

## **Jurisprudence of Jurisdiction and the Rules Regulating Acquisition of Jurisdiction\***

### **Abstract**

Jurisdiction is the livewire of any judicial proceeding. The mode of its acquisition and exercise have a vital effect of the legitimacy and validity of the resulting proceedings. This paper undertook a cohesive study of the rules regulating the acquisition of jurisdiction in judicial proceedings and the effect of lack of or wrongful acquisition of jurisdiction. The paper explained that the jurisdiction of any court is granted *aliunde* from without and not from within, so that the primary and basic sources of jurisdiction are comprised in the Constitution and statutes creating a tribunal. The paper then expounded that from the perspective of its exercise, before a court may act, there must be some appropriate application invoking the judicial power of the court with respect to the matter sought to be litigated, and in this regard, acquisition of subject matter jurisdiction is dependent on a party's application for relief. Thereafter, the paper clarified that basically, judicial proceedings are initiated by due process of law, and it is a condition precedent to the exercise of jurisdiction for the parties to be served with the processes of court, so that acquisition of personal jurisdiction over a party is dependent on lawful service of process. Flowing from the foregoing, the paper distinguished judicial error from lack of jurisdiction, and found that an adjudication by a court having jurisdiction is conclusive against the entire world until set aside by a proper appellate tribunal, notwithstanding that the court may have mistaken the law or misjudged the facts, so that judicial error is remediable solely by the appellate process. Flowing from that, in investigating the effect of fraudulent acquisition of jurisdiction, the paper found fraud to constitute a strong vitiating factor that affects fatally, even the most solemn judgments and decrees. The paper then interrogated the effect of complete absence of jurisdiction, and found that unlike the effect of judicial error in the exercise of jurisdiction properly acquired, a total lack or absence of jurisdiction corrodes the very basis of an adjudication, as a result of which the verdict may be challenged collaterally. The paper then concluded.

**Keywords** - *Fraudulent acquisition of jurisdiction; Judicial error; Jurisdiction: Lack of jurisdiction; Service of process*

### **1. Introduction**

In June 2024, an *ad hoc* committee established by the Kaduna State House of Assembly to examine the finances, loans, and contracts under former Governor El-rufai delivered its findings to the parliament. The Committee alleged in its report that El-rufai together with certain members of his cabinet misappropriated certain substantial sums of money during the period when governed the State. On Wednesday, June 26, 2024, El-rufai through counsel filed a fundamental rights lawsuit at the Federal High Court in Kaduna, and sought a declaration that the House of Assembly's report is invalid, for the reason that he was not given a fair hearing regarding the allegations against him and his administration. The Kaduna State House of Assembly, the state Attorney General, and the Commissioner of Justice are named as respondents in the suit. Clearly, the matter did not arise from the administration, management and control of the Federal Government or any of its agencies; or from any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decisions by the Federal Government or any of its agencies. In any event, even where there is concurrent federal and states' high court's jurisdiction, if a part of the claim is cognisable by the Federal High Court, but the entire claim is not, the Federal High

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Court has the power, if the entire claim is cognisable by the High Court of a state, to remit the entire claim to the High Court of a state for adjudication. On August 9, 2024 the Federal High Court in Kaduna State declined jurisdiction in the fundamental rights suit filed by former Governor Nasir El-Rufai against the Kaduna State House of Assembly, and transferred the matter to the Chief Judge of Kaduna State High Court. This backdrop provides the immediate context for this paper which in investigating the jurisprudence of jurisdiction, seeks to explain and clarify the rules regulating and controlling the acquisition of subject matter and personal jurisdiction. This paper is written in nine sections. In the section next, the paper will examine the rule that both territorial and subject matter jurisdiction is never bestowed *aliunde* but is generally donated by the Constitution or a statute. The paper will thereafter investigate the effect of the relief sought by a party on subject matter jurisdiction. Thereafter, the paper will explain the effect of service of process on acquisition of personal jurisdiction. Thereafter, the paper will examine the effect of error and absence of jurisdiction on the ensuing proceedings. The paper will then scrutinise the effect of fraudulent acquisition of jurisdiction and total absence of jurisdiction on the concomitant proceedings. The paper will then conclude.

## 2. Generally

A cause of action consists of facts or combination of facts conferring on a party, a right to judicial relief; or a right which a party has to institute a judicial proceeding. It is a matter or a state of affairs which entitles a party to maintain or sustain an action in a court of law. It is the entire set of circumstances giving rise to a legally enforceable claim. It is an act or conduct of the defendant which donates to the plaintiff his cause of action, and is not based on evidence, but on facts<sup>1</sup>. The rights and obligations of parties must be considered in the light of the provisions of the law, as it was when the cause of action arose; a change in the law after the cause of action arose is of no moment. Jurisdiction is assumed by a court when the person bringing the action and the subject matter are properly before it. They are properly before it when by the enabling statute or its inherent jurisdiction it can exercise jurisdiction over the parties<sup>2</sup>. The general rule is that a court's acquisition of jurisdiction over a case depends on the facts existing at the time its jurisdiction is invoked<sup>3</sup>; so that for an acquisition of jurisdiction *in rem*, it is essential that the *res* be within the jurisdiction of the court at the time of the commencement of the action, that some process of the court shall have been served on it, and that it shall have been brought within the direct control of the court<sup>4</sup>. Where the facts existing at the time of commencement of the action are such as to endue the court with jurisdiction over the case, a change in circumstances subsequent to the commencement of the case is not sufficient on its own to denude the jurisdiction already acquired. Although a court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted to it by the law of its organisation, its decree is void<sup>5</sup>.

## 3. Constitution and Legislation as Sources of Jurisdiction

Jurisdiction is the authority which a court has to decide matters which are litigated before it, or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted and may be extended or restricted by similar means. If no restriction is imposed, the jurisdiction is said to be unlimited. A limitation may be as to either the kind and nature of

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<sup>1</sup>*Sodipo v. Lemminkainen Oy*, [1992] 8 NWLR Part 258, 229

<sup>2</sup>*Alese v. Aladetuti*, [1995] 6 NWLR Part 403, 527

<sup>3</sup>*Minneapolis & St Louis Railway Co. v. Peoria & P. U. R. Co.*, 270 US 580, 46 S Ct 402

<sup>4</sup>*Mutual Home Association v. Zwatchka*, 20 Am Jur 2d, 491

<sup>5</sup>*US v. Walker*, 3 S. Ct. 277, 109 US 258

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the actions and matters of which the particular court has cognisance or as to area over which the jurisdiction extends or it may partake of both of these characteristics<sup>6</sup>. The jurisdiction of any court is granted aliunde from without and not from within<sup>7</sup>. A court's jurisdiction is prescribed, embedded or engraved in the statute which creates it. It is usually circumscribed and not open-ended and at large<sup>8</sup>. The Constitution is an organic instrument which confers powers and also creates rights and limitations. It is the supreme law in which certain first principles of fundamental nature are established. Once powers, rights and limitations under the Constitution are identified as having been created, their existence cannot be disputed. All agencies of government are organs of initiative whose powers are derived either directly from the Constitution or from laws enacted thereunder. They therefore stand in relationship to the constitution as it permits of their existence and functions<sup>9</sup>. A court possesses only such jurisdictional powers as are directly, or indirectly, expressly or by implication, conferred upon it by the constitution or legislation of the sovereignty on behalf of which it functions<sup>10</sup>, thus, jurisdiction is never conferred in obscurity. The language of the law must be clear and positive so that jurisdiction as a power will be clearly visible to all beholders of the Constitution or the law that confers it<sup>11</sup>. In this regard, the concept of doing justice is not sufficient authorization for a court to assume jurisdiction if none had been invested on it<sup>12</sup>. Courts, being creatures of statutes, including the Constitution, derive their powers and authority or jurisdiction from such statutes and subsidiary legislations made thereunder either in the form of rules or regulations. It is only these sources that can validly expand, extend or enlarge on the one hand, or restrict, limit or curtail such jurisdiction on the other hand. Where the jurisdiction of a court is called into question, in order to determine if jurisdiction was conferred on that court, the first point to be considered is the statute creating such court. It is only where the court was clothed with jurisdiction by the statute creating it that other conditions or requirements of jurisdiction, for instance parties, subject matter, time of suit, composition of court, etc., would be considered<sup>13</sup>. The jurisdiction of a court should be vested in a clear and unambiguous language that does not allow dispute. Jurisdiction of a court or tribunal should lend itself to sustained search, inquiry and investigation to discover. It ought to be plainly manifest<sup>14</sup>. If a statute prescribes the mode of acquiring jurisdiction, that mode must be complied with or the proceedings are void<sup>15</sup>. Jurisdiction is vested by the Constitution and substantive law, and not by adjectival or procedural law<sup>16</sup>. Since jurisdiction is not an inherent power, no court can assume jurisdiction over a matter without an enabling statute<sup>17</sup>.

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<sup>6</sup>*Ejike v. Ifeadi*, [1990] 4 NWLR Part 142, 89, [quoting from Halsbury's Laws of England, 4<sup>th</sup> edition, volume 10, para. 715, page 323]; see Chike B. Okosa, 'Jurisprudence of Jurisdiction: Relationship and Jurisdiction as Between the Federal and State Court Systems', (2023) 8 (1) *COOU Law Journal*, [159-172]

<sup>7</sup>*Compagnie Generale de Geophysique (Nig.) Ltd. v. Asaagbara*, [2001] 1 NWLR Part 693, 155

<sup>8</sup>*Ibori v. FRN*, [2009] 3 N. W. L. R. Part 1128, 283

<sup>9</sup>*Attorney-General, Ondo State v. Attorney-General, Federation*, [2002] 9 NWLR Part 772, 222

<sup>10</sup>*County Welfare Board v. Starke Circuit Court*, 20 Am Jur 2d, 451

<sup>11</sup>*Nwobodo v. Rivers State Primary Education Board*, [2008] 1 NWLR Part 1069, 537

<sup>12</sup>*Emordi v. Igbeke*, [2011] 9 NWLR Part 1251, 24

<sup>13</sup>*Imo Concorde Hotels Ltd. v. Choice Supermarket and Restaurant Ltd.*, [2008] All FWLR Part 400, 680

<sup>14</sup>*Obi v. INEC*, [2007] All FWLR Part 378, 1116

<sup>15</sup>*Cowan v. District Court of First Judicial District*, 20 Am Jur 2d, 452; in *Smith v. Smith*, 20 Am Jur 2d, 452, it was stated that unless the power and authority of a court to perform a contemplated act is found in the constitution and laws of the state, the act if done, is *coram non judice*

<sup>16</sup>*Adegbite v. Raji*, [1992] 4 NWLR Part 236, 478; in *Adeniyi v. Oroja*, [1992] 4 NWLR Part 235, 322 it was held that jurisdiction is granted either by the Constitution or; the enabling statutes setting up the courts or; other existing statutes which contain random provisions on the jurisdiction or lack of jurisdiction of certain courts.

<sup>17</sup>*Maiwada v. Pate*, [1995] 8 NWLR Part 412, 191

Where, the jurisdiction of a court has been prescribed by statute, such as the provisions of the Constitution, the court must consider the totality of the enabling Act in all its sections and subsections<sup>18</sup>. Where the jurisdiction of a certain court is fixed by constitutional provision, the legislature is powerless to abridge or enlarge the constitutional jurisdiction<sup>19</sup>. Where however, the constitution endues jurisdiction with a provision for the legislature to grant further jurisdiction, the legislature is competent to enlarge the jurisdiction of the court, but not to abridge it. If the Constitution has given jurisdiction, it cannot be lightly divested; and when it is intended to divest a court of the jurisdiction that has been given to it by the constitution, it must be by express and unambiguous words and by a competent amendment of the Constitution<sup>20</sup>. In the absence of clear statutory manifestation that access to courts is prohibited if a specific right has been created, general jurisdictional statutes are controlling<sup>21</sup>. Where the existence of jurisdiction of a court over a particular case depends on the construction of a statutory provision, the construction will, in case of doubt be such as serves to maintain the court's jurisdiction<sup>22</sup>. Since the legislature can validly confer powers upon courts only if this is not in derogation of a constitutional provision, a statute purporting to affect the jurisdiction of a court will be construed, if it is reasonably possible to do so, so as not to be in conflict with a constitutional provision<sup>23</sup>. The rules of the different State High Courts do not confer jurisdiction on the State High Courts. Rather, they set out how the jurisdiction derived under the Constitution and all other laws is to be exercised as between the judicial divisions comprised in each State High Court. If then, a dispute arises as to which

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<sup>18</sup>*Daniel v. Amosun*, [2009] All FWLR Part 473, 1339

<sup>19</sup>*Godchaux Sugar Inc. v. Ockman*, 20 Am Jur 2d, 452; in *Nigerian Agip Oil Company Ltd. v. Kemmer*, [2001] 8 NWLR Part 719, 506, s. 7(4) of the Arbitration and Conciliation Act provided that any appointment of arbitrators by the Court pursuant to s. 7(2) & (3) of the same Act is not subject to appeal. The Court of Appeal held that the overriding position of the law is contained in s. 241 of 1999 Constitution which gave an unrestricted right of appeal to the appellant, and s. 1(3) of 1999 Constitution which proclaimed the superiority of a constitutionally guaranteed right. In *Ogunwale v. Syrian Arab Republic*, [2002] 9 NWLR Part 771, 127, it was held that the fact that the Arbitration and Conciliation Act is an existing law is of no consequence in exercising any of the rights conferred by s. 241(1)(a), (b) & (c) of 1999 Constitution. Consequently, sections 7(4) and 34 of the Arbitration and Conciliation Act cannot override the right of appeal conferred on a party by s. 241(1) of 1999 Constitution because the right of appeal has a constitutional backing.

<sup>20</sup>*Nwonu v. Administrator-General*, [1991] 2 NWLR Part 173, 343; in *Securities and Exchange Commission v. Kasunmu*, [2009] All FWLR Part 475, 1684, Galinje, JCA stated at 1703C-1704E: "*The Securities and Exchange Commission was established by section 1 of the Investments and Securities Act, Cap. 124 Laws of the Federation of Nigeria, 1999. It is an Act of Parliament. Section 242 of the Act provides for the establishment of a tribunal with exclusive jurisdiction to entertain any suit or proceeding in respect of any matter which it is empowered under the Act to determine and no injunction shall be granted by any court against any action taken by the tribunal.....The question now is, can the Federal High Court's jurisdiction, constitutionally guaranteed, be ousted by an Act of Parliament. Clearly, the answer is no. In the instant case, is the Federal High Court seized with jurisdiction to determine the claims of the respondent at the lower court? I have set out elsewhere in this judgment, the claims of the respondent. To determine whether the Federal High Court has jurisdiction to determine same, recourse has to be made to the provisions of the Constitution. Section 251 of the Constitution of the Federal republic of Nigeria gives limited but exclusive jurisdiction to the Federal High Court to hear and determine all those items contained therein. .... Where a Constitution has clearly conferred jurisdiction on the court in any matter, it will be naive for such a court to abdicate from its responsibility of doing justice in the matter on the ground that such jurisdiction has been taken away by an inferior legislation. From the foregoing, even if the tribunal were in place, it would not have made any difference because as the Investment and Securities Act is incapable of ousting the jurisdiction of the Federal High Court"*

<sup>21</sup>*Chambers v. US*, 17 FPD 2d 101

<sup>22</sup>*Abbott v. Gatch*, 20 Am Jur 2d, 452

<sup>23</sup>*Bednarik v. Bednarik*, 20 Am Jur 2d, 452

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State High Court has jurisdiction in a matter, it is usually determined by reference to the cause of action in the suit, the Constitution and such other similar laws confirming jurisdiction<sup>24</sup>.

### **4. Jurisdiction as Dependent on Application by Party for Relief**

It is basic that, however critical an issue might be, a court cannot on its own motion initiate a controversy for adjudication, or proceed into the adjudication of a controversy that has not been submitted to it for resolution. For the jurisdiction of the court to append to a particular action, a lawsuit must be instituted in the regular course of judicial procedure, so that the jurisdiction of the court may only be invoked and set into motion by a party in some mode recognised by the law. A court has no power either to investigate facts or to initiate proceedings<sup>25</sup>. Before it may act, there must be some appropriate application invoking the judicial power of the court with respect to the matter sought to be litigated. Where a statute prescribes a mode of acquiring jurisdiction, that mode must be followed. A plaintiff is a person who initiates an action. He is the party who complains or sues in a civil action and is so named on the record. A plaintiff is also a person who seeks remedial relief for an injury to rights. In other words, a plaintiff is the party who commences an action in a court of law, and should be a person who has a right of action, that is, the person who has been wronged. A plaintiff is also known in some jurisdictions as the complainant, demandant, objectant or pursuer<sup>26</sup>. The court has no jurisdiction to entertain a suit initiated by a non-existent person. A suit commenced by a legal entity cannot in law be taken over and continued by a non-legal entity which neither can sue nor be sued. In the same vein, a suit or process initiated by a non-legal entity cannot be taken over or continued by a legal entity for in law, the suit or process does not exist<sup>27</sup>. It is a fundamental principle that jurisdiction is determined by the plaintiff's claim. In other words, it is the claim before the court that has to be looked at or examined to ascertain whether it comes within the jurisdiction conferred on the court<sup>28</sup>. The court turns to the claim endorsed on the writ of summons or particulars of claim where one exists, or a statement of claim. It is from one or more of these processes filed by the plaintiff that the cause of action, which is the aggregate of facts in the relationship between the parties which the court will recognise as enabling the plaintiff to enforce the claim against the defendant<sup>29</sup>. In determining the jurisdiction of a court, the enabling law vesting jurisdiction has to be examined in the light of the relief or reliefs sought. If the relief sought comes within the jurisdiction of the court as portrayed by the facts of the relief sought, the court must assume jurisdiction as it then has jurisdiction to do so. Conversely, if the relief sought does not come within the jurisdiction of the court as portrayed by the facts, the court must reject jurisdiction, as it has no jurisdiction in the matter<sup>30</sup>. The effect that the claim of the plaintiff will have if successful is not the determinant of jurisdiction, rather, it is the relief as claimed and couched that is the determinant of jurisdiction<sup>31</sup>. By contradistinction, in criminal cases, it is the charge

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<sup>24</sup>*Nigerian Bottling Company Plc v. Nwaneri*, [2000] 14 NWLR Part 686, 30

<sup>25</sup>*Sale v. Railroad Commission*, 20 Am Jur 2d, 455

<sup>26</sup>*Ejezie v. Anuwu*, [2008] 12 NWLR Part 1101, 446, no person can in the same suit be both the plaintiff and the defendant, even in different capacities. All persons who join as plaintiffs in the same suit cannot set up conflicting claims between themselves. In other words, plaintiffs in a suit must act together. They must present a common cause of action with a common set of reliefs.

<sup>27</sup>*Obike International Ltd v. Ayi Teletronics Services Ltd.*, [2005] 15 NWLR Part 948, 362

<sup>28</sup>*Tukur v. Government of Gongola State*, [1989] 4 NWLR Part 117, 517; *Okobule v. Oyagbola*, [1990] 4 NWLR Part 147, 723

<sup>29</sup>*Babington-Ashaye v. EMA General Enterprises Nigeria Ltd.*, [2011] 10 NWLR Part 1256, 479

<sup>30</sup>*Uzoho v. National Council on Privatization*, [2007] All F. W. L. R. Part 394, 370

<sup>31</sup>*Stallion Manufacturing & Marketing Company Ltd. v. Stallion Fisheries Ltd.*, [1990] 6 NWLR Part 157, 501

before the court that determines the jurisdiction of the court to entertain the matter. It will be wrong for the court to consider the evidence to be adduced by the prosecution witnesses. Thus, what the court will consider is the charge or charges before the court outlining the offences alleged to have been committed by the accused person<sup>32</sup>. Ordinarily, the defendant's defence will not be looked at in considering if the court has jurisdiction<sup>33</sup>. Relief is the livewire of an action. Relief puts in specific demand, the cause of action. If there is no relief sought in an action, there is nothing for the court to grant. It is the bedrock of the entire action. The action either stands or falls by the relief sought<sup>34</sup>. The law applicable to a matter is the law that exists on the date that the cause of action arose and not the law in force when the matter is brought to court or is being heard<sup>35</sup>. While substantive rights are settled as of the time the cause of action arises, rights in procedural matters, such as jurisdiction and service of process, are determined by the law in force at the time of institution of the action<sup>36</sup>. Extinguishing of cause of action by an act subsequent to the filing of the complaint does not deprive the court of the jurisdiction to render judgment and, if the court adjudicates that there is a right of action where there is none, such adjudication is mere error and not absence of jurisdiction<sup>37</sup>. Once the court assumes jurisdiction of cause of action, it possesses power to afford effective relief<sup>38</sup>. If jurisdiction appears from the complaint, the court has jurisdiction even though it may hold that the plaintiff is entitled to no relief<sup>39</sup>.

## 5. Acquisition of Jurisdiction as Related to Service of Process

Under our system of adjudication, proceedings before courts of law must be initiated by due process of law, and it is a condition precedent to the exercise of jurisdiction for the parties to have been duly served with the processes of court<sup>40</sup>. Acquisition of jurisdiction over the person of the defendant generally depends on whether service of process has been made in the manner required by law<sup>41</sup>. The essence of service of process is to give notice to the defendant of the proceedings initiated and pending against him. Due process of law requires that this notice be given. However, if the defendant has had notice 'reasonably calculated' to give him

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<sup>32</sup>*Mattaradona v. Ahu*, [1995] 8 NWLR Part 412, 225

<sup>33</sup>*Opiti v. Ogbeiwi*, [1992] 4 NWLR Part 234, 184

<sup>34</sup>*Uzoukwu v. Ezeonu II*, [1991] 6 NWLR Part 200, 708

<sup>35</sup>*Ogunleye v. Jegede*, [1991] 6 NWLR Part 199, 594; *Olaniyi v. Aroyehun*, [1991] 5 NWLR Part 194, 652; *Amavo Ltd v. Bendel Textile Mills Ltd.*, [1991] 8 NWLR Part 207, 37; *Ekechi v. Military Governor, Bendel State*, [1992] 3 NWLR Part 227, 39; *Opawande v. Oyedokun*, [1992] 6 NWLR Part 248, 512

<sup>36</sup>*Kene v. Multicore Solders Ltd.*, 17 FPD 2d 212; in *Arewa Paper Converters Ltd. v. NDIC (NUB Ltd)*, [2006] 15 NWLR Part 1002, 404, it was stated that the applicable law to a cause of action is different from that which confers jurisdiction on the court which entertains the suit founded on that cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose whereas the jurisdiction of the court to entertain the action is determined by the state of the law conferring jurisdiction at the point in time the action is instituted and heard. In *Akande v. Nigerian Army*, [2001] NWLR Part 714, 1, it was held that, in the ordinary way, an appellate court cannot take into account, a statute which has been passed in the interval since the case on appeal was decided by the court of first instance because the rights of litigants are generally to be determined according to the law in force at the date of the earlier proceedings. However, the situation is different where the statute is retrospective either because it contains clear words to that effect or because it deals with matters of procedure only, for then, the Legislature has shown an intention that the Act should operate on pending proceedings and the appellate court is entitled to give effect to this retrospective intent, as well as the court of first instance.

<sup>37</sup>*Seaboard Surety Co. v. US, for Use and Benefit of Marshall-Wells Co.*, 42 FD 582

<sup>38</sup>*Baker v. Carr*, 17 FPD 2d 179

<sup>39</sup>*Sherwood v. Bradford*, 17 FPD 2d 101

<sup>40</sup>*Antia v. Asuquo*, [1990] 5 NWLR Part 151, 446

<sup>41</sup>*National Licorice Co. v. National Labour Relations Board*, 309 US 350, 60 S Ct 569

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actual notice of the proceedings, the requirement of due process is satisfied<sup>42</sup>. No valid judgment *in personam* can be rendered against a defendant without personal service upon him in a court of competent jurisdiction, or a waiver of summons, and voluntary appearance therein<sup>43</sup>. Due process requires proper service of process as a condition for obtaining jurisdiction over a party so as to give the party notice of the proceedings against him, so that he might contest it or otherwise have his day in court. The practice of constructive service raises doubts about whether this objective of the law is actually realised. Where a form of service in substitution of personal service is effected pursuant to order court, the defendant may not obtain actual service, but is ascribed with such constructive notice of the process as is sufficient to endue the court with the requisite jurisdiction. However, for constructive service to amount to anything, it must be of such a mode and form as will make it probable and likely that the defendant will receive actual notice of the proceedings<sup>44</sup>. It would appear that a requirement for personal service under the rules is met where the party to the action was not personally served by a bailiff of the court, but receives the processes from a third party who had earlier been served with the process by a bailiff<sup>45</sup>.

If a court has jurisdiction over the subject matter of the suit, but no *in personam* jurisdiction over the defendant or any other party, the court may acquire *in personam* jurisdiction over the defendant or any other party who by accepting unconditionally, service of the processes on them consent to its exercise of jurisdiction over them. However, the consent of a party to this exercise of jurisdiction does not affect the rights of any other parties who refuse to submit to the jurisdiction<sup>46</sup>. Where a consensual jurisdiction requires for its

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<sup>42</sup>*Hackner v. Guaranty Trust Co.*, 313 US 559, 61 S Ct 835

<sup>43</sup>*Clark v. Wells*, 27 S Ct. 43, 208 US 164

<sup>44</sup>*Henry L. Doherty & Co. v. Goodman*, 294 US 623, 55 S Ct 553

<sup>45</sup>*Panache Communications Ltd. v. Aikhomu*, [1994] 2 NWLR Part 327, 420, in a decision that completely stood the law on its head, Sulu-Gambari, JCA stated at 431C-D “What has been effected is the fact that the bailiff has not served the processes by himself in person to the person to be served. The requirement of the law here is that the parties to be sued must be served personally, meaning that the processes must be given to them and that they are the people to receive them. The law does not require that a person to give it to them must give it to them by himself”. This decision was unfortunately followed in *Kenfrank Nigeria Ltd. v. Union Bank Nigeria Ltd.* [2002] 15 NWLR Part 789, 46. The practical problem with this position held by the court is that any affidavit of service sworn to by the bailiff asseverating service on the party would necessarily be false. In the affidavit is sworn to on information and belief that the person to whom he handed the process over to, served it on the defendant, the affidavit would be useless hearsay. However, in *Okereke v. Ejiofor*, [1996] 3 NWLR Part 434, 90, it was held by the same Court of Appeal that service of court processes on an individual must be personal, in the sense that the documents for service must be delivered personally to him by the person assigned with that responsibility. Any other mode of service will only be proper with the leave of court.

<sup>46</sup>*Russell (John) & Co. Ltd. v. Cayzer, Irvine & Co. Ltd.*, [1916] 2 AC 298, here, plaintiffs shipped goods at London on a shipped owned by a company domiciled in Scotland for carriage to Calcutta. On her arrival at Madras the ship was requisitioned by the Indian government and the cargo discharged. Thereupon, another company domiciled in Scotland, without the knowledge or consent of the cargo owners, loaded the cargo on a ship in which they were interested, and which was then bound for Calcutta, and on her way this ship was sunk by an enemy cruiser, and her cargo including the plaintiffs’ goods were lost. Plaintiffs issued a writ in the King’s Bench division against both companies claiming damages for breach of contract, or duty in the carriage of goods by sea, and for trespass and wrongful conversion of the goods. The writ was marked ‘Not for service out of jurisdiction.’ The first defendants consented to the jurisdiction, and their solicitors accepted service on their behalf. The plaintiffs then by leave of court issued a concurrent writ and served it on the second defendants in Scotland. These defendants after entering a conditional appearance, applied to have the concurrent writ and the service thereof set aside. It was held that the consent of the first defendants to the jurisdiction could not affect the rights of third parties. Per Lord Haldane: “Jurisdiction can be given by accepting service, that is to say, by consent. The persons who are already defendants in the action although they may submit to the jurisdiction and so preclude themselves from raising any objection cannot by that procedure affect the rights of third parties”

constitution, the consent of ‘all the parties’, the consent of all whose interests are concerned in the proceedings is necessary, and the absence of consent, whether due to unwillingness or inability to consent, is equally fatal to the exercise of jurisdiction<sup>47</sup>. Nonetheless, the sphere of jurisdiction and the sphere of the right which the acceptance of service confers upon the court are not conterminous. For example, the court may decline jurisdiction on the ground that it is contrary to its duty to entertain it. If the action relates to matrimonial status, then, according to well settled principles of private international law, the courts will now refuse to interfere unless the parties are domiciled (the husband at any rate<sup>48</sup>) in this country. If the action relates to land abroad, similarly, the courts decline jurisdiction because they cannot go into questions of title under foreign law. Again if a foreign Sovereign is sued, although it might be possible to serve him within the country, the court would decline to regard the service as giving rise to jurisdiction, unless, indeed, the foreign Sovereign chose voluntarily to submit<sup>49</sup>. In any event, a distinction must be made between notice required to secure jurisdiction over the person of a party at the commencement of a suit, and notice of motions, applications and other steps in the proceeding after jurisdiction has been acquired by the court. When originating process has been validly served on the defendant, the jurisdiction of the court is effectively invoked to enter into the adjudication. Failure to serve subsequent process on him might provide a ground to set aside the proceedings undertaken under the subsequent process, but will not be a ground to hold that the court lacked jurisdiction over the person of the defendant.

Where proper service is requisite to the acquisition of jurisdiction, it is the fact of the service, not the proof thereof, which gives jurisdiction to the court<sup>50</sup>. To overcome the presumption of jurisdiction over the parties arising in favour of the judgment of a court of superior jurisdiction, when re-enforced by an express finding that service was duly made on the defendant, it is not enough that the record is silent as to facts material to the validity of such service, but it must be shown affirmatively that the service was invalid<sup>51</sup>. Furthermore, jurisdiction is acquired on the date of service of process not on the date of return of process<sup>52</sup>. Statutory provisions prescribing the manner of serving process are mandatory and must be strictly complied with in order to vest the court with jurisdiction<sup>53</sup>. However, since it is a personal privilege of a defendant to require that he be served with process in a legal manner, though of a constitutional nature, he may consent to the jurisdiction of the court without exacting performance of the usual legal formalities as to service of process<sup>54</sup>. It is the party who is entitled to be served but was not served that may raise the issue of non-service. No other party is entitled to complain unless he shows that he suffered a detriment because of the non-service of the process. The law will not encourage a party in litigation to rake-up the issue of non-service to obtain technical victory in a matter which is otherwise bad for him<sup>55</sup>.

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<sup>47</sup>*Hanna Eissa Kawa v. Bishara Elias Kawa*, [1943] 2 All E R 530

<sup>48</sup> In *Koku v. Koku*, [1999] 8 NWLR Part 616, 672, it was held that domicile is the permanent place of abode or home of a party. The jurisdiction to hear a divorce petition is governed by the domicile of the husband and not by the residence of the husband. Moreover, by operation of law, a married woman, on marriage, takes on the domicile of her husband. Consequently, the court with jurisdiction to adjudicate on a divorce matter is the court of the domicile of the husband. See *Omotunde v. Omotunde*, [2001] NWLR Part 718, 252

<sup>49</sup>*Russell (John) & Co. Ltd. v. Cayzer, Irvine & Co. Ltd.*, (n 46)

<sup>50</sup>*Bank of Orlando v. Dodson*, 20 Am Jur 2d, 492

<sup>51</sup>*Travellers' Protective Association v. Gilbert*, 42 FD 576

<sup>52</sup>*Cunningham v. Spokane Hydraulic Mining Co.*, 20 Am Jur 2d, 492

<sup>53</sup>*Atkinson v. Superior Court of Los Angeles County*, 20 Am Jur 2d, 492

<sup>54</sup>*Jones v. Brimson*, 20 Am Jur 2d, 492

<sup>55</sup>*Chime v. Chime*, [1995] 6 NWLR Part 529, 501; *Mark v. Eze*, [1997] 11 NWLR Part 529, 501; in *Gomwalk v. Military Administrator, Plateau State*, [1998] 6 NWLR Part 555, 653, it was held that whether or not other



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Nevertheless, once a party raises the issue of non-service of court process, or an allegation of defective service, that issue affects the jurisdiction of the court; and the court is bound to look at it<sup>56</sup>. In this regard, if a defendant appears for the purpose of challenging the jurisdiction of the court, and puts in issue the sufficiency of the service made, the decision of the court upon that issue is conclusive and unless reversed by some other court having power of review; and, if the sufficiency and validity of the service is sustained, the judgment subsequently rendered in the cause cannot be collaterally attacked for want of jurisdiction over the defendant<sup>57</sup>.

### 6. Effect of Error and Lack of Jurisdiction

The test of jurisdiction is whether the court had power to enter upon the inquiry, not whether its conclusion was right or wrong<sup>58</sup>. An adjudication by a court having jurisdiction is conclusive against the entire world until set aside by a proper appellate tribunal, notwithstanding that the court may have mistaken the law or misjudged the facts<sup>59</sup>. Lack of jurisdiction must be distinguished from an erroneous decision made by a court in exercising the jurisdiction it possessed<sup>60</sup>. Judgments of courts, which at the time the judgments were rendered had no jurisdiction to consider or determine the issues, and whose records disclose such lack of jurisdiction, may be collaterally attacked; but judgments of courts having power to hear and determine issues relative to the subject matter and persons to the suits, are only voidable for error and not open to collateral attack, though illegal and wrong<sup>61</sup>. Thus, a distinction exists between absence of jurisdiction and application of the wrong law by a court that has jurisdiction to try a case. A person can appeal against the application of a wrong law by a court that has jurisdiction to try a case but such application of wrong law does not affect the jurisdiction of the court to try the case<sup>62</sup>. Where a court is wrong in its decision on an issue before it, it does not follow that because of that wrong decision, the court has not kept within its jurisdiction<sup>63</sup>. Consequently, not every error of a court is a jurisdictional error, for,

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defendants in a civil suit can benefit from a preliminary objection raised by one of the defendants will depend on the nature of the objection raised. For instance, a preliminary objection founded on the fact that an action is statute-barred, and where the cause of action against the several defendants had accrued on the same date, an objection by one of the defendants ought to result in the suit being struck out even if the other defendants had not raised any objection. The position will be the same if the objection in an action against several defendants is predicated on the fact that the court concerned has no jurisdiction to try the suit. A successful objection by one of such defendants should enure to the advantage of the other defendants. In *Eze v. Okechukwu* [2003] FWLR Part 140, 1710, the State Proceedings Law of Anambra State, 1986 required that no action shall be filed against the state, or any public officer thereof in respect of any action done pursuant to any written law or in the execution of a public duty unless a pre-action notice was given at least three months before the institution of the action. It was held that the proviso does not permit any defendant who is not entitled to the defence to canvass it on behalf of the party for whose benefit it was made.

<sup>56</sup>*Caribbean Trading & Finance Corporation v. NNPC*, [1991] 6 NWLR Part 197, 352

<sup>57</sup>*Phelps v. Mutual Reserve Fund Life Association*, 42 FD 578

<sup>58</sup>*Board of Commissioners of Lake County v. Platt*, 42 F D 568

<sup>59</sup>*Gray v. Brignardello*, 68 US 627, 17 L Ed 693

<sup>60</sup>*General Investment Co. v. New York C.R. Co.*, 271 U S 228, 46 S Ct 496

<sup>61</sup>*Phebus v. Search*, 42 FD 583; in *Josiah Cornelius Ltd. v. Ezenwa*, [1996] 4 NWLR Part 443, 391, it was held that judgments or orders which are given without jurisdiction are, without doubt, null and void, and the party against whom such judgments are tendered in evidence could under section 53 of the Evidence Act establish their invalidity by showing that the court from which they emanated had no jurisdiction to entertain same. However, judgments or orders which are not null and void but only irregular or erroneous can only be declared ineffective or set aside on appeal; otherwise they would have the full force of subsisting judgments or orders.

<sup>62</sup>*Conac Optical Nigeria Ltd. v. Akinyede*, [1995] 6 NWLR Part 400, 212

<sup>63</sup>*Kano State Urban Development Board v. Fanz Construction Co. Ltd.* [1990] 4 NWLR Part 142, 1, the remedy of a party aggrieved by such a decision is to appeal against it. In the absence of an appeal, the decision is valid, rightly or wrongly.

jurisdiction is the power to decide erroneously as well as correctly<sup>64</sup>, so that a judge having authority to act on a particular matter has the power to decide correctly or to make mistakes; the fact that an appellate court may regard his action as incorrect is not a denial of his authority<sup>65</sup>. An order or judgment made within jurisdiction is neither a nullity, nor is it invalid, even if it is erroneous in law and in fact or perverse. A wrong judgment is not a nullity when the court was not incompetent<sup>66</sup>. Accordingly, if jurisdiction has attached, whatever errors may subsequently occur in its exercise, the proceeding being *coram judice*, can be impeached collaterally only for fraud<sup>67</sup>. Error in determination of questions of law or fact on which the court's jurisdiction in a particular case depends, the court having general jurisdiction of the cause and of the person, is 'error in exercise of judgment' and affords no ground for collateral attack<sup>68</sup>. The distinction between lack of jurisdiction and any other error affecting a decision of the court lies in that where a court has jurisdiction, a wrong decision is not void and therefore not subject to collateral attack<sup>69</sup>. The distinction between an 'error in judgment' and a 'usurpation of power' is that an error in judgment denotes cases where a judgment is reversible by the appellate court, and a usurpation of powers denotes cases where a judgment may be declared a nullity collaterally. The remedy to correct an error in judgment is by appeal<sup>70</sup>. Where the court had jurisdiction of the cause, errors in irregular procedure should be rectified by appeal from judgment, and not by collateral attack<sup>71</sup>. Furthermore, a writ such as prohibition may be available only if a court has acted without jurisdiction, and not on the ground it acted erroneously<sup>72</sup>.

## 7. Effect of Jurisdiction Fraudulently Obtained

Generally, if jurisdiction is delegated to a tribunal over a subject matter, and its exercise is confided to the discretion of the tribunal, the decision of the matter, in the absence of fraud, is valid and conclusive, and even fraud will not in every case open the judgment to review where the proceeding is not a direct one<sup>73</sup>. It is fundamental in our system of jurisprudence

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<sup>64</sup>*Pope v. US*, 323 US 1, 65 S Ct 16; in *Anisminic Ltd. v. Foreign Compensation Commission*, [1969] 1 All ER 208, Lord Reid stated at 213 H-214 A: "It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word 'jurisdiction' has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly"

<sup>65</sup>*Johnston v. Marsh*, 20 Am Jur 2d, 451

<sup>66</sup>*Onyekweli v. INEC*, [2009] All FWLR Part 490, 738

<sup>67</sup>*McNitt v. Turner*, 83 US 352, 21 L Ed 341; in *Mitchell v. Arnall*, 20 Am Jur 2d, 451, it was held that a decision of a court having jurisdiction both of the subject matter and the parties, however irregular or erroneous it may be, is binding until set aside.

<sup>68</sup>*Burgess v. Nail*, 42 FD 578

<sup>69</sup>*Badger v. Holdale*, 20 Am Jur 2d, 451

<sup>70</sup>*US v. US Fidelity and Guaranty Co.*, 60 S Ct 383, 308 U S 548

<sup>71</sup>*Bohenik v. Delaware & H. Co.*, 52 S Ct 23, 284 U S 643

<sup>72</sup>*Knewel v. Egan*, 268 U S 442, 45 S Ct 522

<sup>73</sup>*Meador v. Norton*, 78 US 442, 20 L. Ed. 184

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that the law will never protect any person against his own deliberate default or misdeed<sup>74</sup>. Ordinarily, the illegality of an arrest does not invalidate a later proceeding<sup>75</sup>. However, it is neither possible to justify or validate a proceeding that is otherwise an illegality, nor could validity be threshed or winnowed out of what is a nullity<sup>76</sup>. Fraud is an intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. It is a false representation of a fact, whether by words or by conduct, by false or misleading allegations or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. It is a strong vitiating factor<sup>77</sup>. Fraud affects fatally, even the most solemn judgments and decrees<sup>78</sup>, so that fraud or collusion may be shown to avoid proceedings before any tribunal having jurisdiction<sup>79</sup>. Fraud in obtaining judgment destroys the jurisdiction of the court rendering such judgment<sup>80</sup>. The law will not allow a person to reap any benefit from his own wrongful act. To allow such is manifestly unjust and will portray the law as an instrument of injustice<sup>81</sup>. Judgments and grants obtained by fraud or collusion are void and confer no vested title<sup>82</sup>. If judgment or decree is procured through the fraud of either of the parties or by collusion of both for purposes of defrauding some third person, such third person may escape from the injury thus attempted by showing the fraud or collusion by which the judgment was obtained<sup>83</sup>. If a judgment has been fraudulently obtained in the absence of the defendant, the fact that he subsequently moves to vacate the same, and afterwards withdraws his motion by leave of court does not constitute an appearance to the action so as to render the judgment valid; he may still impeach it in another suit<sup>84</sup>.

### 8. Effect of Lack of Jurisdiction

A party aggrieved with a judgment or an order of a court granted without jurisdiction could either apply to the court to exercise its inherent jurisdiction to set aside the judgment or order as having been made without jurisdiction, and therefore a nullity; or appeal to the appellate

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<sup>74</sup>*Ita v. Nyong*, [1994] 1 NWLR Part 318, 56

<sup>75</sup>*Guzman-Flores v. US Immigration & Naturalisation Service*, 17 FPD 2d 207; in *Mattaradona v. Ahu*, (n 32) it was held that by virtue of s. 382 of the Criminal Procedure Code, no finding, sentence or an order of a court of competent jurisdiction shall be reversed on account of any error, omission or irregularity on the warrant unless the appeal court or reviewing authority thinks that a failure of justice has in fact been occasioned by such error, omission or irregularity.

<sup>76</sup>*Unuakhoni v. State*, [1985] 3 NWLR Part 12, 364, this case is further authority for the proposition that jurisdiction must exist both at commencement and conclusion of the case. Here, a Chief Magistrate at Ibadan tried the appellant on a one count charge of stealing a car at Kaduna. At the end of the trial, the appellant was acquitted on the charge of stealing the car at Kaduna, but convicted on the lesser offence of receiving the same car in Ibadan. The Court of Appeal held that the learned Chief Magistrate, sitting at Ibadan, Oyo State, in the absence of any special provisions empowering her to enforce the laws of Kaduna State, did not have any jurisdiction to determine and decide an offence committed in Kaduna State. Since the trial court had no jurisdiction to try the charge of stealing, it could not have the jurisdiction to justify conviction for the lesser offence of receiving stolen property merely because the evidence revealed such offence; per Uche Omo, JCA at 370E “*Once the jurisdiction of the Court to try the offence charged is ousted, that is final. It cannot in the course of the trial, purport to ‘change horses in midstream’ as it were and then assume jurisdiction. Once there is no jurisdiction, the trial is a nullity and remains so for all purposes*”

<sup>77</sup>*Ntuks v. Nigerian Ports Authority*, [2007] All FWLR Part 387, 809

<sup>78</sup>*Nudd v. Burrows*, 91 US 426, 23 L Ed 286

<sup>79</sup>*Shelby v. Bacon*, 51 US 56, 13 L Ed 326

<sup>80</sup>*Nardi v. Poinssatte*, 42 FD 589

<sup>81</sup>*African Petroleum Ltd. v. Owodunni*, [1991] 8 NWLR Part 210, 391

<sup>82</sup>*League v. De Young*, 52 US 185, 13 L Ed 657

<sup>83</sup>*Michaels v. Post*, 88 US 398, 22 L Ed 520

<sup>84</sup>*First National Bank v. Cunningham*, 42 FD 569

court<sup>85</sup>. The general rule is that proceedings conducted or decisions made by a court are legally void where there is an absence of jurisdiction over the subject matter<sup>86</sup>, even if the court in good faith believed it had jurisdiction<sup>87</sup>. Where a court has no jurisdiction, it cannot do anything, and that is where the matter ends. There is no longer any question of fair hearing, as it does not now arise without jurisdiction. If a court lacks jurisdiction, the question of doing substantial justice is not relevant since defeat of jurisdiction relates to embarking on the case and not to miscarriage in the course of it or to the correctness of the decision<sup>88</sup>. Once a court lacks jurisdiction over a matter before it, introduction of the concept of doing substantial justice and shunning technicalities will make no difference, for no degree of liberal interpretation or coinage of the concept of justice, even in the most articulate judicial premise can be employed to confer jurisdiction on a court that lacks it<sup>89</sup>. A defect in jurisdiction or lack of it relates to the act of embarking on the case, and not any errors committed in the course of the hearing, or to the correctness of the judgment<sup>90</sup>. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing that fact and terminating the proceedings<sup>91</sup>. However, before a court may pronounce an action incompetent, it should be clear on the record that it has no jurisdiction whatsoever to entertain it. The court can only do this when the action is illegal, illegitimate, unfit, lacking in legal capacity or legal power<sup>92</sup>. But the, jurisdiction is not a discretionary matter; if in law and in fact jurisdiction is lacking, the case must be terminated on that ground rather than to be considered on its merit<sup>93</sup>. When a court declares that it has no jurisdiction to hear and determine a case, it means that the court cannot proceed to hear evidence and determine the rights of the parties in the case<sup>94</sup>. A court without jurisdiction has no power to adjudicate, but can only terminate a proceeding for lack of jurisdiction<sup>95</sup>. Once a court declines jurisdiction to entertain a suit, the only other step it could take in the matter is to

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<sup>85</sup>*Okafor v. Okafor*, [2000] 11 NWLR Part 677, 21

<sup>86</sup>*Re Bonner*, 151 US 242, 14 S Ct 323

<sup>87</sup>*Norfolk v. WR Co. v. Pinnacle Coal Co.*, 20 Am Jur 2d, 458

<sup>88</sup>*Riruwai v. Shekarau*, [2009] All FWLR Part 461, 975

<sup>89</sup>*Owners M/V Baco Liner 3 v. Adeniji*, [1993] 2 NWLR Part 274, 195

<sup>90</sup>*University of Jos v. Carlen (Nigeria) Ltd.*, [1992] 5 NWLR Part 241, 352

<sup>91</sup>*Local 1498 American Federation of Government Employees v. American Federation of Government Employees*, AFL/CIO 17 FPD2d 100

<sup>92</sup>*Busari v. Oseni*, [1992] 4 NWLR Part 237, 557, apart from the substantive issue of jurisdiction, an action could be said to be incompetent if its non-compliance with the rules of court affects the props, the foundations and the fundamentals of the case. However, if the non-compliance is of a peripheral nature which is not substantial but intangible and frivolous, it should not give rise to a pronouncement that the action is incompetent.

<sup>93</sup>*Thomas v. Travellers Insurance Co.*, 17 FPD 2d 101

<sup>94</sup>*Oyelami v. Military Administrator, Osun State*, [1999] 8 NWLR Part 613, 45; in *New Orleans Mail Co. v. Flanders (New Orleans & BS Mail Co. v. Fernandez)*, 20 L Ed 249, it was held that a court devoid of jurisdiction over the case cannot make a decision in favour of either party. It can only terminate the case for want of jurisdiction.

<sup>95</sup>*Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 17 FPD 2d 213; however, in *Arewa Paper Converters Ltd. v. NDIC (NUB Ltd.)* (n 36), it was suggested as a matter of procedure that though, if a court lacks jurisdiction to hear a matter and comes to that decision, the court has nothing to do with the merits of the matter because the exercise will be in futility. However, courts below the Supreme Court will not be wrong to take the merits of the matter in the alternative. This exercise will come in handy in the event that the court wrongly ruled that it had no jurisdiction when in law it had. It is the view of the author that this *obiter dictum* in the concurring judgment of Tobi, JSC is basically an extrapolation of the rule that even where an appellate court below the Supreme Court is entitled to resolve the appeal on a single ground, it should consider every other ground filed, so that perchance it was mistaken in its consideration of the single ground, the appeal could be resolved on the rest of the grounds. This author is of the view that the opinion of the learned Justice is, with respect to jurisdiction, the extrapolation is a novelty which does not stand on very firm jurisprudence.

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make an order striking-out the suit. Any other order or pronouncement made by the court after declaring that it lacks jurisdiction to entertain a suit is null and void and of no effect whatsoever<sup>96</sup>. A dismissal of an action is adjudication on the merits and there can be no adjudication on the merits where there is no jurisdiction or competence to adjudicate. Where a court holds that it has no jurisdiction to entertain an action, the court should not dismiss the action, but strike it out<sup>97</sup>. As a result, a decision of a court or other agency on matter concerning which it has no jurisdiction has no binding effect whatsoever<sup>98</sup>. It is invalid in the sense that an invalid order of court is one which is deficient in law and therefore having no legal effect whatsoever. It carries a legal disability so that it should not be enforced. It has no effect in law and no cogency and force of law. It is null and void<sup>99</sup>. If an act is void, then in law it is a nullity. It is both bad and incurably bad. It will be unable to sustain any act or proceeding. A declaration of the requisite tribunal as to its voidness is sufficient without a consequential order setting it aside<sup>100</sup>. The rule that a court without jurisdiction can make no order except to terminate the suit does not apply to actions setting aside orders made improperly before the want of jurisdiction was discovered<sup>101</sup>. Where a court of law lacks jurisdiction to entertain a matter, it equally lacks the power to review its earlier order not to talk of going ahead to make new and contrary executor orders. It could at best only set aside its null judgment and or vacate the order made by it in the course of the null proceeding<sup>102</sup>. An order by the court that it has no jurisdiction is basically declaratory and cannot be stayed. The consequential order striking out the suit for absence of jurisdiction may also not be stayed<sup>103</sup>. Once a court pronounces that it lacks jurisdiction to hear and determine a case, then a court of concurrent jurisdiction has no business conferring jurisdiction on itself<sup>104</sup>. A judge has no jurisdiction to re-open a suit struck out by another judge on ground of lack of jurisdiction. Apart from the position of the law that a judge of coordinate jurisdiction has no competence to sit on appeal over a judgment delivered by another judge, a pronouncement on lack of jurisdiction remains so and can only be set aside on appeal<sup>105</sup>.

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<sup>96</sup>*Obi v. INEC*, (n 14); in *Abubakar v. Bebeji Oil and Allied Products Ltd*, [2007] 18 NWLR Part 1066, 319, in an *obiter dictum*, a Justice of the Supreme Court endorsed the position of the lower court that once a matter is struck out for want of jurisdiction, the remedy open to the aggrieved party is to appeal, and not to reopen the case again by way of a fresh litigation. It is doubtful where this represents the correct position of the law.

<sup>97</sup>*Ezeonu v. Aghaeze*, [1991] 4 NWLR Part 187, 631; *Gombe v. PW (Nigeria) Ltd.*, [1990] 5 NWLR Part 151, 473

<sup>98</sup>*Utah v. Construction & Mining Co. v. US*, 86 S Ct 1545, 384 U S 394

<sup>99</sup>*Obikoya v. Wema Bank Ltd.*, [1992] 5 NWLR Part 239, 122

<sup>100</sup>*Nwachukwu v. Nnadike*, [2007] All FWLR Part 395, 558

<sup>101</sup>*New Orleans Mail Co. v. Flanders*, (n 94)

<sup>102</sup>*Adeyemi-Bero v. Omotosho*, [2008] 15 NWLR Part 1111, 576

<sup>103</sup> In *Government of Gongola State v. Tukur* [1989] 4 NWLR Part 117, 592, the Supreme Court stated per Obaseki, JSC: "*It should be borne in mind that at the stage when a court declares that it has no jurisdiction or has jurisdiction in a matter, it has not entered into a determination of the rights of the parties. If it has heard evidence beside the evidence on the issue of jurisdiction, it has not assessed and evaluated the evidence to enable it determine the rights of the parties and or grant or refuse the reliefs claimed. It is saying at that stage that it is incompetent to entertain, hear and determine the case or that it is competent to hear and determine the case. If it declares that it has no jurisdiction, and is incompetent to hear and determine the case, that is a complete decision in itself. It means that the court cannot proceed to hear evidence and determine the rights of the parties in the case. There is nothing in the decision calling for enforcement by any of the parties. So there is nothing to be executed and there is nothing to be stayed.*" See also *Oyelami v. Military Administrator, Osun State*, (n 94)

<sup>104</sup>*Abubakar v. Bebeji Oil and Allied Products Ltd*, (n 96)

<sup>105</sup>*Anyaeibunam v. Attorney-General, Anambra State*, [2001] 6 NWLR Part 710, 532

## 9. Conclusion

The rule that if a court has once acquired jurisdiction, it may decide every issue that arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs and does not transcend in the extent or character of its judgment, the law which is applicable to it<sup>106</sup>. Essentially, this connotes a bifurcation between the cause of action jurisdiction and the adjudicatory jurisdiction of the court. The cause of action jurisdiction deals with the right and privileges which accrue to a party, whereas the adjudicatory jurisdiction of the court relates to the competence of a court to hear and determine an action before it. The law which supports a cause of action is not necessarily co-extensive with the law which confers jurisdiction on the court which entertains the suit founded on the cause of action. The relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose, whereas the jurisdiction of the court to entertain an action is determined upon the state of the law that confers jurisdiction at the point in time the action was instituted and heard<sup>107</sup>. Therefore, when a court is denied jurisdiction at the time a cause of action arose, it cannot assume jurisdiction when the action is instituted later in respect of the subject-matter even if its jurisdiction to entertain similar matters is then restored. Similarly, when a court had jurisdiction over a subject matter at the time of the cause of action, but loses jurisdiction at the time the action is instituted, it cannot entertain such action<sup>108</sup>. In any event, jurisdiction once acquired, continues until all issues, both of fact and law, have been finally determined<sup>109</sup>, and the jurisdiction of the court continues until the satisfaction of the judgment of the court<sup>110</sup>.

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<sup>106</sup>*Windsor v. McVeigh*, 93 US 274

<sup>107</sup>*Ansa v. Registered trustees of the Presbyterian Church of Nigeria*, [2008] 7 NWLR Part 1086, 421

<sup>108</sup>*Adah v. NYSC*, [2004] 13 NWLR Part 891, 639

<sup>109</sup>*Rhodes v. Houston*, 83 S Ct 724, 372 U S 909

<sup>110</sup>*In re Terrace Superette*, 17 FPD 2d 194

