A JURISPRUDENTIAL ANALYSIS OF THE APPLICATION OF THE DOCTRINE OF STARE DECISIS UNDER THE NIGERIAN LAW

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Abstract

This paper attempts a critical analysis of the application of the doctrine of stare decisis under the Nigerian law. The doctrine of stare decisis entails to stand by decided cases and with the obligation of the judges to follow previous decisions of higher courts in appropriate cases. The inclinations to be guided by past decisions is a natural course of conduct and is therefore not peculiar to common law systems. The aim of the effort is to examine the application of the doctrine in the various strata of courts. The study adopted doctrinal methodology of research and placed reliance on primary sources of several statutes and decided cases. The findings of the study were that the application of the doctrine has left the system open to several abuses and negative consequences in judicial administration and these have debilitating consequences in the working of the courts and judicial administration. The study concluded that there is the need to revisit the application of the doctrine for its continued relevance to modern adjudication.

Keywords: Nigerian law, adjudications, common law, court, judicial precedent.

1.0 Introduction

It was Christopher (Harris) Fry that said: *"I know I am not a practical person; legal matters and so forth are Greek to me, except, of course, that I understand Greek"*[1]. This statement underscores the importance of certainty and clarity of the law in the administration and dispensation of justice. It is against this back drop that the role and application of the doctrine of *stare decisis* under the Nigerian law will be analysed.

The doctrine of judicial precedent or, to use its more technical terminology, *stare decisis*, is, perhaps, in the long but chequered history of jurisprudential writings and the most widely discussed in any consideration of the internal dynamics of the legal or judicial systems. In the

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[1] Dictionary of Quotations (Geddes and Grosset, 1994), 203.

Anglo-Saxon legal tradition particularly, precedents based on cases are, to use the words of Bacon "anchors of the law". *Stare decisis* is, indeed, one of the foundations upon which English law rests[2], and its existence in the operation of the civil law systems are also not generally denied. Yet, it has been a subject of intense controversies among legal theorists, philosophers, jurists and scholars.

The debate over its continued relevance or otherwise to the development of law is a consequence of the many strengths and weaknesses that have been identified in its practical operation across legal systems.

This effort is a critical examination and assessment of the role of precedents in the Nigerian judicial system. The main focus is an appraisal of the relevance or otherwise of the continued reliance on precedent, particularly authoritative binding precedents, in the internal workings of the Nigerian judicial system.

1.1 Origin and Meaning of the Doctrine

The word 'precedent', in its widest and most inclusive sense, means *"the use of past decisions as guides in giving other decisions"*[3]. It involves the *"reasonable practice of treating like cases alike*"[4]. It is based on the logic that while no two cases are exactly alike, it is possible over time to extract principles of law common to several cases, and begin to discern regular patterns of decisions in case with similar facts and principles. Kalgo JSC., posits on the meaning of the doctrine thus:

> *Simply put this doctrine lays down the golden rule that decisions of higher courts of the land are binding on the lower courts in the land. And decisions of courts of co-ordinate jurisdiction are, for all*

[2] RWM Dias, Jurisprudence (4th ed.) (Butterworths, 1976), 164.
[3] Ibid, 162.
[4] JH Farrar and AM Dugdale, Introduction to Legal Method (3rd ed.) (Sweet and Maxwell, 1990), 87.

> *intents and purpose, binding as between those courts. In all cases, decisions made per incuriam are not included for obvious reasons and a court may depart from its earlier decision if it is satisfied that the decisions was wrong and there is a need to reverseor alter it in the interest of justice*.[5]

Obilade[6] on his part opines that judicial precedent or case law consists of law found in judicial decisions. A judicial precedent is the principle of law on which a judicial decision is based. It is the *ratio decidendi* (literally, the reason for the decision). It follows that it is not everything said by a judge in the course of his judgment that constitutes a precedent. At common law, the principle of law on which a court based its decision in relation to the material facts before it must be followed in similar cases by the courts below it in the hierarchy of courts and may be followed in similar cases by courts above it in the hierarchy.

Judicial precedent is of antiquated origin and it is found, in varying degrees in all legal systems, including prehistoric and traditional systems[7]. In fact, all legal systems follow precedent in one form or another. It originated, perhaps, when it was difficult to take decisions in important cases and the only course left was reference to how previous similar disputes were resolved.

However, while previous decisions were expected to be followed in ancient and medieval legal systems, judicial precedent did not begin to acquire the character of authoritative bindingness until it became developed as such under the English common law system. In England, its origin is traceable to the 13th century during the reign of Edward I[8]. It was not,

[5] Global Trans. & Anor v. Free Ent. Nig. 5 NSCQR 4897 at 504 – 505.
[6] AO Obilade, The Nigerian Legal System (Sweet & Maxwell, 1979).
[7] Zander M., The Law-Making Process (2nd ed.) (Weidenfield & Nicolsddon, London, 1985), 159.
[8] For The Growth of Precedent in English Law From the Time of Bracton Up To The Modern Time, See: KA Charleton, Law in the Making. (Clarendon Press, 1964), 187 – 235.

however until the 16th century, with the introduction of law reports, that it began to assume its present, modern form[9]. There is, indeed, no role for statutory law in the emergence and growth of precedent[10]. Early reference to precedent did not suggest that it had authoritative binding effect, and to that extent it was not a peculiarity of the modern or common law system.

Goodhart[11] has rightly observed that the doctrine of precedent, which is an hallmark of the English common law, is applicable to every legal system even though with some variations in its application, The idea of being guided by decisions in earlier cases has been a constituent part of Nigerian customary law jurisprudence[12].

1.2 Operation of the Doctrine

In the operation of the doctrine in Nigeria and all common law countries, the decision on a given issue of law handed down by the apex court, which for us in Nigeria is the Supreme Court, is not only superior but binds all subordinate courts, including all courts exercising appellate jurisdiction. It is the law that a decision of a court of competent jurisdiction, no matter that it seems palpably null and void, unattractive or insupportable, remains good law and uncompromisingly binding until set aside by a superior court of competent jurisdiction[13].

It is often said that the function of the court is to interpret laws made by the legislature and not to make law. In theory that is so, but it must equally be admitted that judges are not robots who have no minds of their own except to interpret legislations. They are intrepid by their great learning and training and distinguished in order to render justice to whom it is due. As the society is eternally dynamic and with fast changing nature of things in the ever

[9] See P Harris, An Introduction to Law (4th ed.) (Butterworths, 1993), 149 – 150.
[10] AO Obilade, The Nigerian Legal System (Spectrum Books Ltd., 2002), 257 – 258.
[11] AL Goodhart, Precedent in English and Continental Law (1934) L.Q.R. 41.
[12] JO Asein, Introduction to Nigerian Legal System (2nd ed.) (Ababa Press Ltd., 2005), 74.
[13] Abacha v. Fawehinimi (2000) 2 SCNQR 2, 489 at 543; Folorunso v. Adeyemi (1973) 1 NMLR 128; Ejowhomu v. Edok-Eter Mandilas Ltd. (1986) 5 NMLR (Pt. 39) 1, Ratio 8.

changing world and their complexities, the court should empirically speaking situate its decisions on realistic premise regard being had to the society's construct and understanding of issues that affect the development of jurisprudence. *Stare decisis* rests on two main pillars: reliable report of cases and a settled hierarchy of courts[14]. Its effective operation assumes a hierarchy of courts with authority flowing from the top to the bottom. Our consideration of the place of judicial precedent must, therefore, of necessity make a reference, howbeit brief, to the hierarchical structure of the courts system. In all legal systems, courts are hierarchically structured and cases do go on appeal from the lower courts to the higher courts on the judicial ladder until the highest court, or the 'court of last resort', is reached.

Hierarchy of courts is a matter of legislation. In England, this was achieved by the Judicature Acts, 1873 – 1875 and the Courts Act, 1971 which re-organised the English judicial system. In Nigeria, the United States of America and other common law jurisdictions, the constitution and other legislative enactments served the purpose. In Britain, the House of Lords stands at the apex of the judicial hierarchy, followed by the

Court of Appeal, the High Court in its various decisions, and other lower courts (Magistrate, District, County, etc). The constitution of the United States of America creates only the US Supreme Court, while the other lower courts are creations of congressional exercise of the legislative power. In Nigeria, 'the superior courts of record' – like the Supreme Court of Nigeria, Court of Appeal, Federal High Court, National Industrial Court and High Courts of the various states, are created under the constitution, while other courts and judicial tribunals are created by Acts of the National Assembly or laws of the State Houses of Assembly[15].

[14] RWM Dias, (n 2), 166.
[15] For a brief examination of the structure of the court system in Nigeria, see: MO Alabi, The Supreme Court in the Nigerian Political System 1963-1997 (Denyaxs Publishers, 2002).

In this hierarchically structured system, the binding authority of precedent flows from the top to the bottom. Simply put, this means decisions of higher courts bind the lower courts in the determination of cases before them. Thus, the decision of the House of Lords binds all the English Courts, while those of the Court of Appeal binds the courts below it. In a similar vein, the decision of the Supreme Court of Nigeria binds all the courts, and those of the Court of Appeal create binding precedents for all the courts below it. The binding effect of a precedent on a court therefore depends on the relative position of the court that created the precedent vis-à-vis the court before which the precedent is being considered.

The binding character of a precedent is dependent not upon the correctness or otherwise of the decision being considered, but rather upon the authority conferred on the precedent-creating court by virtue of its status on the judicial hierarchy. Thus, in *Atolagbe and Anor v. Alhaji Awuni and Ors*.[16], Wali, JSC, desecrated attempts by lower courts to refuse to take the decision of the Supreme Court of Nigeria as binding as *"not only wrong but amounts to arrogance and judicial irresponsibility"*. In that case, Uwais CJN, said:

> *It is now settled that under the common law doctrine of precedent or stare decisis, the decision of a higher court may be criticised by the judge of a lower court, but notwithstanding the criticism, the judge of the lower court is bound to follow and apply such decision in the case before him. He has no right to disregard the decision or side track it.*[17]

[16] (1997)7 SCNJ 21.
[17] Supra, 25.

In the case of *Dalhatu v. Turaki,*[18] Ogundare, JSC described the attitude as *"the height of judicial impertinence"*[19]. According to Katsina-Alu, JSC, who delivered the lead judgment, to which all the other Justices concurred.

> *By the doctrine of stare decisis, the courts below are bound to follow the decisions of the Supreme Court. The doctrine is a sine qua non for certainty to the practice and application of law. A refusal, therefore by the judge of the court below to be bound by the Supreme Court's decision, is gross insubordination, such a judicial official is a misfit in the judiciary*.[20]

Since in most jurisdictions, the hierarchy of the court system is often well laid out in legislations, the line of authority may not create much problem as far as operation of the doctrine of *stare decisis* is concerned. However, the doctrine also operates to determine how a court, particularly the appellate courts, would treat their own previous decisions. Under the strict rule of precedent, such courts are also bound by their own previous decisions. And for upward of seven decades beginning from 1898, that was the positions of the House of Lords, during which period the court remained bound by its previous decisions[21]. This is the court claimed to do, in the locus classics of *London Tramways v. London County Council*[22], in the interest of certainty and finality in the law. It was not until 1966 that a conscious change in policy was made when the court announced that it would no longer be absolutely bound by its own decisions vide a Practice Statement released on July 26, 1966. While recognizing that the principle of *stare decisis* was *"an indispensable foundation upon which to decide what is the law and its application to individual cases"*, which promotes "some degree of certainty"

[18] (2003) 7 SCNJ 1.
[19] Ibid, 16.
[20] Ibid, 12.
[21] London Street Tramways Co. v. LCC (1898) AC 375.
[22] (1898) AC 375.

and "a basis for orderly development" of the law, the House of Lords conceded that: *"too rigid adherence to precedent may lead to injustice... and also unduly restrict the proper development of the law"*[23].

A court will not follow such previous decisions *"where it appears right to do so"*. But even then, the court was loath to depart from its previous decisions, preferring instead to distinguish rather than overrule previous decisions.[24] It uses the power only sparingly, the first of such eight years after the policy change was announced. This was the case of Johanna Oldendorff which overruled the Aello on the test for determining when a ship becomes an "arrived ship".[25]

The principle governing the operation of *stare decisis* in the English Court of Appeal is slightly different. Not being a "final" court, it is absolutely bound by the decisions of the House of Lords and by its own previous decisions in civil suits. In *Young v. Bristol Aeroplane Co. Ltd.* The English Court of Appeal held that in civil appeals it was bound by its own decisions but subject to the following qualifications: (a) If two decisions are in conflict, the court must choose between them; (b) If a decision is inconsistent with a subsequent decision of the House of Lords or of the Judicial Committee of the Privy Council, the court is hot bound by its; (c) If a decision is given per incuriam, the court is not bound by it. Moreover, a decision of a court of two judges on an interlocutory matter is not binding on a subsequent court if the latter court thought it to be wrong.[26] Also, where its previous decisions had been wrongly decided and no review by the House of Lords was possible, the

[23] See Practice Statement (1966)3 All ER 77.
[24] See e.g. British Railway Board v. Harrington (1972) AC 877.
[25] See: Oldendorff (E.L.) & Company G.m.b.H v. Tradax Export S.A.; (1974) AC 479; Sociedad Financiera de Bienes Raices, S.A. v. Agrimpex Hungarian Trading Company for Agricultural Products (1961) AC 135. See also Miliangos v. Frank George (Textiles) Ltd. (1976) AC 443.
[26] (1944) KB 718; See also Dias (n2) 193 – 194.

Court of Appeal may not be bound by it.[27] However, where the Court of Appeal sits in its criminal division, a full appellate court assembled for the purpose is entitled to overrule its previous decisions.[28] Thus, in criminal appeals, the Court of Appeal is not bound by its own decisions although often reluctant to depart from such previous decisions.

It must be pointed out at this juncture, as was held in *Okpala v. Okpu*[29] that:

> *...a case does not lose its value as a judicial precedent in the common law system on the ground of age. As a matter of law, a case which has survived the test of judicial precedent is recognized as stable, if decided by the highest court of the land, and will receive the adoration of the lower courts until overruled by the highest court. But until overruled it represents that state of the law. The older a case, the mature it is and the Supreme Court and all the courts below are bound to follow it, and they should not throw it into the dust bin.*

The second pillar on which the operation of *stare decisis* rests is an efficient system of law reporting. This is based on the logic that for a decision to be followed, it has to be known. The law reporting system has come to fill the gap in this regard. In fact, there cannot be precedent without some measure of law reporting, whether verbal or written.

[27] Boys v. Chaplin (1968) 2 QB 1; See also Dias (n2) 193 – 194.
[28] R. v. Taylor (1950) 2
K.B. 368.
[29] (2003) 1 SCNJ 290 per Tobi JSC.

As Walker notes, the operation of the doctrine is *"inextricably bound up with law reporting".*[30] Court decisions, i.e. judgments, rulings, opinions, etc. are therefore the hub of the operation of *stare decisis*.

1.3 Interlocutory and Final Decisions

The doctrine of *stare decisis*, as earlier stated, is based on an inferior court in the hierarchy of courts applying the *ratio decidendi* in a "decision" of a superior court in the hierarchy in similar cases before it (inferior court). A decision in relation to a court is defined in the 1999 Constitution of the Federal Republic of Nigeria[31] as: *"any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation"*.

Hence, the principles of law stated in a decision of a court, be it an interlocutory or a final decision, becomes a binding precedent on courts below it in hierarchy.

The Supreme Court opined thus on the finality of a court's decision:

> *Since the question whether or not a court can reopen in a later case, or even at a later stage in the same case, a question it has decided on a previous occasion arises in a variety of circumstances, the test most adequate for all occasions is whether the court which gave the decision can vary, reopen or set aside the decision. If it cannot, the decision is in that context 'final'.*[32]

[30] Walker, Op. cit. p. 132.
[31] Section 318 (1) Constitution of the 1999 Constitution Federal Republic of Nigeria, as amended.
[32] Onyeabuchi v. INEC (2002) 4 SCNJ 265 at 276.

The court further opined that:

> *A decision is final if it is one that cannot be varied, reopened or set aside by the court that delivered it or any other court of coordinate jurisdiction although it may be subject to appeal to a court of higher jurisdiction.*[33]

1.4 Determining the Ratio Decidendi of a Judgment

A court's decision has three main components (ingredients) viz:

(a) Findings of material acts whether direct or inferred.

(b) Statements of principles of law applicable to the legal problems disclosed by the facts;

(c) Judgment based on the combined effect of (a) and (b).[34]

However, it is not everything said or written by a judge in a judgment or ruling that constitutes precedent. That part of the judgment that is relevant for purposes of creating precedent is the principle of law contained in the decision.[35] As Jessel, MR said in *Osborne v. Rowlett:*

> *The only thing in a judge's decision, binding as an authority upon a subsequent judge, is the principle upon which the case was decided.*[36]

The binding effect of a decision is limited to the ratio decided.[37] This term may be simply translated as *"the reason for (or of) deciding"*, or *"the rule of law proffered by the judge as*

[33] Ibid.
[34] Walker, op cit., 135 – 136.
[35] Obilade, op. cit., 135-136.
[36] Walker, op. cit., 135.

the basis of his decision", or *"the rule of law which others regard as being of binding authority"* or *"a generalization drawn from a specific past happening and projected into the future".*[38] Okay Achike JSC in *Abacha v. Fawehinmi*[39] postulated thus:

> *The jurisprudence and practice of law in this country appears to be tolerably clear. It is the ratio or the rationes contained in the leading judgment that constitutes or constitute the authority for which the case stands. All other expressions contained in the concurring judgments, particularly those not addressed in the leading judgment are obiter dictum or dicta…*

A former Supreme Court Justice, Ogundare, J.S.C. in *Abu & Ors. v. Odugbo & Ors.*[40] added his view on the meaning of *ratio decidendi* this way:

> *The people of law upon which a particular case is decided is called the ratio decidendi, and the effect of this is to serve as basis of the doctrine of judicial precedent in subsequent cases with similar facts…*

It must be noted that the *ratio decidendi* of a judgment is not limited to the principles of law contained in the leading judgment alone. In *Nwana v. F.C.D.A.*[41], the Supreme Court held thus:

> *A concurring judgment has equal weight with as a leading judgment.*
>
> *A concurring judgment complements, edifies and adds to the leading*

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[37] (1880) 13 Ch. D 774 at 785.
[38] See NEPA v. Onah (1997) 1 SCNJ 220.
[39] (2000)4 SC (Pt.11)1
[40] (2001)7 MJSC 87 at 126.
[41] (2004) 7 SCNJ 90.

> *judgment. It could at times be an improvement of the leading judgment when the justices add to it certain aspects, which the writer of the leading judgment did not remember to deal with. In so far as a concurring judgment performs some of all of the above functions, it has equal force with or as the leading judgment in so far as the principle of stare decisis are concerned.*

However, a concurring judgment is not expected to deviate from the leading judgment. A concurring judgment, as the name implies, must be in agreement with the leading judgment. A concurring judgment that is its own way outside the leading judgment, is not a concurring judgment but a dissenting judgment. The mere fact that a concurring judgment mentioned in a positive and correct way what is not contained in the leading judgment does not make it wear the appellation of a dissenting judgment. In so far as what is contained therein is relevant to the issues in the matter, the judgment is acceptable as a concurring judgment.

It is the province of a court to determine the *ratio decidendi* of a relevant previous case. Where the court in the previous case clearly stated the legal principle on which it based its decisions, the court in a latter case would usually regard that principle as the *ratio decidendi*. But where the legal principle as stated is wider than the material facts of the case require, the statement of principle is considered in a later case as obiter dictum to the extent of its deviation from the material facts[42]. Similarly, where the statement of principle is too narrow in relation to the material facts, it is the task of the court in a later similar case to state the

[42] See e.g. R v. St. Edmundsbury and Ipswich Diocese (Chancellor) (1984) I KB 195 at 215.

ratio decidendi in its proper form. For instance, in *Barwick v. English Joint Stock Bank,*[43] Willes J. delivering the judgment of the court said:

> *But with respect to the question whether a principal is answerable for the act of his agent in the course of his master's business, and for his mater's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit though no express command or privity of the master be proved.*[44]

But in *Lloyd v. Grace, Smith & Co.,*[45] the House of Lords expressed the view that the reference to the master's benefit I the judgment in *Barwick's case* was not part of the *ratio decidendi*. Accordingly, the court held that an employer was liable for a fraud committed by a servant in the course of his employment, the fact that the fraud was not committed for the benefit of the master notwithstanding. In some cases, the court does not state the reason for the decision or the principle of law on which the decision is based. Nevertheless, the *ratio decidendi* of the case can usually be determined by the court in a subsequent case. Even where the reason for the decision is stated, it may not correctly represent the principle of law on which the decision is based.

In determining the *ratio decidendi* of a case, the courts usually consider any one or more of the following factors; the reasons for the decision as stated by the judge, the principle of law stated by the judge as that on which the decision was based and the actual decision in relation

[43] (1867) L.R. 2 Exch. 259.
[44] See also R v. St. Edmundsbury and Ipswich Diocese (Chancellor) (1984) 1 K.B. 195 at p. 215, cited in Obilade op. cit., 112.
[45] (1912) AC 716.

to the material facts. In addition, the court may consider the interpretation of the case in any later case determined before the instant case. It is sometimes difficult to find the *ratio decidendi* of a case determined by a court consisting of more than one judge. Where the court is divided and the majority judgments are consistent with one another even through each majority judge relies on a legal principle different from that relied upon by any other majority judge, it seems that all the legal principles relied upon in the majority judgments constitute the *rationes decidendi* of the case.[46] Where the majority judgments are consistent with one another and they are based on the same legal principle, that principle is the *ratio decidendi* of the case. In cases where the majority concur in the result by the majority judgments are inconsistent with one another it is difficult to determine the ratio decidendi.

The determination of the exact statement(s) in a judgment that constitute the *ratio decidendi* has always not been an easy exercise. It often involves "some skills, and at times great industry and ingenuity"[47]. Indeed, there are many theories of *ratio decidendi*, and none has commanded unanimous acceptance by scholars and jurists. From a classical perspective, the ratio is regarded as the principle of law upon which a judge based his decision. This simplistic view of the ratio was criticized by Professor Goodhart on three grounds, viz:

(a) There may be no rule of law set forth in a judgment; (b) the rule of law may be stated too broadly or too narrowly; and (c) at the appellate level, different judges may arrive at the same conclusion for different reasons.

2.0 The Doctrine of Stare Decisis and the Hierarchy of Courts in Nigeria

It must be stated as a general rule of practice that so much premium is placed on the doctrine of *stare decisis* as the barometer of the level of certainty that is necessary to keep the host of

[46] See Jacob v. London County Council (1950) AC 361.
[47] Obilade op. cit, 259.

legal principles on even keel. As guardians of decisions with established principles, the higher courts in the judicial hierarchy will not brook any wanton deviation by the lower courts which may provoke a reaction on the part of higher court to call to order the recalcitrant or non-conforming court or member to order.

It is now settled that under the common law doctrine of precedent or *stare decisis*, the decision of a higher court may be criticized by the judge of a lower court but notwithstanding the criticism the judge of the lower court is bound to follow and apply such decision in the case before him. He has no right to disregard the decision or sidetrack it. *Nwako v. Governor of Rivers State*[48] and *Enbiteh v. Obiki*[49], are two of such decisions in which the justices of the Court of Appeal took liberties with some abstruse points of law in the decisions of the Supreme Court; but the privilege of the higher court to have its decisions respected and followed was sustained by the critiques and kept inviolable and undiminished. This is rooted in the ethics of the higher judicial bench apart from divergence of the principles of law that is kept in check by the doctrine of *stare decisis*.

Where a higher court in the hierarchy of courts has constructed a rule of court which is in pari material with the rules of a lower court, that decision of the higher court is binding on any lower court in so far as the meaning of that rule is concerned. See *University of Lagos v. Olaniyan*[50] *and Nwobodo v. Onoh*[51].

2.1 The Supreme Court of Nigeria

The Supreme Court of Nigeria is a creation of the 1999 Constitution of Nigeria.[52] The court consists of the Chief Justice of Nigeria and such number of justices of the Supreme Court,

[48] (1989) 2 NWLR (Pt. 104) 470.
[49] (1992) 5 NWLR (Pt. 243) 599.
[50] (1985) 16 NSCC (Pt. 1) 98.
[51] (1984) 1 SC 1, 34-35.
[52] See S. 230 (1) of the 1999 Constitution of the Federal Republic of Nigeria, as amended.

not exceeding twenty-one, as may be prescribed by an Act of the National Assembly. The court to the exclusion of any other court, has original jurisdiction in any dispute between the federation and a state or between states if and in so far as that dispute involves any question (whether of law or act) on which the existence or extent of a legal right depends.[53] In addition to the foregoing, the court has such original jurisdiction as may be conferred upon it by any Act of the National Assembly.[54] Section 232 of the Constitution deals generally with the appellate jurisdiction of the court. For the purpose of exercising any jurisdiction conferred upon it by the constitution or any law, the Supreme Court shall be duly constituted if it consists of not less than five justices of the Supreme Court.[55] Provided that in exceptional circumstances contained in the constitution[56], the court shall be constituted by seven justice.

The decisions of the Supreme Court of Nigeria are binding on all other courts to which the common law doctrine of binding precedent applies. Although the doctrine does not apply to customary courts, area courts or the Sharia Court of Appeal (as shall be discussed later), in principle, by virtue of the appellate system whereby decisions of these courts can ultimately reach the Supreme Court, the courts should follow decisions of the Supreme Court.

The Supreme Court replaced the Judicial Committee of the Privy Council as the highest court for Nigeria. It should therefore treat the decisions of the Privy Council given before the abolition of appeals to the Council, as it would treat its own decision. That was, indeed, the attitude adopted by the Supreme Court in the case of *Johnson v. Lawanson.*[57] In that case, a full court of the Supreme Court overruled a Privy Council decision, *Maurice Govalin Ltd. v.*

[53] Ibid, S. 232 (1).
[54] Ibid.
[55] Ibid, S. 234.
[56] Ibid.
[57] (1971) All N.L.R. 56.

Aminu[58]. It is clear from this Supreme Court decision that the Supreme Court does not regard Privy Council decisions as binding upon it. The court in the same case overruled three of its previous decisions[59] without distinguishing between the authority of its previous decisions and the authority of Privy Council decisions. It is clear from the decision in *Johnson v. Lawanson* that the Supreme Court is not bound by its previous decisions.

The case also suggests that the Supreme Court was of the opinion that it could overrule its own previous decisions or that of the Privy Council in order to avoid perpetuating an error which if not corrected would result in injustice. It may be said therefore, that the Supreme Court would normally treat its previous decisions and those of the Privy Council with great respect but it would depart from a previous decision if it is of the opinion that the decision was wrong and following it would be unjust.

2.2 The Court of Appeal

The Court of Appeal is a creation of the 1999 Constitution of the Federal Republic of Nigeria, as amended.[60] The said constitution provides for the jurisdiction[61] and composition of the court.

The court, formerly known as the Federal Court of Appeal, is bound by the decisions of the Supreme Court of Nigeria.[62] The practice of the court is similar to that of the Court of Appeal of England. The practice is stated in the English case of *Young v. Bristol Aeroplane Co.*,[63] and re-stated in *Ebere v. Onyenge*[64] where it was held that:

[58] Privy Council Appeal No. 17 (1957).
[59] Odeneye v. Sirage (1964) NMLR. 115; Williams v. Akinwunmi (1966) 1 All NLR. 115.
[60] See Section 237 of the 1999 Constitution of the Federal Republic of Nigeria, as amended.
[61] Ibid, Section 239 and 240.
[62] Ibid, Section 247 and 240.
[63] (1944) K.B. 718.
[64] (2000) 2 NWLR (Pt. 643)

"The Court of Appeal is bound by its previous decisions. There are, however, recognized circumstances in which the court may legitimately decline to follow such decisions as where:

(a) the Court of Appeal may decide to follow one of two of its conflicting decisions in preference to the other.

(b) it may decline to follow its decision, which though not expressly overruled cannot, in its opinion co-exist with a decision of the Supreme Court.

(c) it may decline to follow its earlier decision if satisfied that decision has been reached per incuriam; and

(d) it is also not bound to follow the *obiter dicta* of any of its justices".[65]

The Court of Appeal was bound by the decisions of the Judicial Committee of the Privy Council given before the abolition of appeals to the Committee since the Committee was the highest court for Nigeria. By virtue of its position (second from top) in the hierarchy, the court is higher in status than the former Supreme Court and is therefore not bound by the decisions of that Supreme Court. The position of the Court of Appeal is similar to that of the Federal Supreme Court or the West African Court of Appeal. Accordingly, the Court of Appeal would treat the previous decisions of the Federal Supreme Court and the West African Court of Appeal as its own previous decisions.

2.3 The Federal and State High Courts

All the High Courts including the Federal High Court are bound by the decisions of the Supreme Court of Nigeria and the Court of Appeal. With respect to State matters (that is, matters within the legislative competence of a State), the High Court of a State does not form

[65] See also Osho V. Foreign Finance Corporation (1991) 4 NWLR (Pt. 184) 157 at 1988; Usman v. Umaru (1992) 7 NWLR (Pt. 254) 377 at 398 – 399.

part of the hierarchy of courts of any other State Accordingly, the decisions of the High Court of a State given in the exercise of its jurisdiction in State matters are not binding on any court in another State. On the other hand, every High Court in the exercise of Federal jurisdiction binds all Magistrates' courts in the country and all District courts in the northern states.[66]

Obilade[67] opines that a judge of a High Court in Nigeria sitting as a court of first instance is not bound by the decisions of another judge of the High Court sitting as a court of first instance. He further opines that a judge of a High Court is not bound by the decisions of another judge of the High Court sitting as a court of appeal for the two judges are judges "of equal jurisdictions". But when a local High Court sitting as a court of appeal is constituted by two or more judges, as it is in the northern states, it is equivalent to a Divisional Court of the High Court of England. Its decisions, therefore, bind a judge of the High Court sitting as a court of first instance. Clearly of course, a judge of a High Court sitting in his original jurisdiction is not bound by his previous decisions whether given in the exercise of original jurisdiction or given in the exercise of appellate jurisdiction.

2.4 The National Industrial Court

The National Industrial Court is expressly listed as one of the superior courts of record in the constitution.[68]

Item 34 of the Exclusive Legislative List in the Second Schedule to the 1999 Constitution of Nigeria, as amended gives the National Assembly powers to make laws relating to labour, including trade unions, industrial relations conditions, safety and welfare of labour industrial

[66] Obilade p.cit.
[67] Ibid.
[68] See Section 6(5) (cc) of the 1999 Constitution of the Federal Republic of Nigeria, as amended.

disputes prescribing a national minimum wage for the Federation or any art thereof; and industrial arbitrations.

Thus, by the provisions of the Trade Dispute Act, Cap. 432, Laws of the Federation of Nigeria, 1990 and Section 1 (A) (1) of Decree 47 of 1992, the only court that is conferred with jurisdiction to hear trade dispute matters is the National Industrial Court. A trade dispute has been defined in *Ekong v. Oside*[69] as any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person.

As regards the applicability of the doctrine of *stare decisis* to the court, it is submitted that by reason of the fact that appeals lie from the decisions of the court to the Court of Appeal, it behoves on the court to follow relevant decisions of the Court of Appeal and Supreme Court so that its decisions will not be upturned on appeal.

2.5 Magistrates' and District Courts

Magistrates' courts of a state are bound by the decisions of the High Court of the State by virtue of their position in the hierarchy of courts to which the doctrine of judicial precedent applies. Similarly, District courts of each of the Northern States are bound by the decisions of the High Court of the State. Magistrates' Courts and District courts are not bound by their previous decisions.[70]

2.6 Courts to Which the Common Law Doctrine of Stare Decisis Does Not Apply

The common law doctrine of judicial precedent does not apply to Customary or Area

[69] (2004) 67 FR 82 at 89 per Mohammed, J.C.A.
[70] Obliade Op. cit.

Courts. Similarly, the doctrine does not apply to the Sharia Court of Appeal of any the Northern States because the court is not empowered to administer adjective common law.

In principle, however, by virtue of the appellate system, the Sharia Court of Appeal should follow the decisions of the Supreme Court of Nigeria. Similarly, customary courts and area courts should follow the decisions of higher courts. This last statement is given credence in the case of *Okoye & Anor. v. Omeje*[71] where it was held that:

> *In the hierarchical system of court courts, it is settled principle that, generally, a lower court is always bound by the ratio decidendi in one decision of a superior court but not the obiter dictum of that superior court. Thus, a Magistrate Court or a Customary Court or Area Court is bound by the ratio decided of a High Court, which in turn, is itself bound by the ratio decidendi in the decisions of the Court of Appeal. The decisions of the Supreme Court (the highest court of the land) which finds expression in the ratio decidendi are very much binding on the Court of Appeal and indeed, all the courts below the Court of Appeal.*

2.7 Administrative Tribunals, Tribunals of Enquiry etc.

Section 36(1) of the 1999 Constitution provides thus:

> *In 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 reasonable time by a court or <u>other</u> <u>tribunal</u> established by law*

[71] (2003) 8 FR 1.

and constituted in such a manner as to secure its independence and impartiality.

Indeed, there is the Tribunal of Inquiry Act, Cap 447 Laws of the Federation of Nigeria 1990 and Tribunal of Inquiry Law in each of the States of the Federation which empowers the President or Governor, as the case may be, to constitute by way of an instrument, one or more persons (as) a Tribunal into any matter or thing or into the conduct or affairs of any person in respect of which in his opinion an inquiry will be for the public welfare. Under a normal democratic dispensation, a Tribunal set up or constituted under the Tribunal of Inquiry Act or Law is far inferior and subordinate in every material particular to a State High Court and a single Judge of a High court can stop or restrain or set aside the proceedings of such Tribunal notwithstanding the eminence or learning or stature of the personnel composing it.

A good example was the injunction given by Honorable Justice Oye Adefila of the Borno State High Court against the Tribunal/Commission of Inquiry set up by the then President Shehu Shagari to inquire into the deportation of the then majority leader of the Borno State House of Assembly, Alhaji Shugaba Abdulrahaman. That Tribunal / Commission of Inquiry was headed by no less a personality than the Honorable Justice Akpamgbo who, was then a very senior Justice of the Supreme Court of Nigeria. To demonstrate his respect for the judiciary and the superiority of its authority over that of a Tribunal, the Honorable Justice Akpamgbo on alighting at the Maiduguri Airport and hearing over the radio that a Borno State High Court had granted Alhaji Abdurahaman Shugbaba an injunction restraining the sitting of the Tribunal headed by him, he took the next available flight from Maiduguri back to Lagos. An Administrative Tribunal or Commission is therefore under an obligation to be bound by apposite decisions of the High Court and all other courts above the High Court in the hierarchy of courts. This is because the High Court has supervisory and appellate

jurisdiction over such Tribunals, which include the power to issue prerogative orders such as mandamus, certiorari and orders of prohibition against any tribunal that does not conduct its proceedings and reach decisions that are in accordance with principles of law enunciated in decisions of superior courts of record. *In Okorafor v. The Miscellaneous JCA Offences Tribunal,*[72] Sulu Gambari, JCA succinctly puts the position thus:

> *The courts of law have been normally jealous of and they resist encroachment upon their jurisdiction. It will be the duty of the High Court to see that a tribunal specially created to take up some matters is indeed properly so created.... Thus, notwithstanding the conferment of exclusive original jurisdiction on a tribunal, the superior court may intervene in the exercise of its supervisory jurisdiction by prohibition or injunction or certiorari.*

3.0 Appraisal of the Usefulness of The Doctrine of Stare Decisis in Nigeria

The usefulness of the doctrine of *stare decisis* is aptly and succinctly stated in the dictum of Kalgo, JSC in *Global Trans Oceanico S.A. & Anor v. Free Ent. Nig.*[73]

> *In the case of Eperokun v. University of Lagos (1986) 4 NWLR (Pt. 34) 162, this court stated the main benefits of following previous decisions per Oputa JSC on page 193 of the report that:*
>
> *"Standing by a previous decision which has not been proved to be perverse, or to have been decided per incuriam or proved to be faulty legally or procedurally has a lot of advantages. It fosters stability and enhances the development of a consistent and*

[72] (1995) 4 NWLR (Pt. 387) 59 at 80 – 81.
[73] (1995)8 NWLR (Pt. 413) 257.

> *coherent body of law. In addition, it preserves continuity and manifest respect for the past. It also assures equality of treatment for litigants similarly situated. It likewise spares the judges the task of re-examining rules of law, or principles, with each succeeding case, and finally it affords the law a desirable measure of predictability'.*
>
> *I entirely agree with this statement and wish to add that it also helps to maintain some legal order within the judicial system.*

The above dictum of Kalgo JSC, confirms the position of judicial precedent as the cornerstone of the adjudicatory system of the common law legal tradition. Its practical operation is however fraught with a number of problems and difficulties that have tended to put a question mark on its continued relevance in the administration of justice in particular and the development of the law in general.

Stare decisis is justified to the extent that it brings stability, certainty and consistency to the law. It has been noted to promote equality, consistency and impartiality, qualities that are crucial to the attainment of justice in the resolution of disputes. The need for certainty and predictability in law necessarily makes the use of precedents indispensable.

3.1 Conclusion

The ‘hieratic tradition' of judicial orthodoxy which regards judges as declarers and not makers of law has ensured the emergence of judicial precedent as a tool of revolutionary legal development. This development, spanning over eight centuries, gave a measure of stability, certainty and consistency to law in its application to day-to-day interactive activities of human beings.

Nonetheless, the application of the doctrine in its authoritative and binding nature has left the system open to a number of abuses and inconveniences in the resolution of conflicts and adjudications of disputes. The deleterious effect of these on the working of the judiciary in particular and administration of justice in general has necessitated a revisit of its usage and continued relevance to modern adjudication.