



CHAPTER ONE



THE COURT



The Court of Appeal is "The Court"



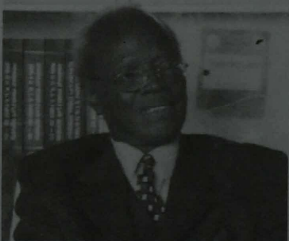
Hon. Justice Umaru F. Abdullahi: *"Laws are made in the Court Of Appeal. It is The Court".*



Hon. Justice I. A. Salami: *"When matters come from the High Courts, the Court of Appeal sits down to reconcile them and sift the grains from the chaff. By the time it gets to the Supreme Court, it is settled or well refined."*



Hon. Justice Maryam A. Muktar: *"The Court of Appeal is the Court. It's a court that a Judge really needs to pass through not only in terms of judgments or his knowledge of the law but even in human interactions."*



Hon. Justice Sylvanus Nsofor: *"Every judge ought to pass through the Court of Appeal and I hold strongly to that view. Yes, it is The Court and I say it without fear of contradiction."*



Hon. Justice Victor Obase: *"It is the main court in Nigeria because after the High Court has done its work, the main work is here in the Court of Appeal."*



Hon. Justice Zainab Bulkachuwa: *"The Court of Appeal is an on-going project and our greater years are still ahead."*

IN THE BEGINNING...

Six years after the civil war ended, Nigeria was still on the path to recovery. One of the major indices of this manifested in the judicial realm. The year 1976 was an eventful year indeed.

Various military regimes had come and gone but the judiciary had not only trudged on but still managed to maintain its sanity. Six years back, the government of General Yakubu Gowon ousted the jurisdiction of the courts in the famous Lakanmi case. "The decree supersedes the constitution," the military government declared. "No way!" The judiciary replied.¹

Sequel to the military incursion of January 1966 into governance in Nigeria, Decree No. 1 of 1966 was promulgated. This decree suspended some sections of the 1963 Constitution and modified others. Among the suspended sections was the part which stated that the Constitution was supreme.

When the properties of Mr. E.O. Lakanmi, and some others were seized as result of Edict No. 5 of 1967², the family approached the High Court of Western State sitting at Ibadan. The Court dismissed their application and gave effect to the Edict of the state government.³ Undaunted, they appealed to the Western State Court of Appeal in Ibadan which also heard and dismissed the appeal. On further appeal to the Supreme Court, in the matter today known as *Lakanmi & Anor. v. The Attorney General Western Region & Ors*, the Attorney General of the Western State, insisted that the military was not accountable to anybody.

Dr. F.A. Ajayi who was Attorney General at that time claimed that: "*What took place in January 1966 was a revolution*".⁴ He further stated that the Federal Military Government which seized power on January 15, 1966 was a revolutionary Government that had an unfettered right to rule by force and by means of Decrees. He pointed out that nothing from the Republican Constitution⁵ of 1963 could be implied into the new mode of ruling the country.

On April 24, 1970, the Supreme Court gave judgment in favour of Lakanmi and declared Edict No. 5 of 1967 null and void. It held that the 1966 coup d'état was not a revolution but an illegal hijack of power.⁶

To avoid being caught off guard in future, the then Federal Military Government of General Yakubu Gowon, promptly promulgated Decree No. 28 of 1970. That decree nullified the judgment and ousted the courts' jurisdiction. The decree withdrew, from courts in the country, the power to make any pronouncement on the competence of any of the governments of the Federation to make a Decree or an Edict.

In a rather surprising move, Gowon's government established the Federal Revenue Court. Although the need was noted during the Constitutional Conference leading to independence, to establish a high court for the determination of causes and matters

within the Federal Exclusive Legislative Competence, as is traditional in countries with the Federal System of Government, no step was taken in that regard until the enactment of the Federal Revenue Court Decree 1973. The court today is known as Federal High Court.

Then came the 1975 civil service purge that saw the removal of many judicial officers. Some hailed the move. Others felt it was flawed as a number of innocent people were affected.⁷

Prior to this time, Gowon's government had started losing popularity. On October 1, 1974, he announced that his government would no longer proceed with the proposed transition to civil rule. This change of heart from the earlier promise as well as citizens' reservations towards the government bordering on ineffectiveness and increasing corruption turned the tide against his government.⁸ While Gowon was attending an OAU meeting in Kampala, Uganda on July 29, 1975, some young officers with the assent of Brigadier Murtala Mohammed toppled his government. Mohammed was made Head of State and later got promoted to the position of General.⁹

On assumption of duty, Murtala Mohammed who said his government was poised to restore public confidence in the Federal Government removed top federal and state officials. More than 10,000 public officials and employees were dismissed without benefits, on account of age, health, incompetence, or malpractice. The purge affected the civil service, judiciary, police, armed forces, diplomatic service, public corporations, and universities. Some officials were brought to trial on charges of corruption. He also began the demobilization of 100,000 troops from the swollen ranks of the armed forces.¹⁰

Between July 30, 1975 and February 13, 1976, he had set a date for the return to democratic rule for 1979 and proclaimed a new Federal Capital for Nigeria. That began the movement of the Federal Capital from Lagos to Abuja.

Then on February 13, 1976, Nigeria witnessed another major coup. The Head of State, General Murtala Mohammed was killed. This was the second coup claiming the life of a Military Head of State; the first being General Aguiyi Ironsi, who was assassinated in the counter coup of 1967 when the clouds of Nigerian Civil war was beginning to gather strength. The coup which felled General Mohammed failed. His second in Command, General Olusegun Obasanjo took the mantle as Head of State, Commander-in-Chief of the Armed Forces. Thus began the process of a possible hand over to civilian rule.¹¹

The judiciary was not left out in this process. The government, it appeared had plans to bring justice closer to the people. Appeals to both the Privy Council and West African Court of Appeal (WACA) had long been abolished. The Federal Supreme Court (as it was then called) which was at some point a high court and an intermediate court had become the highest court of the land. Appeals therefore went directly to the apex court from the High Courts.¹²

In the beginning, appeals moved from the high courts to the Federal Supreme Court; then it proceeded to WACA and finally to the Privy Council in England. This system lasted from pre- independence period to October 1, 1963 when Nigeria became a Republic.¹³

The events leading to this transformation started when a dispute arose between Chief S. L. Akintola, Premier of the Western Region and Chief Obafemi Awolowo who was Premier until his movement to the Federal Parliament. As a result of the disagreement, attempts were made by the Awolowo group to remove Akintola from office and replace him with Alhaji D. S. Adegbenro.

The matter moved from the High Court of Western State to the Federal Supreme Court and later to the Privy Council. Alhaji D.S. Adegbenro and the Awolowo group won the appeal. In reaction, the Federal Government of Alhaji Tafawa Balewa which appeared to favour the Akintola faction stopped the filing of appeals at the Privy Council.

On October 1, 1963, a new Constitution came into operation and the Federal Supreme Court which came to be known as the Supreme Court of Nigeria became the final court of the land. The new constitution also empowered regions in Nigeria which at the period, were divided into three (Western, Eastern and Northern) to establish their own Courts of Appeal.¹⁴

Eventually, it was only the Western Region that exercised this power, establishing a court known as Western Nigeria Court of Appeal (WNCA) by the Court of Appeal Edict No. 15 of 1967. The new court became operational on April 1, 1967, with Hon. Justice Adejumo Kester as its first President.¹⁵

While appeals from High Courts in other regions went straight to the Supreme Court, appeals from high courts in Western Region went first to the WNCA and later to the Supreme Court. As at 1967, only the Western Region comprised of present day Ogun, Oyo, Osun, Ondo and Ekiti States had three tiers of courts as other regions operated two tiers.

WNCA functioned until March 31, 1976 when it was abolished by Decree No. 42 of 1976, in view of preparations to inaugurate the Federal Court of Appeal.

The birth of the Federal Court of Appeal as it was then called on October 1, 1976 was one of the defining moments of the 1970s and also an interesting 16th birthday package for the country. With a mix of professionals from diverse backgrounds, the Court, which had its inaugural sitting on Monday, February 21, 1977, began its journey into bringing justice closer to the people. Hon. Justice Dan Ihikwe a justice of the Supreme Court was its first President.

The All Nigeria Judges Conference of 1972 in Lagos had recommended that a Court of Appeal be established. The Federal Military Government of General Gowon ignored the recommendation. In 1976, the Federal Military Government of General Olusegun Obasanjo, through the Federal Court of Appeal Act No. 43 of 1976 and decree No. 42

of 1976 established the Federal Court of Appeal. The Court became an intermediate court and the second highest court in the land, next to the Supreme Court.

On the occasion of the Court's inauguration, General Obasanjo noted that the elimination of the Privy Council left the Supreme Court with the final appellate jurisdiction without having to create a new judicial institution to play the intermediary role of the Supreme Court. This he said, led to the establishment of the Court of Appeal.

During the ceremony, Justice Ibekwe remarked that the official opening of the Court was the end of a long journey in the quest for a Court of Appeal, to correct the anomaly that arose from the abolition of appeals to the Privy Council. He explained that by way of emphasizing the country's unity, it was decided that the new Court should be a Federal Institution.

Explaining the rationale for the Court, Justice Maman Nasir, Ibekwe's deputy said:

*"The real reason for getting a Court of Appeal was to improve the quality of administration of Justice. The government was ready for any idea that would reduce delay in the Judiciary. In a country like Nigeria, very populous and rich, it is in the interest of the social peace and economic growth that administration of justice is speeded up."*¹⁶

The name "Federal Court of Appeal" was changed to "Court of Appeal" in 1984. Incidentally, the Federal Military Government had earlier in 1976 established the National Industrial Court; a high court that handles matters related to labour and trade disputes.

JUSTICES

The first appointments to the Court were those of Dan Ibekwe and Maman Nasir. They were the most junior justices on the Supreme Court bench at that time. Ibekwe was however Nasir's professional senior. Both men also held the record of going straight to the Supreme Court from the bar. Ibekwe and Nasir were to provide the initial appellate experience. The Court's history must reckon properly with this duo who stepped down from the bench of the Supreme Court to lay the foundation of today's Court of Appeal.

Since its establishment in 1976, the Court has had six presidents and 221 justices in all. Over the years, the Court has had periodic infusion of new justices and new ideas. Also, justices of the Court are sometimes elevated to the Supreme Court. Others retire due to Constitutional retirement age and new ones are appointed from superior courts of record.

To ensure their independence, salaries of the justices are not determined by any executive fiat. This is to forestall any incidence of interference in the work of judicial officers by the Executive. Previously, the Judiciary was treated as an appendage of the Executive



arm in the sense that, unlike other organs of government that were directly funded from the Federation Account, it was funded through the Federal Ministry of Finance. With the creation of the National Judicial Council (NJC) however, the Judiciary became self accounting like other arms of government. The Constitution states that any amount payable to the Judiciary from the Federation Account shall be paid directly to the NJC for disbursement to the courts and other judicial bodies.¹⁷

Also, the Constitution provides that justices' salaries be paid from the Consolidated Revenue Fund of the Federation. This is a special fund designated for the payment of President, Vice President, Judges and other designated public officers' salaries.¹⁸

By other of precedence, the President of the Court ranks equal to justices of the Supreme Court while other justices of the Court are next to justices of the Supreme Court.

ROLE OF THE COURT

The Court is primarily an appellate court constituted for the purpose of hearing and determining appeals. It entertains appeals whether civil or criminal from:

- The Federal High Court
- High Courts of States
- High Court of the Federal Capital Territory, Abuja
- Customary Courts of Appeal for both Abuja and the States
- Sharia Courts of Appeal of states including Abuja
- The Code of Conduct Tribunal
- Investments and Securities Tribunal
- National Industrial Court of Nig. (Civil Matters only)
- Election Petition Tribunals (particularly with regards to the governorship and legislative Houses Election Tribunals)
- Courts Martial

Justices of the Court usually sit in a panel of three but for election petitions and other matters requiring constitutional interpretation, they sit in a panel of five.

Furthermore, because of the number of justices that sit on appeal, it is expected that judgments delivered by the Court are thorough and sound. When the lead judgment is written, the other two or four judges as the case may be are provided the opportunity to look through; to see if they hold different opinions.

In election matters, the Court of Appeal is the trial court for petitions relating to Presidential election and appeals go from its decisions on such petitions to the Supreme Court. In other words, the Court has original jurisdiction as court of first instance in Presidential election petitions.¹⁹



According to Honorable Justice Irikefe of blessed memory:

“the possibility that a decision of an inferior court may be scrutinized on appeal by a higher court, at the instance of an aggrieved party is, in itself, a safeguard against injustice as it acts as a curb against capriciousness or arbitrariness” (Rabiu v. State (1980) 8 - 11 S. C. 130 at 175 - 176.)

The Court is often called ‘Court of Unity’, where you find Justices from different backgrounds and cultures working together in harmony for the promotion of the administration of justice in the country. It has contributed tremendously to the quick dispensation of justice in the sense that had it not been set up, so much time would have been spent. Prior to its inception, appeals waited for years without being heard because the Supreme Court was inundated. Thus, the creation of the Court was very significant as it reduced the workload of the Supreme Court.

The sustenance of democracy and development is largely dependent upon building and maintaining effective institutions that guarantee the rights of every citizen. That is, ensure speedy dispensation of justice and provide the framework for peaceful co-existence amongst people, irrespective of their socio-political, economic or ethnic backgrounds. The courts within the country are part of a larger governmental and legal framework for the administration of justice. The role of the justice system as a catalyst in the healthy development of a nation has acquired general recognition everywhere. Citizens’ groups and judiciaries in developed, transitional, developing and post-conflict countries alike are increasingly confronted with the challenge of how to enhance court performance and restore citizens’ confidence in the judiciary. The Court of Appeal, Nigeria, recognizes these central goals. It is on a mission to build and entrench an efficient, accessible and speedy justice sector.

IMPACT

At inception, the Court started with Lagos division. Kaduna division followed shortly after and nine days later, the division in Enugu was set up. In June 1977, the number increased to five with the establishment of Benin and Ibadan divisions. Jos division in 1983, Port Harcourt division in 1989 and Abuja division in 1996. Two judicial divisions were established at Ilorin and Calabar in February 1999. The Sokoto division was inaugurated in May 2009 with Owerri following in the month of November of the same year. Ekiti division began on October 4, 2010 while the Akure division commenced October 18 of the same year. Yola division started sitting in November, 2010 and Makurdi in March 2011. This brought the total number of divisions including the headquarters to 18.

In 1976, the number of justices of the Court including the President was fixed at 36.²⁰ In 1990, the number increased to 41 and another amendment in 1993 boosted it to 50. By the 2013 Court of Appeal Amendment Act, it had increased to 90.

THE COURT

Although it faces the challenge of people sometimes questioning its relevance, the Court remains a bastion of hope that has brought succor to many. Indeed, it has been said that the Court of Appeal is the only court of law because below it, is the High Court, often referred to as a Court of trial and error. Appeals go to the Court of Appeal and its primary function is to correct the errors of law.”²¹ To underscore this statement, two jurists shed light on the importance of the court.

Justice M. S. Ishaq quoting the late Hon. Justice Atanda Fatayi Williams, former Chief Justice of Nigeria said: *“The Court of Appeal has become the main repository of dissatisfaction with the decision of the lower courts. It is indeed the source of law and development.”*²² This is an assertion a former President of the Court, Justice Umaru Abdullahi agreed with. *“It is often said that the law is made in the Court of Appeal, the Supreme Court merely white washes it.”*²³

NIGERIAN NEWSPAPER HEADLINES/CAPTIONS ON FEBRUARY 23, 1977



Appeal Court opens



Daily Times
NIGERIA'S LARGEST DAILY SALE
21,482 Wednesday, February 23, 1977 10k

FEDERAL COURT OF APPEAL LAUNCHED



OBASANJO LAUNCHES APPEAL COURT



JUSTICE MOVES TO THE PEOPLE —Ibekwe

'...Court will bring justice nearer'

Bid to ease congestion

At a ceremony here, President Obasanjo today launched the Federal Court of Appeal, a new judicial institution designed to ease the congestion of the Federal High Court and to bring justice nearer to the people.

NIGERIAN HERALD

RISE IN CRIME WORRIES GOVT



JUSTICE MOVES TO THE PEOPLE —Ibekwe

WE'LL IMPROVE

FEDERAL APPEAL COURT SET UP




The Head of State, Lt.-General Abacha, today presented the bill to the President of the Federal Court of Appeal to the President of the Senate, Mr. Abacha.



JUSTICE MOVES TO THE PEOPLE —Ibekwe

WE'LL IMPROVE JUDICIAL SYSTEM —OBASANJO

The President today launched the Federal Court of Appeal, a new judicial institution designed to ease the congestion of the Federal High Court and to bring justice nearer to the people.

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PRIVY COUNCIL

The 1960 Constitution first vested appellate jurisdiction on the Federal Supreme Court but not as the final Court. Appeals from Federal Supreme Court went to the Privy Council so that whatever error was made in the Court could be tested or corrected at the Privy Council. This continued until 1963 when the Federal Government abolished appeals to the Privy Council.



THE SUPREME COURT OF NIGERIA

NOTES

1. Lakanmi & Anor. v. Attorney General of Western Region & Ors (1970) 6 NSCC (pt. 143).
2. Yakubu, J.A. "Democracy, Good Governance and the Rule of Law: The Nigerian Challenge." EasyLaw Legalpedia. Nigerian Legal Encyclopedia. CD Rom.
3. The Western Nigeria Edict No. 5 of 1967, provided that no defect whatsoever in decisions made by any person empowered by that law in relation to any inquiry, shall affect the validity of the proceedings and that no action in any form against it shall be entertained in a court of law .
4. Lakanmi, Loc. Cit.
5. The Republican Constitution of 1963 was the statute in operation before its suspension by the enactment of Decree No.1 of 1966.
6. Lakanmi, Supra.
7. Afrique, Grotto. "General Murtala Mohammed." [Http://www.grottoafrique.com/genMurtala.html](http://www.grottoafrique.com/genMurtala.html). 27 July, 2010.
8. "Yakubu Gowon." Wikipedia. The Free Encyclopedia. Web. 27 July, 2010.
9. Omoigui, Nowa. "The Murtala Muhammed Coup of 1975." [Http://www.omoigui.com/files/murtala_muhammed_coup_1975.pdf](http://www.omoigui.com/files/murtala_muhammed_coup_1975.pdf). 27 July 2010.
10. "Murtala Mohammed." Wikipedia. The Free Encyclopedia. Web. 27 July, 2010.
11. Omoigui, Op. Cit., 14.
12. Okenwa, L. N. (producer). (2006). The Supreme Court of Nigeria, First Fifty Years. [DVD]. Fiduciare Media Productions.
13. Ibid.
14. Ibid.
15. Fawehimi, G. Bar and Bench in Nigeria, Lagos. Nigerian Law Publications Ltd., 1988. 230. Hon. Justice Adejumo Kester, 1st President Western State Court of Appeal was appointed on June 1, 1967.
16. Okenwa, L.N. (producer). (2008). The Court of Appeal, 30 & 2 Years: The journey So Far. [DVD]. Fiduciare Media Productions.
17. Constitution of the Federal Republic of Nigeria (1999). Section 162 (9).
18. Ibid. 84(2)(3)(4).
19. Ibid. 239(1)(a-c).
20. Federal Court of Appeal Act, Decree No. 43, 1976.
21. Okenwa, Op. Cit.
(Ishaq was Deputy Chief Registrar of the Court's head quarters. The interview was conducted shortly before his appointment as judge of the Federal High Court in January 2008.
22. Ibid.

CHAPTER 1

List of Cases

1. Lakanmi and Anor. v. Attorney General of Western Region and Ors. (1970) 6NSCC, 143
2. Rabi v State (1980) 8-11S.C, 130 at 175-176

Table of Statutes

1. The Republican Constitution (1963)-This was the statute in operation before its suspension by the enactment of Decree No.1 of 1966.
2. The Western Nigeria Edict No.5 (1967),. Provided that no defect whatsoever in decisions made by any person empowered by that law in relation to any inquiry, shall affect the validity of the proceedings and that no action in any form against it shall be entertained in a court of law.
3. The Constitution of the Federal Republic of Nigeria (1999) (as amended), Section 162 (9).
4. The Court of Appeal Amendment Act (2006).
5. The Federal High court of Appeal Act (1976), Decree no. 43.

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1. Afrique, Grotto. "General Murtala Mohammed"
<http://www.grottóafrique.com/genmuritala.html>. 27th July, 2010.
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3. Omoigui Nowa "The Murtala Muhammed coup of 1975"
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4. Yakubu, J.A. "Democracy, Good Governance and the Rule of Law: The Nigerian challenge" Easylawlegalpedia.com.