

ANALYSIS OF WHETHER CIVIL PROCEDURE RULES OF COURT ARE SUPERIOR TO THE LAW ESTABLISHING SUCH COURT: A CASE FOR THE REVIEW OF TARABA STATE AREA COURTS EDICT 1988 AND THE AREA COURTS (CIVIL PROCEDURE) RULES 1971

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Abstract: Civil Procedure Rules are made out of the powers conferred on the enacting Judicial Officer usually the Chief of the State to make practice and procedure for administration of justice in Courts within such state. It is an exercise of powers derived from the principal law. The principal law is the foundation while the procedure or practice is built on the foundation. The principal law is superior and should have overriding effect over the procedural law if both comes in conflict on an issue regarding administration of justice and procedure in Courts. This article aim to query and ascertain the propriety or otherwise of civil procedure rules of a court being interpreted to be superior to the law which established such court or interpreted to mean that until powers of the Chief Judge to make recent civil procedure is activated, the literal meaning of the words of the establishing law will not be superior to extant civil procedure rules. The article adopts the doctrinal methodology with particular reliance on sections of the Taraba State Area Courts Edict 1988 and the Area Courts (Civil Procedure) Rules 1971. It consulted secondary sources related to the topic. The article found that the Taraba State Area Courts Edict 1988 and the Area Courts (Civil Procedure) Rules 1971 predates the creation of Taraba State and do not represent a 21st century legal framework for administration of justice in the state. It recommended that the Taraba State House of Assembly amend the Area Courts Law while the Chief Judge should urgently issue a new Area Courts (Civil Procedure) Rules for the State.

Keywords: Taraba, State, Area, Courts, Law and Civil-Procedure-Rules.



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INTRODUCTION

The rationale for establishing Courts at rural and urban cities is to keep citizens close to access to justice and maintenance of law and order for a prosperous society (Falana, 2017). Courts are seen as the hope of the common man (Ikimi, 2022). It is a place where all are treated equal before the law. Courts are usually created or established by a law (Stein, 2029). That law may empower the Chief Judge to, by warrants, establish other divisions or district of inferior courts for that state (Pfander, 2013). Besides the law which establishes a Court, Courts are to administer justice through a laid down procedure so that what is done to one is equally done to another. Rules of Court are promulgated by virtue of powers vested in the promulgating authority from the principal law which established such Courts. Instruments or rules of practice or procedure made from such laws are equal to and not greater than the law itself. When there arises conflict or contention, the law ought always to prevail because it is the source from which the rules emanated. Where it is otherwise, it raises the question of

which is superior: the rules made from the law or the law from which the rules were formulated.

METHODOLOGY

This article adopts the doctrinal methodology of research with data drawn from Taraba State Area Court Edith 1988 now Laws of Taraba State 1997; and, Taraba State Area Courts Civil Procedure Rule 1971 and other Acts and Laws. The choice for doctrinal intends that the recommendation be implemented through enactments by the House of Assembly of Taraba State; and, a Practice Direction in the interim but Civil Procedure Rules in the long term by the hand of the Chief Judge of Taraba State for seamless administration of justice at the lower Courts.

LITERATURE REVIEW

The Concept of Delegated Legislation

Legislative powers are powers to make, enact, promulgate or cause a law to come to existence or to change amend or modify a law. Section 4(7) of the Nigerian Constitution provides to the effect that “The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State”. The duties or responsibilities of making laws for Taraba State vest in the State House of Assembly. It follows that the Judiciary of the State cannot make laws unless such power is delegated by a law passed by the State House of Assembly (section 274, Constitution of the Federal Republic of Nigeria [CFRN] 1999). The Constitution in section 274 provides that “the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State” subject to any law made by the House of Assembly of the State. The Chief Judge of a State cannot make practice or procedural rules unless a law enacted by the State House of Assembly authorises it. Delegated legislation is authorisation to legislate by persons other than legislators. The instrument by which such authorisation is given may specify the extent to which the person or body named should exercise legislative powers.

Chinwo, (2021) contends that delegation is “the vesting of authority on a person or body to act on behalf of or pursuant to the mandate, direction or instruction of another person or body upon whom such power, mandate duty is primarily vested”(Chinwo, 2021:72) The same author in his earlier of the cited had said delegated legislation come in different forms: the Bye-Laws of made by local government councils, standing orders or compulsory purchase orders, regulations made by government department and ministries as well as rules of court, and the rules of professional conduct among others (Chinwo, 2008:26).

There are so many reasons for delegation of legislative powers to the Chief Judge of a State to legislate on matters of practice and procedure which Courts in the state will follow in delivery justice. Time for details required in the procurement of peculiarities of Court procedure may not be available to the legislature hence they delegate the Chief Judge. Technicality involved in promulgating special aspects of judicial proceedings may be another reason. The rules of procedure target all circumstances conceivable in legal proceedings hence the need for those who are masters and specialised in the field to take on the responsibility. Delegation of powers to make rules to the Chief Judge is to allow for flexibility. Rules are supposed to follow recent happenings and not be too archaic for modern litigation transaction. A rule governing civil proceedings should respond to emerging trends and not draw lawyers and litigants back to status quo of 1971 when in 21st century.

The Theory of Conflict of Law

A law is said to be in conflict if it has capabilities for dual interpretation or it provides opposing things on same subject matter. If a law which was supposed to provide guidance or explanation (like regulations) contains words which are capable of introducing meanings which are contrary to what the principal legislations enacts, such law or rule is said to be in conflict with the other. How to resolve conflict of law is by applying the principal law with explanations, where necessary, from the subordinate law. The establishment law for Area Courts for instance, is the law to extrapolate when answering questions as to the propriety or otherwise of conflict between the enabling law and the Rules made pursuant to it.

Again, the interpretation given to sections 17, 19 and 23 as though they were contrary to and inconsistent with section 71 of the Area Courts Edict in the case of Prof. K.T. Oweh vs Jafaru Ibrahim, is so lean to offer any objective reason for any conflict between those sections as discussed below. Section 71 Area Court Edict give powers to the Chief Judge of the State to make rules of practice and procedure for Area Courts in Taraba State while section 23 (1) of the same Edict offers that until the Chief Judge exercises such powers as are vested in the office under section 71, sections 17 and 19 of the Area Courts Edict is to be administered and applied by Area Courts in Taraba State.

Could the conflict so supposedly exist in the figment of academic imagination? Or could it be real and factual? This article offers in the negative that there is not an iota of conflict between sections 17, 19 and 23 Area Courts Edict; as against section 71 Area Courts Edict, Order 13 Rule 5 of the Area Courts (Civil Procedure) Rules 1971. The intention for section 71 was to create a judicial law making to suit the technical peculiarities of the

administration of justice in Court. Then, sections 17 and 19 offers that methods which are not incompatible with the Edict or Law and which accords with principles of natural justice equity and good conscience can be adopted in Area Courts. This is not conflict but complementary and consistent with a standard check for judicious law making.

RESEARCH ANALYSIS

Taraba State Area Courts Edict 1988

The long title of the law as captured on the face of the edict reads “An Edict to Establish and Regulate Area Courts in Gongola State” 1988 with its commencement date of 29 June 1988 (Area Courts Edict, 1988, CAP 11, Vol. 1, Laws of Taraba State 1997.). Section 51 of the aforementioned law was amended in 2007 to provide for appeals from area courts to lie straight to the Sharia Court of Appeal on Islamic personal law; to the Customary Court of Appeal on customary law matters; and, in any other matters to the High Court (section 3, Taraba State Area Courts Edict (Amendment) Law 2007). It took about 10 years from when Taraba State was created to amend only section 51 of the Area Courts Law and there had not been any new Civil Procedure Rules for administration of justice at the Area Courts even though times and practice of 1971 is no longer the practice of the 21st century.

Laws to be administered by Area Courts in Taraba State

The giving of section 17 of the Area Courts Edict of Taraba State is that the law to be administered in the Area Courts in the state are those which are prevailing in the area or binding between parties (section 17(1)(a)(i&ii) Area Courts Edict 1988); any written law which the court is authorised to enforce – the Governor may enlarge the jurisdiction of a Court in the State (section 17(1)(b) Area Court Edict); any rule or order made by the local government (section 17(1)(c) Area Court Edict). Area Courts are to administer laws which are not repugnant to natural justice, equity and good conscience (section 17(2)(a) Area Court Edict); those which are not incompatible with any written law in force (section 17(2)(b) Area Court Edict). In instances of mixed civil causes other than for land, section 19 of the Area Courts Edict provides that the customary law to which parties agreed, or intended or may be presumed to have agreed or intended or a combination of those shall apply (section 19(1)(a) Area Court Edict). Where parties did not agree or intended and it may not be presumed that they intended or agreed, the Court shall apply the customary law which it deemed fit for the transaction between the parties (section 19(1)(b) Area Court Edict). The proviso is that where the customary could not be agreed or intended or fitting to be adopted by the court for the parties, the Court should apply principles of natural justice equity and good conscience (Proviso to section 19(1) Area Court Edict). Section 23 of the Area Court Edict provides that subject to the Edict or any written law and “to any rules which may be made under section 71”, section 17 and 19 shall apply in regulating practice and procedure in civil causes and matters at the Area Courts (section 23(1) Area Court Edict). It is argued that the literal implication of the words “to any rules which may be made under section 71” is that until any such rules are made, sections 17 and 19 applied in civil causes and matters before the Area Courts in Taraba State. This work did not find any rules made pursuant to section 71 as from the commencement date of the Area Court Edict or the 1997 laws of the State.

Area Courts (Civil Procedure) Rules 1971

The Area Courts (Civil Procedure) Rules, 1971 was made to commence on 1st July 1971. The Rules were made in the years when the defunct Gongola State existed. Taraba State adapted this Rules for its Area Courts (section 71, Area Court Edict). Of particular interest to this article are the Area Courts Civil Procedure Rules, Order 13 Rules 4&5 thereof. Order 13 Rule 5 is to the effect that the method for receiving evidence at the Area Courts in Taraba State was through oral evidence recorded in a book by the Judge or Clerk (Order 15 Rule 5, Area Courts (Civil Procedure) Rules 1971). Order 13 Rule 5 of the Area Courts (Civil Procedure) Rules 1971 provides “The Judge or clerk shall write in the appropriate record book the oral evidence given before the Court.” This, by literal interpretation, would mean that the only method for evidence taking in the Area Court or Upper Area Court is by oral evidence which the record will record. On the method of evidence for Area Courts, the Civil Procedure Rules provides under Order 13 Rule 4 thus “All evidence given before a court and the method by which such evidence may be given and recorded by a court shall be in accordance with the native law and custom applicable to the cause or matter under consideration” (Order 15 Rule 4, Area Courts (Civil Procedure) Rules 1971). This order too when given literal interpretation will mean that all evidence are to be taken in accordance with applicable custom and native law. If the cause or matter is outside native law, what happens then? What the Law offers is sections 17&19 of the Area Courts Edict supra.

It does appear also that the Rules does not admit of only oral evidence in the Area Courts. Order 5 Rule 2 provides inter alia “Unless the Court shall otherwise order, no motion shall be entertained by the court until the party moving has filed a motion paper...” It follows that the Court can or does admit paper written evidence in determination of motion. This can be extended to Witness Statement on Oath especially where no harm will be done to the other party and the principles of natural justice are complied with. After all, motion paper contained written evidence like the witness statement on oath.

RESULT

Taraba State Area Courts Law and Area Courts Rules which is Superior

This article was prompted by arguments which ensued in a matter before Upper Area Court Wukari, Taraba State in the case of Prof. K. T. Oweh vs. Jafaru Ibrahim (Prof. Oweh v Ibrahim, 2023). In that case of Prof. K.T. Oweh vs. Jafaru Ibrahim, the Plaintiff filed and served a Witness Statement on Oath which was objected to by the Defendant Counsel on the grounds that it was not consistent with Order 13 Rule 5 of the Area Court (Civil Procedure) Rules 1971. The Court adjourned for the Plaintiff and Defendant Counsel to address it on the issue. The Plaintiff relied on sections 17, 19 and 23 of the Taraba State Area Courts Edict 1988 now Area Courts Law 1997 to point out that first, the matter was based on sales of goods which is outside the customary law oral testimony envisaged under Order 13 Rules 5 of the Area Courts Rule. The Plaintiff Counsel maintained that the Area Courts Law was superior to the Area Courts Rules and so whatever method of evidence consistent with the principles of natural justice equity and good conscience should serve parties until the Chief Judge exercises the powers under section 71 of the Area Courts Law. The Plaintiff Counsel concluded that section 23(1) of the Area Court Law provides inter alia that “sections 17 and 19 shall apply in the regulation of the practice and procedure of Area Courts in civil causes and matters.” For the Plaintiff, until the Chief Judge of the State makes rules pursuant to section 71, the use of Witness State on Oath is consistent with sections 17, 19 and 23 of the Area Courts Law and so valid method or procedure in Upper Area Court Wukari.

The Counsel for the Defendant on his part argued that section 71 of the Area Courts Law was sacrosanct in determining which method of giving evidence was applicable in Upper Area Court Wukari. He maintained that until the Chief Judge exercises such discretion vested by the enabling law, no other procedure will be valid except those outlined in the extant Area Courts Rule 1971. He cited Order 13 Rules 5 which provides “The judge or clerk shall write in the appropriate record book the oral evidence given before the Court.” The Counsel concluded that literal interpretation be given to the cited Order and Rule.

The Court in delivery its ruling on the issue said “This court took it time to carefully peruse the authority cited by the Plaintiff’s counsel on the propriety of the methodology he adopted in prosecuting this case particularly section 17, 19 and 23 of the Area Court Law of Taraba State, and ORDER 13 RULE 4 of the Area Court Civil Procedure Rules... The methodology adopted by the plaintiff is very strange to this court. It is a total misapplication of the law cited by the plaintiff’s counsel to rely on those laws in order to adopt the procedure he adopted for himself.” As part of the Court’s obiter, it said “In sum, if one considers the benefits and importance of frontloading system, it is my prayer that in the nearest future, the system shall be adopted and applied at the lower courts for quicker dispensation of justice considering the fact that the bulk of our cases are handled by the courts of the lower cadre. I strongly believe that this is the desire and wishes of the learned counsel for the plaintiff that triggered him to adopt this procedure. But with the extant legal framework governing proceedings in this court, this procedure cannot be adopted in this court” (Prof. Oweh v Ibrahim supra).

Where there are two opposing arguments, one hinged on the Area Courts Law and the other anchored on the Area Courts Rules on the validity of a Witness Statement on Oath filed and served the other party at a proceeding in Upper Area Court, which should be given affirmation by the Court? The law is trite that principal legislation give birth to subsidiary legislation (PENGASSEN v Chevron, 2020). It is also trite that any law establishing a Court is the conduit and umbilical cord from which the rules of that Court could exist; and so, such rules of Court cannot be more valid than the law. Where the law establishing a Court has permitted the method for doing a thing or such law has covered the procedure adopted by a party in the Court, that the Rules of the Court provides otherwise should vitiate the method which is compatible with the law establishing the Court. Particularly if the transaction called to question at the Area Court is such that are unknown to customary law like it was in Prof. Oweh’s case The idea intended to be communicated was captured by Iguh, (2010) when that author said:

There are many activities in contemporary Nigeria, which did not exist, in the traditional societies of the country, nor has the adaptability of customary law enabled it to fill all the gaps. It is that situation which makes the exception both prudent and essential. In many respects, it will coincide with the other exception. For often to enter a transaction that is only recognized by English law may be construed as an agreement to be bound by that law. This provision is a mere truism and thus redundant as it states an obvious fact for if a transaction is unknown to customary law, customary law cannot govern it and has no benefits of

its own to bestow upon any person in relation to the transaction (Iguh, 2010:1)

The law is settled that for a subsidiary legislation (like the Area Court Civil Procedure Rules) to be valid in a constitutional democracy like Nigeria, the legislation must not be inconsistent but must be compatible with the principal or enabling Act (SEC v. Big Treat Plc, 2020). The proviso to section 19(1) of the Taraba State Area Court Law provides that “but if in the opinion of the Court, none of the paragraphs of this subsection is applicable to any particular matter in controversy, the Court shall be governed by the principles of natural justice, equity and good conscience” (Proviso to section 19(1) Area Courts Edict) In a scenario where the subject of matter of the suit is a commercial transaction involving sales of Television Set covered by Sales of Good Law which is outside customary law and practices, should the appropriate law applicable (according to the proviso) not be principles of natural justice (which dictates that a Court should hear from both sides)? This is arguably the correct method an Area Court should adopt when faced with matters which do not fall within customary law.

DISCUSSION

The results obtained from the concentration accuracy analysis of the participants in this study using the sensor indicate an interesting finding regarding age groups. Specifically, it was observed that individuals between the ages of 21 and 23 exhibited the highest levels of focus. This finding aligns with previous research suggesting that cognitive abilities and attentional capacity tend to be at their peak during young adulthood. The heightened focus observed in this age range may be attributed to factors such as enhanced cognitive processing, reduced distractions, and increased motivation and engagement. It is important to note that age-related differences in concentration accuracy may be influenced by various factors, including neurological development, life experiences, and individual differences in cognitive abilities. Further investigation is required to better understand the underlying mechanisms contributing to the observed differences in concentration accuracy across age groups. These findings have implications for the application of the sensor technology in various contexts. By identifying the age range with the highest levels of focus, the sensor can be optimized for targeted interventions, such as cognitive training programs or attention-enhancement techniques. Additionally, these results highlight the importance of considering age as a factor in future studies involving the sensor and its potential applications in clinical and educational settings. It is important to acknowledge that concentration accuracy is a complex construct influenced by multiple factors beyond age alone. Future research should explore additional variables, such as gender, cognitive abilities, and environmental factors, to provide a more comprehensive understanding of concentration accuracy across different populations.

CONCLUSION

The words of the Learned Area Court Judge, the Hon. Abdulrahman Usman, “if one considers the benefits and importance of frontloading system, it is my prayer that in the nearest future, the system shall be adopted and applied at the lower courts for quicker dispensation of justice considering the fact that the bulk of our cases are handled by the courts of the lower cadre. I strongly believe that this is the desire and wishes of the learned counsel for the plaintiff that triggered him to adopt this procedure.” It is believed that the principal law establishing a Court should govern practice and procedure in such Courts as to say otherwise would be elevating rules higher than the source from which they are derived.

It is recommended that the Taraba State Area Courts Edict 1988 now CAP 11, Volume I, Laws of Taraba State 1997 be amended to suit modern legal practice and court procedure; and, the Chief Judge should urgently deploy his powers under section 71 of the Area Courts Law to promulgate Area Courts Civil Procedure Rules which offers quick, easy and appropriate justice delivery at the Area Courts levels; the learned Chief Judge may in the interim enact a Practice Direction.

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