IS THE CODE OF CONDUCT TRIBUNAL REALLY INFERIOR TO THE FEDERAL HIGH COURT?[1]

Introduction

1. There have been arguments in several quarters as to whether the Code of Conduct Tribunal (CCT) is actually inferior to the Federal High Court (FHC).[2] This paper examines, in succinct detail, the jurisdiction of the CCT vis-à-vis the inherent jurisdiction of the FHC. This paper also proceeds to consider in what instances, if any, the CCT will be bound by an Order of the FHC and whether the CCT is indeed a court of superior record.

Trajectory of Facts

2. Before delving into the legal consideration, it is quite helpful to give a trajectory of facts that birthed this article. Charges were filed against the Senate President,[3] Dr. Bukola Saraki at the CCT over alleged false declaration of

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[2] *See for instance Chief Mike Ozekhome, SAN, OFR, The Street Journal, "The Law, The Myth, The Limits of the Code of Conduct Tribunal (Part 1)", available at http://thestreetjournal.org/2015/09/the-law-the-myth-the-limits-of-the-code-of-conduct-tribunal-part-1/ and accessed on September 21, 2015 at 11:05pm; see also Daniel Elombah, "Saraki Trial, the intrigues: Federal High Court -vs- Code of Conduct Tribunal", available at http://www.elombah.com/index.php/special-reports/924-saraki-trial-the-intrigues-federal-high-court-vs-code-of-conduct-tribunal and accessed on September 21, 2015 at 11:08pm; see Chika Ebuzor, "Agbakoba faults Code of Conduct Tribunal", available at http://pulse.ng/politics/saraki-agbakoba-faults-code-of-conduct-tribunal-id4186191.html and accessed on September 21, 2015 at 11:09pm.*

[3] *See further Daniel Elombah, "Saraki Trial, the intrigues: Federal High Court -vs- Code of Conduct Tribunal", available at http://www.elombah.com/index.php/special-reports/924-saraki-trial-the-intrigues-federal-high-court-vs-code-of-conduct-tribunal, where it was stated thus: "The Code of Conduct Bureau had filed a 13-count charge against the Senate President, Bukola Saraki, at the Code of Conduct Tribunal. Saraki is said to have made false declaration of his assets. The Deputy Director in the office of the Attorney-General of the Federation, M.S.Hassan, filed the charges against Saraki on September 11. The charges against Saraki include false declaration of assets, alleged acquisition of assets beyond his legitimate earnings and keeping foreign accounts while holding public office first as Kwara State governor in 2003 and later as a senator."*

assets.[4] Dr. Saraki, in a bid to protect his 'rights', filed an application at the FHC, seeking to stop the scheduled trial at the CCT.[5] The said application, filed *ex-parte* was granted as prayed. Not minding the existence of the said *ex-parte* order, Dr. Bukola Saraki, was expected to appear before the CCT on Friday, September 18, 2015 and upon his failure to show up at the said proceedings, the CCT, on the application of the prosecutor, issued a bench warrant for his arrest. However, the Court of Appeal refused to grant the *ex-parte* application filed by Dr. Saraki, seeking to set aside the order made on Friday, 18.09.15 by the CCT, holding that it would be interest of justice for the respondents to be put on notice and has set down same for hearing on 29.09.15.[6]

Demystifying the Concept of 'Court of Record' and 'Superior Court of Record'

3. For a better understanding of this topic, it is pertinent to define what a 'court of record' is and the meaning of a 'superior court of record'. As defined by the *Black's Law Dictionary*,[7] 'court of record' is "[A] court that is required to keep

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[4] *Vanguard, September 22, 2015, "Alleged false declaration of assets: Bukola Saraki must face trial – Appeal Court", available at http://www.vanguardngr.com/2015/09/alleged-false-declaration-of-assets-bukola-saraki-must-face-trial-appeal-court/ and accessed on September 23, 3015 at 1:09pm.*

[5] *Saraki had raised objections to his trial by the tribunal citing the non-appointment of a substantive Justice Minister and Attorney General of the Federation (AGF) as well as a pending ruling of the Federal High Court, which had summoned both chairmen of the Code of Conduct Bureau, CCT and a Deputy Director in the Federal Ministry of Justice, Musiliu Hassan, who filed the case at the tribunal on behalf of the Federal Government. In his ruling on Saraki's objections, the presiding judge, Justice Danladi Umar, said that the tribunal took notice of the fact that there was no AGF at the moment. He further held that the absence of the AGF does not stop the filing of a criminal charge adding that in the absence of the AGF, the Solicitor General can institute such charge. On the issue of a pending ruling, the tribunal held that the Federal High Court has the same jurisdiction with it, and hence, it was not binding by its ruling. See further http://www.informationng.com/2015/09/saraki-trial-code-of-conduct-tribunal-erred-by-disobeying-order-of-superior-court-agbakoba-adegboruwa.html, available at http://www.informationng.com/2015/09/saraki-trial-code-of-conduct-tribunal-erred-by-disobeying-order-of-superior-court-agbakoba-adegboruwa.html.*

[6] *See Eric Ikhilae, The Nation Online, "Court of Appeal, Federal High Court refuse Saraki's Prayers to stop Tribunal", available at http://thenationonlineng.net/court-of-appeal-federal-high-court-refuse-sarakis-prayers-to-stop-tribunal/ and accessed on September 21, 2015 at 11:46pm; see further Vanguard, September 22, 2015, "Alleged false declaration of assets: Bukola Saraki must face trial – Appeal Court", available at http://www.vanguardngr.com/2015/09/alleged-false-declaration-of-assets-bukola-saraki-must-face-trial-appeal-court/ and accessed on September 23, 3015 at 1:09pm.*

[7] *Ninth Edition, Thomas Reuters, the United States of America, p. 407.*

a record of its proceedings".[8] On the other hand, *Black's Law Dictionary*[9] defines 'superior court' as 'a trial court of general jurisdiction'.[10]

4. In writing on the classification of courts into 'superior' and 'inferior' courts, John Asein, in his book, Introduction to the Nigerian Legal System has opined that superior courts of record have wider powers than the inferior courts and further referred to superior courts of record as "courts of unlimited jurisdiction". He further asserted that the jurisdictions of the superior courts of record are not limited by the value of the subject matter of a case but are usually competent to award the maximum remedy or penalty prescribed by law though they may be subject to jurisdictional limits with respect to the type or class of cases they may entertain.[11] More importantly, Asein noted that superior courts exercise supervisory jurisdictions over the inferior ones by means of the prerogative orders of *certiorari*, *mandamus* and prohibition.[12]

The CCT: Establishment, Composition, Function, Jurisdiction and Right of Appeal

5. Essentially, a cursory look at paragraph 15(1) of the Fifth Schedule to the Constitution shows the constitutional basis for the CCT.[13] Paragraph 15(1) of Fifth Schedule to the Constitution provides for the establishment of the CCT as follows:

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8 *Bryan Garner, Black's Law Dictionary, Ninth Edition, Thomas Reuters, the United States of America, p. 407. See also Fredrick Pollock & Frederic William Maitland, History of English Law Before the Time of Edward I 669 (2d ed. 1899) cited in Bryan Garner, Black's Law Dictionary, Ninth Edition, Thomas Reuters, the United States of America, p. 407 where it was stated thus: "The distinction that we still draw between 'courts of record' and courts that 'not of record' takes us back to early times when the kings asserts that his own word as all that has taken place in his presence is incontestable".*

9 *Ninth Edition, Thomas Reuters, the United States of America, p. 407*

10 *Bryan Garner, Black's Law Dictionary, Ninth Edition, Thomas Reuters, United States, p.407.*

11 *See J.O. Asein, Introduction to Nigerian Legal System, Ababa Press Ltd, Surelere, Lagos, Nigeria, p. 173. It must be noted that general rule is that nothing shall be intended to be within the jurisdiction of an inferior court except that which is so expressly stated. Conversely, for a superior court, nothing shall be intended to be outside of its jurisdiction except that which specially appears to be so.*

12 *J.O. Asein, Introduction to Nigerian Legal System, Ababa Press Ltd, Surelere, Lagos, Nigeria, p. 173.*

13 *Meanwhile, it should be noted that the Code of Conduct Bureau is established mainly to maintain a high standard of morality in the conduct of government of business and to ensure that the actions and behavior of public officers conform to the highest standards of public morality and accountability. See Sections 3 and 4 of the Code of Conduct Bureau and Tribunal Act*

"***There shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons".***[14] It is quite instructive to note the provision of Paragraph 15(2) which clearly provides that "**The Chairman shall be *a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria* and shall receive such remuneration as may be prescribed by law".**[15]

6. There appears to be unusual confusion in certain quarters, as some have misconstrued the fact that the Chairman of the CCT must be a person who has held office as a Judge of a superior court of record in Nigeria or qualified to hold office as a Judge of a superior court of record in Nigeria to mean that the CCT Chairman qualifies as a judicial officer,[16] even when there is express constitutional provision to the contrary. Some have argued that that the intention of the drafters of the Constitution is enacting paragraph 15(2) of the Fifth Schedule of the Constitution was for intent and purposes to appoint an individual to head the CCT who is at par with a Judge of the High Court or Federal High Court.[17][18]

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[14] *See also Section 20 of the Code of Conduct Bureau and Tribunal Act, Cap. C15, Laws of the Federation of Nigeria, 2004 which provides that "[T]here is hereby established a tribunal to be known as the Code of Conduct Tribunal..."*

[15] *See further Section 20(2) & (3) of the Code of Conduct Bureau and Tribunal Act, Cap. C15, Laws of the Federation of Nigeria, 2004 which provide that "The Tribunal shall consist of a chairman and two other members. The Chairman shall be a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria and shall receive such remuneration as may be prescribed by law."*

[16] *See section 318 of the Constitution for definition of a 'judicial officer'. Mention must also be made that the Chief of Justice of Nigeria, Justice Muhammed Mahmud has, in a letter dated 18.05.2015 addressed to the CCT Chairman, Hon. Danladi Y. Umar warned him and other CCT members to "desist forthwith from addressing (themselves) or being allowed to be addressed as 'Justice', save where the Member is a retired Judicial Officer serving on the Code of Conduct Tribunal"*

[17] *https://www.facebook.com/UDEMSYL/posts/973572359352983*

[18] *It is on this note that the author agrees with Mike Ozekhome SAN, OFR when he submitted, upon construction on a combined reading of Paragraph 15(2) of the Fifth Schedule and Section 318(1) of the Constitution that "no member, including the Chairman of the CCT, on appointment, is a 'judicial officer', as defined in Section 318(1) of the 1999 Constitution, unless he or she has held the office as a Judge of Superior Court of record in Nigeria". See Chief Mike Ozekhome, SAN, OFR, The Street Journal, "The Law, The Myth, The Limits of the Code of Conduct Tribunal (Part 1)", available at http://thestreetjournal.org/2015/09/the-law-the-myth-the-limits-of-the-code-of-conduct-tribunal-part-1/ and accessed on September 21, 2015 at 11:05pm.*

7. At this juncture, it is quite apt to note the scope of the right of an appeal from the CCT to the Court of Appeal. An appeal lies of right only from a decision of the CCT in only two instances, to wit: (x) as to whether or not a person is guilty of a contravention of any of the provisions of the Code of Conduct Bureau and Tribunal Act (CCBTA);[19] and (y) as to the punishment imposed on a public officer found guilty of contravention of the Code of Conduct Bureau and Tribunal Act.[20] The implication of the foregoing is that except in those two instances mentioned under the CCBTA and the Schedule to the Constitution, an appeal shall not lie as of right to the Court of Appeal.[21] Meanwhile, neither the Fifth Schedule to the Constitution nor the CCBTA provides for instances when an appeal can lie with leave to the Court of Appeal.[22]

8. A careful look at Paragraph 18(4) and (5) of Part 1 of the Fifth Schedule to the Constitution and Section 23 (4) & (5) of the CCBTA will reveal two things, to wit: (x) Where the CCT gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of the Code of Conduct, an appeal shall lie as of right from such decision or from any

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19 *Code and Bureau and Tribunal Act Cap. C15, Laws of the Federation of Nigeria (CCBTA).*

20 *See Section 23(4) of the Code of Conduct and Bureau and Tribunal Act Cap. C15, Laws of the Federation of Nigeria and Paragraph 18(4), Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

21 *See for instance, section 241(1) of the Constitution provides for cases when an appeal shall lie from decisions of the FHC to the Court of Appeal as of right: "An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases - (a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance; (b) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings; (c) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution; (d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person; (e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death; (f) decisions made or given by the Federal High Court or a High Court - (i) where the liberty of a person or the custody of an infant is concerned, (ii) where an injunction or the appointment of a receiver is granted or refused, (iii) in the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise, (iv) in the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability, and (v) in such other cases as may be prescribed by any law in force in Nigeria.*

22 *See for example section 242(1) of the Constitution which provides that "an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or that High Court or the Court Appeal". There is no similar provision in the CCBTA.*

punishment imposed on such person to the Court of Appeal at the instance of any party to the proceedings; and (y) Any right of appeal to the Court of Appeal from the decisions of the CCT shall be exercised in accordance with an CCBTA and the rules of court for the time being in force, regulating the powers, practice and procedure of the Court of Appeal.

9. Furthermore, Paragraph 17(4) of the Part 1 of the Fifth Schedule of the Constitution stipulates that "[w]here the Code of Conduct Tribunal gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of the Code of Conduct, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the Court of Appeal at the instance of any party to the proceedings."

10. Relying on the foregoing, one may be tempted to conclude that a careful read but purposive interpretation of the above stated provision is that the right to appeal only lies to the Court of Appeal, where a decision as to whether a person is guilty of a contravention of any the provisions of the Code of Conduct has been reached. In other words, one may rightly assert that an appeal will not lie to the Court of Appeal from a bench ruling or a decision of the CCT if such a decision does not finally determine whether a public officer is guilty of a contravention of the any provisions of the Code of Conduct.

11. In addition, one may also be right to assert that for an appeal to be competent from the decision of the CCT to the Court of Appeal, the CCT must have actually given a final decision on whether a Public officer charged before it is guilty of the Code of Conduct or not. Consequently, where a decision has not been reached whether a public officer is guilty or not as the case is in Dr Bukola Saraki's case (taking into consideration that Dr. Saraki has not even taken his plea), the argument may be put forward that such an appeal filed at the Court of Appeal is susceptible to being declared incompetent.[23]

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[23] *The foregoing notwithstanding, it can be argued, relying on Section 36(1) of the Constitution that it is well within the contemplation of the law and that of the law makers that any public officer, (including the Senate President), desirous of seeking judicial review of any action of a tribunal or enforcement of his right, that such a public officer be allowed access to the court. See further Section 36(1) of the Constitution which provides that "[I]n the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a*

The Debate

12. Having examined the legal framework for the CCT, it then becomes pertinent to consider the debate, exemplified by two schools of thought as to whether the CCT is a superior court of record. Proponents of the first school of thought, ably represented by Chief Olisa Agbakoba SAN, a former President of the Nigerian Bar Association have argued that the recent conduct of the CCT in the Saraki Case and its failure to comply with the order of the FHC is condemnable and could result in a total disregard for the rule of law cum established hierarchy of courts. In arguing that the CCT is not a superior court of record, but an inferior court, proponents of this school of thought have postulated that the CCT "is not a superior court; it is an inferior court and because it is an inferior court, it is amenable to the judicial review jurisdiction of a superior court of record like the Federal High Court". Different opinions and views have been expressed by proponents of this school of thought, who have further contended that what the CCT did, in issuing a bench warrant against the Senate President, Senator Bukola Saraki, in the face of an existing Order of the FHC amounts to serious judicial abuse of the due process of the rule of law and amounts to judicial rascality on the part of the CCT.[24]

13. On the other hand, proponents of the second school of thought have argued that the CCT is also a Superior Court of Record with specific jurisdiction in certain matters, viz, violations of the Conduct of Conduct prescribed for public officers outlined in the Fifth Schedule to the Constitution. It has been further argued that the CCT qualifies as a Superior Court of Record and is a court of coordinate jurisdiction with the FHC; given the fact the provision of Paragraph 18(4) of the Fifth Schedule of the Constitution which provides that appeals from the CCT lie only to the Court of Appeal. A lie has however been delivered by some of the proponents of this school of thought who have argued, rather

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reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality." It is trite that the principle of fair hearing is fundamental to all court procedure and even tribunal proceedings, and like jurisdiction, the absence of it vitiates the proceedings no matter how well conducted. See also Atano V A.G Bendel State 1988) 2 NWLR (PART 75) 132.

[24] *Chika Ebuzor, Pulse.ng "Agbakoba faults Code of Conduct Tribunal", available at http://pulse.ng/politics/saraki-agbakoba-faults-code-of-conduct-tribunal-id4186191.html and accessed on September 21, 2015 at 11:09pm.*

erroneously that, "*any dissatisfaction arising from a decision or a ruling of the CCT can only be entertained by the Court of Appeal*". Nothing, I believe, can be farther from the truth than this faulty assertion which, when tested and scrutinized will fail to see the light of day given the analysis earlier done on the scope of the right of appeal from a decision of the CCT to the Court of Appeal. It can be rightly argued that to say that 'any dissatisfaction' can only be entertained by the Court of Appeal is stretching what is provided for in the Constitution. The fallacy contained in the said argument is best discovered by having recourse to the canon of statutory interpretation. Having considered the arguments raised by both schools of thought, efforts will now be made to consider whether the CCT is actually a superior court of record.

Judicial Powers and Superior Courts of Record

14. Section 6(1) of the Constitution provides that "[t]he judicial powers of Federation shall be vested in the courts to which this section relates, being courts established for the Federation. More importantly, Section 6(3) of the Constitution expressly provides that the Courts[25] to which Section 6 relates "**shall be only superior courts of record in Nigeria...and shall have all the powers of a superior court of record**". Relying on the foregoing provision, one may be tempted to conclude that a literal construction of Section 6 of the Constitution without more reveals that the CCT is not a Court of Superior Record contemplated under the Nigerian Constitution. This argument may further be buttressed by the settled principle of law which is that the express mention of one or more thing of a particular class excludes others.[26] Notably, one of the cardinal rules of judicial interpretation of statute, including the Constitution, is to exclude what is not stated in statute or Constitution; this rule is encapsulated

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[25] *As provided in Section 6(5) of the Constitution, the Courts to which Section 6 relates are: (i) the Supreme Court (ii) the Court of Appeal (ii) the Federal High Court (iv) The National Industrial Court (v) the High Court of the Federal Capital Territory, Abuja; (vi) the Sharia Court of Appeal of the Federal Capital Territory Abuja (vii) the Customary Court of Appeal of the Federal Capital Territory, Abuja (viii) a Customary Court of Appeal of a State; (ix) such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and (x) such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.*

[26] *See Oduyoye v. Lawal [2003] 3 NWLR (Pt. 807)432, Onalaja, JCA; see also Blue-Chip Communications Company V. Nigerian Communications Commission*

in the Latin maxim '*expressio unirous exclusio alterius*', which means that what is not stated is deemed excluded.[27]

15. However, one must note, as rightly warned by a learned jurist, Hon. Justice Onalaja, JCA that the Latin maxim – '*expressio unius est exclusio alterius*' must be applied with great care and caution.[28] Again, it has been sagely noted by Wills J., in **Colquhoun v. Brooks** that:[29] "*expressio unius exclusio alterius* is one that certainly requires to be watched. Perhaps few so-called rules of interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the expression complete very often arise from accident, especially from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind and the application of this and every other technical rule of construction varies so much under differing circumstances and it is open to so many qualifications and exceptions, that it is rarely that such rules help one to arrive at what is meant."[30]

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[27] *Amgbare v. Sylva (2007) 18 (Pt. 1065) 1 at 26, paras. B - C (CA); see Nawa v. Att., Gen. Cross Rivers State (2008) ALL FWLR (Pt. 401) 807 at 843, paras. F - H (CA) where the Court of Appeal, Per Ngwuta, JCA held thus: "A principle of statutory interpretation of statutes is that express mention of one thing in a statutory provision automatically excludes any other thing which otherwise would have applied by implication with regard to the same issue- expressio unius exclusio alterius". Per. Ngwuta, JCA; see also Odumegwu-Ojukwu V. Yar'adua & Ors. (2008) 4 NWLR (Pt. 1078) where the Court held that "'expressio unius est exclusio alterius' rule...means that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been included by implication. See PDP v. 1NEC (1999) 11 NWLR (Pt. 626) 200; Buhari v. Dikko Yusuf (2003) 14 NWLR (Pt.841) 446; Ogbunyiya v. Okudo (1979) 6-9 S.C. 32. See also Halsbury's Law of England, 4th Edition paragraph 876."*

[28] *Oduyoye v. Lawal (supra), Onalaja, JCA; see Ehuwa v. O.S.I.E.C. (2006) 10 NWLR (Pt.1012) 544 where the Supreme Court held that "[I]t is now firmly established that in the construction of a Statutory provision, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. The latin maxim is "Expressio unius est exclusio alterius" - i.e. the expression of one thing is the exclusion of another. It is also termed 'inclusion unius est exclusio alterius" or "enumeratio unius exclusion alterius" - See Legal Maxims in Black's Law Dictionary Seventh (7th) Edition page 1635. See also ...Udoh & 2 Ors. v. Orthopaedic Hospital Management Board & Anor. (1993) 7 SCNJ (Pt.11) 436; (1993) 7 NWLR (Pt.304) 139 at 148 and many others. In other words, the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication with regard to the same issue."*

[29] *(1887) 19 QBD 400 at page 406*

[30] *Interestingly, on appeal, as reported in Colquhoun v. Brooks (1889) 21 QBD 52 at page 65 Lord Lopes, L.J. the Court of Appeal stated thus: "[T]he maxim expressio unius exclusio alterius has been pressed upon us. I agree with what is said in the court below by Wills J. about this maxim. It is often a valuable servant but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident and the maxim ought not to be applied were its application having regard to the subject matter to which it is to be applied leads to inconsistency or injustice."*

16. Nonetheless, one may also argue that in addition to the 9 (nine) courts listed in section 6(5) of the Constitution, the Constitution only recognises: (x) a superior court of record as may be prescribed in an act of National Assembly; and (y) a superior court of record as may be prescribed in a law of the House of Assembly of a State. To this end, it may be rightly argued that for any court created by either the National Assembly or the State House of Assembly to qualify as a superior court of record, such must be expressly stated in the enabling Act or law.

17. Upon a careful perusal of the relevant provisions of the CCBTA, the proposition can be made that the CCBTA has failed to qualify the CCT as a court of superior record. The wordings of Section 6(3) of the Constitution are as follows: *"[T]he **Courts to which this section relates,** established by this Constitution...**specified in subsection 5(a) to (i) of this section shall be the only superior courts of record in Nigeria;** and **save as otherwise prescribed by the National Assembly** or **by the House of Assembly of a State**..."*

18. In addition, adopting the literal meaning of "*prescribe*" as provided Black's Law Dictionary which means "*to dictate, ordain, or direct; to establish authoritatively (as a rule or guideline)*", it may be rightly asserted that the National Assembly, having failed to expressly state that the CCT shall be a superior court of record, the CCT does not qualify to be called "a superior court of record" in Nigeria. For instance, this argument may be fortified that the National Industrial Court (NIC), before its inclusion in the list of superior courts of record in the Constitution, had an express statutory backing, which specifically stated that the NIC shall be a superior court of record. While Section 1(3) (a) of the National Industrial Court Act 2006 expressly provides that the NIC shall "be a superior court of record", Section 1(3) (b) of the NIC Act provides that the NIC shall have the powers of a High Court, except as otherwise provided by any enactment.[31]

19. Relying on the foregoing, it may be right to make recourse to the settled principle of law that the court is bound to give the words of statutes/constitution

[31] See further *J.O. Asein, Introduction to Nigerian Legal System, Ababa Press Ltd, Surelere, Lagos, Nigeria, p.231.*

their literal, grammatical and natural meanings[32] unless doing so it will result in absurdity. Consequently, it can then be submitted that the Constitution and the CCBTA, having not stated that the CCT shall be a superior court of record, any argument to the contrary will surely fall like a pack of cards[33]

20. A lie has however been given to an argument in certain quarters, that taking into consideration the provisions of Paragraph 18(4), Part 1 of the Fifth Schedule to the Constitution and Section 23(4) of Code of Conduct and Bureau and Tribunal Act (CCBTA),[34] the CCT, a 'superior court of record' with coordinate jurisdiction with the FHC is not bound by an order of the FHC, given that "an appeal lies as of right from the decision or from any punishment imposed" on a public officer.[35] The fallacy contained in that argument is best unraveled by the submission earlier made that neither the Constitution nor the CCBTA provides for the establishment of the CCT, as a superior court of record in Nigeria.[36]

Remedies Available to a Public Officer

21. The foregoing notwithstanding, one may be right to assert that legislators never intended to deny a public officer his fundamental rights which include the right to fair hearing. It is quite instructive to note that Section 36(1) of the Constitution provides that "[I]n the ***determination of his civil rights and obligations***, including **any question or determination by** or against **any government or authority**, ***a person shall be entitled to a fair hearing*** within a

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[32] *In Attorney General of Bendel State v. Attorney General of the Federation and ors. (1982) 3 NCLR 1.77-78 the Supreme court, per Obaseki JSC laid down some principles to guide in the interpretation of the Constitution. Among these is the principle that:- "The language of the Constitution where clear and unambiguous must be given its plain evident meaning." Note also it is beyond cavil that in the interpretation of statutes, where the words used therein are clear and unambiguous, the court's only legitimate duty is to give them their ordinary and plain meaning and construe them without any glosses or interpolations. See Kalu V. Odili (1992) 5 NWLR (240) 130 AT 193 - 194; African Newspapers Ltd. V. Federal Republic Of Nigeria (1985) 2 NWLR (6) 137; Adewunmi V. A.G. Ekiti State (2002) 17 NWLR (743) 706.*

[33] *See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

[34] *Code and Bureau and Tribunal Act Cap. C15, Laws of the Federation of Nigeria*

[35] *See Section 23(4) of the Code and Bureau and Tribunal Act Cap. C15, Laws of the Federation of Nigeria and Paragraph 18(4), Part 1 of the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

[36] *See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the CCBTA.*

reasonable time by a court ***or other tribunal established by law and constituted in such manner as to secure its independence and impartiality***."[37]

22. Relying on the foregoing provisions, it may be rightly asserted that the drafters of the Nigerian groundnorm never contemplated a situation where a public officer cannot approach the court, particularly the FHC (which is a Superior Court of record as established in Section 6 of the Constitution) for a judicial review, to determine the lawfulness or otherwise of an action or procedure adopted by the CCT in relation to such public officer. In addition, section 46(1) of the Constitution allows any person, including a public officer, who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him to apply to a High Court in that State for redress.

Can the FHC exercise Judicial Review over the CCT?

23. There is a need to consider the judicial review power of the FHC in relation to the CCT. The Court of Appeal in *Nwaogwugwu v. President, F.R.N.*[38] has defined 'judicial review' as 'a special procedure through which public bodies or *tribunals exercising quasi-judicial or judicial functions are subject to the supervisory jurisdiction of superior courts.'* Similarly, the apex Court, Per Onnoghen, J.S.C., in *African Continental Bank Plc. v. Nwaigwe*[39] has opined *inter alia* that *"[j]udicial review is the supervisory jurisdiction of the High Court exercised in the review of the proceedings, decisions and acts of inferior courts and tribunals* and acts of governmental bodies."[40] Consequently, it

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37 *The provision of Section 36 of the Constitution is akin to the fifth and fourteenth Amendments to the American Constitution regarding "due process of law". More often than not, there is a great tendency to equate the constitutional provision with the doctrine of natural justice. It has even been said that "the requirement of fair hearing presupposes the observance of the principles of natural justice which are the audi alteram partem rule (hear the other party) and nemo judex in causa sua (no one can be a judge in his own case). See Iluyomade & Eka, Cases and Materials on Administrative Law in Nigeria, Second Edition, 1992, Obafemi Awolowo University Press Ltd., Ile-Ife, Nigeria, pp. 190-191; see also Araka, C.j., in Nigeria Judges Conference Papers, 1982 at p. 100.*

38 *(2007) 6 NWLR (Pt.1030) 237 C.A.*

39 *(2011) 7 NWLR 380*

40 *See also Bakare v. L.S.C.S.C. (1992) NWLR (Pt. 262) 641 where the Supreme Court, Per Nnaemeka-Agu, JSC held as follows: "The courts in exercise of their power of judicial review are constantly called upon to scrutinize the validity of instruments, laws, acts, decisions, and transactions. In the exercise of the jurisdiction, the courts can declare them*

may be argued that given that the High Court (including the FHC) has the supervisory jurisdiction to review the proceedings of an inferior court and/or tribunal, the FHC, will be well within its inherent jurisdiction to exercise its power of judicial review on a Tribunal such as the CCT, when invited to do so by an aggrieved party, except there is an express statutory or constitutional provision to the contrary. It must be noted, however, that there has been controversy as to whether inferior courts, but not administrative tribunals, may be immune from judicial review.[41] It has been argued that where a tribunal or administrative body exercises sole and exclusive jurisdiction, taking into consideration the special nature of that jurisdiction, the supervisory control to be exercised by the court must be one of limited nature.[42] The foregoing notwithstanding, it is can be rightly argued that to the extent that the FHC does not intend to review the final 'decision' of the CCT given that the Constitution has already provided that the right of appeal lies to the Court of Appeal in such instance, the FHC will well be within its inherent powers to consider, for instance, the validity of the procedure adopted by the CCT in trying an accused person.[43]

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invalid or ultra vires and void not because they are unconstitutional in terms of section 33 of the Constitution but because they offend against the rules of natural justice of audi alteram partem, or nemo judex in causa, or offends against the rules of fairness, or otherwise offends the rule of natural justice. All these are in the realm of administrative, and not constitutional, law. The court can by its power of judicial review set them aside. The great divide is that section 33 deals with judicial bodies and does not necessarily extend to all bodies not judicial but all the same deciding on right and obligations."

41 *See M.Allen & Brian Thompson, Cases & Materials on Constitutional & Administrative Law, 7th Edition, 2002, Oxford University Press, p. 581;*

42 *See also Regina v. Lord President of the Privy Council, Ex parte Page [1993] AC 682.*

43 *See further Civil Service Unions v. Minister for the Civil Service[1985] AC 374 at 410. In Council of Civil Service Unions v. Minister for the Civil Service (supra), he stated that judicial review had developed to a stage when without reiterating any analysis of the steps by which the development has come about, one could conveniently classify under three heads the grounds upon which administrative is subject to control by judicial review. He called the first ground "illegality"; the second he called "irrationality"; and the third he called "procedural impropriety". The third ground, 'procedural impropriety' identified by Lord Diplock is the applicable test to the subject matter of this paper. "Procedural impropriety', identified by Lord Diplock as the third of the grounds upon which a decision of a public authority or officer could be susceptible to 'judicial review', Lord Diplock wrote: "I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure*

Conclusion

24. Finally, it is humbly submitted that: (x) the FHC, being a superior court of record, is well within its supervisory jurisdiction to exercise judicial review of the proceedings and/or acts of the CCT (which is not a superior court of record but a tribunal), that affects the fundamental rights of a public officer; and (y) an order made by the FHC further to its supervisory powers ought to not only be honoured but also respected by the CCT as anything less would amount to judicial rascality; and (z) the CCT is not a superior court of record. As aptly noted by the learned authors of the *Halsbury's Laws of England*,[44] where it was stated:

> "**The courts have an inherent jurisdiction to review** the exercise by public bodies or officers of statutory powers impinging on legally recognized interests. Powers must not be exceeded or abused....The ***superior courts have a somewhat similar inherent supervisory jurisdiction over inferior courts and tribunals. If such a body has exceeded or acted without jurisdiction, or has failed to act fairly or in accordance with the rules of natural justice...Alternatively, a tribunal may be prohibited from violating the conditions precedent to a valid adjudication before it has made a final determination."***[45] [Emphasis supplied].

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does not involve any denial of natural justice". The 'procedural impropriety' triggers the judicial review of the court where the statutory procedures and the principles of natural justice have not been complied with.

[44] *Vol. 1, Fourth Edition, Butterworths, London, 1973, p.51*

[45] *Halsbury's Laws of England, Vol. 1, Fourth Edition, Butterworths, London, 1973, p.51*