

Requisite Jurisdiction of Courts over Tax Matters in Nigeria

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ABSTRACT

There is conflict of jurisdiction between the Federal High Court and the Tax Appeal Tribunal in Nigeria. Hence, this study aims at giving a comprehensive overview of the types of tax dispute that each court can entertain and succinctly analyze the controversy of jurisdiction between the Federal High Court and Tax Appeal Tribunal. It further discusses the courts that have jurisdiction over tax matters in Nigeria. Consequently, it is observed that various courts have jurisdiction over different types of tax matters in Nigeria depending on the tier of government that has power to impose the tax, the amount of money sought to be recovered or the organization or individual from whom tax is being recovered. It is instructive, therefore, to note that while the Court of Appeal is vested with jurisdiction over tax matters, appeal lies from it to the Supreme Court. Therefore, the Supreme Court is the only court vested with appellate jurisdiction over decisions of the Court of Appeal either as of right or with leave.

Keywords: *Jurisdiction of Courts, Tax Matters, Federal High Court, Tax Appeal Tribunal*

INTRODUCTION

Jurisdiction is the power of the court to decide a matter in controversy and presupposes the existence of a dully constituted court with control over the subject matter and the parties... The power of courts to inquire into facts, apply the law, make decisions and declare judgment; the legal right by which judges exercise their authority.¹

In the same vein, Das Kumar opined that:

The word jurisdiction is derived from the Latin terms juris and dicto which means “I speak by the law”. It refers to the right of administering by means of law and includes every act from taking cognizance in a court to final disposal of the suit.²

¹ Bryan A. G, *Black's Law Dictionary* (West Group Publishers, ST Paul, 1999), 885.

² Das J. K, *Das Code of Civil Procedure* (PHI, Delhi, 2014), 85.

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Conversely, if a court lacks jurisdiction to entertain a matter, the court should decline from entertaining the matter at the time it discovers that it does not have jurisdiction and stop further proceeding. It is usually determined by the claim of the parties before the court or geographical location of the parties.³ For a court to be competent and exercise jurisdiction, certain conditions must be fulfilled. The *locus classicus* case on this is the case of **Madukolo v Nkemdillim**⁴ the Supreme Court held per Bairamian, FJ: I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when -

1. it is properly constituted as regards quorum and qualification of the members of the bench, and no member is disqualified for one reason or another;
2. the subject matter of the suit is not within the cases which prevents the court from exercising jurisdiction; and
3. the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

No court is vested with an inherent jurisdiction to entertain any matter. Courts of law do not derive their power and determine matters only because they are courts of law. Rather each Court in Nigeria derives its jurisdictional power from the Constitution.⁵ or a statute⁶ therefore; Nigerian courts that are vested with jurisdiction over tax matters derive such jurisdiction by virtue of the constitution and some statutes.⁷

Customary Court

Customary courts operate in all the Southern States, the court was formally known as Native Court, it became Customary Court in the old Western Region by virtue of the Customary Courts Law of Western Region.⁸ While in the former Eastern Region, it became Customary Court pursuant to the enactment of the Customary Law of Eastern Nigeria.⁹ Although there are no Customary Courts in the Northern Nigeria they are not forbidden from establishing it, any state which so wishes can establish one.¹⁰ The

³ Akinbiyi A, *Practictice and Procedure in Civil Matters in Nigeria* (Streams Communications, Lagos, 2008), 15.

⁴ (1962) 2 NSCC 374, (1962) ANLR (pt II) 581.

⁵ Constitution Federal Republic of Nigeria (CFRN) 1999.

⁶ Nyame v FRN (2010) All FWLR (pt 527) 618.

⁷ Olamide K and Obayemi A.C, "Tax Litigation in Nigeria and Review of Recent Nigerian Courts Decisions on Taxation", (2014), 5 (24), *Research Journal of Finance and Accounting*, 162 – 165. Available at <http://www.iiste.org> last visited December 2016.

⁸ Cap 31 Laws of Western Nigeria (LWN) 1959.

⁹ Cap 32 Laws of Eastern Nigeria (LEN) 1956.

¹⁰ Agaba, J.A. *Practical Approach to Criminal Litigation in Nigeria* (Panaf press, Abuja 2011), 149.

constitution even encourages all states to establish customary courts by virtue of creating the Customary Court of Appeal thereby giving any state that wishes to establish same the elasticity to do so.¹¹

It is pertinent to note that after the creation of States in Nigeria, all the States retained the customary court law as part of the laws of the state. We shall consider the Customary Court Edict 1984 applicable in Edo and Delta States for ease of reference and against the background that jurisdiction of Customary Court is virtually the same in all the States that have the court.¹² In Edo and Delta States, Customary Courts are vested with jurisdiction over tax matters in respect of taxes and levies collected by Local Government Authorities, if the tax sought to be collected does not exceed six hundred thousand naira (N600,000) only.¹³

Magistrate Court

Magistrate Courts are established all over the federation. They are established by the Magistrate Court Law of the various states.¹⁴ In Southern states, the Magistrate Court is regarded as Magistrate Court whether it sits in its civil or criminal capacity. But in Northern States when the Magistrate Court sits in its civil capacity, it is regarded as District Court.¹⁵ However, we shall be considering Magistrate Court Law of Lagos State for ease of reference. The Magistrate Court is vested with jurisdiction over tax matters in respect of levies and taxes collected by the Local Governments, if the amount involved exceed six hundred thousand naira (N600,000) but does not exceed one million naira (1,000,000) only.¹⁶ The Magistrate Court is vested with jurisdiction over both criminal and civil tax matters provided that the amount of money involved in the matter does not exceed the monetary limit of the magistrate concerned.¹⁷ Section 78

¹¹ S.280 CFRN 1999.

¹² Agaba, above n 10,140.

¹³ S.20 (1); First Schedule of the Customary Courts Edict, (1984), applicable in Edo and Delta States; see also Olamide K. and Obayemi A.C, "Tax Litigation in Nigeria and A Review of Recent Nigerian Courts Decisions on Taxation", (2014), 5 (24), *Research Journal of Finance and Accounting*, 162 – 171. Available at <http://www.iiste.org> last visited December 2016.

¹⁴ Hambali Y. D. U, *Practice and Procedure of Criminal Litigation in Nigeria* (Feat Print and Publishing Ltd, Lagos, 2013) 23.

¹⁵ Effewerhan D. I, *Principles of Civil Procedure in Nigeria* (Snaap Press Ltd, Enugu, 2007) 92.

¹⁶ S.28 (2) Magistrate Court Law of Lagos State, 2011; See also Olamide K. and Obayemi A.C, above n 79.

¹⁷ Tanko M.B, "Tax Law Enforcement: Practice and Procedure", (2015), 6(7), *Research Journal of Finance and Accounting*, 2 - 11. Available at <http://www.iiste.org>, last visited 2nd January 2017.

of the Personal Income Tax Act¹⁸ provides as follows:

1. Income tax may be sued for and recovered in a court of competent jurisdiction by the relevant tax authority in its official name with full cost of action from the person charged therewith as a debt due to the government of the federation or the relevant tax authority;
2. For the purpose of this section *a court of competent jurisdiction shall include a Magistrate Court* which court is hereby invested with jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to action for debt. (underlining is mine) Similar provision has been made under the Companies Income Tax Act.¹⁹

State High Court

The High Court of a State is established by the Constitution.²⁰ All the states of the federation have High Court Laws which recognizes the existence of the High Court and regulate its practice and procedure. However, the State High Court is a superior court of record, established by the Constitution.²¹ The Constitution vested the High Court with a very wide jurisdiction, thus section 272 (1) provides as follows:

Subject to the provision of section 251 and other provisions of this constitution, the High Court of a state shall have jurisdiction to hear and determine any proceeding 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 liabilities in respect of an offence committed by any person.²²

The above provision of the Constitution is only limited by matters that are exclusive to the Federal High Court and National Industrial Court. Therefore, the State High Court enjoys unlimited jurisdiction over un-enumerated matters. In *NUT, Niger State v COSST, Niger State*²³ Bada, Justice of Supreme Courth (JSC) opines as follows: “When the above provision is construed, it would reveal that except for matters falling within section 251 of the 1999 Constitution, the High Court of a state has unlimited jurisdiction in all matters”. Therefore, it is plausible to maintain that the

¹⁸ Personal Income Tax Act (PITA) Cap 8 LFN 2004.

¹⁹ S.8 (2) Company Income Tax Act (CITA) Cap 8 LFN 2004.

²⁰ S.270 CFRN 1999.

²¹ S.6 (6) CFRN.

²² *Ibid.*

²³ (2002) 10 NWLR 1307, 109 [E-F].

State High Court has jurisdiction over tax matters provided in the concurrent legislative list second schedule part II paragraph 7 of the 1999 Constitution. Since the Federal High Court is vested with jurisdiction in respect of matters connected with or pertaining to taxation of companies,²⁴ which is provided in the exclusive legislative list under the second schedule part I items 58 and 59 of the Constitution.²⁵ Thus, in *Lagos State Internal Revenue v Motorola Nigeria (Ltd) & Anor*²⁶, it was held that even though taxation of incomes, profits and capital gains are being covered in exclusive legislative list, the collection of the taxes is brought under the concurrent legislative list. Specifically item D 7 says: In exercise of its power to impose tax or duty on –

- (a) Capital Gains, incomes or profits of persons other than companies;
- (b) Documents or transactions by way of stamp duties, the National Assembly may prescribe, that the collection of any such tax or duty or administration of the law imposing it shall be carried out by government of a state.

Since it is expressly stated that it is the state that can enforce the payment of personal income tax, the challenge should go to the State High Court. In **Wilbros (Nig) Ltd v AG Akwa Ibom State**²⁷, the subject matter was personal income tax, which accrued to the respondent; the appellant filed an action at the Federal High Court challenging the respondent's claim for the said tax. The respondent challenged the jurisdiction of the Federal High Court to entertain the matter. The court declined jurisdiction. The appellant lodged an appeal; the Court of Appeal dismissed the appeal affirming the position of the trial court. Justice Omega who delivered the lead judgment, held:

...my lords, I have considered and discussed in the judgment above the ruling of the Federal High Court on this appeal, I find no error in its entirety when I say yes to the principal issue in this appeal, that issue of tax before the court is on personal income tax, PAYE and the eligible court to try the issue is the State High Court, Akwa Ibom State.

Tax Appeal Tribunal

The Tax Appeal Tribunal was established pursuant to section 59 of the Federal Inland Service (Establishment) Act, 2007. The tribunal started operating in 2011; it replaced the former Body of Appeal Commissioners and the Value Added Tax Tribunal. The Tax Appeal Tribunal is vested with jurisdiction in respect of disputes arising from the

²⁴ CFRN 1999 S.251 (1) (b).

²⁵ *Ibid.*

²⁶ (2012) LPER -147, 112 (CA)

²⁷ (2008) 5 NWLR 1081, 495 [E – H].

operation of all the tax statutes listed in the first schedule to the Act.²⁸ The Tax Appeal Tribunal is therefore vested with jurisdiction to settle disputes arising from the following statutes;²⁹

1. Companies Income Tax Act;
2. Petroleum Profits Tax Act;
3. Personal Income Tax Act;
4. Value Added Tax Act;
5. Any other law contained or specified in the first schedule to the Act or other law made from time to time by the National Assembly.

The Minister of Finance is empowered to specify the zones within which the Tax Appeal Tribunal shall exercise jurisdiction.³⁰ In exercising this power, the Minister created eight zones of the Tax Appeal Tribunal vide section 1 of the Tax Appeal Tribunal (Establishment) Order 2009.³¹ Each division consists of five tax appeal commissioners headed by a Chairman who must be a lawyer of not less than fifteen years' experience in tax matters. The other commissioners must be knowledgeable in tax laws, regulations, norms, practice and operation of taxation in Nigeria.³² Such persons must have the capacity for management of trade and business or he is a retired civil servant in tax administration.³³ The Chairman shall preside over the sittings of the tribunal; in his absence another commissioner shall hold office for a term of three years renewable for another three years only.³⁴ The hearing of the Tax Appeal Tribunal shall be held in public, the judgment of the Tax Appeal Tribunal is enforceable against the tax payer. But the tax authority is required to register the judgment of the tribunal with the Chief Registrar of the Federal High Court. Thereafter the judgment of tribunal may be registered as if it is a judgment of the Federal High Court.³⁵

Appeal lies to the Federal High Court from the Tax Appeal Tribunal.³⁶ Any person dissatisfied with a decision of the tribunal may appeal such decision on point of law to the Federal High Court upon giving notice to the secretary of the tribunal within 30 days after the date on which the decision was given.³⁷ It is pertinent to note that

²⁸ Federal Inland Revenue Service Act (FIRS Act) No:13, 2007.

²⁹ *Ibid*, first schedule Paragraph 1- 11.

³⁰ *Ibid*, Fifth Schedule.

³¹ The Tribunals are located in Bauchi, Kaduna, Jos, Ibadan, Enugu, Benin, Lagos and Abuja.

³² FIRS Act No:13 2007, S. 59 (2) paragraph (2) Fifth Schedule FIRS Act.

³³ *Ibid*, S. 59 (2) paragraph (3) Fifth Schedule FIRS Act.

³⁴ *Ibid*, S. 59 (4) Fifth Schedule FIRS Act.

³⁵ FIRS Act No: 13, Fifth Schedule Paragraph 17-18.

³⁶ *Ibid*, Fifth Schedule Paragraph 17.

³⁷ Mohammed B.O, "Tax Law Enforcement: Practice and Procedure", (2015) 6 (7), *Research Journal of Finance and Accounting*, 114-117. Available at <http://www.iist.org> last visited January 2017.

appeal lies to the Federal High Court from the Tax Appeal Tribunal only on point of law, while appeal lies to the Court of Appeal from the Tax Appeal Tribunal on issues of facts.³⁸ The powers of the Tax Appeal Tribunal include *inter alia*, to:³⁹

1. Summon and enforce the attendance of the person to be examined on oath;
2. Require the recovery and production of documents;
3. Receive evidence on affidavit;
4. Call for examination of witnesses or document;
5. Review its decisions;
6. Dismiss an application for default or deciding matters *ex parte*;
7. Set aside any or dismissal of any application for default or any order passed by it *ex parte*; and
8. Do anything which in the opinion of the tribunal is incidental or ancillary to its function.

It is pertinent to note that the Tax Appeal Tribunal is not conferred with criminal jurisdiction, where evidence of criminality is discovered, the tribunal is obliged to refer the matter to the office of the Attorney General of the Federation, Attorney General of a State or any other relevant law enforcement agency.⁴⁰

Federal High Court

The current Federal High Court was known as Revenue Court. It was established by Decree No.13 of 1973. The Court was changed to Federal High Court by the 1979 Constitution, by virtue of section 228. Under the 1999 Constitution the Federal High Court was established by section 249 (1). The Court is headed by the Chief Judge of the Federal High Court and such number of judges as may be prescribed by an Act of National Assembly.⁴¹ Section 251 (1) (a), (b) and (c) confers exclusive jurisdiction on the Federal High Court in respect of matters that are connected with or pertaining to the government of the federation or any of its organ / agency. Section 251 provides:

- (1) ...the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters –
 - (a) relating to the Revenue of the Government of the Federation in which the said Government or any organ thereof or any person suing or being sued on behalf of the said Government is a party;
 - (b) connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to federal taxation;

³⁸ *Ibid.*

³⁹ FIRS Act No: 13, 2007 Paragraph 20 (2) Fifth Schedule.

⁴⁰ FIRS Act No: 13, 2007, Fifth Schedule Paragraph 12.

⁴¹ CFRN 1999 S. 249 (2) (b) and (b); S. 1 (2) (b) of the Federal High Court Act, 1973.

- (c) connected with or pertaining to customs and excise duties and export duties including any claim by or against the Nigerian Custom Service or any of its members or office thereof, arising from the performance of any duty imposed under any regulation relating to custom and excise duties and export duties;

Historically, the main reason for the establishment of the Federal High Court was to protect the revenue of the Federal Government. That was why the initial court which metamorphosed into the Federal High Court was called the Federal Revenue Court. This implies it was connected with the revenue of the Federal Government and ancillary matters such as taxation and all forms of duties.⁴² The provisions of section 251 (1) (a) and (b) received judicial blessings in several pronouncements of our superior courts. In **NPA v Eyamba**⁴³ the respondent had claimed for certain rent from the appellant an agent of the Federal Government. The respondents who were plaintiffs at the High Court of Cross Rivers State, the appellant filed a preliminary objection contending that the court that had jurisdiction was the Federal High Court. The preliminary objection was dismissed whereupon the appellant appealed. The Court of Appeal allowed the appeal and held, per Omokri, Justice of the Court of Appeal (JCA):

By virtue of the provision of section 251(1) (a) of the Constitution the Federal High Court shall exercise jurisdiction to the exclusion of any other court in civil cases and matters relating to the revenue of the Government of the Federation or any of its organ thereof or any person suing or being sued on behalf of the government is a party...

In **Lead Merchant Bank v Petroleum Special Trust Fund**⁴⁴ the respondent an agency of the Federal Government filed a suit at the High Court of the Federal Capital Territory, Abuja. The appellant challenged the jurisdiction of the court on the ground that since the subject matter bother on revenue of the Federal Government, the Federal High Court had exclusive jurisdiction. The appellant was over ruled; as a result the appellant appealed to the Court of Appeal, the Court of Appeal allowed the appeal and set aside the ruling of the High Court of Federal Capital Territory.

Section 251 (1) (b) also deals with the revenue of the Federal Government, but in particular with respect to taxation of companies and all other persons subject to federal taxation. If the taxation in question involves any government other than the Federal Government, then the Federal High Court will not have exclusive jurisdiction,

⁴² Amadi J. *Modern Civil Procedure Law and Practice in Nigeria Vol: I* (Pearl Publishers, Port Harcourt, 2014), 38.

⁴³ (2005) 12 NWLR 939, 441[B-H].

⁴⁴ (2006) 5 NWLR 974, 476 [C-D].

which means, the state High Court will have jurisdiction.⁴⁵ Thus, it is the State High Court that has jurisdiction over issue of personal income tax not the Federal High Court because the personal income tax is imposed by the State Governments or their authorities.⁴⁶ In the same vein in **Cadbury (Nig) Plc v Federal Board of Inland Revenue**⁴⁷ the dispute before the court was related to Value Added tax (VAT) which fell under section 251 (1) (b),⁴⁸ the respondent which collects tax on behalf of the Federal Government filed a suit at the VAT Tribunal, the appellant asserted on appeal that the VAT Tribunal lacked jurisdiction to entertain the matter. The Court of Appeal agreed with this position. Fasami JCA opined:

...it is crystal clear that the respondent who is a statutory body and agency of the Federal Government is suing to enforce the Value Added Tax Act in order to collect tax allegedly due to the Federal Government...I therefore, hold that the action is clearly within the jurisdiction of the Federal High Court...

In **Attorney General of Lagos State v Attorney General of the Federation**,⁴⁹ the plaintiff brought the suit before the Supreme Court under the original jurisdiction of the Supreme Court, challenging the competence of the Federal Government to legislate on and collect VAT in Nigeria. The Supreme Court struck out the case for want of jurisdiction because the claim was related to revenue of the Federal Government which ordinarily falls within the jurisdiction of the Federal High Court. The Federal High Court is also vested with criminal jurisdiction in respect of tax matters as provided under section 251 (1) (a), (b) and (c)⁵⁰ because section 251 (3)⁵¹ provides:

The Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by sub-section (1) of this section.

It is plausible to conclude that the Federal High Court is vested with criminal jurisdiction over tax matters in so far as:⁵²

1. It is relating to the revenue of the Federal Government, if any of the parties is an agent of the Federal Government;
2. The matter is connected with or pertaining to companies and other persons subject to federal taxation;

⁴⁵ Amadi, above n 42, 41.

⁴⁶ *Wilbros* (2008) 5 1081 495.

⁴⁷ (2010) 2 NWLR (1179).

⁴⁸ CFRN 1999.

⁴⁹ (2014) LPFLR 22.

⁵⁰ CFRN 1999.

⁵¹ *Ibid.*

⁵² *Ibid.*, Section 251 (1) (a) (b) and (c).

3. The matter is connected with or pertaining to customs and duties. Unlike section 251 (1),⁵³ which expressly vested the Federal High Court with exclusive jurisdiction in civil matters that are listed under it, section 251 (2)⁵⁴ omitted the word exclusive in its dealing with the ambit of criminal jurisdiction of the Federal High Court. Thus, this omission may be interpreted to mean that the Federal High Court does not have exclusive jurisdiction in criminal matters listed under section 251 (2).⁵⁵

Controversy of Jurisdiction between Tax Appeal Tribunal and Federal High Court

In 2013, two separate and conflicting decisions of the Federal High Court were delivered that casted doubt on the validity of the jurisdiction of the Tax Appeal Tribunal.⁵⁶ In **TSKII Contruces International Sociadade LDA v FIRS**⁵⁷ Justice Ademola Adeniyi of Federal High Court Abuja struck down the composition of the Tax Appeal Tribunal (TAT) on the ground that, the Federal Inland Revenue (Establishment) Act No.13 2007 and the Tax Appeal Tribunal (establishment) Order (2009) under which the TAT was established conflicted with exclusive jurisdiction of the Federal High Court vested on it by the Constitution.⁵⁸ Conversely in **Nigerian National Petroleum Company (NNPC) v Tax Appeal Tribunal (TAT)**⁵⁹ the Federal High Court Lagos judicial division, held that the TAT's jurisdiction did not interfere with the exclusive jurisdiction of the Federal High Court but was only an administrative body set up to determine preliminary matters before proceeding to the Federal High Court. Justice Buba opined that the provision of section 251 (1)⁶⁰ is to the effect that the National Assembly may make laws from time to time, so as to confer additional jurisdiction and powers on the Federal High Court and that the intent of this provision is to enable the legislators expand the jurisdiction of the Federal High Court and in no way can this provision be construed as empowering the National Assembly to remove or restrict

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Sokefun J, "The Court System in Nigeria: Jurisdictions and Appeals", (2016), 2 (3), *International of Business and Applied Social Science*, 23, available at <http://www.iibassnet.com>, last visited January 2017.

⁵⁶ Josephine A and Aladi A, "Tax Dispute Resolution in Nigeria: A Storm in a Tea Cup", (2014) 29 *Journal of Law Policy and Globalization*, 103. Available at <http://www.iiste.org>, last visited 2nd January 2017.

⁵⁷ Suit No. FHC/ABJ/TAT/11/12. Available at <http://www.iiste.org> last visited 2nd January 2017.

⁵⁸ S. 251 CFRN 1999.

⁵⁹ (2009) 13 NWLR 1157, 226.

⁶⁰ CFRN 1999.

the original jurisdiction of the Federal High Court. The two contradictory decisions on the constitutionality of or otherwise of the TAT handed down by the Federal High Court Abuja division and Lagos division have created confusion in the legal circle. Accordingly, it is necessary for the Court of Appeal which is next in hierarchy of courts in Nigeria, to make pronouncement on the issue.⁶¹

Court of Appeal

The Court of Appeal is composed of the President of the Court of Appeal and other justices of the court not being less than forty one. Section 240⁶² provides that the Court of Appeal has exclusive jurisdiction to hear and determine appeal from the Federal High Court, State High Court and other courts that are of co-ordinate jurisdiction with them. Since the Federal High Court and State High Court are next on the line after the Court of Appeal and they are vested with jurisdiction over tax matters, it means the Court of Appeal is vested with appellate jurisdiction over tax matters emanating from the Federal High Court.⁶³ In exercise of its appellate jurisdiction over tax matters emanating from the Federal High Court and State High Court, the Court of Appeal entertained many tax matters over the years. One of the recent decisions of the Court of Appeal on tax matters is, **Independent Radio Television v Edo State Board of Internal Revenue**⁶⁴ where the Court of Appeal extensively considered the powers of the tax authorities to distrain property belonging to a defaulting tax payer within the context of constitutional provisions of fair hearing, especially where the distrain order was obtained *ex parte*. The gist of the case is that after assessment against the appellant, the respondent obtained an *ex parte* order to seal off the appellant's business premises to enforce collection of tax pursuant to section 104.⁶⁵ After the lower court refused to set aside the distress order, on appeal the Court of Appeal held that sections 36 and 44 of the Constitution⁶⁶ were not violated,⁶⁷ likening a distress order to garnishee proceedings, to collect a debt, the distress order was upheld.

⁶¹ Umenkweze M.N and Ezeibe K.K, "Nigerian National Petroleum Co-operation v Tax Appeal Tribunal & 3 others – Constitutionality of The Tax Appeal Tribunal", (2015) 3 (2), *Journal of Business Law and Research*, 73. Available at <http://www.seahipaj.org> last visited 2nd January 2017.

⁶² CFRN 1999.

⁶³ *Ibid*, S. 241 (1) and (2).

⁶⁴ (2014) 16 TLRN 37.

⁶⁵ PITA Cap 8 LFN 2004.

⁶⁶ CFRN 1999.

⁶⁷ While S. 36 mandates fair hearing and right to trial rules, S. 44 prescribes that a person's property cannot be taken without due process and compensation.

Supreme Court

The Supreme Court of Nigeria was established by section 230 (1) of the Constitution.⁶⁸ It is the highest court in the country and the Court of last resort. The Chief Justice of Nigeria and the head of the Nigerian judiciary preside over the Supreme Court. The Court consists of the Chief Justice and such number of justices not exceeding twenty one as may be prescribed by the National Assembly. Ordinarily the court is dully constituted with five justices of the court, except where it is exercising its original jurisdiction or a matter which involves a question of interpretation of the constitution. Or whether any provision relating to fundamental rights provisions of the constitution has been, is being or is likely to be contravened, in this regard the court is duly constituted if it consists of seven justices of the Supreme Court.⁶⁹

The Supreme Court is vested with appellate jurisdiction over decisions of the Court of Appeal either as of right or with leave.⁷⁰ Since the Court of Appeal is vested with jurisdiction over tax matters and appeal lies from it to the Supreme Court, it means tax disputes may be litigated up to the Supreme Court. Thus one of the recent tax disputes which reached the Supreme Court is **AG Federation v AG Lagos State**,⁷¹ where the Federal Government sought to invalidate Lagos State laws that regulate hotel occupancy and licensing restaurant operation within Lagos State, the Supreme Court held that the Federal Government's power to legislate on tourist traffic under item 60 of the exclusive legislative list,⁷² would not oust Lagos State's power to regulate intra – state hotel business.

CONCLUSION

This study was carried out to establish the requisite jurisdiction of Courts over Tax Matters in Nigeria. The work listed and discussed the courts that have jurisdiction over tax matters in Nigeria. It has succeeded in giving a detailed overview of the types of tax disputes that each court can entertain. The conflict of jurisdiction between the Federal High Court and the Tax Appeal Tribunal was analyzed. Various courts have jurisdiction over different types of tax matters in Nigeria depending on the tier of government that has power to impose the tax, the amount of money sought to be recovered or the organization or individual from whom tax is being recovered.

⁶⁸ CFRN 1999.

⁶⁹ *Ibid*, S. 234.

⁷⁰ *Ibid*, S. 233 (1) (2) and (3).

⁷¹ (2013) 12 TLRN 55.

⁷² CFRN 1999 Second Schedule Part I.



The Customary Courts are vested with jurisdiction over tax matters in respect of taxes and levies collected by Local Government Authorities, if the tax sought to be collected does not exceed six hundred thousand naira (N600,000) only. However, if the amount involved exceed six hundred thousand naira (N600,000) but does not exceed one million naira (1,000,000) only, the Magistrate Court is vested with jurisdiction. The Magistrate Court is vested with jurisdiction over both criminal and civil tax matters provided that the amount of money involved in the matter does not exceed the monetary limit of the magistrate concerned, *the State High Court is the eligible court to try the issue is personal income tax, PAYE*. The Tax Appeal Tribunal is vested with jurisdiction in respect of disputes arising from the operation of all the tax statutes listed in the first schedule to the Tax Act. Nevertheless, Appeal from the Tax Appeal Tribunal goes to the Federal High Court. In exercise of appellate jurisdiction over tax matters, the Court of Appeal has exclusive jurisdiction to hear and determine appeal from the Federal High Court, State High Court and other courts that are of co-ordinate jurisdiction with them. It is instructive, therefore, to note that while the Court of Appeal is vested with jurisdiction over tax matters, appeal lies from it to the Supreme Court. Therefore, the Supreme Court is the only court vested with appellate jurisdiction over decisions of the Court of Appeal either as of right or with leave.