



**AN ASSESSMENT OF CONSTITUTIONALITY OF THE
ESTABLISHMENT AND JURISDICTIONAL COMPETENCE OF
SPECIAL TRIBUNAL ESTABLISHED UNDER BOFIA, 2020**

By

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Abstract

The Constitution of Federal Republic of Nigeria confers exclusive jurisdiction on Federal High Court in banks and banking related matters among others. Thus, the Constitution which is the grundnorm excludes all other courts and tribunals from entertaining matters exclusively donated to the Federal High Court. Whereas, BOFIA, 2020 established a special tribunal and vested it with jurisdiction to enforce and recover eligible loans by financial services banks, specialized banks or other financial institutions or matters pertaining to or connected with enforcement or recovery of eligible loan. The jurisdiction confers on the tribunal by the Act indisputably borders on banks and banking related matters. Hence, this research set out to examine the constitutionality of the establishment and jurisdiction confers on the tribunal. In carrying out the task, the article adopted doctrinal method of research. It subjected relevant provision of the Constitution and that of the BOFIA, 2020 to legal analysis. The article found that the establishment and jurisdiction confers on the tribunal is constitutional. It however argued that conferring the tribunal with powers of superior court of record is unconstitutional.

Keywords: **Constitutionality, Jurisdiction, Tribunal, Banking and BOFIA**

1.0 INTRODUCTION

Banking industry is one of the regulated industries in various jurisdictions including Nigeria. The industry is not only regulated but also supervised to ensure compliance with the regulations. Basically, banks are regulated vide local or sovereigns laws, guidelines, rules, regulations or policies. The guidelines, rules, regulations and policies are issued by authorities saddled with responsibility of regulating and supervising banks such as the Central Bank of a nation.

In Nigeria, the basic statutes regulating activities of banks is the Bank and Other Financial Institution Act (BOFIA), 2020 and Central Bank of Nigeria Act, 2007¹. The Central Bank of Nigeria Act establishes the Central Bank which serves as banker of other banks² as well as regulator and supervisor³ of all banks in Nigeria. To this end, the Central Bank is empowered to issue guidelines for day-to-day regulation and supervision of banks in Nigeria.

Bank and Other Financial Institution Act, 2020 (BOFIA) repealed BOFIA 2004 and thereby becomes the extant statute for regulation of banks in Nigeria. BOFIA, 2020 introduces some innovations to ensure proper and effective regulation of banks in Nigeria. One of these innovations is the establishment of special tribunal under the Act. The tribunal is established to enjoin powers of superior court of record and territorial jurisdiction that cut-acrosses the federation⁴. BOFIA confers on the tribunal jurisdiction to entertain matters pertaining to recovery and enforcement of eligible loan. Whereas, the 1999 Constitution of Federal Republic of Nigeria establishes superior courts in Nigeria⁵. Out of these courts, Federal High Court, High Court of a State, High Court of Federal Capital Territory (FCT), Abuja and the National Industrial Court are courts of original jurisdiction like the tribunal. The jurisdiction donated to the Federal High Court and National Industrial Court are to the exclusion of any other courts or tribunal in Nigeria. The High Court, on the other hand, enjoin unlimited jurisdiction barring matters exclusively donated to the Federal High Court and National Industrial Court under section 251 and 254C of the 1999 Constitution of Federal Republic Nigeria (As Amended). Thus, the establishment and jurisdiction donated to the tribunal under the Act raises questions such as: i) Constitutionality of the establishment of the special tribunal as a superior court? and ii) Competence of the tribunal to exercise its jurisdiction as conferred under the Act in the face of exclusive jurisdiction of the Federal High Court?

This article seeks to find answer to the above identified issues by determining constitutionality of the establishment and jurisdiction confers on the special tribunal established under BOFIA, 2020. In so doing, the paper is divided into 6 parts. After this introductory part, the second part discusses concept and importance of jurisdiction. The third part examines the relevant provision of BOFIA, 2020 as it relates to establishment, qualification and composition of the tribunal while the fourth part examines the provision of Act as it relates to jurisdiction of the tribunal. The fifth part represents crux of the article; it examines the constitutionality of the establishment of the tribunal as well as the constitutionality of the jurisdiction confers on the tribunal. The sixth, being the last part, concludes the work.

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¹ Abdulqadir Ibrahim Abikan and Is-haq O. Oloyede, 'Relevance of Islamic Finance to the Nigerian Economy: The Regulatory Challenges' in S. Nazim Ali (ed), Umar Oseni and Shariq Nisar (Ass. Ed.) *Islamic Finance and Development*, (Massachusetts: Harvard Law School, 2014) 223

² Section 41 of Central Bank of Nigeria (CBN) Act, 2007

³ Charity Ifunaya Osakwe, Ogochukwu Nwakaego Udoye and Racheal Chika Akuna, 'The Effect of Central Bank of Nigeria Regulation on the Performance of Deposit Money Banks' *IJM CER*. (2022) 4 (1) 92

⁴ Section 106 of Banks and Other Financial Institutions Act, 2020

⁵Section 6 of the 1999 Constitution of Federal Republic of Nigeria (As Amended)

2.0 CONCEPT AND IMPORTANCE OF JURISDICTION

The term jurisdiction can be described as the courts' right or power to hear and determine causes placed before them⁶. In other words, it can be described as a limit imposed on court to hear and determine issues between parties⁷. The courts' power to hear and determine matters may be limited based on territory otherwise known as territorial jurisdiction or subject matter otherwise known as substantive jurisdiction⁸. Territorial jurisdiction refers to limitation of court to entertain a matter that arose outside a designated geographical location or division⁹. For instance, a High Court of a State cannot entertain a matter that arose outside the territory of the state¹⁰. It may also be that a court is not allowed to entertain a matter that arise outside its judicial division. It is worthy of note that territorial jurisdiction that relates to judicial division is not usually fatal while ones that relate to state is fatal.¹¹

On the other hand, substantive jurisdiction refers to the power of court or its limitation to entertain certain subject matters¹². For instance, it is only the Supreme Court of Nigeria that is clothed with exclusive jurisdiction to entertain dispute arising between Federal Government of Nigeria and state(s) or dispute arising between a state and another state¹³. In essence, no other court has jurisdiction to entertain such matters, thereby, limiting their powers to hear and determine such matters. Equally, the Federal High Court is conferred with exclusive jurisdiction on certain matters which includes arms and ammunition currency, custom and excise duty, citizenship and matters pertaining to banking¹⁴ among others. As a result, other courts such as High Court of a State has limitation to entertain such matters because same have been exclusively donated to the Federal High Court¹⁵. Flowing from the above, it is clear that court enjoin distinct subject matter jurisdiction. In few circumstances, however, courts enjoin concurrent jurisdiction.

Jurisdiction of Court can also be classified as original and appellate jurisdiction. A court is said to have original jurisdiction in a matter where it has power to entertain the matter as a court of first instance. For example, a High Court of a State has original jurisdiction in matters that borders on ownership of land that is located within the territorial competence of the court. While, appellate jurisdiction refers to power of a court to entertain appeal from a lower court. For instance, it is the Court of Appeal to the exclusion of all other courts that has power to entertain appeal

⁶ *PDP & Anor v Lawal & Anor* (2002) LPELR-59169 (SC) 16; John W. Walsh, 'The True Meaning of the term "Jurisdiction"' < <https://www.jstor.org/stable/3306463>> accessed 16th January, 2024

⁷ DI Efevwerhan, *Principles of Civil Procedure in Nigeria* (2nd edition, Snaap Press Nigeria Ltd Enugu 2013) 16

⁸ *Tukur v Government of Gongola State* (1989) 4 NWLR (Pt. 117) 517; Akin O. Oluwadayisi, *Practical Approach to Civil and Criminal Litigation* (Vicolad Grafic Media Limited Lagos 2013), 15 -17

⁹ Ibid

¹⁰ See *Rivers State Government of Nigeria & Anor v Specialist Konsult (Swedish Group)* (2005) LPELR-2950 (SC), 23

¹¹ D.I Efevwerhan, *Principles of Civil Procedure in Nigeria* , 17

¹² Ibid, 16

¹³Section 232 of the Constitution of Federal Republic of Nigeria, 1999 as amended; *Attorney General of Kaduna State & Ors Attorney General of the Federation & Ors* (2023) LPELR-59936 (SC), 25

¹⁴ See Section 251 (1) (a) – (s) of the Constitution of Federal Republic of Nigeria, 1999 as amended; *National Electric Power Authority v Mr. B. Edegbero & Ors* (2002) LPELR-1957 (SC)

¹⁵ See Section 272 (1) of the Constitution of Federal Republic of Nigeria, 1999 as amended

arising from the judgement of the Federal High Court, National Industrial Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a court-martial or other tribunals as may be prescribed by an Act of the National Assembly¹⁶. Thus, the Court of Appeal, while entertaining appeal from the trial court, is exercising its appellate jurisdiction. It is worthy of note that the Court of Appeal also enjoin original jurisdiction in handful of matters¹⁷.

It is worthy of note that apart from substantive and territorial factor, other factors such as constitution of the court and compliance with due process may also hinder competence or jurisdiction of the Court. To this end, the Supreme Court in *Madukolu & Ors v Nkemdilim*¹⁸, highlighted circumstances when a court of law will have jurisdiction to entertain an action thus:

Put briefly, a Court is competent when -

1. It is properly constituted as regards number and qualifications of the members of the bench and no members is disqualified for one reason or another; and
2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevent the court from exercising its jurisdiction, and
3. The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication.

Flowing from the quoted dictum of the apex court, it is cleared that importance of jurisdiction in adjudicatory system of Nigeria cannot be over-emphasized. Hence, the term has been described using various phrase such as life wire¹⁹, spinal cord²⁰, backbone²¹, bedrock²², threshold issue²³ in an adjudicatory process. It is said that a proceeding without jurisdiction no matter how well conducted amount to nullity²⁴. Hence, jurisdiction is one of the necessary matter to look out for before instituting a matter in a court of law²⁵.

3.0 ESTABLISHMENT, QUALIFICATION AND COMPOSITION OF THE TRIBUNAL

One of the innovations brought by Banks and Other Financial Institution Act (BOFIA), 2020 is the establishment of a special tribunal under the Act. The BOFIA

¹⁶ See section 240 of the Constitution of Federal Republic of Nigeria, 1999 as amended

¹⁷ See section 239 of the Constitution of Federal Republic of Nigeria, 1999 as amended

¹⁸ *Gabriel Madukolu & Ors v Johnson Nkemdilim* (1962) LPELR-24023 (SC), .9 -10

¹⁹ *Chevron Nigeria Limited v Theophilus Nwuche & Ors* (2014) LPELR-24291 (CA)

²⁰ *Akunwata Interlink (Nig) Ltd & Anor v. Personal Trust Microfinance Bank Ltd* (2021) LPELR-56753 (CA) 20

²¹ *Ibid*

²² *Skye Bank Plc. v Iwu* (2017) 16 NWLR (Pt. 1590) 24 at 111 -112

²³ *Wada v Bello* (2016) 17 NWLR (Pt 1542) 374 at 441

²⁴ *Gabriel Madukolu & Ors v Johnson Nkemdilim* (1962) LPELR-24023 (SC)

²⁵ DI Efevwerhan, *Principles of Civil Procedure in Nigeria*, 16

2020, repealed BOFIA, 2004²⁶ and inserted a number of sections which establish a special tribunal, state the qualification and composition of the tribunal. It is worthy of note that BOFIA is one of the main statutes that regulates the license and operation of banks in Nigeria. Therefore, this tribunal is arguably established to further regulate and ensure smooth running of banking business in Nigeria. It is not in doubt that proper dispute resolution mechanism such as the tribunal in question is one of the means of archiving proper operation of banks in the country. Thus, this innovation is in tune with best practice.

The provision of Section 102 of the Act, establishes the tribunal while the composition of the tribunal is provided for under Section 103 of the Act. According to the provision, the tribunal shall consist of at least 11 persons (including the president who shall be the head of the tribunal) to be appointed by the President of the Federal Republic of Nigeria. The qualification of the president of the tribunal and other members of the tribunal is equally stipulated under the Act. For a person to be qualified for appointment as president and member of the tribunal such person shall be qualified to practice as a legal practitioner for a period not less than 15 years and 12 years respectively. In addition, such person must have minimum of 7 years (for the president) and 5 years (for other members) experience in banking and financial services; law and practice; or in the banking and financial services sector.

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Flowing from the above, appointment of the president and other members of the tribunal is exclusively vested in the hand of the President of Federal Republic of Nigeria. In other words, there is neither requirements of recommendation from National Judicial Council nor confirmation by the senate. This appointment procedure is not the same with requirements put in place in the appointment of judges or justices of Federal Courts established under the 1999 Constitution of Federal Republic of Nigeria (As Amended). This author observed that requirement of recommendation by National Judicial Council or any other competent body will assist the president to appoint competent president/members to the tribunal. In the same vein, the requirement of confirmation by the senate especially in the appointment of the president of the tribunal will serve the purpose of check and balance enshrined in the Constitution.

It is, however, worthy of mention that the president and other members of the tribunal are not totally immune from National Judicial Council's recommendation. This is because they may be recommended for disciplinary action(s) by the National Judicial Council to the President of Federal Republic of Nigeria. Thus, while the NJC is not empowered to recommend members of the tribunal and its president for appointment, the body is empowered to recommend them for disciplinary actions. In other words, the function of National Judicial council in respect of the tribunal is limited to recommendation of the president and members of the tribunal to President of Federal Republic of Nigeria for disciplinary actions.²⁸

The law, equally, provides for circumstances where Members of the tribunal (including the President) is disqualify to continue to hold the office. The circumstances are as follows:

²⁶ Section 130 Banks and Other Financial Institutions Act, 2020

²⁷Section 103 (2) & (3) Banks and Other Financial Institutions Act, 2020

²⁸Section 104 Banks and Other Financial Institutions Act, 2020

- a. where the president or member attain the age of 65 years
- b. where he becomes of unsound mind or is incapable of discharging his duties
- c. where he is adjudged bankrupt
- d. where he is convicted of a felony or any offence involving fraud or dishonesty by a court of competent jurisdiction
- e. where he is guilty of serious misconduct in relation to his duties
- f. where he is disqualified or suspended (other than at his own request) from practicing the legal profession in any part of Nigeria or outside Nigeria by order of any competent authority made in respect of him in person or has an interest in or he is a director or shareholder of a financial service
- g. where he has an interest or he is a director or shareholder of a bank, specialized bank or other financial institution or where he is convicted of a sexual offence.²⁹

Apart from the members of the tribunal, the law establishes the panel of expert whose function is to provide opinion in cases before the tribunal where required from time to time.³⁰ The appointment of members of the panel of expert is vested in the Central Bank of Nigeria. The qualification for members of the panel is that such person must possess a minimum of 10 years' experience in banking and credit or capital market operations. The law provides that there shall be a lead expert among the panel members who shall be responsible for assigning cases that require expert opinion before the tribunal to the members of the panel. The panel of expert is required to be independent and impartial in the performance of their function and they shall be paid remuneration as may be determined by the Central Bank of Nigeria. The request for expert opinion can be made upon application of either of the parties before the tribunal or by the tribunal *suo moto*. The expert designated by the lead expert shall provide the opinion within the frame of time as may be prescribed by the tribunal. It is worthy of note that the expert opinion is not binding on the tribunal but advisory³¹.

4.0 JURISDICTION OF THE TRIBUNAL

The jurisdiction confers on the special tribunal established under BOFIA, 2020 is for the enforcement and recovery of eligible loans by financial services banks, specialized banks or other financial institutions or matters pertaining to or connected with the subject³². Eligible loan is described as any credit facility, overdraft, loan, risk asset to the tune of at least ₦25, 000, 000.00 or such other amount as may be prescribed by the Central Bank of Nigeria which repayment obligations have become due for not less than 90 days and has been designated by an instrument under the hand of the Governor of Central Bank of Nigeria as being eligible for enforcement and recovery before the Tribunal³³.

From the above definition, for loan, credit facility, overdraft or risk asset to qualify as eligible loan, the amount must be to the tune of ₦25, 000, 000.00 (Twenty Five Million Naira) or as may be prescribed by the Central Bank of Nigeria. Thus, amount lesser than the stated amount cannot be considered as eligible amount. Equally, for the tribunal to have jurisdiction the party (arguably the claimant) must

²⁹ Section 108 of Banks and Other Financial Institutions Act, 2020

³⁰ Section 123 of Banks and Other Financial Institutions Act, 2020

³¹ Section 124 (4) Banks and Other Financial Institutions Act, 2020

³² Sections 102 and 115 of Banks and Other Financial Institutions Act, 2020

³³ Section 131 of Banks and Other Financial Institutions Act, 2020

be Financial Service Banks, Specialized Banks³⁴ or Other Financial Institutions³⁵. Specialized banks include Bank of Industry, Bank of Agriculture, Development Bank of Nigeria, Nigeria Export Import Bank, The Infrastructure Bank, Federal Mortgage Bank of Nigeria, Nigeria Mortgage Refinancing Company, Primary Mortgage Banks, Micro-finance Banks, Non-Interest Bank and such other banks as may be designated from time to time by the Bank³⁶ and Other Financial Institutions refers to any individual, body, associate or group of persons; whether corporate or unincorporated other than the banks licensed under this Bank, which carry on the business of a discount house, bureau de change, finance company, money brokerage, authorized buying of foreign exchange, international money transfer services, mortgage refinance company, mortgage guarantee company, financial holding company or payment service providers regardless of whether such businesses conducted digitally, virtually or electronically only and companies whose objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases order financing, and such other business as the Central Bank of Nigeria may from time to time, designate regardless of whether such businesses are conducted digitally, virtually or electronically only. Financial Service Banks is not defined under the Act. Arguably, it referred to banks offering financial services other than Specialized Banks and Other Financial Institutions.

From the wordings of the provision of section 115 of the Act which provides: ‘The Tribunal shall have and exercise jurisdiction on any cause and matter-

(a) Pertaining to enforcement and recovery of eligible loans by financial services banks, specialized banks or other financial institutions.....’

it appears the claimant shall at all-time be Financial Service Banks, Specialized Banks or Other Financial Institutions as defined by the Act. In other words, persons, be it natural or artificial, other than Financial Service Banks, Specialized Banks or Other Financial Institutions cannot be a claimant before the tribunal. This view is premised on unambiguous provision of the section and trite canon of interpretation that state that express mention of a thing excludes the other³⁷. In this circumstance, it is argued that express mention of the trio is intended by the legislator to exclude other persons/body to be enforcer or claimant of the loan before the tribunal. However, the defendant before the tribunal is not limited to the identified persons. As such, any person (natural or artificial) who qualify to be customer of any of Financial Service Banks, Specialized Banks or Other Financial Institutions and indebted to them to the tune of ₦25, 000, 000.00 or other amount as may be prescribed by the Central Bank of Nigeria is a competent defendant before the tribunal.

Another feature of the substantive jurisdiction of the tribunal is that the loan must be due for a period of not less than 90 days. Thus, a loan sum that is not due for up to a period of 90 days is not an eligible loan and cannot be entertained by the tribunal.³⁸ Equally, such loan must have been designated by an instrument under the hand of Governor of Central Bank of Nigeria as being eligible for enforcement

³⁴Section 131 of Banks and Other Financial Institutions Act, 2020

³⁵ Ibid

³⁶ Ibid

³⁷ *Umar v Zailani & Ors* (2023) LPELR-59471 (CA)

³⁸ Section 131 of Banks and Other Financial Institutions Act, 2020

and recovery before the Tribunal.³⁹ Thus, all these features must be satisfied in a case before the tribunal can be competent to exercise jurisdiction⁴⁰

The territorial jurisdiction of the tribunal is through-out the states of the Federation. To this end, section 106 BOFIA, 2020 provides:

The tribunal shall have and exercise jurisdiction throughout the Federation and for that purpose, the president of the tribunal shall, for administrative purpose divide the entire Federation into such number of divisions as may be deemed appropriate, having regard to the volume of cases likely to be instituted, and provided that the total number of divisions in operation at any time in point shall not be less than two.

Flowing from the above quoted provision, the tribunal has a feature or semblance of a Federal Court whose territorial jurisdiction is through-out the federation. The president of the tribunal is mandated to divide the tribunal into number of divisions as may be deemed appropriate for administrative and convenience purpose. As a result, parties are expected to institute action in the judicial division that is most convenient having regards to the parties to the case and witnesses. Therefore, a judge in a judicial division may decline jurisdiction for the convenience of the litigants and the witnesses in line with principle of forum shopping⁴¹.

5.0 CONSTITUTIONALITY OF THE ESTABLISHMENT AND JURISDICTION CONFERS ON THE TRIBUNAL

In attempt to do justice to this work, this part is discussed under two segments to wit; constitutionality of establishment of the tribunal and constitutionality of the jurisdiction confers on the tribunal by BOFIA

i. Constitutionality of Establishment of Special Tribunal under BOFIA

Nigeria operates a constitutional democracy that recognizes judiciary as an arm of government⁴². The judicial powers are vested in the court and tribunal established under the law. The power to establish court is vested on the legislative arm of government⁴³. The legislative power is vested on National Assembly and State Houses of Assembly representing the Federal and State Legislative Authority. The National Assembly is decomposed into the House of Representative and House of Senate. Hence, the tribunal which is established by the Federal Legislative Authority is established by appropriate authority. This is because court can be established by either the Constitution of Federal Republic of Nigeria or Statutes. However, the statute establishing court and donating judicial powers on it must not conflict with letters and spirit of the constitution. For, any legislation/statute which is inconsistent with the provision of the constitution is deemed a nullity to the extent of its inconsistency⁴⁴.

Thus, a consideration of relevant provision of the Constitution of Federal Republic of Nigeria *viz-a-viz* provision of BOFIA establishing the tribunal is *sin qua non* to

³⁹ Ibid

⁴⁰ *Gabriel Madukolu & Ors v Johnson Nkemdilim* (1962) LPELR-24023 (SC)

⁴¹ *Declan Mbadiwe Emeluwa V. Barrister Donatus Onuigwe & Ors* (2011) LPELR-4029 (CA), 35

⁴² See section 6 of the 1999 Constitution of Federal Republic of Nigeria (As Amended)

⁴³ See section 4 of the 1999 Constitution of Federal Republic of Nigeria (As Amended)

⁴⁴ See Section 1 of the 1999 Constitution of Federal Republic of Nigeria (As Amended)

determining legality of the establishment of the Tribunal. Having resolved that both Federal and State legislative authorities are empowered to establish court, it is safe to conclude that the establishment of the Tribunal by the National Assembly is constitutional. The next issue that calls for consideration is whether BOFIA can establish a tribunal that enjoin inherent powers of a superior court of record aside the ones established by the Constitution. The relevant provision of the Constitution on superior courts of record is contained in section 6 (3), and (5) and they are hereunder reproduced:

Section 6(3):

The courts to which this section relates established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (i) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each court shall have all the powers of a superior court of record.

Section 6 (5):

This section relates to:-

- (a) the Supreme Court of Nigeria;
- (b) the Court of Appeal;
- (c) the Federal High Court;
- (cc) the National Industrial Court
- (d) the High Court of the Federal Capital Territory, Abuja;
- (e) a High Court of a State
- (f) the Sharia Court of Appeal of the Federal Capital Territory, Abuja
- (g) a Sharia Court of Appeal of a State;
- (h) the Customary Court of Appeal of the Federal Capital Territory, Abuja;
- (i) a Customary Court of Appeal of a State

The interpretation of the above quoted provisions came up for consideration before the Supreme Court in *National Union of Electricity Employees & Anor. v. Bureau of Public Enterprises*.⁴⁵ The Court, while construing the provisions quoted above but before the enactment of Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 which inserted paragraph 'cc', held:

It means therefore that by Decree No. 47 of 1992 arrogating to the National Industrial Court a superior court of record as has been contended by the appellants does not by that token make the said NIC a superior court of record without due regard to the amendment of the provisions of Section 6(3) and (5) of the 1999 Constitution which has listed the only superior courts of record recognized and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended it remains a subordinate court to the High Court.'

It is, therefore, argued on the strength of the Supreme Court decision quoted above that the Act cannot make the tribunal a superior court of record as same is

⁴⁵ (2010) 7 NWLR (Pt 1194) 538

inconsistent with section 6(3) and (5) (a) –(i) of the 1999 Constitution and therefore null and void to the extent of its inconsistency. For avoidance of doubt, the extent of inconsistency of the provision of 126 BOFIA is to the extent of conferring to the tribunal powers of a superior court of record. Thus, the establishment of the tribunal can only stand as a court that is subordinate to the High Court. To this end, Section 6 (4) of the Constitution provides:

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;

ii. Constitutionality of the Jurisdiction confers on the Tribunal

The Constitution of Federal Republic of Nigeria is the organic law or grundnorm⁴⁶. It establishes the superior courts of record in Nigeria and confers jurisdiction on them. The scope of the jurisdictions confers on the superior courts are wide enough to entertain all form of disputes that may arise among persons, corporate entities, government officials or tiers of government. Yet, the Constitution legitimize establishment of other court/tribunal and conferment of jurisdiction on the court so established. To this end, the legislative arm, in performance of duty confers on it by the Constitution, repealed BOFIA, 2004 and legislate BOFIA, 2020. The new law (BOFIA, 2020) establishes special tribunal and clothed it with jurisdiction to entertain matters pertaining to recovery and enforcement of eligible loan.

However, for the jurisdiction so confers to be legitimate, it must be consistent with the provision of the Constitution. This is because any action or inaction that is inconsistent with the constitution shall be null and void to the extent of its inconsistency. Thus, the validity of the jurisdiction confers on the tribunal BOFIA can be tested against constitutional provision.

A perusal of relevant provision of BOFIA reveals that the tribunal exercises original jurisdiction. Thus, the jurisdiction confers on the tribunal is to be tested against Superior Courts of record original jurisdiction enshrined in the Constitution. The original jurisdiction of the Supreme Court, Court of Appeal and Election Tribunals are clearly distinguishable from the jurisdiction of the tribunal. Thus, the Courts whose jurisdiction needs to be examined against that of the tribunal is the High Courts and National Industrial Court.

High Court of a State and that of the Federal Capital Territory (FCT), Abuja enjoin unlimited jurisdiction barring the items listed in section 251 and 254 (C) of the 1999 Constitution of Federal Republic of Nigeria which are exclusively reserved for the Federal High Court and National Industrial Court respectively. It is however worthy of note that the jurisdiction of the State High Court and that of the FCT is not to the exclusion of other courts or tribunals⁴⁷. Thus, the tribunal can exercise concurrent

⁴⁶ *Lagos State Government & Ors v Miss Asiyat Abdulkareem (Minor) & Ors* (2022) LPELR-58517 (SC) 37 -38

⁴⁷ Sections 257 and 272 of the Constitution of Federal Republic of Nigeria 1999, as amended

jurisdiction with High Court of a State and that of the Federal Capital Territory, Abuja.

However, the jurisdiction vested on the Federal High Court and National Industrial Court are to the exclusion of any other court. The jurisdiction the National Industrial Court boards on trade disputes, labour and employer-employee related matters⁴⁸. Hence, the court's jurisdiction is distinct from the jurisdiction of the tribunal on the ground of subject matter that confers jurisdiction on the court. It is therefore argued that there is no inconsistency between the exclusive jurisdiction of National Industrial Court and the jurisdiction vested on the tribunal. For, where Financial Service Banks, Specialized Banks⁴⁹ or Other Financial Institutions (The class of party that can activate the jurisdiction of the tribunal) is before the National Industrial Court, the subject matter of disputes submitted before the court must be labour and/or employer-employee related which is distinct from the subject matter jurisdiction confers on the tribunal. Hence, the jurisdiction confers on the tribunal is consistent with the jurisdiction of the National Industrial Court.

On the hand, the Federal High Court enjoy exclusive jurisdiction on number of matters including banks and banking related matters. To this end Section, 251 (1) (d) provides:

(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –

(d) connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures:

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank;

It is worthy of note that the proviso to the above quoted sub-section has been interpreted in number of judicial decisions to be an exception to the exclusive nature of the Federal High Court's jurisdiction. In the case of *Trade Bank Plc v Benilux (Nig) Ltd*⁵⁰, the Supreme Court, while interpreting section 230 (d) of the 1979 Constitution which is *pari-materia* with the above quoted subsection, held:

Section 230 (1) (d) of the 1979 Constitution as amended by the Constitution (Suspension and Modification) Decree No. 107 of 1993 vests exclusive jurisdiction on the Federal High Court in respect of banking, banks, other financial institutions including any action between one bank and other, any action by or against the Central Bank of Nigeria arising

⁴⁸ Section 254 (C) of the Constitution of Federal Republic of Nigeria 1999, as amended; Anthony Nwazuo, 'Appraisal of the Jurisdictional Regime of the National Industrial Court of Nigeria' *The Nigerian Judicial Review* (2013) 11, 48 -50

⁴⁹ See Section 131 of Banks and Other Financial Institutions Act, 2020

⁵⁰ (2003) LPELR-3262(SC)

from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.

The provision can only be invoked on banking transactions in respect of bank *inter se* including the Central Bank. By the proviso, the subsection will not apply to any dispute between individual customer and his bank in respect of transaction between an individual customer and a bank.’

Equally, in the relatively recent case of *Merill Guaranty Savings & Loans Ltd & Anor v Worldgate Building Society Ltd*⁵¹, the Supreme Court held:

There is no doubt, from the main sub-section of the law, that the Federal High Court ordinarily has the exclusive jurisdiction in those matters contained therein. But the exclusiveness stated in the law has been whittled down with the proviso. The said proviso has been interpreted by this Court in *Nigeria Deposit Insurance Corporation (Liquidator of Allied Bank of Nigeria Plc V. Okem Enterprises Ltd & Anor* (2004) 4 SCM 109, when considering section 251 (1) (d) of the 1999 Constitution which is *impair-materia* with the provisions of section 230 (1) (d) of the 1979 Constitution which was considered in the instant case. This Court had opined as follows: “Plainly, the provision in question is in section 251 (1) (d) to put it in simple analysis, says that the Federal High Court will have exclusive jurisdiction in banking matters but when what is involved is individual customer and his bank transaction, the Federal High Court shall not have exclusive jurisdiction.

Considering the above quoted dictum, other courts or tribunal can be rightly vested with jurisdiction to entertain matters bordering on bank and customer relationship. Thus, the jurisdiction vested on the tribunal will be consistent and constitutional if, and only if, the matters brought before it borders on banks and customer relationship. In this author’s view, the jurisdiction confers on the tribunal by Section 115 of BOFIA, 2020 contemplates disputes relating to banks and customers relationship. For, the jurisdiction only covers loan arising from credit facility, overdraft, loan or risk asset which are forms of product offers to customer be it individual or company (including other banks). Therefore, jurisdiction donated to the tribunal under BOFIA, 2020 is constitutional. It is worthy of mention that there is nothing in the provision of the law that suggest that the matters donated to the tribunal is to the exclusion of other courts. Therefore, this author is of the view that the Federal High Court, the State High Court, High Court of Federal Capital Territory, Abuja and the Tribunal enjoin concurrent jurisdiction on matters pertaining to recovery and enforcement of eligible loan under the Act.

6.0 CONCLUSION AND RECOMMENDATION

This article examined the constitutionality of establishment as well as jurisdictional competence of the special tribunal established under BOFIA, 2020. It found that the tribunal was established under the Act and confers with the powers of superior court of record. Equally, the article found that the tribunal is vested with jurisdiction to entertain causes pertaining to recovery and enforcement of loan by Financial Services Banks, Specialized Banks and Other Financial Services. This article found that the tribunal was duly established by appropriate legislative authority. It,

⁵¹ (2012) LPELR-9719 (SC) 46 -47

however, argued that the tribunal can only be established as court/tribunal subordinate to the High Court and not as a court that enjoin powers of superior courts of record. On jurisdictional competence of the court, this paper postulated that jurisdiction confers on the tribunal is consistent with the Constitution. As a result, it argued that the tribunal enjoins concurrent jurisdiction with the High Courts. It is recommended that for the tribunal to enjoy the powers of superior court of record, there is need to amend the relevant provisions of the Constitution including the provision of section 6(5) of the Constitution.