

CODE OF CONDUCT TRIBUNAL

A Clash of Judicial and Executive Powers

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By

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“If the legislative and executive authorities are one institution, there will be no freedom. There won’t be freedom anyway if the judiciary body is not separated from the legislative and executive authorities.”

- Charles de Montesquieu



INTRODUCTION

- All lawyers have a duty to promote the rule of law, to uphold justice and to maintain a high standard of professional conduct.
- The motto of the Nigerian Bar Association:

“Promoting the rule of law”

- Critical elements of the Rule of Law include:
 - The **Supremacy of the Constitution**;
 - **Certainty of laws** which would enable citizens to predict the outcomes of their actions; and
 - The existence of an **efficient and independent judiciary**.



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RULE OF LAW

- The Rule of Law is defined in the Blacks Law Dictionary, 10th Edition, as:

“The doctrine that every person is subject to the ordinary law within the jurisdiction; the equal subordination of all citizens and classes to the ordinary law of the land.”

DUE PROCESS

The justice system and legal processes must be clear, efficient and fair, ensuring the protection of all fundamental rights

ENFORCEABILITY

The laws must be administered in a timely, impartial and fair way.

ACCOUNTABILITY

All government and private persons are accountable and liable under the law

TRANSPARENCY

All laws must be understandable, stable and accessible.

- When the Rule of Law is disregarded, good governance, democracy and the sustainable development of the nation are threatened.

SUPREMACY OF THE CONSTITUTION

Section 1(1) and (3) of the 1999 Constitution (as amended) states that:

“This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall to the extent of its inconsistency, be void.”

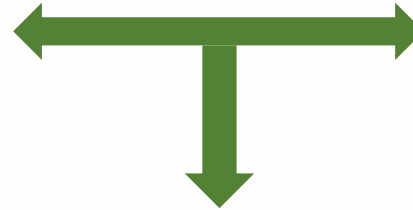
SEPARATION OF POWERS

- The principle of Separation of Powers is one of the fundamental pillars on which the **Constitution of the Federal Republic of Nigeria (1999) (as amended)** (*"1999 Constitution (as amended)"*) is predicated.
- The three arms of government are enshrined in **Sections 4, 5 and 6 of the 1999 Constitution (as amended)**.
- The doctrine is rooted in the understanding that:
 - The primary responsibility of formulating national developmental programs vests in the Executive arm;
 - Law making and oversight functions over activities of the Executive vests in the Legislature arm; and
 - The interpretation of the laws and adjudication of disputes vests in the Judiciary arm.

SEPARATION OF POWERS



OPERATE IN SYNERGY



MAINTAIN INDEPENDENCE



CHECKS AND BALANCES



**GOOD ADMINISTRATION & GOOD
GOVERNANCE**

- The ongoing debate on whether the functions of the Code of Conduct Tribunal (CCT) constitutes a clash between:

- a) The Judiciary; and
- b) The Executive

Continues to rage on because:

- a) The inherent powers of the courts to exercise their power of judicial review; and
- b) The exclusive power of the National Judicial Council (NJC) to exercise disciplinary control over judicial officers,

Continue to be threatened.

- In order to evaluate the powers of the CCT and whether or not there is a conflict between the powers of the judiciary and the executive arms of government, the following posers are herein raised:

POSERS

- i. How can maladministration, weak and dependent institutions, unfair distribution of resources, ethnic tension and abuse of power, be forestalled without first adhering to the rule of law?
- ii. How can we achieve sustainable development as a nation without strict adherence to the rule of law?
- iii. Is the principle of separation of powers central to the promotion of the rule of law?
- iv. What would be the future of the legal profession without the independence of the judiciary?

IS THERE A CLASH?

NEED TO ASCERTAIN:



The extent of the powers of the two Federal Executive Bodies i.e. Code of Conduct Tribunal (the adjudicatory arm of the Code of Conduct Bureau) as opposed to the National Judicial Council

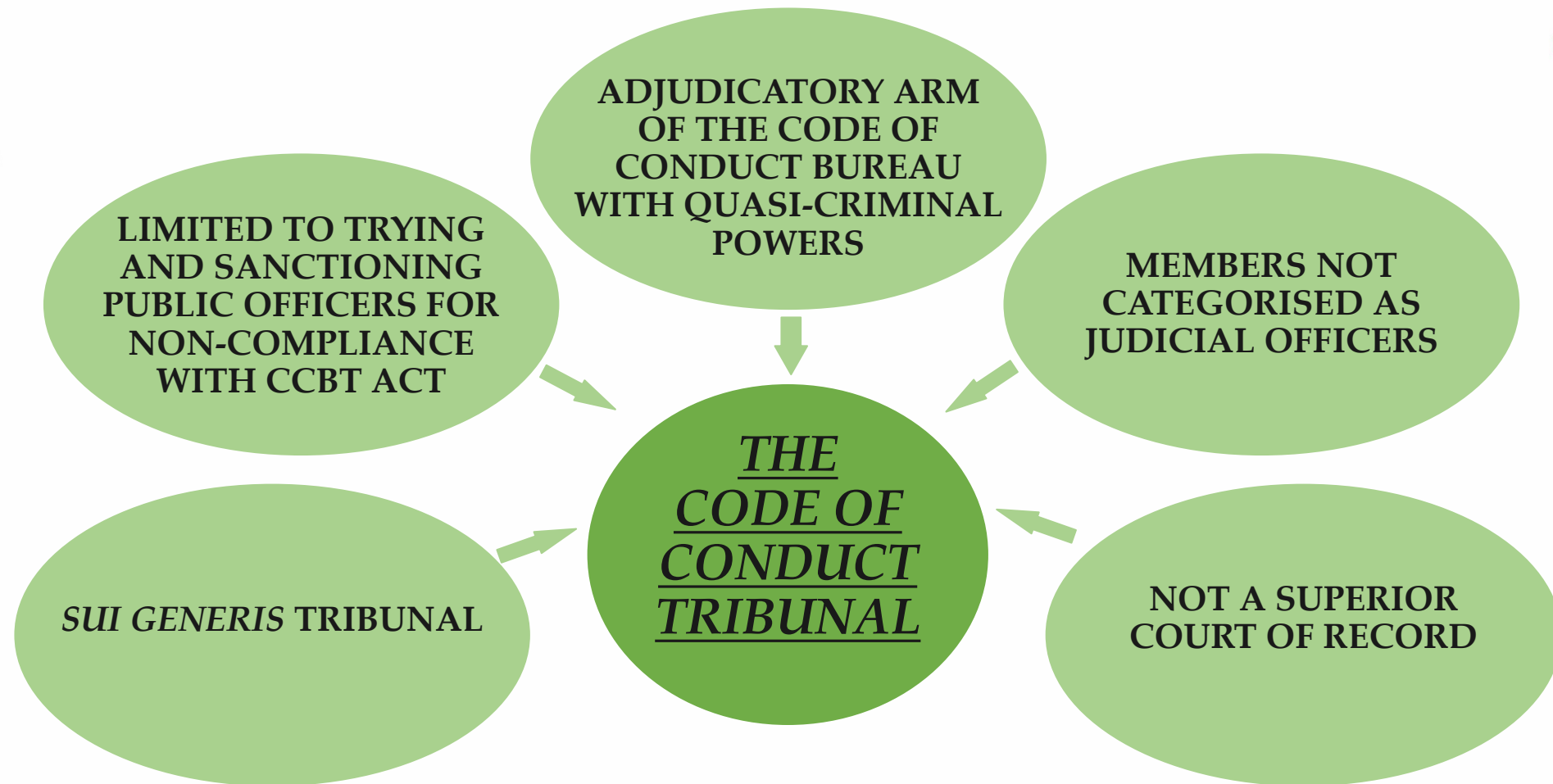
The nature and the ambit of the Code of Conduct Tribunal's powers and functions as opposed to the judicial powers of the superior courts of record.

NATURE OF THE CCT

- Paragraph 15(1) of the Fifth Schedule to the 1999 Constitution (as amended)
- Section 20(1) of the Code of Conduct Bureau and Tribunal Act (“CCBT Act”) provides:

“There is hereby established a tribunal to be known as the Code of Conduct Tribunal (in this Act referred to as “the Tribunal”).”

NATURE OF THE CCT



NATURE OF THE CCT

Olubukola Saraki v. F.R.N. (2016) 3 NWLR (Pt. 1500) 531 at 579 paras F-H

"... it is safer to hold that the said Tribunal has a quasi-criminal jurisdiction designed by the 1999 Constitution, as amended. It is a peculiar Tribunal crafted by the Constitution n the circumstance, I hold a strong view that as a tribunal with quasi-criminal jurisdiction with authority to be guided by the Criminal Procedure Act or Code in the conduct of its proceedings, it can legally issue bench warrant for the purpose of carrying out its quasi-criminal jurisdiction. I should not be understood as saying that the Code of Conduct Tribunal is a Court of superior record or jurisdiction with relevant inherent powers and sanctions..." (Emphasis ours)

Metuh v. F.R.N. (2017) ALL FWLR (Pt. 901) SC

"This court (the Supreme Court) pronounced also in Olubukola Saraki v. Federal Republic of Nigeria (2016) 3 NWLR (Pt. 1500) SC 531 that the Code of Conduct Tribunal (CCT) is not a court of superior record of jurisdiction, but a court of quasi-criminal jurisdiction." (Emphasis ours)

THE EXTENT OF POWERS OF THE CCT

- Jurisdiction to try all public officers and impose prescribed punishments for contravention of the provisions of the CCBT Act. (Paragraph 18(1) & (2) Part I of the Fifth Schedule of the 1999 Constitution and Sections 23(1) & (2) and 24 of the CCBT Act).
- Public officers are those listed in Part II of the Fifth Schedule of the 1999 Constitution and Schedule II of the CCBT Act.
- Public officers include *“The Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law.”*

THE EXTENT OF POWERS OF THE CCT

- Power to impose the following sanctions on all guilty public officers.
 - a) vacation of office or any elective or nominated office, as the case may be;*
 - b) disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and*
 - c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.*

THE EXTENT OF POWERS OF THE CCT

APPEALS

Section 246 (1), Paragraph 18(4) of Part I of the Fifth Schedule of the 1999 Constitution and Section 23(4) of the CCBT Act



An appeal of any decision made by the CCT in respect of an allegation of violation of the CCBT Act lies as of right to the Court of Appeal.



This right shall be exercised in accordance with the provisions of the Court of Appeal Act and the Rules of Court for the time being in force.



This does NOT confer on the CCT the inherent powers of the superior courts of record, neither does it make it coordinate to the Federal High Court, State High Courts or any other superior courts of record.



Legal Practitioners Disciplinary Committee	National Assembly Election Tribunal & Governorship Election Tribunal
-Supreme Court	- Court of Appeal

POWERS OF SUPERIOR COURTS OF RECORD

Judicial powers of the Federation, FCT and States are vested in the nine (9) superior courts of record listed in **Section 6(5)(a)-(i) of the 1999 Constitution.**

- a. The Supreme Court of Nigeria
- b. The Court of Appeal
- c. The Federal High Court
- d. The High Court of the Federal Capital Territory, Abuja;
- e. A High Court of a State
- f. The Sharia Court of Appeal of the Federal Capital Territory, Abuja
- g. A Sharia Court of Appeal of a State
- h. The Customary Court of Appeal of the Federal Capital Territory, Abuja
- i. A Customary Court of Appeal of a State

POWERS OF SUPERIOR COURTS OF RECORD

- **Section 6(5)(j) of the 1999 Constitution** allows for additional superior courts of record to be established upon the express prescription and authorization of the National Assembly.
- Unless and until the National Assembly enacts a law to establish another superior court of record, the only recognized superior courts of record are the nine (9) listed in **Section 6(5)(a)-(i) of the 1999 Constitution**.
- The CCT is **NOT** a superior court of record as defined by the Constitution or common law.

POWERS OF SUPERIOR COURTS OF RECORD

- Pursuant to the principle of *stare decisis*, the power of superior courts of record to enforce their decisions in any part of the federation by all authorities, persons and other courts of law with subordinate jurisdiction is guaranteed by **Section 287 of the 1999 Constitution (as amended)**.
- **S. 257 (1) & (2) and S. 272(1) & (2)** give the High Court of the FCT and States, supervisory jurisdiction to exercise judicial review over the proceedings of inferior courts and/or tribunals such as the CCT.
- **S. 252 (1)** vests the Federal High Court (FHC) with all the powers of the High Courts of the state, including supervisory powers over subordinate courts.
- In **Obot v. Etim & Ors (2007) LPELR–8071 at 18-20, paras F-D** it was held that:
“The Tribunal had no option as it was under a constitutional duty and obligation to give effect to the judgment of the Federal High Court which was properly placed before it.....It was not open to the tribunal to ignore the judgment of the Federal High court which is still valid and subsisting.
- A combined reading of the above, shows that failure to obey valid and subsisting court orders, whether in its original jurisdiction or supervisory capacity is a fundamental violation of the constitution.

THE NATIONAL JUDICIAL COUNCIL

The 1999 Constitution (as amended) provides:

SECTIONS 81(3) & 162(9)
Control over Judiciary funds
from the Consolidated
Revenue Fund and
Federation Account

**PARA. 21(a)-(b) OF THE
THIRD SCHEDULE**
Recommend to the President
the appointment and removal
of judicial officers and to
exercise disciplinary control
over them

SECTION 153(1)(i)
Established as a
Federal Executive
Body

SECTION 158(1)
The independence from the
direction or control of any
other authority or person

SECTION 292(1)&(2)
Recommend to the President
the removal of other judicial
officers

NB: The provisions of Paragraph 21 of the Third Schedule and Section 158 of the 1999 Constitution (as amended), pertaining to the National Judicial Council (NJC), were not inserted into the Constitution until the 1999 amendment.

IS THERE A CLASH?

- The question as to whether a judicial officer can be tried and arraigned by the CCT in the face of the principle of separation of power and the independence of the judiciary has become pertinent and must be resolved to avoid denegation of the rule of law.
- Having reviewed:
 1. The apparent powers of the CCT to try and punish public officers, which include judicial officers;
 2. The powers of the NJC, a federal executive body created to oversee, regulate and exercise disciplinary control over judicial officers as contained in **Sections 153, 158 and paragraph 21 (a)-(b) of the Third Schedule to the 1999 Constitution**;
 3. Contestation as to whether or not the CCT is a superior court of record;
 4. The supervisory powers of superior courts are inherent powers which when exercised must be obeyed by subordinate courts such as the tribunal,

Reliance on the rules of interpretation of statutes and judicial precedent becomes critical.

IS THERE A CLASH?

- Paragraph 15 (1) and 18 of the Fifth Schedule of the 1999 Constitution cannot be read in isolation or interpreted in a way to defeat Sections 6(5)(a)-(j), 153(1)(i), 158, 292(2) and paragraph 21(b) of the Third Schedule of the 1999 Constitution (as amended) which prescribe the hierarchy of our judicial system and seek to preserve the sacred doctrine of separation of powers and the independence of the judiciary.
- The powers and functions of the NJC have been settled by judicial pronouncements:

Elelu-Habeeb v. A.G. of the Federation (2012) 13 NWLR (Pt. 1318) at 446-447 para D-C per Mohammed JSC:

“...It is not difficult to see that for the effective exercise of the powers of removal of a Chief Judge of a state by the Governor and House of Assembly, the first port of call by the Governor on his journey to remove a Chief Judge of the State shall be the National Judicial Council which is equipped with the personnel and resources to investigate the inability of the Chief Judge to discharge the functions of his office....”

IS THERE A CLASH?

Nganjiwa v. F.R.N. (2018) 4 NWLR (Pt. 1609) at 342 para C-H per Obaseki-Adejumo JCA:

“...then the NJC is the appropriate body to investigate such breaches by the judicial officer and if found to be so, such judicial officer shall face disciplinary action and the NJC may recommend the removal of such a judicial officer to the appropriate authority ..., and/or take other actions appropriately...Whenever there is an allegation of official misconduct against a judicial officer and the above stated process is not adhered to, it amounts to jumping the gun and ipso facto a direct violation of the Constitution. Recourse to the National Judicial Council is a condition precedent as clearly set out by the constitution, and any attempt ...”

- See also **Anya v. Iyayi (1993) 7 NWLR (Pt. 305) 290 at 315 paras A-B, (per Kabiri- Whyte JSC) and Akintokun v. Legal Practitioners Disciplinary Committee (2014) 13 NWLR (Pt. 1423) 1 at 85 paras F-G.**

IS THERE A CLASH?

- Judicial hierarchy of the CCT:
 - The Supreme Court in **Olubukola Saraki v F.R.N. (supra)** and **Metuh v F.R.N. (supra)** were unequivocal that the CCT is a tribunal and not vested with the inherent powers of superior courts of record pursuant to **Sections 6(5)(a)-(j) or 287 of the 1999 Constitution (as amended)**.
- Notwithstanding the increase in the number of cases seeking to ascertain the hierarchy of the CCT, one cannot ignore the fact that in 2018, even the CCT declined jurisdiction in a matter against Honourable Justice Sylvester Ngwuta in deference to the valid and subsisting decision in **Nganjiwa v. F.R.N. (supra)**, which was to the extent that the NJC must first hear and determine any matter on disciplinary control of a judicial officer before any other body can take further steps.

IS THERE A CLASH?

- Consequently, in answer to this nagging question;
 - It is my opinion that the overlap between the *specific powers of the NJC to first investigate and discipline judicial officers* on the one hand and the *overreaching powers of the CCT to discipline public officers* for violation of the CCBT law of which judicial officers are listed as public officers is what appears to be the seeming clash.
- This became more apparent in the trail of the case of Hon. Justice Walter Onnoghen, CJN (as he then was) and the Supreme Court missed an opportunity to pronounce and clarify this overlap in the case of *A.G. Cross River State v. A.G. Federation (SC. 45/2019)*.

RECOMMENDATIONS



- Attempts have been made to distinguish the facts and issues raised in **Nganjiwa v. FRN (supra)**. This school of thought contends that the question in Nganjiwa is not applicable to the issue under consideration in this paper. I do **NOT** agree.
- Unfortunately, the Supreme Court in *A.G. Cross River State v. A.G. Federation (supra.)* lost the opportunity to pronounce on the:
 - Specific interpretation of the powers of the two federal executive bodies (NJC and CCT) to investigate allegations against judicial officers;
 - Interpretation of the provisions of **Sections 252, 257 (1) & (2) and 272 (10) & (2) of the 1999 Constitution** which describe the supervisory powers of superior courts of record over inferior courts or tribunal such as the CCT; and interpretation of Section 292 of the Constitution which deals with removal of judicial officers.

RECOMMENDATIONS

1. I therefore look forward to the Supreme Court, as the apex court, pronouncing on the specific interpretation on the above issues.
2. Another approach could be amendments to the Constitution and the CCBT Act to the extent that:
 - a) Where the Code of Conduct Bureau discovers a potential violation of the CCBT Act by a judicial officer, it shall refer that officer to the NJC and be available to provide relevant documentary evidence to enable the NJC investigate and prescribe sanctions accordingly, if found guilty.
 - b) The supervisory powers of superior courts of record (FHC and High Courts of State & FCT) over the CCT, which is clearly prescribed should be enforced.
3. A categorical position as to the legal hierarchy of the judicial system, the importance of respecting court orders, the supremacy of the constitution and the need to protect the independence of the judiciary, should be championed by the NBA as a collective voice.

CONCLUSION



- It needs to be acknowledged that the 1999 Constitution (as amended), being the *grundnorm*, provides broad provisions as well as empowers more than one body to investigate and sanction judicial officers.
 - While the CCT is vested with power to investigate, prosecute and sanction public officers, who include judicial officers, the NJC has specific powers to superintend over the funding, appointment, discipline and removal of judicial officers. It is this distinction that the courts, particularly the Supreme Court, has to judicially interpret in order to cover the field.
 - The Constitution also provides a distinct procedure for removal of judicial officers on grounds of infirmity of mind, gross misconduct and contravention of the code of conduct.
- However, the rules of statutory interpretation, together with judicial precedents are available to breathe life into these provisions, so as to prevent absurdity and uphold the true intendment of the legislators.
- It is for this reason that I conclude by saying that the aforementioned valid and subsisting judgments that relate to the procedure of removal of judicial officers, remain applicable and binding, until the Supreme Court pronounces otherwise.



THEME:
FACING THE FUTURE

THANK YOU!