal/ retrieved on 14 April 2018.