Introduction

It is part of the criminal policy as well as the adjudicatory system of our nation that a criminal court must have jurisdiction to entertain a criminal matter before it. Until recently, the arduous task of the exercise of criminal jurisdiction which is an essential feature of criminal justice administration was that of regular courts and Special Military Tribunals, though in the case of the latter the exercise of criminal jurisdiction over the civilian only became a prominent feature around 1970s, few years after the commencement of military rule.

The major aim of this paper is to analyze the jurisdiction of the various strata of courts in criminal proceedings in Nigeria, taking into account the existing literature as well as recent developments. In examining the jurisdiction of courts in criminal cases in Nigeria, it is imperative to first decipher its meaning. Black Laws Dictionary provides an exhaustive definition of the term. It says jurisdiction:

is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties ... the power of courts to inquire into facts, apply the law, make decisions and declare judgment; The legal rights by which judges exercise their authority.¹

At the Nigerian level, Suleiman Nchi defines jurisdiction thus:
The power or competence of a court to entertain an action or dispute and decide it, ... territorial limits within which judicial or legislative authority may be exercised and enforced.²

Nigerian jurists have also made illuminating contributions while exposing the significance of jurisdiction in proceedings generally. According to Justice Kayode Eso:

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¹ Black Laws Dictionary
² Suleiman Nchi
The sub-stratum of a court is no doubt jurisdiction. Without it, the “labourer” therein, that is both litigants and counsel on the one hand, and the judge on the other hand, labour in vain.  

No less illuminating in this regard is the contribution of Justice Akpata. In his words said:

A court with jurisdiction builds on a solid foundation because jurisdiction is the bedrock on which court proceedings are based, but when a court lacks jurisdiction and continues to hear and determine judicial proceeding; it builds on quicksand and all proceedings and steps taken on it will not stand.

In a nutshell, jurisdiction may be defined as the authority of a court of law to exercise judicial power in a matter brought by litigants and pronounce judgement on the matter or issues raised.

In criminal cases a court would possess the required jurisdiction if it has the competence to try the person or persons alleged to have committed an offence having regard to the nature of the allegation or offence in question.

Jurisdiction to hear criminal cases in Nigeria can be divided into two categories. In the first place there are courts with jurisdiction to try persons who are alleged to have committed an offence or offences. These are courts of general criminal jurisdiction. Secondly, there are courts of law with jurisdiction to try only certain identified persons or determinate classes of persons alleged to have committed an offence. These are known as courts of special criminal jurisdiction.

It is thus understandable that the issue of jurisdiction is of paramount importance in a criminal trial. It is so important that it can be raised at any point, whether at the court of first instance or on appeal and at the instance of either of the parties or by the court.

**Court of Criminal Jurisdiction in Southern States of Nigeria**

We may now consider first courts of general criminal jurisdiction in the Southern States of Nigeria. Since it is obviously impossible to touch on all Magistrate courts in the Southern part of Nigeria, it will suffice to use
Lagos State as an example. In Laos State the various grades of Magistrate courts are set up pursuant to the Magistrate Courts Law of 1994, Laws of Lagos State. There are seven grades of Magistrate courts in Lagos State. We shall consider the jurisdiction to try offences as well as the jurisdiction to prescribe punishment. With respect to jurisdiction to try offences, Lagos State has seven grades court namely:

(a) Chief Magistrate Court Grade I  
(b) Chief Magistrate Court Grade II  
(c) Senior Magistrate Court Grade I  
(d) Senior Magistrate Court Grade II  
(e) Magistrate Court Grade I  
(f) Magistrate Court Grade II  
(g) Magistrate Court Grade III

The Magistrate Court Law of the Lagos State 1994 regulates the jurisdiction of the Magistrate Courts in Lagos State to try and impose punishment. The jurisdiction to try offences depends on the type of offence i.e. whether it is an indictable or non-indictable offence.\(^5\)a One normally have to peruse the provision of a penal statute to determine its true character. Except in murder cases, all grades of the magistrates have jurisdiction to try non-indictable offences, while magistrates ranging from Chief Magistrate Court Grade I up to Magistrate Court Grade I.\(^5\)b Magistrate Court Grade II and III are thus the only category of courts that lack such jurisdiction.

In murder cases a magistrate court having jurisdiction to try an indictable offence may posses the jurisdiction to try murder cases where the necessary consent of the accused person is obtained. It is mandatory for a magistrate to obtain the consent of the accused as well as that of the prosecutor where the prosecutor is a State Counsel.\(^6\) The required consent is in relation to the accused persons right to elect whether to be tried summarily by the magistrate court or by the High Court. The consent requirement is fulfilled once the accused signals his intention to be tried by the magistrate court.
With respect to jurisdiction to try offences, stated alongside the various categories of magistrate courts are the maximum punishments which each of such magistrate court can impose in criminal matters.\(^7\)

1. **Chief Magistrate Court Grade I**  
   7 years imprisonment  
   N4000 fine

2. **Chief Magistrate Court Grade II**  
   6 years imprisonment  
   N3000 fine

3. **Senior Magistrate Court Grade I**  
   5 years imprisonment  
   N2000 fine

4. **Senior Magistrate Court Grade II**  
   4 years imprisonment  
   N1000 fine

5. **Magistrate Court Grade I**  
   3 years imprisonment  
   N500 fine

6. **Magistrate Court Grade II**  
   2 years imprisonment  
   N300 fine

7. **Magistrate Court Grade III**  
   1 year imprisonment  
   N100 fine

It is now settled law that a magistrate court in Lagos State is not allowed to impose punishment in excess of its jurisdiction except as may be permitted by the Attorney General of Lagos State on the recommendation of the Chief Judge of the State by notice in the gazette. The attitude of the court towards the imposition of punishment beyond the maximum allowed is exhibited in *Emone v. Police*\(^8\) and a host of other cases.\(^9\) In the Emones’s case the accused was brought before a Grade II Magistrate Court on a charge containing three count offences. By the definition of the offence only one-year imprisonment and a fine of N200.00 was allowed under the then magistrate court law. The magistrate in apparent violation of the provision of the law imposed a consecutive term of imprisonment amounting to two years. On appeal to the High Court, the conviction was set aside for being in excess of the maximum prescribed by the Magistrate Court Law.

The earlier doubts as regards whether a magistrate could prescribe punishment and sentence in excess of the maximum was sparked off by
the provision of Section 380 of the Criminal Procedure Act that provides thus:

Where a sentence of any person by a court, the court may order that the sentence shall commence at the expiration of any other term of imprisonment to which the person has been previously sentenced by any competent tribunal in Nigeria so however that where two or more sentences passed by a magistrate court are ordered to run consecutively the aggregate term of imprisonment shall not exceed four years or limit of jurisdiction of the adjudicating magistrate whichever is greater.

What the courts have done to resolve the controversy is to interpret the provision especially the second arm of Section 380 subject to the Magistrate Courts Law of Lagos State is seen in *Emone’s case* and others.

Jurisdiction to punish arises only when a magistrate in Lagos State has the jurisdiction to try the offence. Doherty illustrates the significance of the distinction with the provision of Section 407 of the Criminal Code. The learned author states that:

The offence of demanding property by written threats constituted under Section 407 is an indictable offence because the punishment prescribed for the offence exceeds two years imprisonment. Being an indictable offence, all grades of magistrates except Magistrate Grade III are vested with jurisdiction to try the offence, provided the consent of the accused is obtained and that of a State Counsel is obtained, if a State Counsel is prosecuting the case. After assuming jurisdiction of the accused is convicted the magistrate has jurisdiction to impose punishment. Although the maximum punishment prescribed for the offence is 14 years imprisonment, no grade of magistrate can impose a 14 years imprisonment. Therefore, the magistrate should impose a sentence within his limit of his jurisdiction.

Thus once a magistrate has the jurisdiction to try an offence he could also punish provided the punishment prescribed does not exceed the limit of his jurisdiction.

**Magistrate Courts Appellate Jurisdiction**
In the Southern States of Nigeria, Magistrate Courts have appellate jurisdiction in criminal cases in appeals from Customary Courts, Lagos State affords an example. Under Section 41 of the Customary Courts Law of 1994 an aggrieved person has the right of appeal against the decision of the Customary Court to a Chief Magistrate Court.

**Customary Courts**

The Customary Courts are constituted by Customary Courts Laws of the various States. In Lagos State, it is constituted by the Customary Court Law of 1994, Laws of Lagos State. The jurisdiction of the Customary Court Law of Lagos State is in relation to the trial of offences against local authority bye-laws or where jurisdiction is expressly conferred on it by the States Assembly. It also has jurisdiction over contempt committed in the face of the court. The maximum limit of its jurisdiction in terms of punishment in Lagos State is N2000 or 1 month imprisonment.\(^\text{10}\)

**States High Courts**

The States High Courts in Nigeria encompassing both North and South have jurisdiction in criminal cases in the same manner as the High Court of Justice in England.\(^\text{11}\) Section 272(1) of the Constitution provides with respect to the judicial powers of the State High Court thus:

> Subject to the provisions of Section 251 and other provisions of this constitution, the High Court of a State shall have jurisdiction to hear any criminal proceedings involving or relating to any penalty, for future, punishment or other liability in respect of an offence committed by any person.

And Section 272(2) also provides that:

> The reference to civil or criminal proceedings in this section includes reference to proceedings, which originate in the High Court of a State and those, which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

As is apparent from the above constitutional provision, the limit of the jurisdiction of the State High Court on any matter brought before it is only
to the extent of the jurisdiction of the Federal High Court provided under Section 251 of the Constitution.

It is also evident from the provision of Section 272(2) that the criminal jurisdiction of States High Courts is divided into two, namely:

(a) Jurisdiction over federal offences
(b) Jurisdiction to hear and determine appeals from Magistrate Courts in criminal cases.

The question whether or not States High Court have jurisdiction over Federal offences was settled in Bronik Motors v. Wema Bank Ltd. In the case the counsel for the appellant contended that the Constitution of 1979 clearly demarcated the jurisdiction of State and Federal High Court, and that while State High Courts were restricted to State offences, those of the Federal High Courts related to Federal offences. The Supreme Court rejected the appellants contention and held that the jurisdiction of both the State and the Federal High Courts are as provided for in the specific provisions of the Constitution of the Federal Republic of Nigeria.

It is timely to add here that in 1999 the Federal Government promulgated Decree No. 62 of 1999 whose provisions had far reaching consequences on the jurisdiction of the States High Courts. Under Part II of the schedule to the Decree, offences created under the listed decrees were made part and parcel of the jurisdiction of the State High Courts. These were:

(a) Robbery and Firearms (Special Provisions) Decree 1984;
(b) Advance fee fraud and other related offences Decree 1995;
(c) Students’ Union Activities (Control and Regulation) Decree 1989;

It is worthy of note that the High Court of a State may also exercise jurisdiction over economic and financial crimes depending on the nature of the crime in question. Section 18 of the Economic and Financial Crimes Act of 2002, states that the Federal High Court or the High Court of a State has jurisdiction to try offences under this Act.
Section 18(2) also states that the court shall have power notwithstanding anything to the contrary in any other enactment to impose penalties provided for in this Act. The nature of offences over which the court may exercise jurisdiction are stated under section 17 of the Act. They are:

(a) Engaging without lawful authority in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence referred to in the section.

(b) Engaging without lawful authority in the management, organization of financing of any of the offences under the Act, or

(c) Engaging without lawful authority in the conversion or transfer of authority knowing that such property is derived from any offence under the Act, or

(d) Engaging without lawful authority in the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property knowing that such property is derived from any offence referred to under the section.

By deduction therefore the jurisdiction of the State High Courts in respect of the above offences is dependent on whether or not the offence relates to the revenue of the government or matters set out under section 251 of the Constitution.

**The Federal High Court**

The Federal High Court is also established by the provisions of Section 249 of the Constitution of the Federal Republic of Nigeria 1999, meanwhile, Section 7 of the Federal High Court Act 1973 states the jurisdiction of the court to encompass the following items:

1. **Civil cases and matters**
   (a) relating to the revenue of the Government of the Federation in which the said Government or any organ thereof
or a person suing or being sued on behalf of the said government is a party;

(b) connected with or pertaining to: (i) Customs and Excise Duties, (ii) Banking, Foreign Exchange, Currency, or other fiscal measures,

(c) arising from the operation of the Companies Act 1990 or any other enactment relating to Copyright, Patents, Design Trademarks and Merchandise marks.

2. **Criminal cases and matters:**

Arising out or connected with any of the matters in respect of which jurisdiction is conferred by sub-section (1) of this section.

3. The jurisdiction conferred under the foregoing sub-section in respect of criminal cases and matters shall without prejudice to the generality of that sub-section ... include original jurisdiction in respect of offences under the provisions of the criminal code being offences in relation to which proceedings may be initiated at the instance of the Attorney-General of the Federation.

Section 251 of the 1999 Constitution has not only re-enacted the provision of section 7 of the Federal High Court Act of 1973, but has widen the scope of its previous jurisdiction, obviously to take account of recent developments. Section 251 states the ambit of the courts jurisdiction as consisting of matters pertaining to:

(a) the revenue of the government of the federation in which the said government or any organ thereof or a person suing or being sued on behalf of the said government is a party;

(b) the taxation of companies and other bodies established or carrying on business in Nigeria and other persons subject to Federal taxation;

(c) Custom and Excise duties and export duties, including any claim by or against the Nigeria Custom Services or any member or officer thereof arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties;
(d) 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.

(e) Arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.


(g) Any admiralty jurisdiction includes Shipping and Navigation on the River Niger or River Benue and their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports (including the Constitution and powers of the courts authorities for Federal ports) and carriage by sea.

(h) Diplomatic Consular and Trade representations.

(i) Citizenship, Naturalization and Aliens, Deportation of persons who are not citizens of Nigeria, Extradition, Immigration into and Emigration from Nigeria, Passports and Visas.

(j) Bankruptcy and Insolvency.

(k) Aviation and Safety of Aircraft.

(l) Army Ammunitions and Explosives.

(m) Drugs and Poisons.

(n) Mines and Mineral (including oil fields, oil mining, geological surveys and natural gas).
Weights and Measures.

The administration or management and control of the Federal Government or any of its agencies.

Subject to the provision of the Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies.

Any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies, and

Such other jurisdiction civil or criminal and whether to the exclusive if any other court or not as may be conferred upon it by an Act of the National Assembly.

1. Provided that nothing in the provisions of paragraphs (p), (q) and (r) of this sub-section shall prevent a person from seeking redress against the Federal Government or any of its agencies in an action for damages, injunction or specific performances where the action is based on any enactment, law or equity.

2. The Federal High Court shall have and exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences.

3. The Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal cases and matters in respect of which jurisdiction is conferred by sub-section (1) of this section.

Section 252(1) of the Constitution also provides that notwithstanding the jurisdiction of the Federal High Court as specified under Section 251, the National Assembly may, for the purpose of enabling the Federal High Court exercising it jurisdiction confer upon it the powers of a High Court of a State. In the same vein section 252(2) also gives the National Assembly the power to confer on the Federal High Court additional powers where necessary for the purpose of enabling it exercising more effectively its jurisdiction.

It would appear that the correct analyzes of the combined effect of section 252 of the Constitution is that the criminal jurisdiction of the
Federal High Court emanates from the civil jurisdiction of the Federal High Court. It thus means that the criminal jurisdiction of the Federal High Court concerns the following items:

(a) Matters connected with or pertaining to taxation of companies, organizations and persons. Subject to Federal taxation.

(b) Matters dealing with Customs and Excise Duties, Banking Measures, Foreign Exchange Measures, Currency Measures or other fiscal measures.

(c) Matters relating to the operations of the Companies and Allied Matters Act 1990.

(d) Matters relating to the operation of the enactment and also relating to Copyright, Patent, Design, Trademark and Merchandise mark.

(e) Matters arising out of the Admiralty Jurisdiction of the Federal High Court.

(f) Matters pertaining to Bankruptcy and Insolvency.

(g) Matters connecter to or pertaining to Aviation and Safety of Aircraft.

(h) Matters relating to or concerning Arms, Ammunition and Explosives.

(i) Matters dealing with or arising out of dealing in Mines and Minerals.

Except where the National Assembly expressly confers additional jurisdiction beyond matters specified under Section 251 of the 1999 Constitution in certain specified matters, the criminal jurisdiction of the Federal High Court is confined to those items specified under Section 251 and Section 252(2). The court toward this line of reasoning in the case of Mandara v. Attorney General of the Federation.¹⁴

Unlike section 251(1) of the Constitution, which emphatically provides that the Federal High Court has exclusive jurisdiction in civil cases, section 251(2) has however omitted the word “exclusive” in its dealing with the ambit of the criminal jurisdiction of the Federal High Court.
Courts. The implication of this omission is that likelihood of it being interpreted to mean that the Federal High Court has no exclusive jurisdiction in criminal matters listed under its jurisdiction.

It would appear that the omission of the word “exclusive” under the 1999 Constitution was deliberate in order to avoid the problem which arose from the interpretation of the combine provisions of Sections 7(2) and 8 of the Federal High Court Act 1973. While section 7(2) provided that the Federal High Court has jurisdiction and power in criminal cases, section 8(1) of the Act ousted the jurisdiction of the States High Courts in matters that were within the jurisdiction of the Federal High Court. In *Savanah Bank of Nigeria Ltd v. Pan Atlantic Shipping and Transport Agencies*. The Supreme Court held that the limitation of the State High Courts jurisdiction under Section 8 of the Federal High Court Act was inconsistent with section 236(1) of the 1979 Constitution, which sets out the criminal jurisdiction of the States High Courts. The importance of the Supreme Court decision in that case is that the High Courts has unlimited as well as concurrent criminal jurisdiction over criminal cases, which may arise from the civil jurisdiction of the Federal High Court. Though the Savanah Bank’s case dealt with civil cases, its practical importance and bearing on the jurisdiction of the Federal High Court matter is not lost.

At this juncture, it would not be out of place to refer to the illuminating contribution of Oputa, JSC (as he then was) in *Eze v. Federal Republic of Nigeria*. In this case, the appellant a licensed importer of firearms was issued an importation licence for the purpose of making firearms which dated 8th January 1976 to import 1050 pieces of firearms and ammunitions which expiry date was not shown on the licence. The licence contained several endorsements relating to how various quantities of firearms were imported and the dates when importation were actually made. On the 8th of September 1980, the appellant imported some number of firearms into Apapa Port and on request released to custom officials duplicate of the firearms licence as his authority for the importation. He was subsequently brought before the High Court on four count charges. Two of the counts were for importing firearms using
expired licence, an offence contrary to provisions of the Customs and Excise Act 1959. The appellant raised a preliminary objection to the jurisdiction of the Federal High Court in respect of the two offences, which the Federal High Court overruled. The Court of Appeal further sustained the ruling of the Federal High Court. But on further appeal to the Supreme Court the Apex Court held that since the proper document in the case was bill of lading the allegation against the appellant related to the offence of forgery and alteration of document only and not customs duty which has bearing with Federation Revenue. More importantly, the court held that it is the statement of offence and the supporting evidence that determines, whether the Federal High Court has jurisdiction. And where jurisdiction is not vested on the Federal High Court the mere laying of the charge under a law, which a court has jurisdiction to entertain, will not confer jurisdiction on that court. In his lucid judgment Oputa, JSC observed while classifying the position observed that the whole purpose of establishing this special court was to ensure expeditious dispatch and disposal of cases involving the revenue of the Federal Government. Matters or cases having nothing to do with the revenue of the Federal Government were not to be smuggled into jurisdiction of the Federal High Court.17

First, it did in the case of States High Courts, Decree No. 62 of 1999 also had a rob off effect of serious consequence on the criminal jurisdiction of the Federal High Courts. The decree’s abolition of special military tribunal had the effect of transferring certain matters within the jurisdiction of the Tribunals to the Federal High Courts. These are matters contained in part 1 of the schedule of the Decree. The matters are:

(a) Recovery of Public Property (Special Military Tribunal) Decree 1984.
(b) Miscellaneous Offences Decree 1984.
(c) Counterfeit and Fake Currency Decree 1984.
(e) National Agency for Foods and Drugs Administration and Control 1993.
(f) Failed Banks (Recovery of Debt) and Financial Malpractices in Banks Decree 1995.
(g) Money Laundering Decree 1995.
(i) Foods and Drugs Act 1990.

COURTS CRIMINAL JURISDICTION IN NORTHERN STATES OF NIGERIA

Magistrate Courts

In the Northern Stats, Magistrate Courts are established by virtue of section 6(1) of the Criminal Procedure Code. Four grades of Magistrate Courts, are listed under the Code, namely:

1. Chief Magistrate Court Grade
2. Magistrate Court Grade I
3. Magistrate Court Grade II
4. Magistrate Court Grade III

Jurisdiction Over Offences

(a) The jurisdiction of each grade of magistrate court in respect of offences try-able by them is specified in Appendix A of the Penal Code, by virtue of the 6th column. Such offences are also try-able by magistrates of higher grades or by the High Court. 18

(b) Magistrate of different grades may also have jurisdiction to try offences contained in Laws outside the Penal Code provided jurisdiction is conferred expressly on such grades of Magistrate Court. Where the relevant law is silent on jurisdiction over such offences, Magistrate Courts can try such offences in accordance with the limit of their jurisdiction stated hereunder:

1. Chief Magistrate Court 10 years imprisonment or N1,000 fine
2. Magistrate Court Grade I 5 years imprisonment N600 fine
3. Magistrate Court Grade II 2 years imprisonment N400 fine
4. Magistrate Court Grade III 3 months imprisonment N200 fine
It would appear therefore that where the law creating an offence is silent on the issue of jurisdiction, the jurisdiction to try is coterminous with the jurisdiction to punish.

In *Odia v. Commissioner of Police*, the accused was arraigned in court on the allegation of official corruption. This was the period when the Criminal Code was also applicable in Northern Nigeria. The accused was therefore brought under section 116 of the Criminal Code. The maximum punishment for the offence was 14 years imprisonment. The Magistrate Court Grade I, the court he was arraigned, subsequently convicted the accused. Counsel for the appellant on appeal argued that the Criminal Code law is a different law from that of the Criminal Code and that since the law is silent on jurisdiction the provision of section 13(2) of the Criminal Procedure Code is the applicable law.

Section 13(2) of the CPC provides that a Magistrate Court Grade I has no jurisdiction to try the offence since the maximum punishment stipulated by the offence is 14 years which was above the maximum punishment a Grade I Magistrate can impose. The court held, while accepting appellant’s counsel’s submission that Magistrate of the grade of Magistrate Court Grade I lacks jurisdiction to try the case. The appeal was therefore allowed.

**Jurisdiction to Impose Punishment**

The maximum punishment which each grade of Magistrate can impose is as follows:

1. **Chief Magistrate Court**
   - 5 years imprisonment or N1,000 fine
2. **Magistrate Court Grade I**
   - 3 years imprisonment or N600 fine
3. **Magistrate Court Grade II**
   - 1½ years imprisonment or N400 fine
4. **Magistrate Court Grade III**
   - 9 months imprisonment N200 fine

Section 257(1) of CPC makes provision for reference to higher courts for purposes of prescribing higher punishment where a magistrate after
convicting an accused person is of the opinion that the accused deserves a higher and more severe punishment, which the court lacks the jurisdiction to administer. Like its southern counterparts, Magistrate Courts in the Northern States can impose sentences to run concurrently or consecutively. The point of difference however is that in the Northern States Section 24 CPC states that where an accused person is sentenced in respect of more than one offence and the aggregate term shall not exceed twice the maximum punishment which the court has the power to impose ordinarily. This is unlike the Southern States where when sentences are imposed to run consecutively the aggregate term of imprisonment shall not exceed the limit of his jurisdiction.

In Kano State the Magistrate Court law has since been amended with the result that the provisions dealing with the number of grades of Magistrate Courts and punishment to be imposed has been amended. Currently there exist in Kano State as well as some Northern States seven grades of Magistrate Courts.21

By virtue of Section 16 of the same Kano State Edict the grade of magistrate courts as well as their jurisdiction to punish is as follows:

1. Chief Magistrate Court I 14 years imprisonment N30,000 fine
2. Chief Magistrate Court Grade II 12 years imprisonment N25,000 fine
3. Senior Magistrate Court Grade I 10 years imprisonment N20,000 fine
4. Senior Magistrate Court Grade II 7 years imprisonment N15,000 fine
5. Magistrate Court Grade I 5 years imprisonment N10,000 fine
6. Magistrate Court Grade II 3 years imprisonment N5,000 fine
7. Magistrate Court Grade III 1 year imprisonment N2,500 fine
Under Section 19 of CPC, the Governor of a State may on the recommendation of the Chief Judge, by order in writing, increase the jurisdiction of magistrate.

**Area Courts**

Area Courts are constituted by the Area Court Edict of 1967. There are generally four grades of Area Courts:

1. Upper Area Courts
2. Area Court Grade I
3. Area Court Grade II
4. Area Court Grade III

These courts are established by warrant under the hand of the Chief Judge of a State. The warrant establishing each court states the jurisdiction of such courts.²²

Some States in Northern part of Nigeria have amended the Area Court edict with the result that the number of area court has been reduced to three. In Plateau and Kano States for instance, there now exist three grades of area courts only.²³ The jurisdiction of Area Courts is divided into two, namely:

(a) Jurisdiction over persons
(b) Jurisdiction over cases.

**(a) Jurisdiction Over Persons**

Section 15 of the Area Courts Edict vests jurisdiction in Area Courts to try the following categories of persons. These are (a) any person whose parents were members of any tribe or tribes indigenous to some parts of Africa and the descendants of any such person, (b) a person, one of whose parents was a member of a tribe indigenous to Africa and (c) a person who consents to be tried by the court. In spite of these provisions, a State Governor in the Northern part of Nigeria may direct that any person or class of persons may not be subject to the jurisdiction of Area Courts.²⁴

**(b) Jurisdiction Over Cases**

Area Courts are also vested with jurisdiction to hear and determine cases where jurisdiction is vested on them either by warrant or by any other law. Section 12(2) of the Criminal Procedure Code vests jurisdiction
in Area Courts to try offences contained in the Penal Code law. These offences are shown in column 7 of Appendix A to the Criminal Procedure Code. It is important to equally note that an Area Court of higher grade can also try the offences contained in Appendix IX A of the Act. Area Courts however lacks jurisdiction to try homicide cases.

**Jurisdiction to Impose Punishment**

Area Courts have jurisdiction to impose punishment in consonance with the jurisdiction conferred on them by virtue of section 17 of schedule 1, part I of the Area Court Edict 1967. The specific jurisdiction of each grade of court is as follows:

(a) Upper Area Court - Unlimited criminal jurisdiction but lacks jurisdiction in homicide cases.

(b) Area Court Grade I - 5 years imprisonment or N1000 fine

(c) Area Court Grade II - 3 years imprisonment or N600 fine

(d) Area Court Grade III - 9 months imprisonment or N100 fine

Area Courts cannot administer punishment in excess of their jurisdiction. It is important to point out that some States in the North, especially Plateau and Kano have amended the maximum punishment which each grade of Area Court can impose. In Plateau State for example, the position is as stated hereunder:

(a) Upper Area Court - 3 years imprisonment or N1,500 fine

(b) Area Court Grade II - 2 years imprisonment or N1000 fine

(c) Area Court Grade III - 18 months imprisonment or N800 fine

The Area Court can also impose the punishment of canning or hard lashing subject to the provisions of the Penal Code and Criminal Procedure Code.

In Kano State, the situation resulting from its own amendment is almost the same with that of Plateau. Its present position is indicated hereunder:
(a) Upper Area Court - Unlimited jurisdiction but subject to the provision of the Criminal Procedure Code and the penalty provided by the statute or law creating the offence.

(b) Area Court Grade I - 3 years imprisonment or N1000 fine

(c) Area Court Grade II - 18 months imprisonment or N500 fine

Formal charges are not required in Area Courts. It is considered appropriate once the statement of the offence sufficiently puts the accused person on notice as to the allegation made against him.\(^{28}\)

Section 390 Criminal Procedure Code and section 28 Area Court Edict, 1963 rules out legal practitioners from appearing in Area Courts. In *Uzodima v. Comm. of Police*,\(^{29}\) the court, relying on section 390 Criminal Procedure Code held that the lawyer briefed by the accused to defend him had no audience in the Area Court Grade I where the accused was charged for theft, and eventually convicted him. On appeal, against conviction, the High Court held that section 390 of the Act was null and void since it was inconsistent with Section 33(6) of the 1979 Constitution.

Based on the decision in the Uzodinma’s case most Northern States have amended their laws to reflect the current position.\(^{30}\) The current position that counsels are competent to appear in Area Courts equally hold good in States where Sharia law is in application.

Appeals lies from Area Courts Grade I, II or III or Upper Area Courts, while appeal lies from Upper Area Courts to the High Courts.\(^{31}\) In *Akiga v. Tiv Native Authority*,\(^{32}\) the court held that it would be wrong to declare a proceeding a nullity on the grounds that the proceeding had not conform technically with the rules of natural justice. But Area Courts procedure must not detract from procedural justice. The court exhibited this posture in the case of *Jos Native Authority v. Allah N.A. Gani*,\(^{33a}\) where the accused was convicted for the offence of rape on hearsay evidence without the mandatory proof of the element of penetration. In the High Court where the Inspector of Native Court eventually brought the case for review, the High Court held that there had been a miscarriage of justice. The court
accordingly allowed the appeal and set aside the conviction of the accused.

**Courts of Special Criminal Jurisdiction - Juvenile Courts**

The Juvenile Courts is constituted by the Children and Young Persons Law 1994. The essence of these courts is to try juveniles for offences committed by them with the exception or civil matters, which relate to custody and maintenance of children. The various States in Nigeria have their own sets of Children and Young Persons Law.32

Children are generally grouped into two sub-groups, namely:

(i) A child under the age of seven,

(ii) A child or children above seven but under twelve years of age,

(iii) A child or children between twelve and fourteen.

The attitude of both the Criminal and Penal Code is that a child who is less than 7 years is not liable for any act or omission, which is an offence33 persons under this age bracket are regarded as infants. Children who are above seven years but less than 12 years are also presumed not to be liable for any act or omission except where it is established that he was in a position to be criminally responsible for his conduct.34 Responsibility age commences from the age of 12. From this point, a person is liable for any act or omission done by him, which constitute an offence.35

The jurisdiction of juvenile courts is determined principally by the age of the child. But such courts lacks jurisdiction in the following situations:

(a) Where the charge borders on homicide.36 Here, the court would normally be required to hold a preliminary enquiry and take all necessary evidence to determine the issue. The production of a birth certificate or a certificate signed by a medical officer of a government department would suffice.37a

(b) Where a juvenile is charged jointly with an adult, the trial shall take place in the regular courts. The age of the child must also be ascertained by direct evidence. The birth certificate is one reliable way of proving this. In the absence of direct evidence, oral evidence of either parents or relations may be resorted to.37b
Some distinctive features of juvenile courts are that they are not opened to the public.\textsuperscript{38} Identities of juveniles shall not be revealed to outsiders without the leave of court.\textsuperscript{39} the word “conviction” and “sentence” are not to be used.\textsuperscript{40}

Under Section 11 of the law a child shall not be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment or committal to an approved institution. A court of law is however empowered to impose the following punishments on a juvenile:

(a) A juvenile or the juvenile and his parents may be ordered to enter into recognizance to be of good behaviour.
(b) A juvenile may be placed under the supervision of a probation officer, relative or other fit persons.
(c) A juvenile may be sent to a correction institution such as borstal.
(d) The juvenile or the juvenile and his parents may be ordered to pay fines, damages or costs.

The juvenile court may whenever there is no suitable way of dealing with the child, commit such a child to prison, but not up to the point of allowing the child to associate with adult prisoners.

**Court Martial**

A Court Martial is also a court of special criminal jurisdiction. They are special courts established by the Armed Forces Decree No. 105 of 1993 as amended.\textsuperscript{41}

The Armed Forces Decree of 1993 set up two types of CourtMartials:

(a) a general court martial consisting of a president and not less than four members, awaiting member, a liaison officer and a judge advocate,
(b) a special court martial consisting of a president and not less than two members, awaiting members, a liaison officer and a judge advocate.

Under section 130 of the Decree a court has jurisdiction to try a person subject to service law for offences created under the Decree, such
as misconduct in action, insubordination, absence from duty, drunkenness, communicating with the enemy and mutiny.

Court Martial therefore have jurisdiction to try all persons subject to military law who have engaged in acts and omissions, regarded as offences under the decree. The above notwithstanding, Court Martial can also try off counter-claim, a claimant in arbitral proceedings is unlikely to raise an objection on the issue of jurisdiction but generally the respondent.  

A party contesting the jurisdiction of an arbitral tribunal (respondent) has various courses of action open to him. They are:

5. He can refuse to participate at all in the arbitration and can then, if necessary, exercise his right to challenge the award after it has been made or even resist its enforcement. Alternatively he may apply to court for a declaration or injunction in relation to the tribunal’s jurisdiction. It may also be possible for the party contesting jurisdiction to commence court proceedings to pursue a substantive cause of action and resist any application for a stay of those proceedings.

6. He may seek a ruling from the tribunal on the question of jurisdiction under section 12 of the Act (or Article 21 of the Arbitration Rules), which may be given by way of an award on jurisdiction or as part of the tribunal’s award on the merits. Assuming the tribunal decides against him, he must exhaust any arbitral process available for resolving the issue and, if that is unsuccessful, he may seek to challenge the tribunal’s award on jurisdiction or seek a declaration from the court that an award on the merits is of no effect, in whole or in part, for lack of jurisdiction.

7. He may seek an immediate determination from the court on the preliminary question of the tribunal’s jurisdiction. He may take this course, for example, where the parties have agreed that the tribunal should not have power to rule on jurisdiction, or where the tribunal has declined to make an award on
jurisdiction, but he will need either the tribunal’s permission or agreement of all the parties.

What a party contesting jurisdiction cannot do is to participate in the arbitral proceedings without making clear his objection to the arbitral tribunal’s jurisdiction. If he does, the right to object will be lost and he cannot then seek to challenge the tribunal’s jurisdiction after the award has been made, either by applying to set it aside or resisting its enforcement. What then is the best option open to act of the arbitration.
ENDNOTES


5. See *Katto v. C.B* (1991) 9NWLR (Part 214) 126


7. See S. 8(4) and (5) Magistrate Court Law 1994.

8. See also Quarterly V. Inspector General of Police (1957) NR NLR 38; Fashusi V. Police 20 NLR .126 etc. Where the High Courts in each case, reduced the sentence and fine from four years to two years and N105 fine to N50 fine respectively for prescribing punishment in excess of the maximum.


12. (1983) 1 SCNLR 296

12. See Section 35 of the ICPC Act 2000

The Federal High Court was established pursuant to the provision of section A(1) Federal Revenue Court Act 1973. At that time the Federal High Court was known as the Federal Revenue Court.


See also African Newspapers Ltd and Ors V. The Federal Republic of Nigeria: (1986) 4 SC (Pt.1) 76. Where the Supreme Court held that Fed. High Court has no jurisdiction to try treason.

See S. 12(1) CPC S. 16(1) of the Magistrate Court Edict 1987

(1962) NNLR 9.

See also Aba v. Comm. of Police (L962) NNLR 39. Accused were tried summarily, charge contain allegation. One punishable by life imprisonment and the other one year under the criminal code. The appellate court held that by section 13(2) CPC a magistrate lacks jurisdiction to try an offence of life imprisonment.

See S. 4(1) Kano State Magistrate Court Edict 1986

See S. 3(1) Area Courts Edict 1967.


See section 15. Area Courts Edict 1967 Column 1 and 2 26 note that reference to Native Courts. The Native courts preceded Area Courts. They were converted to Area Court when the Area Court Edict came into effect in 1967.

See particularly column 1 and 2

See section 18 Area Court Edict 1967, and S. 12(2) CPC


See Alabi v. Commissioner of Police (1970 NNLR 104) There was no formal charge but the Statement of offence on which the accused was arraigned to court contained the allegation of criminal breach of trust and the conspiracy to commit same. Court held there had not been miscarriage of Justice.

(1982) 1 NCL 27.

S. 28 of the Area Court Edict has been amended by the (Area Courts Law) Amendment Edict 1986, making it possible for counsel to appear in Area Courts.

See S. 53 and 54.
32a (1968) NMCR p. 8


34 See S. 30 criminal code; S. 50 Penal Code.

35 Ibid.

36 See section 8(2) Children and Young Persons Law.

37a See RV Oladimeyi (1964) NML 31. See also Modupe v. The State (1988) 4 NMLR 130. Where an accused has not attained the age of 17 at the time of judgement in a homicide matter he or she shall not be sentence to death.

37b See S. 6(2) of the Law.

38 See S. 6(5) of the Law.

39 See S. 6(5) of the Law.

40 See S. 16 of the Law.


42 Redfern & Hunter. Op Cit at 307

43 See Azov Shipping Co v Baltic Shipping Co. (1999) 1 All ER 476