

**JURISDICTIONAL CRISIS INVOLVING STATE HIGH COURTS AND FEDERAL HIGH COURT IN THE ENFORCEMENT OF FUNDAMENTAL RIGHTS IN NIGERIA\***

**Abstract**

*The 1999 Constitution of the Federal Republic of Nigeria in furtherance of its mandate to protect the fundamental rights of Nigerian citizens, under Section 46 (1) empowers a Nigerian citizen to seek redress for an alleged infringement of any of his fundamental rights in the High Court of the state where the purported contravention took place. Thus, the Federal High Court and State High Courts share concurrent jurisdiction in matters pertaining to enforcement of fundamental rights. This paper in the light of conflicting decisions of the Nigerian trial and appellate courts appraises the jurisdictional powers of the State High Courts to entertain matters pertaining to enforcement of fundamental rights, most especially when the alleged infraction of these basic rights emanates from a subject matter within the exclusive jurisdiction of the Federal High Court. This paper in its findings advocates that due to the importance of these rights, a Nigerian citizen whose right is allegedly infringed is at liberty to choose either the State High Court or Federal High Court in that state and this right is to be exercised notwithstanding the parties involved and the subject matter before the court.*

**Keywords:** Fundamental Rights, State High Court, Federal High Court, Constitution, Application, Reliefs.

**1. Introduction**

The nature of fundamental rights is one which stands far above ordinary rights derived from legislations. These rights form the basic and primary conditions of a civilized society which the Nigerian Constitution recognises and protects. Fundamental rights are therefore given a special place and treatment in any civilised society that observes democratic values.<sup>1</sup> Due to its significance, fundamental rights form the minimum living standard for any civilised milieu; and in Nigeria, these rights are enshrined in the Constitution<sup>2</sup> so that the rights would be inalienable and immutable to the extent of the non-immutability of the Constitution itself.<sup>3</sup> This elevation given to fundamental rights over other rights contained in various statutes or laws can be attributed to its role in the day to day existence and interaction of the citizens.<sup>4</sup> To protect these rights, the 1999 Constitution<sup>5</sup> empowers an aggrieved person to file an application for the enforcement of these rights in the High Court of the state where the breach is likely to occur or where the breach occurred. It is pertinent to note that unlike the 1979 Constitution, Section 318(1) of the 1999 Constitution does not define 'High Court'. However, there is no doubt that the term carries the same meaning as given by Section 277(1) of the 1979 Constitution to mean Federal High Court or the High Court of a State.<sup>6</sup> This foregoing assertion is also fortified by the provisions of Order 1 Rule 2<sup>7</sup> which defined Court to mean the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.

Notwithstanding the clear provisions of Section 46<sup>8</sup>, which gives a person the right to seek for redress for any likely or actual breach of his fundamental rights in a High Court, there appears to be conflicting

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<sup>1</sup> See *Billie v. Multi links Telecoms Ltd* (2017) LPELR-41862 (CA).

<sup>2</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended).

<sup>3</sup> See *Ransome-Kuti & Ors v. AG Federation & Ors* (1985) LPELR-2940 (SC); (1985) 2 NWLR (Pt 6) P.211.

<sup>4</sup> See *NIMCN v. Adesina* (2016) LPELR-40610 (CA).

<sup>5</sup> S 46. (n.2).

<sup>6</sup> See *Abdulahi v. Komolafe & Ors* (2019) LPELR-46519 (CA).

<sup>7</sup> Fundamental Rights (Enforcement Procedure) Rules 2009.

<sup>8</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended).

decisions of both the Court of Appeal and the Supreme Court whenever the subject matter or any of the parties to an application for the enforcement of fundamental rights fall within or outside the purview of the exclusive jurisdiction of the Federal High Court. The first fold of these conflicting decisions holds the view that once it is established that the subject matter that gave rise to the application for the enforcement of fundamental rights is not within the purview of the items contained under Section 251<sup>9</sup>, the Federal High Court will not have jurisdiction to entertain the application. Another similar feature of this first fold of conflicting decisions is that where any of the parties to the suit is the Federal Government or its agencies, only the Federal High Court will exercise jurisdiction in respect of such an application for the enforcement of fundamental rights. Conversely, the second fold of these conflicting decisions hold a strong and better view which this paper totally aligns with to the effect that where any of the provisions of Chapter IV of the 1999 Constitution has been is being or likely to be contravened, the affected party (applicant) pursuant to Section 46<sup>10</sup> has the option of bringing his application for the enforcement of his fundamental rights to either the State High Court, Federal High Court or the High Court of the Federal Capital Territory once it is shown that the principal reliefs sought by the applicant emanated from Chapter IV of the 1999 Constitution. Thus, State High Courts and Federal High Court share concurrent jurisdiction in matters pertaining to enforcement of fundamental rights of Nigerian citizens. This also presupposes that in an application for the enforcement of fundamental rights, an aggrieved applicant is at liberty to choose amongst the State High Court or the Federal High Court in the state where the likely breach or actual breach occurred. However, this option to choose which of the courts to file the application notwithstanding the parties involved or the subject matter had been circumscribed by some decisions of both the Court of Appeal and the Supreme Court in the interpretation of Section 251 of the 1999 Constitution.

## **2. Jurisdictional Powers of the State High Court and Federal High Court to Entertain Applications for Enforcement of Fundamental Rights**

By virtue of Section 236 of the 1979 Constitution, the jurisdiction of the State High Court was unlimited. This meant that the State High Court under the 1979 Constitution could entertain any civil matter. With this state of affair, it was inevitable that the State High Court would in certain situations encroach into the exclusive jurisdiction hitherto given to the Federal Revenue Court, which was later renamed Federal High Court by the Constitution. For instance, Section 7 and 8 of the Federal High Court Act<sup>11</sup> vested in the Court exclusive jurisdiction in admiralty matters. However, pursuant to the then Section 236 of the 1979 Constitution which vested the State High Court with unlimited jurisdiction, it simply meant that the State High Court could entertain any civil matter including admiralty matters.<sup>12</sup> To rectify the situation, the Constitution of the Federal Republic of Nigeria (Amendment) Decree No. 107 of 1993 conferred exclusive jurisdiction on the Federal High Court in respect of some matters.<sup>13</sup> One of these matters very apposite to this paper is contained in paragraphs p, q and r<sup>14</sup> which give the Federal High Court the exclusive jurisdiction to entertain matters pertaining to the administration, management and control of the Federal Government or any of its agencies. This amendment curtailed the unlimited powers enjoyed by the State High Court. Also, by virtue of Section 46 (1)<sup>15</sup> both State High Court and the Federal High Court exercises special concurrent jurisdiction in matters relating to enforcement of fundamental rights. Thus, there appears to be a conflict from the unembroidered interpretation of some paragraphs of Section 251<sup>16</sup> of the 1999 Constitution which provides for the exclusive jurisdiction of the Federal High Court vis-à-vis Section 46 (1) of the same Constitution which provides for the special concurrent jurisdiction of the Federal High Court and State High Courts over matters pertaining to enforcement of fundamental rights. In essence, a State High Court cannot for instance rightly and validly determine allegations of breach of fundamental rights emanating from acts of terrorism or treason and treasonable felonies which fall under the exclusive jurisdiction of the Federal High Court.

<sup>9</sup> *Ibid.*

<sup>10</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended).

<sup>11</sup> Cap F12, Laws of Federation of Nigeria, 2004.

<sup>12</sup> C.C Ani *Understanding Legal Concepts in Nigeria*, Volume 1 (Enugu: CIDJAP,2020) P.211.

<sup>13</sup> See *G & C Lines & Ors v. Hengrace (Nig) Ltd & Ors* (2001) LPELR-1292 (SC); (2001) 9-10 SC 202.

<sup>14</sup> S. 251, Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

<sup>15</sup> *Supra* (n.2).

<sup>16</sup> *Paras* p, q and r. Constitution of the Federal Republic of Nigeria 1999, (As Amended).

Likewise, a Federal High Court cannot validly determine alleged violation of fundamental rights that arise from torts, rape or armed robbery etc. as the same constitute matters that fall within the jurisdiction of the State High Courts.<sup>17</sup> The enormous question which this paper intends to tackle is as to which of these Courts will then exercise jurisdiction where the subject matter that gave rise to the application for enforcement of fundamental rights falls within the purview of matters under the jurisdiction of the State High Court and the one of the parties involved in the application is an agency of the Federal Government. For instance, under Section 2 of the Matrimonial Causes Act,<sup>18</sup> the State High Court is vested with the jurisdiction to entertain matrimonial causes and by virtue of paragraphs p, q and r of Section 251 of the 1999 Constitution (As Amended), matters pertaining to agents of the Federal Government must be brought before the Federal High Court. Ordinarily, the State High Court has the jurisdiction to entertain matters relating to matrimonial causes but the problem that then arises is where any of the parties to the application which arose from matrimonial causes is an agency of the federal government. In this case such an applicant will be at crossroad as to which court to approach for redress of an alleged breach of his fundamental rights.

The foregoing scenario played out in the case of the *Mrs. Comfort Alaba Kolo v. NPF & Ors.*,<sup>19</sup> the Appellant was married to the 4<sup>th</sup> Respondent and the union produced two children. In the course of the relationship, dispute arose which prompted the Appellant to leave her matrimonial home with the two children. The 4<sup>th</sup> Respondent then laid a formal complaint to the Festac Police Division and Appellant was invited to the police station for interrogation. Out of apprehension and fear, the Appellant who felt that she would be detained and tortured refused to honour the invitation. Rather, she brought an application before the Federal High Court for the enforcement of her fundamental rights. The Federal High Court declined jurisdiction on the ground that the subject matter pertains to matrimonial causes and that the 1<sup>st</sup> – 3<sup>rd</sup> Respondent are agents of Lagos State Government, consequently, the State High Court was the proper venue to institute the action. On appeal, the Court of Appeal, allowing the appeal premised its decision on the fact that both the principal claim and ancillary claims all bordered on the enforcement of fundamental rights, and consequently, the lower court had jurisdiction to entertain the complaint and it was irrelevant that the subject matter pertained to matrimonial causes.<sup>20</sup> This paper fully aligns with this view and also submits that the proper formula in determining the jurisdiction of Courts in any application involving enforcement of fundamental rights is to make recourse to the reliefs sought by the Applicant. Once it is established that the principal relief (s) sought borders on fundamental rights, then either the High Court or Federal High Court can entertain the complaint (s) notwithstanding that the subject matter or that any of the parties are not within the jurisdiction of either of the Courts.<sup>21</sup> Thus, the benchmark should be whether the principal relief (s) is connected to any of the rights contained in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria 1999 (As Amended). Furthermore, this position of the law taken by this paper is founded on the belief that fundamental rights of a person, as the name suggest, are fundamental, ranks high over other rights and therefore a serious matter, for reasons of which they ought not to be any form of fetter or restraint in its enforcement. Thus, the intention of the drafters of Section 46 (1)<sup>22</sup> was to remove any restraint or fetter an applicant may encounter as a result jurisdictional provisions in respect of subject matter of the action or the parties involved.<sup>23</sup>

### **3.0 Analysis of Some Conflicting Decisions and Pronouncements of the Court of Appeal and the Supreme Court as it Pertains to the Special Concurrent Jurisdiction Shared by the Federal High Court and State High Courts in the Enforcement of Fundamental Rights in Nigeria**

As earlier stated, that despite the clear provisions of Section 46(1) which empowers a person to seek redress in respect of a breach or a likely breach of his fundamental right in the High Court of that State,

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<sup>17</sup> See *Iheme v. Chief of Defence Staff & Ors* (2108) LPELR-45354 (CA).

<sup>18</sup> Cap M7, Laws of Federation of Nigeria, 2004.

<sup>19</sup> (2018) LPELR-43635 (CA).

<sup>20</sup> Under S 2, Matrimonial Causes Act, Cap. M7, Laws of Federation of Nigeria, 2004, the jurisdiction to try matrimonial causes is conferred on the High Court of a State.

<sup>21</sup> See *EFCC v. Igboruche* (2019) LPELR-47268 (CA).

<sup>22</sup> Constitution of the Federal Republic of Nigeria 1999, (As Amended).

<sup>23</sup> See *Hi-Quality Bakery Ltd & Anor v. Longe & Ors* (2018) LPELR-45173 (CA).

jurisdictional rifts sometimes crops up where one of the parties to the suit is either the Federal Government or any of its agencies. This jurisdictional conflict also occurs in a situation where the subject matter that gave rise to the enforcement of the fundamental right is among the subject matters within the exclusive jurisdiction of the Federal High Court. It will be vital to look at some of the judicial authorities and pronouncements that has made pronouncements as to whether or not State High Court shares concurrent jurisdiction in matters pertaining to enforcement of fundamental rights irrespective of the fact that one of the parties is the Federal Government or agency of the Federal Government or that the subject matter falls within the exclusive jurisdiction of the Federal High Court by virtue of Section 251 of the 1999 Constitution<sup>24</sup>. In *Fajemirokun v. Commercial Bank Plc*,<sup>25</sup> the Supreme Court held that the purport of Section 46 of the 1999 Constitution is to confer special jurisdiction on a State High Court thereby clothing it with the powers to exercise original jurisdiction to hear and determine any application made to it in pursuance of the provisions of Chapter IV of the 1999 Constitution. In *Zakari v. Inspector General of Police & Anor.*,<sup>26</sup> the Court of Appeal held that the State High Court could entertain complaints pertaining to fundamental rights regardless of the status of the Respondent. Similarly, the same Court in *University of Agriculture, Markurdi v. Jack*,<sup>27</sup> made a pronouncement as to the position of the law on the jurisdiction of the Federal High Court in matters affecting the Federal Government of any of its agencies and in this case the enforcement of fundamental right. In the foregoing case, the Respondent was employed by the Appellant on 4<sup>th</sup> June, 1990 as a clinic attendant on the University Salary Scale USS 2 Step 1 and on an annual salary of ₦4,620.00. She carried out her duties until 07/09/91 when she was transferred to the bursary department of the University to serve as store assistance on the same salary level and conditions of service. On 29/09/93 she was served with a letter of suspension and an internal inquiry was set up which found her guilty and accordingly dismissed her from service on 17/02/94. Consequently, an application made pursuant to the Fundamental Rights (Enforcement Procedure) Rules was filed seeking inter alia an order reinstating the Respondent. The Respondent's reliefs were granted which prompted an appeal to the Court of Appeal and one of the issues raised which is apposite to this paper is whether the jurisdiction of the trial Court (High Court of Benue State, Markurdi) was ousted by virtue of Section 230 (1),<sup>28</sup> of 1979 Constitution of Nigeria (As Amended) by Decree No. 107 of 1993 at the time it heard and determined the case of the Respondent. The Court of Appeal allowing the appeal and setting aside the decision of the trial Court, held inter alia that the effect of Section 230(1) of 1979 Constitution is to oust jurisdiction of the State High Court and to vest jurisdiction in the Federal High Court in actions and proceeding in which the relief sought are for declaration or injunction affecting the validity of any executive or administrative action or decision of the Federal Government of any of its agencies. On a further appeal to the Supreme Court by the Respondent (now Appellant), wherein the case was now reported as *Jack v. University of Agriculture Markurdi*,<sup>29</sup> the Supreme Court differed and held thus:

Now be that as it may, it has been contended for the Respondent that Decree No. 107 of 1993 has taken away the jurisdiction of the State High Court. I am unable to agree with this contention I have closely read Decree No. 107 of 1993 and I find nothing even remotely which has repealed or abrogated the Provisions of Section 42 of the 1979 Constitution. Rather a careful reading of the Decree reveals that the Provisions of Section 42 of the 1979 Constitution were preserved by Decree No. 107 of 1993. I would like to add that Section 230(1) of Decree 107 of 1993 is a general provision relating to the jurisdiction of the Federal High Court while Section 42 of the 1979 Constitution relates to special jurisdiction for the enforcement of the fundamental rights provided for in Chapter IV of the 1999 Constitution. As I have already stated, the High Court of Benue State has concurrent jurisdiction with

<sup>24</sup> See *Mobil Prod (Nig) Ltd. v. Suffolk Pet Serv Ltd* (2020) 9 NWLR (Pt. 1728) 1 SC.

<sup>25</sup>(2009) LPELR-1231 (SC); (2009) 21 WRN 2; (2009) 2 FWLR (Pt. 465) 2933; (2009) 2-3 SC (Pt. 1) 26; (2009) 5 NWLR (Pt. 1135) 588.

<sup>26</sup> (2000) LPELR-6780 (CA); (2000) 8 NWLR (Pt. 670) 666; (2001) FWLR (Pt. 44) 509.

<sup>27</sup> (2000) LPELR-10620 (CA); (2000) 11 NWLR (Pt. 679) 658.

<sup>28</sup>S 230(1)(5) provides that notwithstanding anything to the contrary in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

<sup>29</sup> (2004) LPELR-1587 (SC); (2004) 1 SC (Pt. II) 100; (2004)5 NWLR (Pt. 865)208.

Federal High Court in matters of the enforcement of a person's fundamental rights provided for in Chapter IV of the 1979 Constitution. I therefore, answer this issue in the positive.<sup>30</sup>

Surprisingly, in the latter case of *Gafar v. the Government of Kwara State*,<sup>31</sup> the Supreme Court took a diverse turn and held that the application for the enforcement of the fundamental rights of the Appellant to fair hearing could not be entertained by the Federal High Court in so far as it concerned the recommendations of the Judicial Commission of Inquiry and the white paper issued by the Kwara State Government. The Apex Court's decision was premised on the fact that since the complaint of the Appellant was largely against the recommendation of Justice Ayo Salami led Commission of Inquiry established by the Kwara State Government and the white paper issued by the same government towards the implementation of the recommendation of the Commission of Inquiry, thus it is not possible for these main complaints of the Appellant to be brought within the expanded jurisdiction of the Federal High Court, hence the Federal High Court lacked jurisdiction.<sup>32</sup> Relatedly, the Court of Appeal in *Director-General, State Security Service v. Ojukwu*,<sup>33</sup> held that since the relief claimed by the 1<sup>st</sup> Respondent against the Appellant are for declarations affecting the administrative actions or decisions of the Federal Government Agencies, it was squarely within the provisions of Section 251 (1)(q)(r) and thus it was the business of the Federal High Court to handle.<sup>34</sup> Also in *Adetona & Ors. v. Igele General Enterprises Ltd*,<sup>35</sup> which was decided four years after the *Gafar*'s decision, the decision reached was premised on the erroneous belief that the in the determination of jurisdiction of an action pertaining to an application for the enforcement of fundamental rights, the status of the parties involved and the subject matter that gave rise to the application must be put into consideration. The facts of the foregoing case are that sometime in June 2000, the 1<sup>st</sup> Appellant took over the management of the 2<sup>nd</sup> Appellant following his appointment as Receiver/Manager of the 2<sup>nd</sup> Appellant by the 3<sup>rd</sup> Appellant. Six months after the takeover, the 1<sup>st</sup> Appellant in the purported exercise of his duties as Receiver/Manager broke into and locked up the premises which the said premises housed the Respondent's Office and Warehouse (the respondent was a tenant in the premises). At the trial Court (High Court of Lagos State), the Appellant by way of preliminary objection challenged the jurisdiction of the trial Court on the ground that the Federal High Court is the Court vested with jurisdiction in respect of the subject matter of the suit since it was an act committed in furtherance of the Appellant's duties as a Receiver/Manager. The Trial Court, assuming jurisdiction, dismissed the preliminary objection which was also dismissed by the Court of Appeal. On a further appeal, the Supreme Court was of the view that the matter bordered on tort and consequently in dismissing same the Court inter alia held thus:

It has to however be noted that the exercise of this jurisdiction by the Federal High Court is where the fundamental right threatened or breached falls within the enumerated matter on which that Court has jurisdiction. Thus, fundamental rights arising from matters outside its jurisdiction cannot be enforced by the Federal High Court. Equally, a High Court of a State shall lack jurisdiction to entertain matters of fundamental rights although brought pursuant to S 46(2) of the Constitution where the alleged breach of such matters arose from a transaction or subject matter which fall within the exclusive jurisdiction of the Federal High Court as provided by S 251 of the Constitution.<sup>36</sup>

Unexpectedly, the Supreme Court, six years after the judgment in *Adetona*<sup>37</sup> which was delivered on 14<sup>th</sup> January, 2011, made a paradigm shift once again and re-adopted the position of the Court in *Jack*

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<sup>30</sup> *Ibid.* p. 12-13, paras. D-B, *Per Katsina-Alu JSC.*

<sup>31</sup> (2007) LPELR-8073 (SC); (2007) 1-2 SC 189; (2007) 2 FWLR (Pt. 370) 3197; (2007) 4 NWLR (Pt. 1024) 375.

<sup>32</sup> See also *Alhaji Umaru Abba Tukur v. Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517 where the Supreme Court held that the Federal High court had no jurisdiction to enforce fundamental rights over chieftaincy matters.

<sup>33</sup> (2006) 13 NWLR (Pt. 998) 575.

<sup>34</sup> See F., Falana, *Fundamental Rights Enforcement in Nigeria*, 2<sup>nd</sup> Edition (Reprint) (Lagos: Legal Text Publishing Company Limited, 2013) p. 44-45. See also O.N., Ogbu, *Modern Nigerian Legal System*, 3<sup>rd</sup> Edition (Enugu: Snaap Press Limited 2013) p. 288.

<sup>35</sup> (2011) LPELR-159 (SC); (2011) 1-2 SC (Pt. II); (2011) 7 NWLR (Pt. 1247) 535.

<sup>36</sup> *Supra*, (n.35) at p. 36, paras. B-F, *Per Muhammad JSC.*

<sup>37</sup> *Supra*. (n.35).

*v. University of Agriculture, Markurdi*,<sup>38</sup> and *Garba v. University of Maiduguri*,<sup>39</sup> and applied same in the instant case of *FUTMINA & Ors. v. Olutayo*,<sup>40</sup> delivered on 15<sup>th</sup> December, 2017. In the *Olutayo*'s case, the Respondent (a student of the institution) filed an application for the enforcement of her fundamental right to fair hearing before the High Court of Niger State sitting at Minna as a result of her expulsion from the University on alleged grounds of examination misconduct. She contended that she was not given a fair hearing before she was expelled from the institution. The trial Court ruled that there was no violation of her right. The said decision was set aside on appeal to the Court of Appeal. The Supreme Court dismissed the further appeal of the Appellant and discountenanced her contention that the Appellant are all agents or agencies of Federal Government and thus the action ought to have been instituted in the Federal High Court and not the State High Court. Dismissing the appeal, the Court held thus:

I have no hesitation agreeing with the Respondent Counsel that the settled position of the law that the jurisdiction to entertain action for the enforcement of any of the fundamental rights guaranteed by the constitution in Chapter IV therefore is concurrently vested in the Federal High Court and State High Court. This is without prejudice to whether any of the parties is either the Federal Government or agent or agency of the Federal Government.<sup>41</sup>

Concurring, *Kekere Ekun JSC*, added thus:

It is quite evident that S 46(1) above refers to a High Court in that State without any restriction. The violation of a citizen's fundamental rights is viewed so seriously that the framers of the Constitution sought to ensure that no fetters are placed in the path of a citizen seeking to enforce his rights. In other words, the provision ensures that he has access to any High Court as long as it is within the State in which the alleged infraction has occurred. Indeed, it would negate the principle behind the guarantee of fundamental rights if a citizen were to have any obstacle placed in the path of enforcing those rights. The Fundamental Rights (Enforcement Procedure) Rules 1979 (applicable at the time the suit was filed at the trial Court) were made pursuant to S 42(3) of the 1979 Constitution (now S 46(3) of the 1999 Constitution) and therefore have constitutional flavour.

The eminent Jurist further stated that the decision of the Supreme Court in the case of *Jack v. University of Agriculture Markurdi*<sup>42</sup> has put the matter to rest. The Court of Appeal have in some of their recent decisions also trailed this line of reasoning laid down in the *Olutayo*'s case. For instance, in *Julius Berger (Nig.) Plc v. IGP & Ors.*,<sup>43</sup> the Appellant contended that the territorial jurisdiction of the High Court of Imo State is restricted to Imo State and does not extend over the 1<sup>st</sup> set of Respondents (Nigerian Police) as they are an agency of the Federal Government. They further contended that by virtue of Section 251(1)(r) and No. 45 of the Second Schedule Part 1 of the 1999 Constitution, the Nigeria Police is an agency of the Federal Government of Nigeria. The Court of Appeal differed with the contention and held that the belief that 1<sup>st</sup> – 4<sup>th</sup> Respondent cannot be brought before the High Court but the Federal High Court is totally misconceived. Despite this endorsement of the Supreme Court in the *Olutayo*'s case, it is not in contention that this issue which borders on the concurrent jurisdiction of the Federal and State High Court as it concerns enforcement of fundamental rights is yet to be resolved with a view to have some degree of predictability in line with the doctrine of stare decisis. This unpredictability despite the decision of the Supreme Court in *Olutayo*'s case played out again in the case of *Nweke v. Nweke*,<sup>44</sup> which was decided on 8<sup>th</sup> June, 2018. The Appellant's complaint was that on 1<sup>st</sup> August, 2013, she was prevented from entering her one room apartment in the family house of Prince DKC Nweke, who was her husband. She was also prevented from taking part in the burial rites and the mandatory mourning rites of her Late husband. The Respondents also threw away her belongings and those of her children from the property. The Appellant, aggrieved, filed an application for the

<sup>38</sup> *Supra.* (n.29).

<sup>39</sup> (1986) 1 NWLR (Pt. 18) 550.

<sup>40</sup> (2017) LPELR-43827 (SC); (2017) 12 SC (Pt. 1) PI; (2018) 7 NWLR (Pt. 1617) 176; (2018) ALL FWLR (Pt. 935) 1255.

<sup>41</sup> *Supra.* (n.40) at p. 12, paras. C-E, *Per Eko JSC*.

<sup>42</sup> *Supra.* (n.29).

<sup>43</sup> (2018) LPELR-46127 (CA).

<sup>44</sup> (2018) LPELR-44824 (CA).

enforcement of her fundamental rights. The Respondent objected to the jurisdiction of the Federal High Court to entertain the suit on the ground that it bordered on whether the deceased was actually married to the Appellant and also on the custom and tradition of parties. The trial Court upheld the objection and refused the reliefs sought by the Appellant. On appeal, the Court adopted the line of reasoning in *Tukur's* case, dismissed the appeal and held that the Federal High Court Awka, had no jurisdiction to entertain the matter. These were the words of the Court:

Upon a painstaking perusal of the reliefs sought by the Appellant, it seems to me that it smacks of the infringement of her fundamental rights, laced with matrimonial matters. It can be rightly concluded therefore that the fulcrum of the Appellants claim has to do with the maltreatment of her children and herself by the Respondents. Other things became ancillary to that main relief. The question that readily comes to mind is whether in the circumstances of the case, the Court below had jurisdiction to entertain the matter of infringement of her fundamental right. The Court below was a Federal High Court. . . . . From the reliefs sought by the Appellant, I need to reiterate and re-emphasize that both the State High Court and the Federal High Court have concurrent jurisdiction in the enforcement of Fundamental Rights. See *JACK V UNIVERSITY OF AGRICULTURE* 5 NWLR (PT. 865) 208. But there is an important caveat, which decidedly is that in the case of the Federal High Court, the subject matter of the alleged infringement of the Fundamental Right must fall within the enumerated jurisdiction of the Federal High Court under S 251 (1) of the 1999 Constitution, in order for the action to be validly within the jurisdictional competence of the Federal High Court. *TUKUR V GOV OF GONGOLA STATE* (Supra). The same applies with equal force to the High Court of a State where the subject matter of action for the enforcement of Fundamental Rights falls within the enumerated items in which exclusive jurisdiction has been vested in the Federal High Court by S 251 (1) of the 1999 Constitution, then the High Court of a State would not have jurisdiction. *ADETONA VS IGELE GENERAL ENTERPRISES LTD* (Supra). The Appellant in my view should have brought her Application before the State High Court and not the Federal High Court.<sup>45</sup>

#### 4. Conclusion

This paper in its analysis portrayed the significance of fundamental rights of Nigerian citizens and at the same time advocated that due to the importance of these rights, the philosophy and rationale behind Section 46 (1) is that no form of restraint or fetter should be placed in the enforcement of these rights. As rightly stated *Per Kekere Ekun JSC*,<sup>46</sup> the violation of a citizen's fundamental rights is viewed so seriously that the framers of the Constitution sought to ensure that no fetters are placed in the path of a citizen seeking to enforce his rights. In other words, the provision ensures that the citizen has full access to any High Court as long as it is within the State in which the alleged infraction has occurred. Indeed, it would negate the principle behind the guarantee of fundamental rights if a citizen were to have any obstacle placed in the path of enforcing these rights. The only requirement is that the rights alleged to have been infringed must fall within the provided rights under chapter IV of the 1999 constitution and that those reliefs sought in connection to the application for the enforcement of fundamental rights must consist of the main relief sought. This paper in view of the foregoing statement of the Supreme Court advocates that the decision reached in *Olutayo's* case should form the focal point whenever jurisdictional issues as to the concurrent jurisdiction of the Federal High Court and State High Court as it relates to fundamental rights is in dispute.

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<sup>45</sup> *Nweke v. Nweke Supra* (n.44) at p. 13-19, paras. D-E, *Per Pemu JCA*.

<sup>46</sup> See *Futmina & Otrs v. Olutayo Supra*. (n.40).