THE ESTABLISHMENT OF SPECIAL TRIBUNAL FOR THE ENFORCEMENT AND RECOVERY OF ELIGIBLE LOANS UNDER THE BANKS AND OTHER FINANCIAL INSTITUTIONS ACT 2020 (BOFIA 2020): PLACING THE CART BEFORE THE HORSE*

Abstract
The Special Tribunal, with an exclusive jurisdiction for the recovery of eligible loans in banks and other financial institutions, was created by the Banks and Other Financial Institutions Act (BOFIA) 2020. Hitherto, this role was exclusively performed by the various State High Courts. The Special Tribunal would be a superior court having same status with the Federal, State and National Industrial Courts, such that Appeals from the Tribunal will be to the Court of Appeal. The Special Tribunal can create sittings in States of the Federation similar to the practice of the Federal and National Industrial Courts. This paper observed that the Constitution does not permit the Parliament to create additional superior Courts, outside the established Courts recognized in Section 6(5) of the Constitution. The Special Tribunal may suffer the fate of the National Industrial Court before it was included in the Constitution, unlike the Tax Appeal Tribunal and the Investment Tribunal also created by Acts of Parliament but subjugated to the Federal High Court. The paper further observed that the Act provided immunity for the President and other members of the Tribunal; authorized the President of Nigeria to unilaterally appoint the entire members of the Tribunal without recourse to the Federal Judicial Service Commission and the National Judicial Council; established a Panel of Experts to be funded by the Central Bank of Nigeria; and created a Fund to be fuelled from questionable sources including gifts and donations. The Paper concluded that the Special Tribunal is infested with many challenges and thus constituted a 'stillbirth' of a legislative instrument by putting the cart before the horse. It admonished the National Assembly to stay within the armpit of its constitutional powers or toe the path of constitutional amendment to accommodate its creation of additional superior courts in Nigeria.

Keywords: Loans, Eligible debt, Banks, Constitution, National Assembly, Superior Courts, Tribunals.

1. Introduction

Banker-Customer relationship is contractual as it creates a debtor/creditor status as soon as the relationship is consummated by opening an account with a bank in the name of a customer. The relationship is permanent for the duration of the existence of the account[1]. At any point in time, one of them is a debtor while the other is a creditor. Whenever the customer's account is in credit, the bank is a debtor to the customer and the customer is the creditor; and vice versa. A bank is a registered company that is licensed by the Central Bank of Nigeria (CBN)[2] to transact banking business while the customer[3] is the account holder in a bank. This may be individuals, corporate entities, government, government agencies and associations. The Banking industry has developed through series of reforms and control, and currently at varying stages of development in different countries. In Nigeria, the Industry, which modern form commenced in 1893,[4] started from the period of *laissez faire*,[5] when there was free entry and free exit. Banking has since progressed through the era of introduction of banking laws[6] and the establishment of regulatory institutions. First established, amongst the regulatory institutions, was the

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[1] *Joachimson v. Swiss Bank Corporation* (1921) 3 KB 110, 125 LT 338; *ACB Limited v. Dike* [2000] 5 NWLR Pt.675 pg. 441

[2] S.2 Bill of Exchange Act 1954; S.2 BOFIA

[3] *Ladbroke and Co v. Todd* (1914) 30 TLR 433; *Commissioner of Taxation v. English, Scottish and Australian Bank* (1920) AC 683

[4] The First Bank of Nigeria was established in 1893 by Elder Dempster Company. It was first named Bank of British West Africa (BBWA) later renamed Bank of West Africa (BWA) and later Standard Bank of Nigeria Limited (SBNL) before its present name, First Bank of Nigeria Plc.

[5] Many banks were established between 1893 and 1959 with a few surviving for a while, while some collapsed as soon as they were established. The activities of the banks were largely uncontrolled beyond the granting of charter by the colonial government. See Asabia S.O., *Essays in Money and Banking*, (Ibadan: Fountain Publications, 1992), p. 4

[6] The first Nigerian legislation enacted to regulate banking business was the Banking Ordinance of 1952 which introduced the principle of bank licensing and prescribed minimum paid-up share capital.

Central Bank of Nigeria (CBN),[7] the Nigeria Deposit Insurance Corporation (NDIC)[8] and the Assets Management Corporation of Nigeria (AMCON)[9].

2. The Place of Banks in Nations' Economy

Banks are of great importance in the economy of any Nation as they play the role of lubricating the economy by being savings haven for those that have surplus funds, and performing the role of lenders to those in need or are economically in deficit. The banking Industry is so strategically important that it oils the growth of all other sectors of the economy. It has been observed that 'The banks, without exaggeration, constitute the hub on which our economic wheel rotates. Any defect in the hub renders the wheel wobbly'.[9] Succinctly captured[10] the banking industry is said to 'constitute one of the pillars on which the economy of any nation can be erected, and the grease that lubricates the economic machine of any nation. When the banking industry sneezes, the entire economy catches cold. The relevance of banks in the economy of any nation cannot be overemphasized. They are the cornerstones, the linchpin of the economy of a country'. The Encyclopedia Americana international edition succinctly puts the position thus 'economic activity as it is known could not be smooth sailing without the continuing flow of money and credit. The economies of all market-oriented nations depend on the efficient operation of complex and delicately balanced systems of money and credit'. Banks therefore constitute an indispensable partner in economic development as they provide the bulk of the money supply as well as the primary means of facilitating the flow of credit to oil the economic machinery of any Nation. It should be noted that the banks do not manufacture money to lend to customers, it is the money saved by other customers that form the pool of funds from which the banks lend to borrowers. The Central Bank of every Nation plays the role of lender of last resort by giving temporary loans to commercial banks when the savers want their money that had been lent to borrowers and there are not enough savings in the till of the banks to refund to the savers. This is the whole essence of introduction of liquidity ratio[10] by the Central Banks. The need for a smooth and sustainable economic growth in any nation therefore requires that those who borrow money from banks pay back as at when promised. Unfortunately, this has usually not been the case, as several bank customers had borrowed money from banks and had failed, refused and or neglected to pay, therefore putting not only the banks, but the economy of Nigeria in jeopardy.

3. Banking Evolution and Challenges

The West African Currency Board (WACB) meant to serve the West African sub-region was the first known formal banking business to operate in Nigeria, before the establishment of the First Bank of Nigeria in 1893 that became operational in 1894. It was first named Bank of British West Africa (BBWA), later changed to Bank of West Africa (BWA) and at another time to Standard Bank of Nigeria Limited (SBNL) before its present name – First Bank of Nigeria Plc. Many banks were established between 1893 when the first bank was established in Nigeria and 1952 when the first law to regulate banking in Nigeria was enacted, with a few surviving for a while, while some collapsed as soon as they were established. The operations of the banks were largely uncontrolled beyond the granting of charter by the colonial government. It was an era of free entry and free exit. For example, the Industrial Commercial Bank set up in Lagos in 1929 was liquidated a year later. It was discovered that it lent large loans to its Managing Director.[11] The same Managing Director presided over another bank; the Merchantile bank founded in 1931 that got liquidated in 1936. However, the National Bank of Nigeria, African Continental bank (ACB) and Agbonmagbe Bank (now Wema bank) survived the confidence crisis for fairly a long time, due mainly to government patronage and the emergence of laws and regulatory agencies. ACB and National Bank eventually got liquidated and eventually lost their licenses. Wema bank Plc continues to weather the storm by

[7]A draft legislation based almost entirely on the report of Mr. J.B. Loynes, an adviser to the Bank of England, was promulgated into CBN Act in 1958, though the CBN was officially inaugurated and became operational on July 1, 1959. See Charles Brown, *The Nigerian Banking System*, (London: George Allen and Unwin Ltd., 1966).

[8] The Nigerian Deposit Insurance Corporation was established by an Act in 1988 to indemnify small savers and to act as, or appoint, a receiver to realize the assets of failed banks in order to settle its creditors. The Corporation assumed a regulatory institution by virtue of the powers conferred on it by its enabling law. For example, S.15 provides that all licensed banks must have their deposit liabilities insured with the corporation, while S.16 empowers the corporation to examine periodically the books and affairs of every insured bank. The outcome of such examination may lead to further and special examination in S.18, or to necessitate the exercise any of the powers of the corporation in S.4 (g-n).

[9] AMCON Act 2006

[9] Ajibola Bola (former Attorney General of the Federation and Minister of Justice), Preface to *Banking and Other Financial Malpractices in Nigeria* (Lagos: Federal Ministry of Justice, Law Review Series, Malthouse Press Ltd, 1990)

[10] Akanle Oluwole "Legal and Institutional Framework for the Control and Prevention of Crime in the Banking Industry," *Journal of Banking and Finance Law*, June 2003 edition, p. 73

[10] The percentage of savings that the bank is allowed to loan out so that the percentage not loaned out can always provide the pool from which depositors who want their money can be served. The current is ratio 30 to 70, which means that banks must not lend more than 70% of the total deposits generated by it.

[11] Asabia, S.O. *Essays on Money & Banking,* (Ibadan Fountain Publication,1992) P.4

surviving distress crises and all banking reforms since it was established in 1945 thereby assuming the status of being the oldest indigenous bank in Nigeria. The challenge of the banking industry during the period was mainly lack of legal and institutional frameworks for the establishment, operations and regulation of banks in Nigeria.

Banking distress and failure, caused by bad lending and delinquent debts are not limited to the Nigerian banking industry. Similar challenges have also been reported in other countries of the world. For example, between 1928 and 1932, the United States of America saw 9,000 of its 27,000-unit banks collapsed, and a third of their aggregate deposit lost. On March 5, 1933, President Roosevelt proclaimed a four-day bank holiday to abate the run on banks and restore confidence in the economy.[12] In the early 1820's, banking in Britain was also in crisis that reached its peak in 1825 when 73 of the country's principal banks failed and went into liquidation. In 1884, the Bank of England embarked on drastic decisions to prevent the failure of Johnson Mathey Bank. The situation is not different in other developed and developing economies of the world, what is different however is the quality of reforms that followed distress and banking crisis in each country and how soon the banking industry was able to stabilize.

4. Government interventions

Nigerian government has taken critical measures over the years to strengthen the banks and the economy by enacting laws to assist customers of failed banks and quicken recovery of debts. In addition to the establishment of the CBN, the National Deposit Insurance Corporation (NDIC) Act was enacted to assist customers whose funds were trapped in failed banks. The NDIC Act[13] makes it mandatory for licensed banks to contribute a minimum of 15/16% of its total deposit liability to the Corporation annually, out of which the Corporation would invest and refund a maximum of N200, 000:00 to customers of failed banks within 3 months of failure as pronounced by the Central Bank of Nigeria. Financial Institutions other than banks are required to contribute 8/16% of their deposit and the succor to be provided by the Corporation to customers of such failed other institutions is limited to N100, 000:00 per customer[14]. Two other intervention laws were specially targeted at recovery of debts owed by bank customers. They were the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree[15] which was a military intervention, though still existing as an Act in the Laws of the Federation of Nigeria (LFN) as a dormant chapter. It was aimed at recovering of debts owed to failed or failing banks, try offences related to such debts as specified in the Act or any law and try other offences relating to the business or operation of a bank under any enactment. The other was the Asset Management Corporation of Nigeria (AMCON) Act which introduced a radical approach to managing banking distress in Nigeria[16]. The main objects of the law were to assist eligible financial institutions to efficiently dispose eligible bank assets, efficiently manage and sell eligible bank assets acquired by the Corporation and obtain the best achievable financial returns on eligible bank assets or other assets acquired by it.

5. Court's Jurisdiction

The State High Courts all over the Federation are currently saddled with the responsibility of handling cases arising from bank-customer relationship[17], including all matters connected with recovery of debts owed all licensed banks. However, the State High Courts have no jurisdiction over Federal Government owned specialized banks such as Bank of Industry (BOI), Bank of Agriculture (BOA), Nigerian Export and Import Bank (NEXIM), Federal Mortgage Bank and Development Bank of Nigeria which are not licensed but established vide enabling Statutes. Disputes between such specialized banks and their customers are under the jurisdiction of the Federal High Courts.[18]

6. The Special Tribunal newly created by BOFIA

In continuation of efforts at resolving the problems created by delinquent bank customers, the National Assembly in 2020, repealed the 1991 Banks and other Financial Institutions Act (BOFIA) and replaced it with a brand new BOFIA, with a brand new Chapter[19]. The Chapter, which runs through Sections 102 to section 129 creates a Special Tribunal of a High Court Status[20], empowers the President of Nigeria to unilaterally appoint Judges for

[12] Afolabi Layi; "Bank Failure and the Rest of Us",[1994] *Journal of the Chartered Institute of Bankers of Nigeria*, p.11
[13] Nigerian Deposit Insurance Corporation (NDIC) Act, 2006
[14] Sections 17 and 20 NDIC Act 2006
[15] Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree of 1994.
[16] Asset Management Corporation Act 2010, S.4
[17] *ACB v. Jamal Steel Structures* (1973) JELR 33065 (SC); SC (1973)11, ll ER 1; *Federal Mortgage Bank of Nigeria v. NDIC* (1999) 2 NWLR (Pt.591)333; *NDIC v. Okem Enterprises* (2004) 4 SC (Pt.11)77 at 111
[18] See section 251(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)
[19] CHAPTER E – SPECIAL TRIBUNALS FOR THE ENFORCEMENT AND RECOVERY OF ELIGIBLE LOANS
[20] Sections 102, 126, 127 & 129 of BOFIA 2020; Section 6(4) of the 1999 Constitution as amended

the Tribunal without recourse to the National Judicial Commission[21], permits the Tribunal to accept gifts and commission on debts recovered[22], and empowers the Tribunal to unilaterally determine the remuneration of its members and staff higher than what is obtainable in the High Courts without recourse to the National Salaries, Income and Wages Commission (NSIWC) or the Revenue Mobilization and Fiscal Commission (RMAFC)[23]. The Law further establishes a Panel of Experts to be funded by the CBN to advice and guide the Tribunal in the performance of its duties[24], and grants immunity to the President and Members of the Tribunal to protect them against litigation on their acts while performing as juries in the Tribunal[25]. This new Chapter of the BOFIA is the crux of this paper, as it throws up constitutional and ethical issues which may constitute challenges for the smooth implementation of the law. First is the issue of creation of a Tribunal of equal status to a High Court. Section 6 or the 1999 Constitution of the Federal Republic of Nigeria (as amended), in contra distinction to the provisions of Sections 102, 126, 127 and 129 of the Act seems to foreclose the powers of the National Assembly in this regard. Sections 6(1-5) of the 1999 Constitution (as amended) is reproduced below:

> Section 6(1): The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
> Section 6(2): The judicial powers of a State shall be vested in the courts to which the section relates, being courts established, subject as provided by the Constitution, for a State.
> Section 6(3): The courts to which the section relates, established by the Constitution for the Federation and for the States, are specified in subsection (5) (a) to (1) of Section 6, 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, each court shall have all the powers of a superior court of record.
> Section 6(4): Nothing in the foregoing provisions of this section shall be construed as precluding the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court; the National Assembly or any House of Assembly, which does not require it, from abolishing any court which it has power to establish or which it has brought into being.
> Section 6(5) titled: 'Structure of the courts' listed the superior courts as (a) the Supreme Court of Nigeria; (b) the Court of Appeal; (c) the Federal High Court; (d) the National Industrial Court; (e) the High Court of the Federal Capital Territory, Abuja; (f) the High Court of a State; (g) the Sharia Court of Appeal of the Federal Capital Territory, Abuja; (h) the Sharia Court of Appeal of a State; (i) the Customary Court of Appeal of the Federal Capital Territory, Abuja; and (j) the Customary Court of Appeal of a State.

Note that Sub-Section 4 of Section 6 of the Constitution as stated above creates the limits and exceptions to what the Federal and State Parliaments can do with their legislative powers. The creation of a Tribunal equal in status to the High Courts is not within the permissive powers of the National and State Assemblies. It is therefore submitted that the courts listed in Section 6 sub-section 5, are the only superior courts of record, being the creation of the Constitution itself. The powers of the National and the State Assemblies to create or abolish courts are well spelt out in sub-section 4 of Section 6 of the Constitution. These are concerned with courts of lesser status to the High Courts and cannot be equal in status to or above the High Court. *Expressio unius est exclusio alterius* is a Latin maxim which states that 'express mention and implied exclusion', which means express mention of one thing excludes the other thing not mentioned[26]. When something is expressly specified in a statute, it leads to an inevitable presumption that the other things not specified are excluded. The Constitution is so clear and unambiguous as to the Courts it created and went further to prescribe the extent of the powers of the Parliament to create courts that are below the status of High Courts. These of course include the Magistrate and Customary courts in whatever name they are called in each State and Region of the Federal Republic of Nigeria. It is therefore an aberration for the BOFIA to establish a Special Tribunal of equal status to the Federal and State High Courts. Secondly, the Act provides for the appointment of the President and members of the Tribunal by the President of the Federal Republic of Nigeria, without recourse to the Federal Judicial Service Commission, and expects the Tribunal to be of equal status with the Federal High Court[27]. The Federal Judicial Service Commission is a creation of the Constitution[28] to advise the National Judicial Council in the nomination for appointment, removal and

[21] Section 103 of this Act and Section 2 of the Federal High Court Act 1973
[22] Sections 117, 118 and 119 of this Act
[23] Sections 153, 154 & 156 of the 1999 Constitution as amended; Section 114 of this Act
[24] Section 123 of this Act
[25] Section 129 of this Act
[26] Expressio Unius Est Exclusio Alterius - Advocatespedia viewed on 08-02-2022
[27] Section 126 of the BOFIA 2020
[28] The Federal Judicial Service Commission is one of the 14 Federal Bodies established by Section 153(1) **of** the 1999 Constitution of the Federal Republic of Nigeria as amended.

discipline of persons to the offices of Justices and Judges of all Superior courts recognized by the Constitution. Contrary to the provision of the BOFIA[29], the Federal High Court Act[30] provides that 'the Chief Judge of the Court and the other Judges of the court shall be appointed by the President on the recommendation of the Federal Judicial Commission'. This paper is of the opinion that 'Judges' unilaterally appointed by the President, to the exclusion of the National Judicial Council and the Federal Judicial Service Commission are mere political appointees that may be influenced by the Banks to do their biddings, and could be shielded from discipline and control more so that the Judges so unilaterally appointed can fix their remuneration by themselves and provide for their own welfare[31].

Thirdly, the Tribunal is statutorily permitted to create a fund wherein it can accept donations, gifts and grants, and/or endowments or any other monies that are not inconsistent with its objects, or/and from the Central Bank or the licensed banks, and collect percentages of debts recovered as 'debt collector' and manage such funds as it may deem fit in the course of performing its judicial functions[32]. This provision is likely to hinder the neutrality of the Tribunal, in that the Act did not expressly forbid the Tribunal from accepting grant or gifts from the parties in dispute or from their associates. Therefore, the Act has wittingly opened the doors for corruptive practices in the Tribunal as funds may creep in from chronic debtors to compromise the Tribunal. Fourthly, the Act empowers the Tribunal to fix salaries and remuneration of its President, members and staff as it deems fit, which may be far above what is obtainable in the Federal and State High Courts but not less than it[33]. What this connotes is that the Tribunal is removed from the purview of National Salaries, Income and Wages Commission (NSIWC) which is statutorily entrusted with the power to 'examine, streamline and recommend salary scales applicable to each post in the public service'[34]; whereas the Commission fixes the Salaries of all Political Office holders, including the President of the Federal Republic of Nigeria, Senators, Ministers and Judges of all Courts of record. It is noteworthy that the provision of BOFIA[35] is similar to the Federal High Court Act[36] that 'the Chief Judge and the Judges of the Federal High court, shall be paid such salaries as are payable to the Chief Judge of the States and of the Federal Capital Territory, and the Judges of the High Courts of States and the Federal Capital Territory Abuja. The amounts payable under the provision of this section shall be charged upon and paid out of the Consolidated Revenue Fund of the Federation'. It is the considered opinion of this paper that the freedom of the Tribunal to pay extraordinary salaries from gifts and percentages of debts recovered is capable of beclouding the vision of the Tribunal, distract the members of the Tribunal and impair their ability to deliver justice impartially, judiciously and judicially.

The fifth worrisome provision of the Act is the establishment of a Panel of Experts funded by the CBN to advice and guides the Tribunal on efficiency and delivery of proper justice[37]. What an aberration in the temple of Justice! Courts all over the world had developed a convention of seeking opinion of experts[38] when the need arises. This practice is at the discretion of the Court and has never been from a pool of experts funded by interested party. The CBN more often than not is an interested party and cannot be a judge in its own course. He who plays the pipe dictates the tune, there is no way the panel of experts would advise the Tribunal against the interest of the CBN. Note curiously that the CBN will appoint the Lead Expert and other members of the panel, fix their remuneration and pay them[39]. Whenever their services are needed, the Tribunal would not contact any member of the panel of experts directly but through the Lead Expert, who would then assign cases as it deems fit to the members of the Panel for advice. The Tribunal is thus compromised by appointees of the CBN decorated as experts in banking affairs, such that justice cannot judiciously and judicially be served on litigants without fear or favour. The Sixth challenge of the Law is the immunity provided for the members of the Special Tribunal[40] which may lead to arbitrary use of judicial powers and capable of being misused. The Constitution[41] makes it obligatory on all Judicial Officers upon appointment, to take Oath of Allegiance including the Judicial Oath, and be mindful that the authority given them by law is to exercise judicial powers as sacrosanct responsibilities that should not be misused. All judicial officers including members of legally constituted Tribunals are also to comply with their

[29] Section 126, Op cit
[30] Federal High Court Act, 1973, Section 2
[31] Sections 114(3) and 121 of BOFIA 2020
[32] Section 117(2)b and Section 119
[33] Section 114 (3 and 4) BOFIA 2020
[34] National Salaries, Incomes and Wages Commission Act, Cap N72, 1993, Section 3(l)
[35] Section 110(2) BOFIA 2020
[36] Section 5, Federal High Court Act, 1973
[37] S.123 BOFIA 2020
[38] S.45 of the Indian Evidence Act 1872; Sections 68 – 76 Evidence Act 2011
[39] S.123 BOFIA 2020 sub-sections 2 - 5
[40] Section 129 of BOFIA
[41] 5th Schedule of the 1999 Constitution (as Amended)

Oath of Office as laid down in the Code of Conduct for Judicial Officers in Nigeria. The law as presently constituted[42] has created excessive immunity which may excuse members of the Tribunal from being disciplined for wrongful acts, thereby weakening the application of the Code of Conduct for Judicial Officers and likely give the Tribunal wide and treacherous discretion in the determination of cases brought before it.

7. Drawing Inferences from Similar Tribunals

The Failed Banks Tribunal[43] established a Tribunal to try offences connected with delinquent debts owed by bank customers. It contained very wide provisions ranging from infractions that may be committed by officers of the bank to delinquent debts owed bank customers. The Decree empowered the Military President to appoint a single judge to preside over the Tribunal and deliver its judgment not later than 21 days[44]. Appeal on judgment delivered by the Tribunal ends at a Special Appeal Tribunal established by another Decree[45]. It is remarkable that these decrees are still contained in the Nigerian laws but dormant as the provisions of the decrees are antithetical to democratic norms and no civilian President can implement them[46]. Unfortunately, one of the regulatory agencies recently called on the government to resuscitate the Failed Bank Act in order to address the resurgence of huge non-performing loans in the banking industry[47]. The call is quite unfortunate as such approach to recovery of debts arising from normal contractual relationship is uncivilized and bound to be hostile to economic developmental efforts. The failed banks decree is inconsistent with the Constitution and therefore will die a natural death by continually being redundant until it is abrogated. Also, the National Industrial Court suffered a degree of challenges before the inclusion of the Court in the Nigerian Constitution. In 2006, The National Assembly enacted the National Industrial Court Act, which elevated the National Industrial Court to a Superior court of record without correspondingly amending Section 6(5) of the Constitution to accommodate it. All cases decided after the promulgation of the Act were successfully challenged in court. In the words of the former President of the court:

> …the NIC at inception was dogged with a lot of problems mainly traceable to the enabling Act, and these problems impacted negatively on the ability of the Court to effectively perform its duties…..The non-inclusion of the Court in both the 1979 and 1999 Constitutions was an albatross on the effective exercise of its jurisdiction as the Court was not afforded the needed respect by litigants and counsel. Even though, Section 19(2) of the TDA 1990 (now repealed) which was inserted by Decree 47 of 1992 provided that the NIC shall be a superior Court of record. Lawyers disregarded these provisions by asking the Federal High Court to judicially review decisions reached at the NIC[48]

He cited some of the cases on which the jurisdiction of the court was challenged at the Federal High Court[49].

In contrast, the Tax Appeal Tribunal created by the Federal Inland Revenue Service Act[50] to sit on appeals from decisions of the Service as regards tax assessment had been functioning unhindered because the Act subjugates the Tribunal under the Federal High Court. A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws referred to in the Act[51] may approach the Tribunal for review. Even though the Act stipulates that 'An award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the party seeking to

[42] Sections 129(1) to 129(3) of BOFIA

[43] Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree of 1984

[44] S.4 Failed Banks decree

[45] S.5(1) Recovery of Public Property (Special Military Tribunal) Decree 1984

[46] The National Assembly may consider it appropriate to repeal such obnoxious laws to strengthen democracy and rule of law in Nigeria

[47] Reintroduce failed bank act, says AMCON boss - National Daily Newspaper (nationaldailyng.com) visited on 12/03/2022 "worried by the resurgent huge toxic loans in the banking sector, Ahmed Kuru, Managing Director/Chief Executive Officer, Asset Management Corporation of Nigeria (AMCON), has called on the Nigerian authorities to revisit the Failed Bank Act so that operatives in the banking sector would be made to account for their actions".

[48] Hon. Justice Babatunde Adeniran Adejumo, OFR; "How to become a Judge of the National Industrial Court", Being a Commentary Delivered at Attorney Generals Colloquium at Ekiti State on 9th May 2019.

[49] *SGS Inspection Services (Nig.) Limited v, Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN)* (Unreported); *Nigerian Sugar Company Ltd v. National Union of Food Beverages and Tobacco Employees* (1978-79) NICLR 69; *Schlumberger Anadril Ltd v. PENGASSAN* (Unreported).

[50] Section 59 of the Federal Inland Revenue Act 2007

[51] Section 11 of the fifth Schedule of the FIRS Act: (1) The Tribunal shall have power to adjudicate on disputes, and controversies arising from the following tax laws (hereinafter referred to as 'the tax laws) - (i) Companies Income Tax Act, CAP. 60 LFN; 1990; (ii) Personal Income Tax Act No.1 04, 1993; (iii) Petroleum Profits Tax Act CAP. 354 LFN; 1990; (iv) Value Added Tax Act No. 102; 1993; (v) Capital Gains Tax Act CAP. 42 LFN; 1990, and (vi) any other law contained in or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assemb1y.

enforce the award or judgment'[52], the Act specifically saddles the Chief Judge of the Federal High Court to 'make rules providing for the procedure in respect of appeals made under this Act and until such rules are made, the Federal High Court rules relating to hearing of appeals shall apply to the hearing of an Appeal under this Act'[53]. The Act did not create an exclusive jurisdiction[54] for the Tribunal but further makes provision for appeals, though on point of law, to the Federal High Court[55]. Expectedly, the Tax Appeal Tribunals have not received the batching of litigations as it was recorded under the NIC before it was brought under the auspices of the Constitution, simply because its creation is clearly in consonance with the provision of Section 6(4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

The Investment and Securities Tribunal (IST) is similar in all characteristics with the Special Tribunal created by the BOFIA 2020. The Tribunal was established by the Investment and Securities Act 1999 as an Independent and Specialized Tribunal to adjudicate on disputes arising from capital market transactions. An award or judgment of the Tribunal shall be enforced as if it were a judgment of the Federal High Court, upon registration of a copy of such award or judgment with the Chief Registrar of the Federal High Court by the party seeking to enforce the award or judgment[56]. The Act confers on the tribunal an exclusive jurisdiction[57] in that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal constituted under the law is empowered to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred on the Tribunal by or under the Act. Any person dissatisfied with a decision of the Tribunal constituted under the Act may appeal[58] against such decision on points of law to the Court of Appeal upon giving notice in writing to the secretary to the Tribunal within thirty days after the date on which such decision was given. Expectedly, the tribunal has been bedeviled with challenges of recognition and jurisdiction since its establishment. Its supervisory Minister once described it as an Alternative Dispute Resolution (ADR)[59]. In his words, 'the Alternative Dispute Resolution window is going to be rejuvenated to dispel fears and threats from both capital market operators and the investing public on issues that require declaratory orders by the Tribunal'. Also, the Chairman and Chief Judge of the IST has lamented about the status of the tribunal[60], on whether the Constitution should be amended or whether a fresh bill should be presented or both, and whether the IST should remain domiciled in the Judiciary or in the Executive arm of government. The resolutions of these issues, he opined, will limit the challenges to the jurisdiction of the Tribunal once the bill is passed and the Constitution is amended to accommodate the IST. According to him:

> Right now, the position of the Law is that after Judgment, the person who wants to enforce the law has to go to the Federal High Court and register our judgment. This is part of what the new work group would look at and part of what would be in the new amended ACT. This means that IST should be able to enforce its judgment. If someone commits contempt of court before us, there is not much we can do. You can't really try the person but in a regular court, if anyone commits contempt of Court, you should be able to summarily try the person.[61]

He further lamented that Lawyers exploit the limitations of the Tribunal by causing delay in its proceedings.

> What they usually do is to delay the case by making frivolous applications or claiming that the tribunal does not have jurisdiction and things like that. And, when you say that the tribunal has jurisdiction, they would just go and appeal and the substantive matter that they brought would not be heard.[62]

In the opinion of a legal commentator, the exclusive jurisdiction granted the IST is an aberration, the IST being a mere administrative tribunal. In his words:

[52] Section 16 of fifth Schedule to the FIRS Act
[53] Section 17(5) of the fifth Schedule to the FIRS Act
[54] Section 59 of the FIRS Act; Section 11 of the fifth schedule to the Act
[55] Section 17(1) of the fifth schedule to the FIRS ACT
[56] Section 241(3) of the Investment and Securities Act (ISA) 1999
[57] Section 242, ISA 1999
[58] Section 243, ISA 1999
[59] At the inauguration of the 4th Investment and Securities Tribunal on 16th September, 2017 by the then Minister of Finance, Mrs. Kemi Adeosun, https://www.loc.gov/item/global-legal-monitor/2017-10-12/nigeria-government, viewed on 24-02-2022 at 325am
[60] Dr. Ngozi Chinakwalam, at a Workshop in Lagos on 18th January 2016 'Investments, Securities Tribunal adopts cost-effective approach to dispense justice' | The Guardian Nigeria News - Nigeria and World News — Features — The Guardian Nigeria News – Nigeria and World News viewed on 24-02-2022 at 3.31am
[61] *ibid*
[62] *ibid*

> what you have is the Federal High Court exercising original jurisdiction over actions or decisions of the Federal Government or any of its agencies pursuant to section 251(r) of the Constitution on the one hand; and then you have the Investment and Securities Tribunal which is an administrative tribunal established by section 274 of the Investment and Securities Act on the other hand. The jurisdiction of the Investment and Securities Tribunal (IST) is derived from section 284 of the Investment and Securities Act (ISA) which purports to vest in the IST, jurisdiction over decisions or determinations of the Securities and Exchange Commission inter alia to the exclusion of any court of law; and also over matters relating to the Pension Act. As an administrative tribunal, appeals ought to lie directly from the IST to the Federal High Court. But that is not the case with the IST. By virtue of section 295 of the ISA, appeals lie directly to the Court of Appeal. The implication of this is that the IST is elevated from an administrative tribunal to a court of coordinate jurisdiction with the Federal High Court, meaning that they enjoy the same status.[63]

One therefore wonders why the Parliament continues to err against the spirit and letters of the Constitution in spite of the apparent challenges faced by the IST and the NIC (before it was incorporated in the Constitution).

8. Conclusion

In conclusion, this Paper is of the well-considered opinion that the Special Tribunal as currently established by BOFIA 2020 appears to be a still-birth that cannot survive until it is amended to be of lower status to the State and Federal High Courts, and the pecuniary provisions and the exclusive jurisdiction are removed. With these few amendments, it may exist as an administrative tribunal to decongest the High courts. However for the Special Tribunal to enjoy the status of a High Court, the Parliament must move to amend Section 6(5) of the 1999 Constitution as done for the National Industrial Court[64]. Such amendment would create a heading for the Tribunal in the Constitution, containing the establishment, jurisdiction and other requirements as was done for NIC[65]. Until the Constitution is amended to accommodate the Special Tribunal, it's creation via an Act would be tantamount to putting the Cart before the Horse. The paper observed that the creation of a special court for banker-customer disputes or debt collection would create heavy burden on poor debtors, given the logistical challenges that such court with exclusive jurisdiction will occasion. Banking has been acknowledged to be a lubricator that oils the economy of Nations; as the economy of Nigeria is developing, almost all households and every enterprise and individuals, including students, will have relationship with banks, as it is in advanced/developed economies. With an exclusive jurisdiction, the Special Tribunal can only exist in the State Capitals as it is with the NIC. So a poor debtor who is unable to pay his debts would be expected to travel kilometers of roads from all the nooks and crannies of each State to seek justice in a Special Tribunal at the State capital. This is the current dilemma of poor employees of both the public and private Sector employers in Nigeria who cannot approach the State High courts in almost all the Local government headquarters but must approach the NIC in the State Capitals in all trade and labour related disputes. Debtor-creditor relationship, whether between banks and their customers, or between two individuals or corporate entities, are contractual in nature, that are heavily dependent on the terms of contracts. So there is nothing special in owing debts, it is almost a necessity in life for growth and development. By the time all disputes have special courts, as are being advocated for land matters, election matters, matrimonial matters, what would remain of the jurisdiction of the High Courts? This paper is therefore of the very strong opinion that the chapter of BOFIA 2020 that established a Special Tribunal with exclusive jurisdiction for recovery of delinquent debts for banks is absurd, most unnecessary and should therefore be repealed with the speed of light.

[63] Adewale Ateke, 'Appeals from Investment and Securities Tribunal should go to Federal High Courts' | The Guardian Nigeria News - Nigeria and World News — Features — The Guardian Nigeria News – Nigeria and World News viewed on 24-02-2022 at 10.52am

[64] Third alteration to the 1999 Constitution in 2010

[65] Section 254(c) of the 1999 (Constitution as amended)