

## CRITICAL EXAMINATION OF THE QUORUM OF CODE OF CONDUCT TRIBUNAL

### **Abstract**

*This paper critically examines the quorum of Code of Conduct Tribunal, and compares it to those of other tribunals and courts. The paper argues that since the Code of Conduct Bureau and Tribunal Act and the Nigerian Constitution provide for the establishment or composition of the Tribunal only, and not the constitution or quorum thereof, the Chairman and the two members of the Tribunal should sit at any time for it to be able to exercise the jurisdiction vested on it. In writing this paper, doctrinal research method was used in collating materials, principally, judicial authorities, statutes, and learned textbooks and articles, and internet materials. These were critically analyzed. The paper concludes that the most purposive construction on the provisions of the CFRN 1999 respecting the Tribunal is that it is properly constituted where its Chairman sits with two other members. It, therefore, recommends that: Supreme Court overrules itself whenever it has an opportunity to do so and Code of Conduct Bureau and Tribunal Act and the Constitution be amended to specifically provide for the quorum or constitution of the Tribunal.*

**Keywords:** *Critical, Examination, Quorum, Code of Conduct, Tribunal.*

### **1. Introduction:**

There is no inherent difference between a court and a tribunal. The only difference is that tribunals in most cases are courts with jurisdiction to investigate particular matters and adjudicate special cases or disputes.<sup>1</sup> A tribunal is a court, or anyone who sits in judgment of others. A tribunal is a seat of judgment and in its use, it refers to the judge or judges who hear a cause and adjudicate it. In contemporary usage, a tribunal is the institution of a court including both the person of the judge or judges and the other officials and procedure by which the adjudication is prepared and performed. There is no inherent difference in a court called a tribunal and one called a court, although there is a tendency for military courts and other courts established by executive fiat or international decree to be called tribunals.<sup>2</sup> Both the courts and the tribunals interpret the law. However, to be able to discharge this constitutional duty of interpreting the law, it must have jurisdiction, that is, the power or authority to hear and determine controversies between parties.<sup>3</sup> Courts and tribunals determine what the law actually is. The definition of law most appealing to the present author is that by Oliver Wendell Holmes Jnr, to the effect that ‘the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law’.<sup>4</sup> In order for the court to decide what the law is, it must be seised with the power to adjudicate. Proper constitution or quorum of court or tribunal is an aspect of its jurisdiction without which it acts in vain.<sup>5</sup> This paper critically examines the quorum of Code of Conduct Tribunal, and compares same

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<sup>1</sup> *Saraki v FRN* [2016] 2 NWLR (Pt. 1495) C. A. 25 at 58-59, paras. H-A per Adumein, J. C. A.

<sup>2</sup> (n. 1) p.58 paras. E-H per Adumein, J. C. A. Electoral Act 2010 (as amended) Cap E6 Laws of the Federation of Nigeria 2010 (LFN 2010), section 133 (2).

<sup>3</sup> *M. P. P. v I. N. E. C. (NO.2)* [2015] 18 NWLR (Pt. 1491) S. C. 251 at 269-270, 281.

<sup>4</sup> O. W. Holmes, ‘The Path of the Law’ (1897) 10 *Harvard L. Rev* 457, 460-461; J. E. Penner, *McCoubrey & White’s Textbook on Jurisprudence* (4<sup>th</sup> Ed, New York: Oxford University Press, 2008) pp.56-60; M. T. Ladan, *Introduction to Jurisprudence Classical and Islamic*, (Lagos: Malthouse Press Ltd, 2010) pp.63-65; C. C. Wigwe, *Jurisprudence and Legal Theory*, (Accra: Readwide Publishers, 2011) pp.241-242.

<sup>5</sup> *Nkemdilim v Madukolu* [1962] 2 SCNLR 341.

with those of other tribunals and courts. Although the Code of Conduct Tribunal is not presided over by a Judge, it is a special court established to adjudicate cases or disputes relating to breaches by public officers of the Code of Conducts for Public Officers contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended).<sup>6</sup> The paper has become necessary following a recent decision of the Supreme Court of Nigeria in the case of *Saraki v FRN*<sup>7</sup> wherein the apex court held that the Chairman of the Tribunal and one other member could sit to decide cases brought before the Tribunal. It is argued, even if, academically, that this decision is wrong. Both the CFRN 1999 and the Code of Conduct Bureau and Tribunal Act do not provide for the quorum of the Tribunal. The Supreme Court would have considered other provisions of the Constitution and provisions of some Acts or Laws of the National or State Assembly relating to quorum or constitution of tribunals and courts. Again, the best practice is that where a panel of judges, arbitrators or laymen has to decide a case either as a court or forum of first instance or on appeal, their number should be odd and not even.<sup>8</sup> This is a part of public policy which should shape decisions of courts.

The Code of Conduct Tribunal is established to exercise quasi-judicial functions over civil and public servants in Nigeria.<sup>9</sup> That is an aspect of its jurisdiction. Private citizens cannot be tried by the Tribunal. The Tribunal has jurisdiction over the following offences: operating foreign bank account, corruption, abuse of office, illegal acquisition of wealth, failure to declare or under-declaration of assets, while being a public officer.<sup>10</sup> Upon a successful prosecution and conviction of a defendant, the Tribunal has power to order forfeiture of illegally acquired wealth, removal from office, barring the convict from holding public appointive or elective offices for a period not exceeding ten years.<sup>11</sup> He may suffer Criminal Code or Penal Code penalties if his misconduct amounts to a crime under those or other penal statutes.<sup>12</sup> These are the quasi-judicial duties which the Tribunal is established to perform. Under the Act setting up the Tribunal<sup>13</sup> and CFRN 1999<sup>14</sup>, the Tribunal is to consist of three members including the Chairman. Their qualifications are also spelt out.

What both the Act and the CFRN 1999 fail to do is to provide how many members may validly constitute the Tribunal to be able to exercise the jurisdiction conferred on it by Constitution. Third Schedule to the Act does not have any provision on quorum. How should this provision be interpreted, considering provisions of other tribunals and courts, which perform similar functions, so as to carry into effect the intendment of the draftsmen and to avoid absurdity? What canon or rule of interpretation will be most appropriate to achieve this objective? This is exactly the task this paper sets out to do. In writing this paper, doctrinal method of research is used in collating data which are principally decided cases, statutes, learned textbooks and articles and internet materials. These are critically analyzed, with conclusion and recommendations following.

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<sup>6</sup> *Saraki v FRN* (n. 1) p. 59 paras. A-C per Adumein, J. C. A.

<sup>7</sup> [2016] 3 NWLR (Pt. 1500) S. C. 531.

<sup>8</sup> Arbitration and Conciliation Act Cap A18 LFN 2010, section 6; Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), sections 239 (2), 247 (1), 254E (1), 234; cf 285 (4).

<sup>9</sup> CFRN 1999, Part II Fifth Schedule.

<sup>10</sup> Code of Conduct Bureau and Tribunal Act Cap C15 LFN 2010, section 23.

<sup>11</sup> CFRN 1999, Paragraph 18 (2) Part I to the Fifth Schedule.

<sup>12</sup> CFRN 1999, Paragraph 18 (3), (6) Part I to the Fifth Schedule.

<sup>13</sup> Code of Conduct Bureau and Tribunal Act, section 20 (2).

<sup>14</sup> CFRN 1999, Paragraph 15 (1) Part I Fifth Schedule.

## 2. Establishment and Jurisdiction of Code of Conduct Tribunal:

The Code of Conduct Tribunal is established under the CFRN 1999<sup>15</sup> and the Code of Conduct Bureau and Tribunal Act.<sup>16</sup> It consists of three members including a Chairman who must be a person who has held or is qualified to hold office as a Judge of a superior court of record in Nigeria.<sup>17</sup> The Chairman and members of the Tribunal are to be appointed by the President in accordance with the recommendations of the National Judicial Council.<sup>18</sup> The Tribunal is to sit to determine the offences of operation of foreign bank account by a public officer, non-declaration, anticipatory declaration or under-declaration of assets, abuse of office, breach of any provision of the Code of Conduct Bureau and Tribunal Act brought against public officers. The Chairman and other members of the Tribunal shall retire at seventy years of age and they shall not be removed from office by the President except upon an address supported by two-thirds majority of each House of the National Assembly praying that they be so removed for inability to discharge the functions of his office in question (whether arising from infirmity of mind or body) or for misconduct or contravention of the Code.<sup>19</sup>

Where the Tribunal finds a public officer guilty of contravention of any of the provisions of the Code, it shall impose upon that officer any of the punishments specified under paragraph 18 (2) and such other punishment as may be prescribed by the National Assembly. The punishments under paragraph 18 (2) are: vacation of office or seat in any legislative house, disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years and seizure and forfeiture to the State of any property acquired in abuse or corruption of office. These punishments shall be without prejudice to other penalties that may be imposed by any law where the conduct of the concerned public officer also constitutes a criminal offence.<sup>20</sup> Accordingly, nothing in the Code shall prejudice the prosecution or punishment of a public officer for an offence in a court of law even though he has already been tried, convicted and punished under the Code.<sup>21</sup>

A proper order a court makes where it lacks jurisdiction is an order for striking out. The reason is that a defect in commencement is not intrinsic but extrinsic to the entire adjudication.<sup>22</sup> A court is only competent to adjudicate on a matter only if:

- a. it is properly constituted as regards number and qualification of the members of the Bench and no member is disqualified for one reason or the other<sup>23</sup>;
- b. the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and
- c. the case came before the court initiated by due process of law and upon fulfilment of any conditions precedent to the exercise of jurisdiction.<sup>24</sup>

## 3. Quorums of other Tribunals and Courts

Quorum or constitution of courts or tribunals is important. This is because features of jurisdiction of courts or tribunals are conjunctive and not disjunctive. If a tribunal is to be constituted by three members

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<sup>15</sup> CFRN 1999, paragraph 15 of Second Schedule.

<sup>16</sup> Code of Conduct Bureau and Tribunal Act, section 20 (1), (2).

<sup>17</sup> CFRN 1999, Fifth Schedule Part I Paragraph 15 (2).

<sup>18</sup> (n. 17) paragraph 15 (3).

<sup>19</sup> (n. 18) paragraph 17 (1), (3), (4).

<sup>20</sup> Code of Conduct Bureau and Tribunal Act, paragraph 18 (3); s 23 (3).

<sup>21</sup> (n.20) paragraph 18 (6).

<sup>22</sup> *Dapianlong v Dariye* [2007] 8 NWLR (Pt. 1036) 239 at 366 ratio 15.

<sup>23</sup> *Ogbunyiya v Ogbunyiya* [1979] NSCC 77.

<sup>24</sup> *Okafor v Ukadike* [2009] 1 NWLR (Pt. 1122) C. A. 259 at 318-319 paras. H-C per Sanusi J. C. A., *Madukolu v Nkemdilim* [1962] 2 SCNLR 341.

who must possess certain qualifications, it must be three members: no more, no less. Even if the members have all the required qualifications; the case is within their subject jurisdiction and there is nothing in the case that prevents the tribunal from the exercise of its jurisdiction; the matter is brought through a due process of law after fulfilling any conditions precedent, the tribunal cannot exercise its power of adjudication if the number of its members is either more or less.<sup>25</sup> Sometimes, the law provides for the minimum number but leaves the maximum number open.<sup>26</sup> There is a situation where a statute creating a court or tribunal will provide for the minimum and maximum number of its members for purposes of exercising jurisdiction.<sup>27</sup> In such cases, the numbers must not fall below the minimum or above the maximum. It is for this reason that there is need for courts or tribunals to be properly constituted. In *M. P. .P.P. v I. N. E. C. (NO. 2)*<sup>28</sup>, the Ogun State Governorship Election Petition Tribunal Abeokuta sat the first time with a full coram of the Chairman and the two other members which entertained and granted an application for inspection of electoral materials. The ruling was signed by the Chairman and two members of the tribunal. Equally, when all the motions were consolidated and adjourned for definite hearing, the full coram was reflected and the ruling was signed by the Chairman and two members of the tribunal. However, the day the consolidated motions were heard, only the Chairman of the tribunal heard the motions and struck out the petition of the petitioners now the appellants. In determining the appeal, the Supreme Court considered section 285 (3) and (4) and paragraph 2 (1) and (2) Part B of the Sixth Schedule to the CFRN 1999 (as amended); and paragraph 27 (1) of the First Schedule to the Electoral Act 2010 (as amended). The Court held that if a court is not properly constituted, when there is a defect in its membership, then that court cannot be said to have been properly in place. It lacks jurisdiction to properly adjudicate, and whatever decision it reaches is going to be a nullity. In that case, the tribunal was not properly constituted as to its membership. The matter was taken, tried and determined by the Chairman without any member or members with him and that made the decision null and void.<sup>29</sup>

Does it accord with common sense that the Legislature left this important aspect of jurisdiction to conjecture, especially for a tribunal worthy of a place in our Constitution? I have only come across the Technical Committee on Value Added Tax which quorum and proceedings are left to the discretion of its members to determine.<sup>30</sup> The Committee though not a tribunal is even better off than the Code of Conduct Tribunal regarding quorum: at the least, it can determine its quorum because the Act setting it up has empowered it so to do. There cannot be a challenge if they choose to form a quorum with two members. Same cannot be said of the Code of Conduct Tribunal which both the Constitution and the Code of Conduct Bureau and Tribunal Act fail to provide its quorum nor empower it to pick and choose its quorum.

It is for this reason, among others, that the Supreme Court would have considered similar constitutional provisions relating to courts and tribunals before taking a voyage to section 28 of Interpretation Act upon which it based its judgment in the case under consideration. The fact that only the Code of Conduct Tribunal, out of all the courts and tribunals created in the Constitution, does not have its constitution or quorum specifically provided for would have made the apex court depart from literal meaning to more purposive interpretation of paragraph 15 (2) of the Fifth Schedule to the Constitution. The Constitution

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<sup>25</sup> *Zakari v Nigerian Army* [2015] 17 NWLR (Pt. 1487) S. C. 77.

<sup>26</sup> CFRN 1999, section 234.

<sup>27</sup> CFRN 1999, section 254E (1); Armed Forces Act Cap A20 LFN 2010, section 133.

<sup>28</sup> [2015] 18 NWLR (Pt. 1491) S. C. 251

<sup>29</sup> (n. 28) pp. 269-270 paras. H-A, 270 paras. F-H, 281 paragraph G-H. CFRN 1999, section 285 (4).

<sup>30</sup> Value Added Tax Act Cap V1 LFN 2010, section 23.

is supreme to Code of Conduct Bureau and Tribunal Act, Interpretation Act or any other Act or Law.<sup>31</sup> Statutory provisions on quorums of courts or tribunals are considered below in outline.

In section 6 (1) and (2) of the Customary Law of Cross River State<sup>32</sup> a District Court shall, subject to the provisions of sub-section (2), consist of a President and two other members. (2) For purpose of hearing any cause or matter in a District Court, the President (or a member presiding in the absence or incapacity of the President) and one other member shall form a quorum. (4) The President or the other member presiding shall where, there is equality of votes, have a second or a casting vote. Everything is wrong with the provisions of this Law on the quorum of the District Court and the casting vote of its President or presiding member.

Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act<sup>33</sup> establishes a Tax Appeal Tribunal to exercise the jurisdiction, power and authority conferred on it by or under the Schedule. The Minister of Finance may by notice in the Gazette specify the number of zones, matters and places in relation to which the Tribunal may exercise jurisdiction.<sup>34</sup> The Tribunal shall consist of five members referred to as Tax Appeal Commissioners. A Chairman for each Zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 15 years with cognate experience in tax legislation and tax matters. He shall preside at every sitting of the Tribunal and in his absence the members shall appoint one of them to act as the Chairman. The quorum at any sitting of the Tribunal shall be three members.<sup>35</sup> The Value Added Tax Tribunal established under the Second Schedule to the Value Added Tax Act<sup>36</sup> consists of not more than eight members *and at least five members may hear and determine an appeal*.<sup>37</sup> In the case of Value Added Tax Technical Committee, the members are to determine its quorum and regulate its own proceedings.<sup>38</sup>

Under the Customary Court Law of Ebonyi State<sup>39</sup>, every Customary Court shall consist of a Chairman and two other members who shall be styled Customary Court Members all of whom shall be appointed by the State Judicial Service Commission. The Chairman of a Customary Court shall be a legal practitioner who has not less than three-year post-call experience. For purposes of hearing any case in the court, the three members shall be present at the hearing. In all causes and matters before the court, the opinion of the majority shall, in the event of the members disagreeing, be deemed and taken to be the decision of the Court without prejudice to the dissenting member writing a dissenting judgment.<sup>40</sup> This is a perfect example of provisions on quorum of a court. The number is odd, to take care of instances where members may disagree on causes or matters brought before them.

Five members of the Board of Securities and Exchange Commission shall form a quorum at any meeting, two of whom shall be non-executive members, and the Chairman to have a casting vote<sup>41</sup>. If

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<sup>31</sup>CFRN 1999, section 1 (1) (3); *M. P. P. v I. N. E. C.* [2015] (Pt 1491) S. C. 251 at 271 paras. E-F per Muntaka-Commissie, J.S.C.

<sup>32</sup> Cap C21 Laws of Cross River State 2004.

<sup>33</sup> 2007. The Act was omitted in both the 2004 and 2010 editions of Laws of the Federation Nigeria.

<sup>34</sup> Federal Inland Revenue Service (Establishment) Act, Fifth Schedule paragraph 1 (1), (2).

<sup>35</sup> (n. 34) Fifth Schedule paragraph 2 (1-4).

<sup>36</sup> Cap V1 LFN 2010.

<sup>37</sup> Value Added Tax, Second Schedule, paragraphs 2 and 16.

<sup>38</sup> (n. 37) section 23.

<sup>39</sup> Cap 47 Laws of Ebonyi State 2009.

<sup>40</sup> (n. 39) section 4.

<sup>41</sup> Investments and Securities Act (ISA) Cap I24 LFN 2010, section 10 (3); paragraph 1 (2) and (5) of Proceedings of the Board of SEC made pursuant to section 24 thereof.

any person is aggrieved by any action or decision of the Administrative Proceedings of the Commission, he shall either institute an action in the Tribunal or appeal against such decision within the period stipulated under the Act provided that the aggrieved person shall give the Commission fourteen days' notice on his intention to institute an action or appeal against its decision.<sup>42</sup> What this means is that the Investments and Securities Tribunal (IST) has both original and appellate jurisdiction. The Investments and Securities Tribunal shall consist of ten persons.<sup>43</sup> For the purpose of exercising any jurisdiction conferred by the Act, the Tribunal shall be duly constituted if it consists of not less than three members of the Tribunal. The Chairman of the Tribunal may constitute a panel of three from its membership whenever he deems it necessary for the purpose of exercising the jurisdiction vested in the Tribunal by ISA or any other Act provided that a member presiding as Chairman of any panel shall be a legal practitioner, and for the purpose of the ISA, the sitting of such panel shall be deemed the sitting of the Tribunal.<sup>44</sup> In both the original and appellate jurisdiction, minimum of three members of the IST constitute a panel. The Administration of Criminal Justice Monitoring Committee may make standing orders regulating to its proceedings. The quorum of the Committee shall consist of the Chairman or his representative and two other members of the Committee.<sup>45</sup> The foregoing statutes provide for odd numbers of tribunal or committee members.

In the case of *Zakari v Nigerian Army*<sup>46</sup> a junior officer was on the panel of a four-member General Court Martial that tried and convicted the appellant. Section 133 (3) (b) of the Armed Forces Act provides for at the least three members. The appellant's appeal to the Court of Appeal was dismissed. On further appeal to the Supreme Court, the Court allowed the appeal. It held, inter alia, that where a court properly constituted by way of membership, brings in an additional member who is not qualified to sit, it loses its competence to adjudicate because its constitution has changed resulting in a change of the number and qualification of the membership. The Court further held that ant General Court Martial not convened as required by the provisions of the Armed Forces Act is just like a court or tribunal which is not properly constituted. As such its proceedings or any trial conducted by it is a complete nullity. In this case, the disqualification of a captain who was junior to the appellant was sufficient to impugn the composition of the court martial, notwithstanding that there were three other members of the court that formed quorum.<sup>47</sup>

#### **4. Interpretation of Statutes:**

It has been stated earlier that both the CFRN 1999 and the CCB & T Act do not have a specific provision on the quorum of the Tribunal. In *Saraki v FRN*<sup>48</sup> the appellant challenged the jurisdiction of the Tribunal on the ground that it was improperly constituted where it sat with the Chairman and one member to conduct proceedings against him on the 11<sup>th</sup> of September 2015. His appeal to the Court of Appeal was dismissed. He further appealed to the Supreme Court. One of the issues that fell for determination of the court was whether the Tribunal was properly constituted where it sat with its Chairman and one member only. Paragraph 15 (1) Fifth Schedule of the CFRN 1999 and section 20 (2) of CCB & T Act respectively provide that the Tribunal shall consist of a Chairman and two other members, without any provision on the quorum of the Tribunal.

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<sup>42</sup> (n. 41) sections 310, 289; Schedule Eight (Rules of Procedure).

<sup>43</sup> (n. 42) section 275.

<sup>44</sup> (n. 43) section 276 (1), (2).

<sup>45</sup> Administration of Criminal Justice Act 2015, section 476 (1), (2).

<sup>46</sup> [2015] 17 NWLR (Pt. 1487) S. C. 77 at 106, paras. C-E, per Ngwuta, J. S. C.

<sup>47</sup> (n. 46) pp. 109, paras. B-D, per M. D. Muhammad; 103-104, paras. G-A, per Peter-Odili, J. S. C.

<sup>48</sup> [2016] 3 NWLR (Pt. 1500) S. C. 531.

The court sought solution within the Constitution by considering the word ‘consist’ used in paragraph 15 in order to resolve the issue of quorum. The word ‘consist’ means make up something, *constitute* or be composed of. The definition of the word all means to be formed from the things or people mentioned, or to be parts that form something. The application of the definition of the word consists to this case means the Chairman and two other members of the Code of Conduct Tribunal. In other words, the *Tribunal must* be composed of the Chairman and two other members.<sup>49</sup> The word ‘consist’ also means ‘to be made up or composed, ...to reside or lie essentially’.<sup>50</sup> The word consists is also defined in Black’s Law Dictionary as, ‘to stand together, to be composed of or made up of’.<sup>51</sup> The court held that from the definitions of the word ‘consist’ above, it is clear that paragraph 15 (1) of the Fifth Schedule to the CFRN 1999 and section 20 (1) and (2) of the Code of Conduct Bureau and Tribunal Act provide for the establishment and composition of the CCT as consisting of a Chairman and two other members. This construction is clearly the literal meaning of the words used by the draftsman in the relevant sections concerned.

However, does the composition mean the quorum needed for the Tribunal of a Chairman and two other members to competently conduct proceedings? This leads to the meaning of quorum. Quorum means a majority of the entire body, for instance, a quorum of a State Supreme Court; the number of members who must be present in a deliberative body before business may be transacted. In both houses of Congress, a quorum consists of a majority of those chosen and sworn. Such a number of the members of a body as is competent to transact business in the absence of others.<sup>52</sup> It should be noted that the phrase, ‘consists of’ is used in the CFRN 1999 in the establishment and composition sections of the courts of record created therein such as the Federal High Court in sections 249 (2), State High Court in section 270 (2) Court of Appeal in section 237 (2), Supreme Court in section 230 (2) and FCT High Court in section 255 (2). Section 230 of the CFRN 1999 establishes the Supreme Court and its composition. However, section 234 thereof, provides for its constitution (quorum or panel), for the purpose of exercising its jurisdiction.

Both the Constitution and the Code of Conduct Bureau and Tribunal Act provide for when the Chairman and the two other members shall stand together but fail to provide for when they may stand apart. All the courts and tribunals established under the Constitution have sections for both composition/establishment and constitution, and constitution entails jurisdiction. No court or tribunal is established without jurisdiction as to the number of its judicial officials spelt out to constitute the court to enable it exercise the power conferred on it. The Code of Conduct Tribunal is the only exception in this regard.

Quorum does not necessarily mean the majority of members of a body. In fact, such a definition of quorum is strange to the Constitution which establishes a Court of Appeal composed of a President and not less than 49 members but provides for at the least 3 of its members for the purpose of exercising its jurisdiction.<sup>53</sup> It seems that the apex court followed the dictionary and literal meanings of the words ‘consist’ and ‘quorum’ without regard to other modes of interpretation of statutes such as purposive mode which would have better borne out the intention of the draftsman. Inferior courts such as customary and area courts have clear provisions on the number of members to constitute a panel for purpose of exercising their jurisdiction. The Tribunal should have a clear provision on the number of

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<sup>49</sup> *Saraki v FRN* at 620-621, paras. H-D per Kekere-Ekun, J. S. C.

<sup>50</sup> *New Webster Dictionary of English Language International Edition*, 208.

<sup>51</sup> H. Campbell (ed), *Black’s Law Dictionary (6<sup>th</sup> Ed)* p. 308.

<sup>52</sup> (n. 51) p. 1255, at p. 573 of the judgment.

<sup>53</sup> CFRN 1999, sections 237 (2), 239 (2), 247 (1).

its members to form a panel for purpose of exercising its jurisdiction. We, the People of Nigeria have made that mistake.<sup>54</sup> The court to which we give the power to interpret the Constitution should correct it through purposive interpretation.<sup>55</sup>

The court admitted that paragraph 15 of the CFRN 1999 omitted to make categorical provision on what forms the quorum of the Tribunal. The court held that in the circumstance, the provision of section 318 (4) of the Constitution permits recourse to section 28 of the Interpretation Act for guidance on the interpretation of paragraph 15 of the Constitution. Thus, in determining the issue of quorum of the Tribunal, the court held that resort could conveniently be made to section 28 of the Interpretation Act. It found support in the case of *Attorney-General of Attorney-General of the Federation v Abia State (No. 2)*.<sup>56</sup>

In order to resolve this issue, the court relied on sections 318 (4) of the CFRN 1999 and 28 of Interpretation Act<sup>57</sup> respectively. Section 318 (4) of the Constitution empowers courts to apply the Interpretation Act for the purpose of interpreting the provisions of the Constitution. It follows, therefore, that what the court was called upon to do in this case was to interpret the provisions of the Constitution with regard to the Code of Conduct Tribunal. Section 28 of the Interpretation Act provides that notwithstanding anything contained in any Act or any other enactment, the quorum of any tribunal, commission of inquiry (including any appeal tribunal established for the purpose of hearing any appeal arising therefrom) shall not be less than two (including the chairman) provided that the chairman and the other member shall be present at every sitting of the tribunal, commission of inquiry throughout the duration of the trial or hearing. Based on the above provision of section 28 of the Interpretation Act, the Supreme Court held that the Tribunal was properly constituted when it sat with the Chairman and one other member to conduct proceedings.

However, it should be pointed out that whereas the provision of section 28 of the Interpretation Act is general to all tribunals or commissions of inquiry, those of paragraph 15 of the Fifth Schedule to the CFRN 1999 and section 20 (1) and (2) of the CCB & T Act are specific to the Code of Conduct Tribunal. A general and prior provision of an Act or Law cannot override specific and subsequent provision. In *Nobis-Elendu v I. N. E. C.*<sup>58</sup> the Supreme Court held that where a specific provision of a statute is subsequent to a general provision, the specific provision prevails in the event of any conflict between the two.<sup>59</sup> Again, in the case of *Fescum & Co. Ltd v F. A. A. N.*<sup>60</sup> the Court of Appeal held that the Federal Airport Authority of Nigeria Act<sup>61</sup> which re-enacted the Federal Airports Authority Decree No. 9 of 1996, being a special or specific enactment prevails over the general enactment contained in the Public Officers Protection Act.<sup>62</sup> A specific provision in a statute prevails over a general provision in a statute. Thus, the general enactment in the Public Officers Protection Act is subservient to the specific enactment in the Federal Airports Authority of Nigeria Act. In that case, the appellant's suit which was

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<sup>54</sup> (n. 53) Preamble.

<sup>55</sup> (n. 54) section 6 (1).

<sup>56</sup> ([002] 6 NWLR (Pt. 764) S. C. 542.

<sup>57</sup> Cap I23 LFN 2010

<sup>58</sup> (2015) 3 NWLR (Pt. 1485) S. C. 197

<sup>59</sup> *Bamgboye v Administrator-General* [1954] 14 WACA 616; *Madumere v Okwara* [2013] 12 NWLR (Pt. 1368) 303.

<sup>60</sup> [2015] 14 NWLR (Pt. 1480) C. A. 491.

<sup>61</sup> Cap F5 LFN 2010.

<sup>62</sup> Cap P41 LFN 2010.



brought eleven months after the cause of action arose was brought within the twelve months limitation period provided under section 20 of the Federal Airports Authority of Nigeria Act.<sup>63</sup>

The Tribunal is an inferior court exercising quasi-criminal jurisdiction and in such a situation, efforts are made to ensure that substantial justice is done. As a matter of practice, whenever a panel is to sit over a matter, the number of members is usually odd. This helps in resolving matters brought before such a panel especially where there may be a dissenting opinion so that there will not be equality of votes. In Nigeria, for instance, the quorum of most inferior courts and tribunals and appellate courts is in odd numbers of 3, 5, 7, etc.<sup>64</sup> From the foregoing, the quorum or constitution of the Tribunal should also be in odd number. The Tribunals (Certain Consequential Amendments) Decree<sup>65</sup>, repealed almost all tribunals in Nigeria and their functions assigned to the regular Federal, FCT and State High Courts.<sup>66</sup> For instance, by virtue of section 8 of the Counter Currency (Special Provisions) Act<sup>67</sup> the Federal High Court has exclusive jurisdiction to try offences created under the Act which offences were hitherto tried by the dissolved Counter Currency Tribunal. By section 9 of the Robbery and Fire Arms Act<sup>68</sup> State High Court tries offences under the Act which offences were hitherto tried by the disbanded Armed Robbery and Fire Arms Tribunals.<sup>69</sup> However, it pleased the people of Nigeria not only to retain the Code of Conduct Tribunal but to make it worthy of forming part of the CFRN 1999. It should, therefore, receive similar treatment with other courts created by the Constitution.

The quorum of Election Petition Tribunal was the Chairman and two other members.<sup>70</sup> Now, the Election Petition Tribunal *shall* consist of the Chairman and two other persons but its quorum *shall* also be the Chairman and one other member.<sup>71</sup> The word 'shall' is used in both the composition and constitution subsections. If this is interpreted as being mandatory, it literally means that three members are to be appointed always but only two of them must sit always. However, the Supreme Court has interpreted that section to mean the Chairman and one other member; that is to say, at least two members shall constitute a quorum of an election tribunal.<sup>72</sup> This is a purposive interpretation rather than a literal interpretation of that provision. The amendment of quorum of election petition tribunal from three members to two members is ill conceived and runs contrary to national and international best practices.<sup>73</sup> The International Criminal Court (ICC) has 18 Judges.<sup>74</sup> ICC is organized into Divisions: Appeals Division, Trial Division and Pre-Trial Division. The Appeals Division of ICC is composed of the President and four other Judges. The Trial and Pre-Trial Divisions have not less than six Judges each. The judicial functions of the Court shall be carried out in each division by Chambers. The Appeals Chamber shall be composed of all the Judges of the Appeals Divisions. The functions of the Trial Chamber shall be carried out by three Judges of the Trial Division. The functions of the Pre-Trial Chamber shall be carried out by either by three Judges of the Pre-Trial Division or a single Judge of

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<sup>63</sup> Fescum Co. Ltd (n. 60) pp. 505 paras C-E, 508-509 paras. F-A.

<sup>64</sup> CFRN 1999, sections 254E (1), 247 (1) CFRN 1999; Customary Court Law of Ebonyi State 2009, section 4.

<sup>65</sup> No. 62 of 1999.

<sup>66</sup> Federal Government Notice No. 62 of 1999.

<sup>67</sup> Cap C35 LFN 2010.

<sup>68</sup> Cap R11 LFN 2010.

<sup>69</sup> Y. D. U. Hambali, Practice and Procedure of Criminal Litigation in Nigeria, (Lagos: Feat Prints, 2012) pp.73-78.

<sup>70</sup> CFRN 1999, section 285 (4) before the alterations; O. Aguda, Understanding the Nigerian Constitution of 1999 (Lagos: MIJ Professional Publishers, 2000) pp.138-139.

<sup>71</sup> CFRN 1999 (as amended), section 285 (4).

<sup>72</sup> *M. P. P. P. v I. N. E. C. (NO. 2)* (n. 3) pp.279 paras C-G per I. T. Muhammad, J. S. C.; 271 paras. E-F per Muntaka-Commassie, J. S. C.; Electoral Act 2010 (as amended), section 136 (4).

<sup>73</sup> Rome Statute on International Criminal Court 1998, Articles 34 and 39.

<sup>74</sup> Rome Statute (n. 73) Article 36.

that division. All the Chambers or Judges of the Court have to adjudicate in accordance with the Rome Statute and the Rules of Procedure and Evidence. Nothing in the Statute shall prevent the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.<sup>75</sup> Chamber here refers to a panel, consisting of five or three judges, all in odd numbers.<sup>76</sup>

A million naira questions are: what purpose does the reduction in quorum of election petition tribunals serve where three Judges are still appointable? Is it inability of the government to pay their allowances? If the Chairman and one other member sit, does the second member become idle or a research assistant to the tribunal? Was the amendment effected to favour the political interests of the government in power? Ugly reports were made by Sahara Reporters about how party stalwarts bribed tribunal members to get judgments.<sup>77</sup> Was reduction in quorums of election petition tribunals meant to reduce financial burdens on party faithfuls who would wish to settle tribunal judges in order to buy justice?

Election Petition Tribunal handles sensitive election disputes and number of the panelists should be odd and not even. Experience shows that some dissenting judgments of such tribunals were in the past upheld on appeal while some of the majority judgments were overturned. The Court of Appeal Ilorin Division adopted a minority judgment of Ekiti State Governorship Election Petition Tribunal and declared Dr. Fayemi governor of Ekiti State.<sup>78</sup> This would not have been the case if only two judges sat. In fact, five judges sat at the tribunal level; three gave a majority judgment while two delivered a dissenting judgment that ultimately carried the day. The appellate court held, *inter alia*, that on the totality of the first issue raised by the appellants, it was obvious and overwhelming that the majority of the Judges of the trial tribunal were totally wrong to have refused to nullify the election in all the polling units affected by electoral malpractice and violence.<sup>79</sup> If two panelists were to sit, they could not have resolved any dispute arising in a situation of equality of votes especially where the Chairman did not have a second or casting vote. At any rate, the position of Election Petition Tribunal is still better than that of Code of Conduct Tribunal in three major ways. First, there is a specific provision on its quorum.<sup>80</sup> Secondly, there are Election Petition Tribunals in the 36 States of Nigeria and FCT Abuja.<sup>81</sup> Thirdly, Election Petition Tribunals have continued to always sit with the Chairman and two other members notwithstanding the constitutional amendment.<sup>82</sup> The amendment is, therefore, the law in the book while the practice of three panelists sitting is the living law.

Principles guiding interpretation of the Constitution include the following:

- a. the principle upon which the Constitution was established rather than the operation or literal meaning of words used, measure the purpose and scope of its provisions.

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<sup>75</sup> Rome Statute (n. 73) Article 39 (2) (a), (b) (i-iii), (c).

<sup>76</sup> M.D. Evans, *Blackstone's International Law Documents* (9<sup>th</sup> Ed, Oxford: Oxford University Press, 2009) p.483-486.

<sup>77</sup> O. Kuforji, 'Politics: Inside Story of How Ekiti Governorship Election was Purchased by PDP', *Sahara Reporters* 8 May 2010. <<http://saharareporters-oluseunkuforji.blogspot.com-/2010/05/inside-story-of-how-ekiti-governorship-election-was-purchased-by-pdp.html>> accessed on 1 December 2017.

<sup>78</sup> *Fayemi v Oni* (2010) 17 NWLR (Pt. 1222) C. A. 326; C. Ndujihe and D. Akinyemi, 'Ekiti: How Fayemi Became Governor', *Nigeria Vanguard* 16 October 2010. <[www.vanguardngr.com/2010/10/ekiti-hoe-fayemi-became-governor/](http://www.vanguardngr.com/2010/10/ekiti-hoe-fayemi-became-governor/)> accessed on 1 December 2017.

<sup>79</sup> *Fayemi v Oni* (n. 78) p. 387 paras G-H per Salami, PCA.

<sup>80</sup> CFRN 1999, section 285 (4).

<sup>81</sup> CFRN 1999, section 285 (1), (2).

<sup>82</sup> *M. P. P. v. I. N. E. C. (NO. 2)* (n. 72).

- b. A narrow interpretation that would do violence to the provisions of the Constitution and fail to achieve its goal must be avoided. Thus, where alternative constructions are open, the construction that is consistent with the smooth working of the system, which the Constitution read as a whole has set out to regulate, is to be preferred.
- c. The construction of the constitution should be undertaken as a holistic endeavour.<sup>83</sup>

It is the law, the apex court held, that when interpreting Constitution and statutory provisions, clear and unambiguous words used must be given their plain and ordinary meanings except where such interpretation would lead to manifest absurdity or inconsistency with the rest of the statute, or where the context requires some special or particular meaning should be given to the words. In this case, the words used in paragraph 15 (1) of the Fifth Schedule to the Constitution FRN 1999 (as amended) are clear and unambiguous. The clear and unambiguous meaning of the words is that the composition of the Tribunal in its highest or full capacity consists of the Chairman and two other persons.<sup>84</sup> The question that begs for an answer is: if the provision of paragraph 15 (1) of the CFRN 1999 is clear and unambiguous, what business had the Supreme Court in this case to consult dictionaries and section 28 of the Interpretation Act to aid the construction of that constitutional provision? If the composition of the Tribunal at its highest or full capacity, according to the court, is a Chairman and two other members, it follows that its composition could be less than three persons but it cannot be more than three persons. The court also held that there is no provision for quorum in the paragraph and any interpretation that it so provides would amount to reading words which are clearly not in it.<sup>85</sup> On status of a schedule to an enactment, the court held that a schedule to an enactment forms part of the enactment, and as such paragraph 15 (1) of the CFRN 1999 (as amended) forms part of the Constitution.<sup>86</sup>

On the need to construe provisions of a statute as a whole, the court held that the *meaning of a statute should be looked for not in any single section, but in all the parts together and in their relation to the end in view. In other words, the provisions of a statute should be construed harmoniously.* In *Nobis-Elendu v I. N. E. C.*<sup>87</sup> the Supreme Court held that where a court is faced with the interpretation of statutory provisions, the statute must be read as a whole in determining the objective of a particular provision. Thus, all the provisions of the statute must be read and construed together to determine unless there is a very clear reason why a particular provision of the statute should be read independently. To achieve a harmonious result, a section must be read against the background of another to which it relates. This principle is indispensable in giving effect to the true intentions of the makers of the statute.

The court further held that in the context of the Code of Conduct Tribunal, the objective of the CFRN 1999 (as amended) is to have a functional tribunal which would achieve the purpose of the Fifth Schedule of the Constitution; that is to meet the exigencies of accountability, probity, transparency by public officers.<sup>88</sup>

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<sup>83</sup> *Saraki v FRN* (n. 3) p.631 paras. G-C, P 632 paras. E-F per C. C. Nweze, J. S. C.; *Dapianlong v Dariye* (2007) 8 NWLR (Pt. 1036) 332.

<sup>84</sup> *Saraki v FRN* supra pp. 589-590.

<sup>85</sup> *Saraki v FRN* (n. 3) pp. 589-590, 611, 620, 641-642.

<sup>86</sup> *Saraki v FRN* (n. 3) p.611, *NNPC v Famfa Oil Ltd* (2012) 17 NWLR (Pt. 1328)148; A. E. Chukwu, 'Is the Code of Conduct Tribunal a Court with Powers to Convict and Punish Offenders' (2012) 11 N. L.P. J., 66 at 84-86; *Attorney-General v Lamplough* (1878) 3 Ex. D 214 at 279; F. Bennion, *Statutory Interpretation* (2<sup>nd</sup> Ed, 1992) p.419. cited in A. E. Chukwu above at p.85.

<sup>87</sup> [2015] 23 NWLR (Pt. 1485) S. C. 197.

<sup>88</sup> *Saraki v FRN* (n. 3) p. 631, *Adesanya v President, FRN* [1981] 1 NCLR 293.

Jurisdiction is the authority a court or tribunal has to decide matters presented in a formal way for its decision. It also means the authority which a court or tribunal has to decide matters contested before it or the authority to take cognizance of matters presented in a formal way for its decision. The limits of the authority may be prescribed in a statute under which the court or the tribunal is created. Where a court or a tribunal lacks jurisdiction, it cannot adjudicate in a controversy between litigants before it.<sup>89</sup> Jurisdiction is conferred on a court by clear and express language. Where a court lacks jurisdiction to adjudicate on a cause or matter, its proceedings is an exercise in futility however well conducted. In other words, its proceedings would amount to a nullity ab initio and liable to be set aside.<sup>90</sup>

### 5. Conclusion and Recommendations:

The Supreme Court should have considered the provisions of the Constitution relating to composition and constitution of courts and tribunals holistically and not only on paragraph 15 of the Fifth Schedule to the Constitution. Throughout the Constitution, the ‘constitution or quorum’ sections relating to exercise of jurisdiction by other courts and tribunals, without any exception, use the phrases “duly constituted” and “consists of” together. For instance, section 254E (1) of the Constitution provides that for the purpose of exercising any jurisdiction conferred upon it by this Constitution or any other law, the National Industrial Court shall be *duly constituted* if it *consists of* a single Judge or not more than three Judges as the President of the National Industrial Court may direct. Meanwhile, the Supreme Court made a heavy weather of, albeit literally, interpreting the word “consist”. Again, the Court should have considered prevailing practices in empaneling tribunals or appellate courts. If it had done these, it would have interpreted paragraph 15 of the Constitution and section 20 (2) of the Code of Conduct Bureau and Tribunal Act as requiring the Tribunal to be properly constituted where it sits with the Chairman and two other members of the Tribunal. In the case *Oloriegbe v Omotosho*<sup>91</sup> the High Court of Kwara State while exercising its appellate jurisdiction was constituted with two Judges of the High Court and one Khadi of the Sharia Court in compliance with section 63 (1) of the High Court Law of Northern Nigeria 1963<sup>92</sup> applicable to Kwara State. This was contrary to section 238 of the Constitution of Federal Republic of Nigeria 1979 which allowed at the least one Judge of the High Court to sit for purposes of exercising its jurisdiction. The Supreme Court declared the proceedings a nullity. It must be pointed out that the reason for declaring the proceedings in this case a nullity was not because the judicial officers were three in number; it was because one of them, the Khadi, was not qualified to sit in that panel. Section 238 of the 1979 Constitution provided that for the purpose of exercising any jurisdiction conferred upon the High Court of a State under the Constitution or any other law, *it should be duly constituted if it consisted of at least one Judge of that Court*. The implication is that the court could be constituted if it consisted of more than one of its Judges (and the number is open). All the Judges of the Court could sit in one panel to exercise its original and appellate jurisdiction.<sup>93</sup>

In *Wuyep v Wuyep*<sup>94</sup> the Court of Appeal held that an Area Court was properly constituted when it consisted of two members as against three members provided for under section 4 (3) of the Area Courts Edict of Plateau State 1963. The Court justified its decision on the fact that the Chief Judge had pursuant to his powers under the Area Courts Edict directed the number of members to be otherwise than three.<sup>95</sup>

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<sup>89</sup> *Saraki v FRN* (n. 3) pp. 588-589, *National Bank of (Nig.) Ltd v Shoyeye* [1977] 5 SC 181.

<sup>90</sup> *Saraki v FRN* (n. 3) pp. 630, 617; *Akinpelu v Adegboro* [2008] 10 NWLR (Pt. 1096) 531.

<sup>91</sup> [1993] SCNJ 30 at 54.

<sup>92</sup> Cap 49 Laws of Northern Nigeria 1963.

<sup>93</sup> CFRN 1999, sections 272 (2), 273.

<sup>94</sup> [1997] 10 NWLR (Pt. 523) C. A. 154.

<sup>95</sup> Area Courts (Jurisdiction) Edict No. 4 of 1968; F. O. Ogbuinya, *Understanding the Concept of Jurisdiction in the Nigerian Legal System* (Enugu: Snaap Press, 2008) pp. 74-77.

This decision cannot sail in our present democratic dispensation. Only the Legislature has the constitutional powers to make and amend the laws.<sup>96</sup> State Laws enabling Governors, Attorneys-General, Chief Judges or the State Judicial Service Commission to alter any aspect of the jurisdiction of courts, be it subject matter or composition/constitution of the courts, are unconstitutional and void.<sup>97</sup> Indirectly, it is the Judiciary that plays a legislative role as the essence of judicial decision making, and not simply something they do in cases where the law is unsettled.<sup>98</sup>

In *S. P. D. C. N. Ltd v Ajuwa*<sup>99</sup> the respondent did a petition to the House of Representatives over oil spillages and sundry exploitative activities of the appellant on their environment. The House after investigating the petition awarded \$1.5b against the appellant. It was the failure of the appellant to pay the said compensation that triggered the action that led to this appeal. The court held that the judicial powers of the court are to interpret the law. The power to amend either a statute or the CFRN 1999 does not reside in the court. The judicial power vested in the court by the Constitution does not extend to amending or repealing any provision of the Constitution. It would be unconstitutional if the judicial functions of the courts are to be interfered with by the legislature. Conversely, it would be unconstitutional if the legislative functions of the National Assembly are also interfered with by the courts.<sup>100</sup> However, the courts have power to declare any Act or Resolution of the National Assembly inconsistent with the provisions of the Constitution null and void.<sup>101</sup> The courts interpret the law to suit the need of the society. The courts must not interpret the law as if the draftsman intends statutory provisions to be on a collision course with each other. They must be construed on the understanding that the draftsman does not intend to contradict himself.<sup>102</sup> And where such contradictions or collisions occur in interpretation of the Constitution or other statutes, the Supreme Court should overrule or set them aside, including its own decisions, in appropriate cases.<sup>103</sup>

Shortly after the Supreme Court decision in *Saraki v FRN*<sup>104</sup> the National Assembly embarked on the amendment of the Code of Conduct Bureau and Tribunal Act. Prominent among the proposed amendments, is to provide that where assets declarations do not comply with the requirements of the Act and any other law for the time being in force, the Bureau shall invite the public officer concerned and take down his statement in writing.<sup>105</sup> Secondly, where the Bureau receives any complaint about non-compliance with or breach of the Act, and where having regard to any statement taken or to be taken after such subsequent complaint is made considers it necessary to do so, investigate the complaint and where appropriate, refer such complaint to the Code of Conduct Tribunal.<sup>106</sup> The amendment also seeks to repeal paragraph 17 of the Tribunal's Rule of Procedure.<sup>107</sup> The said paragraph 17 provides

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<sup>96</sup> Section 5 CFRN 1999.

<sup>97</sup> Magistrates Court Law of Lagos State 2009, section 30 (2); Magistrates Courts Laws of Edo and Ondo States respectively, section 24.

<sup>98</sup> J. E. Penner (n. 4) p.56.

<sup>99</sup> [2015] NWLR (Pt. 1480) C. A.

<sup>100</sup> *S. P. D. C. N. Ltd v Ajuwa* (n. 99) p.488 paras. A-C per Nwodo J. C. A.

<sup>101</sup> *S. P. D. C. N. Ltd v Ajuwa* (n. 99) p. 490 paras. D-F per Eko J. C. A.

<sup>102</sup> *Fescum & Co. Ltd v F. A. A. N.* [2015] 14 NWLR (Pt. 1480) C. A. 491 at 507, paras. B-C per Ikyegh, J. C. A.

<sup>103</sup> *Jev v Iyortom* [2015] 15 NWLR (Part 1483) S. C. 484 at 509-510, paras G-C per Mohammed, C. J. N.; *Adegoke Motors Ltd v Dr. Adesanya & Anor* [1989] 3 NWLR (Pt. 109) S. C. 250 at 274 per Oputa, J. S. C.

<sup>104</sup> *Saraki v FRN* (n. 7).

<sup>105</sup> Code of Conduct Bureau and Tribunal Act (Amendment) Bill 2016, section 2; s 3 (b) of the Principal Act.

<sup>106</sup> Code of Conduct Bureau and Tribunal Act (Amendment) Bill 2016, section 2; section 3 (d) of the Principal Act.

<sup>107</sup> Code of Conduct Bureau and Tribunal Act (Amendment) Bill 2016, <lawpavilion.com/blog/code-of-conduct-bureau-and-tribunal-act-amendment-bill-2016/> accessed on 1 December 2017.

that the Tribunal could resort to the Criminal Procedure Act or Code where there is no provision in its Procedure for dealing with any Tribunal. Therefore, the following recommendations are made:

1. The Supreme Court should set aside and depart from its decision in *Saraki v FRN*<sup>108</sup> when opportunity presents itself to do so. Courts play interpretative and legislative roles. In *Awolowo v Shagari & Ors*<sup>109</sup>, the Supreme Court interpreted two-thirds of 19 States to mean 12 2/3 States. The Court held that the duty of the court is to interpret the words that the legislature used; those words may be ambiguous, but, even if they are, the power and duty of a court to travel outside them on a voyage of discovery are strictly limited.<sup>110</sup> In *Wada v Bello*<sup>111</sup>, the Supreme Court held that a party the death of the original candidate of APC (second respondent in the appeal) after the commencement of the poll in the November 21 election in Kogi State left a yawning gap in the Nation's electoral process without any provision for filling the gap. In the situation such as this, it amounts to abdication of duty for the electoral empire and the tribunal to fold their hands and bemoan the facts that the Legislature failed to do the impossible, that is, providing for all the exigencies both in the present and in the future in their legislative duties. The court held that a political party could replace its dead candidate and inherent his votes.<sup>112</sup> It should hold that CCT is properly constituted if it consists of the Chairman and two other members.
2. The Code of Conduct Bureau and Tribunal Act and the Constitution should be amended by the National Assembly to specifically provide for the quorum or constitution of the Tribunal.
3. More members of the Tribunal should be appointed for the effective discharge of its constitutional mandate.
4. Three members should sit in each Geopolitical Zone of Nigeria. The Tribunal is central to achieving transparency and probity in the Public Service. There is no good reason to have only one panel for the whole nation.

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<sup>108</sup> (n. 7).

<sup>109</sup> [1979] NSCC 87.

<sup>110</sup> *Mellons Rural District Council v Newport Corporation* [1952] A. C. 189 at 191.

<sup>111</sup> [2016] 17 NWLR (Pt. 1542) S. C. 374.

<sup>112</sup> *Wada v Bello* (n. 111) p.247, paras. D-F per Ngwuta, J. S. C.; *Faleke v I. N. E. C.* [2016] 18 NWLR (Pt. 1543) S. c. 63 at 126-127.