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The Practice of One Territorial Jurisdiction of the Federal High Court of Nigeria and the Need for Constitutional Amendments to Decongest the Courts

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Abstract

This article reviews the decisions of the Supreme Court in **Owners of M.V. Alabera v. NAIC (2008)11 NWLR (pt.1097) 182** which held that a State of Nigeria in relation to one another is outside jurisdiction of the Federal High Court of Nigeria and leave is required to issue, serve and mark as concurrent, one within and the other to be served outside jurisdiction and the recent decision of the Supreme Court that the Federal High Court has one jurisdiction means outside the Federal Republic of Nigeria in the case of **Biem v. Social Democratic Party & 2ors** unreported **SC.341/2019**. Even the issue of one jurisdiction portends a greater problem in that the courts will continue to be congested as some Federal causes are also determinable by the State High Courts and all appeals from Magistrate Courts, Customary Courts, High Courts all pass through the Court of Appeal, Customary Court of Appeal and Sharia Courts of Appeal all the way to Supreme Court. This article adopts the doctrinal approach of reviewing the cases and incidences of True Federalisms to recommend Constitutional Amendments to create state courts of Appeal and Supreme Courts to help decongest the courts and concludes that in as much as one jurisdiction problem of the Federal High Court has been clarified by the Supreme Court in **Biem's** case**,** a lot in terms of Constitutional amendment to decongest the Court ought to be embarked upon as done in other countries such as the United States of America.

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1. PREFATORY

There has been an erstwhile controversy trailing the territorial jurisdiction of the Federal High Court of Nigeria established pursuant to the provisions of Section 249 (1) of the Constitution[1] of the Federal Republic of Nigeria as altered which states thus: '**There shall be a Federal High Court'**

Despite the provisions of Sections 249 (1), 2 and 3 of the Constitution and other provisions in the Federal High Court Act[2], the Sheriff and Civil Process Act[3] and the Federal High Court (Civil Procedure) Rules, 2009[4] which shall be discussed in this article, Counsel filing a Civil Suit in the Federal High Court, for instance in Abuja Division of the Federal High Court with one or more Defendants residing outside the Federal Capital Territory, Abuja, for instance in Lagos State prefer to file a Motion Ex-Parte for Leave of the Federal High Court sitting in Abuja containing the following reliefs:

i. Leave to issue and serve the Originating Summons or Writ of Summons on the Defendants outside the jurisdiction of the Federal High Court, Abuja and in Lagos, Lagos State.
ii. Leave to mark the Originating Summons or Writ of Summons as concurrent, one for service within jurisdiction and the other for service outside the jurisdiction of the Federal High Court, Abuja and in Lagos, Lagos State.

The reason for this practice emanated from the Supreme Court's decision in 2008, *Owners of MV Alabera v. NAIC*[5].

The decision of the Supreme Court in the above case which nullified the Writ of Summons issued in Lagos, Lagos State for service in Abuja was based on the 1976 Federal High Court (Civil Procedure) Rules which is not *inparimateria* with the provisions of the Federal High Court (Civil Procedure)

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[1] CFRN 1999 as altered
[2] FHC Act Cap F12 LFN, 2004
[3] SCP Act, Cap S6– LFN, 2002
[4] FHCPR, 2009
[5] (2008) 11 NWLR (pt. 1097)182

Rules 2009. Order 10 Rule 14 of the Federal High Court Civil Procedure Rules 1976 provides that Leave of Court is required to issue and serve a civil court process outside jurisdiction without defining categorically what was outside jurisdiction of the Federal High Court while the Federal High Court Civil Procedure Rules 2009 in order 6 Rule 31 defines "out of jurisdiction" of the Federal High Court as meaning "out of the Federal Republic of Nigeria".

The forgoing practice continued inspite of these provisions in Section 2, 3 and 249 (1) of the Constitution and the extant provisions of the Federal High Court (Civil Procedure) Rules, 2009 until the decision of the Supreme Court was rendered on the 14th of May, 2019 in the unreported case of *John HingahBiem v. Social Democratic Party & 2ors.*[6]Wherein the Supreme Court affirmed that the Federal High Court has one territorial jurisdiction. The Supreme Court made it categorically clear in a unanimous judgment which leading judgment was delivered by K.B Akaahs JSC that the Originating Summons issued by the Federal High Court, Makurdi which is to be served in Abuja cannot be considered service outside jurisdiction and therefore does not require to be endorsed as concurrent Writ.

What this judgment portends, apart from departing from its earlier decision in *Izeze v. INEC*[7] is that the case of *Owners of M.V Alabera*[8] ought not to have elicited the prominence earlier given to it by all the Superior Courts of record in Nigeria including the Supreme Court itself, especially Counsel, the Federal High Court and the Court of Appeal. This article further discusses the meaning of territorial jurisdiction, the pre-existing Constitutional provision relating to the territorial jurisdiction of the Federal High Court, the resolution of the problem of the territorial jurisdiction of the Federal High Court within Nigeria, and recommendations proffered with concluding remarks made here as to the position of the law on the territorial jurisdiction of the Federal High Court within Nigeria including constitutional amendments to help decongest the courts and enthroned true federalism in the judicature.

[6]SC. 341/2019 unreported
[7] (2018) 11 NWLR (pt. 1629)110
[8]n6 ibid

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2. WHAT IS TERRITORIAL JURISDICTION?

The Black's Law Dictionary[9] defines it as:

"1. Jurisdiction over cases arising in or involving persons residing within a defined territory. 2. Territory over which a government, one of its Courts, or one of its subdivisions has jurisdiction".

Sometimes, it is referred to as geographical area or venue jurisdiction. Territorial jurisdiction has to do with the area a matter arises or parties reside. A court lacks the competence to adjudicate over matters and persons outside its territorial jurisdiction. Amalgamating subject-matter and territorial jurisdiction and underlining their importance, existence and co-existence, Oputa, JSC in ***Tukur v. Govt of Gongola State***[10]said:

> ..... *The first is the legal capacity, the power and authority of a court to hear and determine a judicial proceeding – in the sense that it has the right and power to adjudicate concerning the particular subject-matter in controversy. The second is the geographical area in which and over which the legal jurisdiction of the court can be exercised. This area of authority is called the area of geographical jurisdiction or venue. Both are important when one is considering the concept of jurisdiction. And both must co-exist in any particular case to complete the circuit of jurisdiction.*

3. THE PRE-EXISTING LEGAL FRAME WORK FOR THE ONE TERRITORIAL JURISDICTION OF THE FEDERAL HIGH COURT WITHIN NIGERIA

The Federal High Court is as its title denotes, a Court established for the Federation or Federal Republic of Nigeria which jurisdiction encompasses the whole territory known as the Federal Republic of Nigeria as defined by

[9] Garner A. Bryan, The Black's Law Dictionary, (West Group U.S.A) 856, Obande E. Ogbuinya, Understanding the Concept of Jurisdiction in the NigerianLegal System (Snaap Press Ltd. 2008)22, 23.

[10] (1989)4 NWLR (pt.117)517

Sections 2 and 3 of the Constitution of the Federal Republic of Nigeria as altered. Section 2 states thus:

2(1) Nigeria is one indivisible and indissoluble sovereign state to known by the name of the Federal Republic of Nigeria.
(2) Nigeria shall be a Federation consisting of states and a Federal Capital Territory.

SECTION 249(1) OF THE CONSTITUTION

Under chapter VII titled "The Judicature", The Federal High Court is undoubtedly established for the whole of the Federal Republic of Nigeria irrespective of whether it states there shall be a Federal High Court of Nigeria or not[11]. Section 249 (1) is couched in the same manner as section 237 of the Constitution[12] which established the Court of Appeal and states that, 'There shall be a Court of Appeal'.

All causes and matters litigated at the State High Courts and Federal High Court coming on appeal to the Court of Appeal automatically become Federal causes because there will be no dichotomy of State and Federal causes or matters emanating from State High Courts and Federal High Court proceeding to appeal to the Court of Appeal and finally to the Supreme Court become Federal causes or matters. This is because the States do not have States Court of Appeal or State Supreme Courts. It is posited that this is why the Court of Appeal and Supreme Court in Nigeria are inundated with appeals with the obvious delays in justice delivery. Suggestions on the way forward would be made in the recommendations. Suffice it to say that in the United States, the States have their have separate Constitutions, Police, High Courts, Courts of Appeal and Supreme Courts. The Federal Supreme Court of the United States take only appeals from United States (Federal) Appeal Courts and United States (Federal) Appeal Courts take appeals from Federal District Courts which try Federal causes or matters. In other words, the Federal District Courts try only Federal causes or matters.

[11] *N1 ibid*
[12] *n1 ibid*

Article III Section 1 of the United State Constitution states thus:[13]

> *Section 1.**The Judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme Court and inferior Courts, shall hold their offices during good behavior, and shall, at stated times, receive for their Services a Compensation, which shall not be diminished during their continuance in Office.***

Section 2 of the Article III of the same United State Constitution enumerates the Federal Causes or matters the Supreme Court of the United States and inferior Federal Courts such as Federal Court of Appeal and Federal District Courts have jurisdiction to entertain and it states thus:

> *Section 2.***The Judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and treaties made, or which shall be made, under their Authority;- to all Cases affecting Ambassadors, other public Ministers and Consuls;- to all Cases of admiralty and maritime Jurisdiction;- to Controversies to which the United States shall be a Party;- to Controversies between two or more States;- between a State and Citizens of another *State;- between Citizens of different State;- between Citizens of the same State claiming Lands under the Grant of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects.***

It is submitted that by the parity of logic, argument or of reasoning suggest that the Constitution of the Federal Republic of Nigeria as amended, even though defines Nigeria in Section 2 as 'The Federal Republic of Nigeria', Nigeria is not legally, constitutionally and institutionally a True Federation

[13]*Black Henry Campbell, Blacks Law Dictionary (West Publishing Co. 1991) 1644*

and the issue of True Federalism is a constitutional matter. It goes to show the intention of the drafters of the Constitution of the Federal Republic of Nigeria from 1979 to 1999 which is to create a Unitary State using a pseudo and purported Unitary Constitution called Federal Constitution to create Unitary Republic of Nigeria and called it a purported Federal Republic of Nigeria. For instance, the constitutive states do not have state police, Courts of Appeal and Supreme Courts as the United States of America.

The erstwhile 1960 and 1963 Constitutions of Nigeria were more of Federal Constitutions and Nigeria then was indeed a Federal Republic of Nigeria not under the present 1999 Constitution as altered.

It is further submitted that the undeniable truth is that the Constitutions of Nigeria from 1979 to 1999 Constitutions were midwifed by Military regimes purporting to transit to civil regimes by democracy and in a bid to maintain a grip on the governance, political structures and institutions, got drafters of the Constitution to do their bidding.

Nigerians, in the frenzy to transit from military authoritarian and dictatorship regimes to democracy were ready to accept any kind of Constitution in the garb of democracy and democratic elections even when what Nigerians really desire is true federalism together with democracy. The eyes of Nigerians have now opened as the wool pulled over their eyes are gradually being removed by the vicissitudes of a pseudo federalism thrust upon them by the Constitution handed down to them by the military administrations that preceded transition to civil democracy. There is now the agitation for true federalism, State Police, Resource Control by the States and contribution to the Federal Government as was done under the 1960 and 1963 Constitutions.[14]

The Unitary System of government in the present political, administrative and institutional arrangement in Nigeria is also replicated in the Judicial Arm of Government. There are no Courts of Appeal and Supreme Courts for the

[14]*Sylvanus Elijah Abila and Danfebo. K. Derri, 'Sustainable Development Issues in the Niger Delta' in Festus Enuri and Gowon Danduomo (eds) in Law and Petroleum Industry in Nigeria. Current Challenges, (Malthouse Press, 2009), 223-275.*

States. The only specific Federal cause or matters are those specified in Section 251 (1) (2), (3) and (4) of the Constitution.[15]

This accounts probably for one of the reasons for the lack of distinction between a Federal High Court that has one territorial jurisdiction that encompasses the whole of the Federal Republic of Nigeria and State High Court which territorial jurisdictions are limited to the territory of each State as was seen in the *Owners of M.V Alabera*[16] and *Izeze*[17]cases. It does appear that the Federal Republic of the Nigeria was created as a State of the Federation of Nigeria going by the tenor of those judgments.

The distinction in terms of the territorial jurisdiction of the Federal High Court and the meaning of 'out of the jurisdiction' of the Federal High Court has been laid to rest in the Supreme Court's latest decision on the confusion and controversy in *John HingahBiem v. Social Democratic Party & 2ors*[18]

SECTION 254 OF THE CONSTITUTION

It can also be discerned from Section 254 of the Constitution that subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court. This shows that the Rules of the Federal High Court have Constitutional flavor apart from being a subsidiary legislation pursuant to section 18(1) of the Interpretation Act[19] this has been emphasized by the Supreme Court in *John HingahBiem's case*[20]wherein it adopted and applied the definition of 'out of jurisdiction of the Federal High Court' in Order 6 Rule 31 of the Federal High Court (Civil Procedure) Rules, 2009 as 'out of the Federal Republic of Nigeria'.

[15]*n1 ibid*
[16]*n5 ibid*
[17]n7 *ibid*
[18]*n6 ibidS.C. 341/2019 unreported*
[19] Interpretation Act Cap I 23 LFN, 2004
[20]*n6 ibid*

SECTION 19 (1) OF THE FEDERAL HIGH COURT ACT.

The little known and scarcely cited provision of the Federal High Court Act[21]is section 19 (1) which is apposite in the resolution of the confusion which states thus:

> ***The Court shall have and exercise jurisdiction throughout the Federation and for that purpose, the whole area of the Federation shall be divided by the Chief Judge into such number of Judicial Division or part thereof by such name as he may think fit.***

The Supreme Court also applied the said Section 19(1) of the Federal High Court Act in reaching the decision that the territorial jurisdiction of the Federal High Court encompasses the whole territory of the Federal Republic of Nigeria in *John HingahBiem v. Social Democratic Party & 2ors*.[22]

SECTION 44 (1) (S) OF THE FEDERAL HIGH COURT ACT.

This section is also seldom referred to in all the arguments as to the territorial jurisdiction of the Federal High Court just as section 19 (1) of the same Act, nonetheless the said Sections 19 (1) and 44(1) adorn the said statute. Section 44 (1) (s)[23] states thus:

> ***The Chief Judge may with the approval of the President, make Rules of Court for carrying this Act into effect, and in particular and without prejudice to the generality of the foregoing, for all or any of the following purposes and matters:-***
>
> ***(s) for providing for the service or execution of any writ, warrant, order or other processes issuing out of the Court, the payment of mileage allowance before or after service or execution, the conditions precedent before any such process or process of certain classes will be served or executed and***

[21]*n4 ibid*
[22]*n6 ibid*
[23]*n4 ibid*

> ***the procedure to be followed after the service or execution of such processes.***

This provision puts the Federal High Court in a Class of its own, distinct from State High Courts and High Court of the Federal Capital Territory, Abuja to which the Sheriff and Civil Processes Act[24] applies. It is submitted that this section is not in conflict or inconsistent with Section 254 of the Constitution which authenticates both the Rules made by the Chief Judge of the Federal High Court and approval of the Rules by the President pursuant to Section 44 (1) (s) of the Federal High Court Act. This submission finds company in the Supreme Court's decision in *John HingahBiem*.[25]

SHERIFF AND CIVIL PROCESS ACT

The provisions of Sections 96, 97 and 98 of the Sheriff and Civil Process Act[21] are to guide the services of Writ of Summons, Originating Summons or any Summons in a civil cause or matter in any part of the Federation, endorsement to be made on the Summons for service outside the State or the Federal Capital Territory and the marking of concurrent Summons. It is pertinent to reproduce them here for clarity as follows:

> *96(1) A Writ of Summons issued out of or requiring the defendant to appear at any court of State or the Capital Territory may be served on the defendant in any other State or the Capital Territory.*
>
> *(2) Such service may, subject to any rules which may be made under this Act, be effected in the same manner as if the writ was served on the defendant in the State or the Capital Territory in which the Writ was issued.*
>
> *97. Every writ of summons for service under this Part out of the State of the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the*

[24] *n3 ibid*
[25] *n6 ibid*

> *law of such State or the Capital Territory, have endorsed thereon on a notice to the following effect (that is to say)-*
>
> *"This summons (or as the case may be) is to be served out of the ……. Sate (or as the case may be)……. and in the ……. State (or as the case may be)"*
>
> *98. A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent.*

The above Sections of the Sheriff and Civil Process Act were extant when the Supreme Court decided *Owners M.V Alabera's*[26] and *Izeze's*[27] cases all commenced in the Federal High Court. It was a question of interpretation of those provisions. It is glaringly clear from the said provisions that the Sheriff and Civil Process Act minced no words relating to territory of the Courts which are "State or the Capital Territory". These words were repeated in Sections 96, 97 and 98 of the said Act to leave no one in doubt that the Federal High Court is not contemplated by the Sheriff and Civil Process Act.

The Federal Capital Territory is treated by the Constitution as if it is one of the States the same way the Sheriff and Civil Process Act treats the Federal Capital Territory. Section 299[28] partly states thus that: **"The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation….".**

It is submitted that a Federal High Court sitting in Abuja or Lagos is not the Federal High Court established for FCT Abuja or Lagos State but a Federal High Court established for the whole territory or Federal Republic of Nigeria. Therefore no leave is required for the Federal High Court sitting in Abuja where the Suit is commenced to issue and serve the processes out of

[26] *n5 ibid*
[27] *n7 ibid*
[28] *n1 ibid*

jurisdiction neither is leave required to mark the Writ Concurrent since it is one uniform jurisdiction to be served in Lagos, Lagos State.

RESOLUTION OF THE CONFUSION GENERATED BY THE SUPREME COURT'S DECISIONS IN OWNERS OF *M.V. ALABERA'S* AND *IZEZE'S CASES*.

The above two cases[29] applied the provisions of the Sheriff and Civil Process Act[30] in nullifying the Originating processes issued in the Federal High Court Lagos, Lagos State to be served in Abuja, Federal Capital Territory and Warri, Delta State to be served in Abuja, Federal Capital Territory respectively.

The preamble to the Sheriff and Civil Process Act was even applied in *Alabera's* case to extend the meaning of 'High Court' to include Federal High Court instead of properly construing the tenor of the operative words on territory of the Court in Sections 96, 97 and 98 of the Sheriff and Civil Process Act which are 'State' and 'Capital Territory'.

The 1st Respondent in *John H. Biem's* case placed reliance in Item No. 57 on the Exclusive Legislative List as provided in the Second Schedule of Part 1 of the Constitution which states:

> ***Service and execution in a State of the Civil and Criminal process, judgment, decrees, orders and other decisions of any court of law outside Nigeria other than a Court of law established by the House of Assembly of that State.***

It is submitted that this item does not support the Respondent's case rather it supports the Appellant's case as the National Assembly has legislated in Section 19(1) and 44(1) (s) of the Federal High Court Act which provide for the territorial jurisdiction of the Federal High Court as encompassing the whole of the Federal Republic of Nigeria and for the service or execution of any writ, warrant, order or other process issuing out of the Court respectively. It is trite of course that the State House of Assembly cannot legislate for the Federal High Court or the Federation.

[29] *n5 ibid, n7 ibid*
[30] *n3 ibid*

The Appellant's position which was upheld by the Supreme Court in *Biem's* case is that the territorial jurisdiction of the Federal High Court covers the whole of the Federal Republic of Nigeria and the Sheriff and Civil Process Act was not contemplated to apply to the Federal High Court that was not in existence in 1945 when the Sheriff and Civil Process Act was enacted. The High Courts of the Regions were in existence then which are analogous to the Federating States we have now.

These High Courts then, had as the present High Courts now have, limited territorial jurisdiction as they only entertained matters that originated within the respective regions or states as provided for in Section 272(2) of the Constitution which states thus:

> ***The reference to Civil or Criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the Court in the exercise of its appellate or supervisory jurisdiction.***[31]

The Supreme Court emphatically and categorically held that the Federal High Court was not contemplated by the lawmakers when the Sheriff and Civil Process Act was enacted in the case of *Joseph H. Boko v. Hon. B.E Nungwa& 2ors*[32] wherein it stated at page 443 (paras E – G) thus:

> ***The Sheriffs and Civil Process Act being divided into parts I, ii, iii, iv, vi, and vii and properly stated to whom or which the provisions apply.***
> ***In section 2 and 19 of the Sheriffs and Civil Process Act, the courts contemplated by the Act have been defined. In section 2 of the Act (part ii), "court" is defined as follows:***
> ***"Court" includes a High Court and a magistrate's court"***
> ***In section 19, Part iii of the Act the "court" is defined thus:***
> ***"Court" includes the High Court of the Federal Capital Territory, Abuja or of the State"***

[31] *Emphasis added*
[32] *(2019)1 NWLR (pt. 1654)395*

> ***In section 95 of the Act, the word "court" is further defined as follows:***
> ***"Court" means a court to which parts iii, iv, v, and vi apply".***
> ***I agree with counsel for the appellant that recourse to provisions of the Act will reveal that the Federal High Court was not contemplated by the lawmakers when the Act was enacted.***

The landmark decision of the Supreme Court in *John H. Biem*[33] on the 14th of May, 2019 has put to rest the confusion and controversy surrounding its decision in *Owners of M.V Alabera's and Izeze's* cases and agreed that the decision in *Owners of M.V Alabera* was based on the Federal High Court (Civil Procedure) Rules, 1976 now repealed by the Federal High Court (Civil Procedure) Rules, 2009 and these cases have been overruled by *Boko's* case.[34]

The Supreme Court while disagreeing with the 1st Respondent/Cross Appellant's Counsel's submission at pages 42-44 of the unreported judgment in *Biem's* case held per Akaahs JSC thus:

> ***The submission of the learned Counsel for the 1st Respondent/Cross Appellant that the principal legislation that deals with the service of court processes of any Court in Nigeria is the Sheriff's and Civil Process Act is therefore not correct as it relates to the Federal High Court.***
> ***It is only true of the State High Courts because their jurisdiction is circumscribed by the territory each State occupies and the Federal Capital Territory. The service of any processes issued by the Federal High Court can be carried under the Sheriff and Civil Process Act if such service is to be executed outside the territory of Nigeria.***
> ***Order 6 Rule 31 of the Federal High Court Rules interprets outside jurisdiction to mean outside the Federal Republic of Nigeria. Thus to hold that an Originating summons which***

[33] *n6 ibid*

[34] *n29 ibid*

> ***was issued out of the registry of the Federal High Court, Warri which was addressed forservice at Abuja outside Delta State where the Originating Summons was issued from should be nullified because it did not comply with Section 97 of the Sheriff and Civil Process Act as this Court did in Izeze v. INEC (2018) 11 NWLR (pt. 1629) 110 at 132 did not take cognizance of Section 19 of the Act and Order 6 Rule 31. I am of the considered few that the Originating Summons issued by the Federal High Court, Makurdi which is to be served in Abuja cannot be considered to be service outside jurisdiction and therefore does not require to be endorsed as a concurrent writ.***

The above dictum of the Supreme Court states the resolution of the lingering problem of the territorial jurisdiction of the Federal High Court, outside jurisdiction of the Federal High Court in terms of territorial jurisdiction. It took care of whether Originating processes issued in one division of the Federal High Court, for instance, out of Abuja Federal Capital Territory to be served in Lagos, Lagos State is outside jurisdiction of the Federal High Court, Abuja, whether the Originating Processes should be marked for service outside jurisdiction of the Federal High Court, Abuja and in Lagos, Lagos State and mark same as concurrent writ and to apply for Leave to issue and serve same outside jurisdiction of the Federal High Court, Abuja and in Lagos, Lagos State.

These questions have been answered by the Supreme Court, that a process issued by the Federal High Court in any part of Nigeria to be served in another State of the Federation is not for service outside jurisdiction of the Federal High Court. Outside jurisdiction of the Federal High Court means outside the Federal Republic of Nigeria[35].

[35] *N31*

It is submitted that the long and winding road and time taken by the Supreme Court to reach the decision in *Biem's*case ought to have been cut short by the literal interpretation of the provisions of Sections 2, 3, 249 (1) and 254 of the Constitution as altered, Sections 19(1) and 44 (1) (s) of the Federal High Court Act and Order 6 Rule 31 of the Federal High Court (Civil Procedure Rules, 2009 and Sections 96, 97 and 98 of the Sheriff and Civil Process Act. A community reading and understanding of these Sections and Rules of the Federal High Court would have saved precious judicial time but 14th of May, 2019 is still in good time. It is equally and most respectfully submitted that in deference to the Supreme Court, the provisions of the Sheriff and Civil Process Act having not been contemplated to apply to the Federal High Court which was not in existence when it was enacted, coupled with the definition of High Court therein which does not include Federal High Court but Regional or State High Courts and Magistrate Courts, the Sheriff and Civil Process Act has no application to the Federal High Court. The above laws and Rules suffice on the issue of Territorial jurisdiction and service of process emanating from the Federal High Court either within or outside the Federal Republic of Nigeria.

RECOMMENDATION

From the Supreme Court's decision in *Biem's* case, it is recommended that a Plaintiff who files a civil suit in the Federal High Court sitting in any State of Nigeria or Federal Capital Territory to be served in another State of the Federation does not have to apply for leave to serve outside jurisdiction, does not need to endorse it for service outside jurisdiction nor to mark it as a concurrent writ as the meaning of outside jurisdiction of the Federal High Court is outside the Federal Republic of Nigeria.[36]

This will be of interest to the Court of Appeal Justices, Judges of the Federal High Court, Legal Practitioners and the Academia. It is also recommended and commended to them. The issue of true federalism took the front burner leading up to the 2019 general elections but after the declaration of the results by the Independent National Electoral Commission (INEC) and those who won the

[36] ibid

elections were sworn in, the agitation for true federalism has not only taken the back seat but is completely absent from the National discourse. It seemed as if it was a political campaign stunt or an abusable prop used by dramatists tobe dismantled after recording the episode. It is posited that the much needed decongestion of the dockets of the Court of Appeal and the Supreme Court for expeditious dispensation of justice may yet elude the litigants and judicial officers if the States do not have their State Constitutions creating the High Courts, Court of Appeal and Supreme Courts of the State leaving the Federal High Court, Federal Court of Appeal and Federal Supreme Courts to deal with strictly Federal causes or matters which is highly recommended.

The above recommendation will not come easy, it entails Constitutional amendments. Since the National Assembly is no longer shy of carrying out Constitutional amendments and has gone up to the 4th alteration. It is squarely within the political will of the Federating units known as the States to garner the momentum to work through their representatives in the National Assembly to carry out the requisite Constitutional amendments by way of subsequent alterations of the Constitution to provide for the States of the Federation of Nigeria to have their State Constitutions, Police, High Courts, Courts of Appeal and Supreme Courts to deal with matters that are not Federal causes. An alteration is also required to streamline causes that are Federal causes and made exclusive for Courts established for the Federation. The above are by no means exhaustive of what the National Assembly can do to unbundle and devolve too much power concentrated in the Federal Government. It can be seen that the greatest problem of the Nigerian political atmosphere, security architecture, economic landscape and sluggish dispensation of justice does not lie in the person occupying political position but in the Constitution itself. That is where the blame is. In order to get it right and rightly claim our position as the giant of Africa and probably the largest emerging economy in Africa, we must revisit our Constitution and amend it to unleash the indomitable creative potentials of Nigerians by way of Constitutional amendment to put Nigeria on the path of True Federalism. This will make Nigeria greater and its economy will be unparalled in Africa. From True

Federalism will arise modern and forward looking political leaders who know that the strength of a Nation is in the Nations people and population. Various arms of government will benefit from the true practice of True Federalism backed by Constitutional instruments. Nigeria has natural endowments located in each of the States of the Federation and arable land for agriculture and if space colonization does not work for the technologically advanced Countries of the world because life cannot be found there, Africa will be in again for neo-colonization in the near future in addition to the current rush by them to have a piece of and presence in Africa. Nigeria is one of the toast of the current rush by the advanced world economies for exploitation of naturalresources through trade by batter and mortgage of land for infrastructural development which we can do on our own if we get our political structures and governance right, when that is done, then economic prosperity is assured. Nigeria is expected to lead the way but its political and governance structure seem to stand in its way to truncate its diplomatic attempts to be relevant and be appointed as one of the members of the United Nations Security Council. Nigeria ought not to be deterred in forging ahead with its foreign policy objectives irrespective of the petty jealousies of the other African Countries that only call us the giant of Africa when they need some help from us but when they get it, they turn their backs on us when we need them to advance the international and diplomatic goals of Nigeria. Nigeria needs to take its destiny in its own hands by restructuring and transforming back to True Federalism which will have positive impact in all sectors, lives and livelihoods of Nigerians including the Courts that will be established for the Federation and the States in the manner recommended above.

The congestion of the Courts and slow dispensation of justice are also negative consequences and concomitants of absence of True Federalism in the structure of the political, administrative and institutional frame work of Nigeria. The National Assembly is to take note and commence a gradual process of moving Nigeria towards True Federalism as obtained in the sixties to move Nigeria

forward in terms of general development which will impact positively on the expectations dispensation of justice.

CONCLUSION

There are more cases bothering on the decisions of the Supreme Court in *Alabera's and Izeze's* cases making their way to the Supreme Court because as at March, 2019, the Court of Appeal was still applying the decision in *Alebera's* case. The decisions of the Supreme Court in *Biem's*[37] case is well positioned to expeditiously take care of such appeals. Practicing Legal Practitioners will now leverage on the decisions of the Supreme Court in *Biem's* and *Boko's* cases to file civil suits in any division of the Federal High Court and will not be bothered by the issue of filing Motions ex-parte for leave to issue, serve originating processes outside jurisdiction when the Defendant resides in any part of Nigeria nor to endorse for service outside jurisdiction or mark same as concurrent writs.

The proper interpretation of the territorial jurisdiction of the Federal High Court has been done by the Supreme Court in *Biem's*[38] case and legal practitioners at all levels of Court are therefore guided including the relevant Courts below the Supreme Court.This means that the decisions of the Supreme Court in *Izeze's*[39] case which was decided on the Federal High Court (Civil Procedure) Rules, 2009 is no longer the law as outside jurisdiction of the Federal High Court in Order 6 Rules 31 of the said Rules means outside the Federal Republic of Nigeria.

It is submitted that the Federal High Court, the Court of Appeal and particularly the Supreme Court in deciding *Izeze's*[40]case and even *Biem's*case did not need to look too far to the provisions of the Sheriff and Civil Process Act[41]and the Federal High Court Act[42] to reach the various decisions they

[37] n6 ibid
[38] n6 ibid
[39] n7 ibid
[40] n7 ibid
[41] n3 ibid
[42] n4 ibid

reached in those two cases. It is even further submitted that the Supreme Court's decision in *Alabera's*[43]case ought not to have looked further into those Acts above mentioned but ought to have, in deciding the above cases relied only on the Section 249 (1) of the 1999 Constitution as altered for instance establishing the Federal High Court which states that there shall be a Federal High Court to know that the territorial jurisdiction of the Federal High Court sitting in any part of Nigeria covers the whole of the Federal Republic of Nigeria. Having waited this far for the one territorial jurisdiction of the Federal High Court within the Federal Republic of Nigeria, the Legal Practitioners, the Federal High Court, the Court of Appeal and the Supreme Court itself will now rest easy from such appeals clogging the dockets of the appellate Courts as *Biem's*[44] case has put paid and to rest the issue of one territorial jurisdiction of the Federal High Court within the Federal Republic of Nigeria. It is submitted that in furtherance of decongestion of the courts for early and easy dispensation of justice, a constitutional amendment ought to be embarked upon to create State Constitutions, Police, Courts of Appeal and Supreme Courts to try and finally decide non-federal causes and also define same, the length of time cases take to get to the Supreme Court to be finally decided deters investors from coming into Nigeria to invest among others.

[43] n6 ibid
[44] n6 ibid