

SUPREMACY OF THE CONSTITUTION *VERSUS* SUPREMACY OF THE LEGISLATURE IN NIGERIA-
IMPORTS, LIMITS AND CONSEQUENCES*

Abstract

The doctrine of separation of powers entails that none of the three arms of government encroaches into the powers of the other. Thus, the lawmaking powers of the legislature is sacrosanct as it can make, amend or repeal any law. Nonetheless, the nagging questions are whether legislative powers can be exercised in breach of constitutional provisions and where this happens, what will be the consequence? To resolve this quagmire, this paper deployed the doctrinal research method to analyse diverse statutory and judicial authorities on the intricate but interwoven principles of supremacy of the constitution, separation of powers, checks and balances. The paper further examined the supremacy of the Constitution against the touted supremacy of the legislature and the role of the judiciary where a statute is enacted in breach of the Constitution. It was established that the Constitution is supreme and inviolable for all purposes and that despite separation of powers, the lawmaking power of the legislature cannot be exercised in flagrant violation of constitutional provisions. The paper further determined that the judiciary as the bulwark of the Constitution, acting within the province of its interpretative jurisdiction, is under a duty to uphold the supremacy of the Constitution and consequently declare any statute enacted in breach of the Constitution null and void. It was therefore recommended among other things that in the exercise of its unfettered lawmaking powers, the legislature must strive to uphold the supremacy of the Constitution in order not to legislate in vain.

Keywords: Nigerian Constitution, Judiciary, Legislature, Supremacy, Void

1. Introduction

The aim of this paper is to examine the extent of the supreme lawmaking power of the legislature against the principle of the supremacy of the Constitution. It is hornbook law that the legislature reserves the unfettered right to make, amend or repeal laws. The question has always been whether this is an absolute right or power? Put differently, to what extent can the principle of supremacy of the legislature stand against the doctrine of supremacy of the Constitution? In other words, what will be fate of such a statute enacted in breach of the Constitution and which arm of government is entrusted with the responsibility to act as a watchdog of the legislature? The ensuing analysis will reveal that the power of the legislature to make or amend laws must be in obedience to the relevant constitutional provisions under which the law was made, enacted or amended and that a law made in breach of the Constitution is null and void to the extent of its inconsistency. To this end, for ease of understanding, the outstanding discussions in the paper will be divided into the following segments namely: Supremacy of the Constitution; Separation of powers and checks and balances of the arms of government; Supremacy of the Constitution versus the power of the legislature to make, amend or repeal laws; Power of the Courts where a statute is enacted in breach of the Constitution; Conclusion and recommendations.

2. Supremacy of the Constitution

The extant Constitution of the Federal Republic of Nigeria, 1999 as amended¹ is the supreme law, the *fons et origo* and the *grundnorm*. The principle of the supremacy of the Constitution is traceable to the provisions of section 1(1) and (3) of the CFRN, 1999 as amended. Section 1(1) enacts that ‘This Constitution is Supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria while section 1(3) thereof provides that ‘If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.’ In the recent case of *CBN v Ochife & Ors*,² the apex Court in Nigeria reiterated that the Constitution is the *grundnorm*, the basic law of the land. It stands head and shoulders above any other law or instrument enacted by the National Assembly, State House of Assembly or any other person or authority empowered in that regard. It is from the Constitution that every other enactment or instrument derives their validity and binding force. Supremacy of the Constitution is recognised in a long line of decided cases such as *A-G Federation v A-G Abia State & Ors*,³ *NPF & Ors v Police Service Commission & Anor*,⁴ *Shelim & Anor v Goban*,⁵ *Sifax (Nig) Ltd v Phoenix Capital Ltd & Anor*,⁶ and *Olugbemi v State*.⁷

Based on the doctrine of supremacy of the Constitution, the judiciary is empowered to declare as unconstitutional, null and void, any legislative or executive actions, decisions or directives that are done or carried on in flagrant violation, disobedience or disregard of the Constitution. In *PRP & Ors v KESIEC & Anor*,⁸ the Court of Appeal, per Tobi, JCA, adumbrated on the nature and effect of the supremacy of the Constitution thus-

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¹ Cap. C23 LFN 2004 hereinafter abbreviated and referred to as “CFRN”.

² (2025) LPELR-80220(SC).

³ (2024) LPELR-62576(SC).

⁴ (2023) LPELR-60782(SC) (Pp. 154 paras. A).

⁵ (2009) LPELR-3043(SC) (Pp. 15 paras. B).

⁶ (2023) LPELR-59979(SC) (Pp. 22-23 paras. E).

⁷ (2023) LPELR-60331(SC) (Pp. 32-33 paras. B-B).

⁸ (2024) LPELR-62560(CA) (Pp. 12-13 paras. C).

The constitution of a nation, in this instance the 1999 Constitution of Nigeria is binding on every person and institution in Nigeria and any action taking contrary to the Constitution will be declared null and void. See *PDP v Sylva* (2012) 13 NWLR (Pt 1316) 85, *Udenwa v Uzodinma* (2013) 5 NWLR (Pt. 1346) 94. The Supreme Court made this very clear in the case of *NPF & Ors v Police Service Commission & Anor* (2023) LPELR- 60782 (SC): 'It is equally imperative to restate the elementary principle of the supremacy of the Constitution. The Constitution of the Federal Republic of Nigeria is the grundnorm, the basic law of the land. It stands head and shoulders above any other law or instrument enacted by the National Assembly, State House of Assembly or any other person or authority empowered in that regard. It is from the Constitution that every other enactment or instrument derive their validity and binding force. The doctrine of the Supremacy of the Nigerian Constitution is traceable to *section 1(1) and (3)* of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) ... per Jauro, JSC.'

The Constitution is therefore the benchmark or touchstone upon which the constitutionality of any executive, legislative or judicial act is considered.

3. Separation of Powers and Checks and Balances of the Arms of Government

Having established the supremacy of the Constitution in the immediate past segment, it will be apposite to delve into the intricate ramifications of the doctrine of separation of powers in order to understand constitutional arrangements on power sharing and check and balances of the arms of government in Nigeria. Consistent with the concept of separation of powers, under the Nigerian Constitution, there are three recognised arms of government in both the Federation and the State levels namely: legislature, created under *section 4* of the CFRN, 1999 as amended; executive, created under *section 5* of the CFRN, 1999 as amended; and judiciary, created under *section 6* of the CFRN, 1999 as amended. These are distinct and separate arms and each has its functions and powers clearly set out. In *Ugba & Anor v Suswam & Ors*,⁹ the Supreme Court, per Rhodes-Vivour, JSC, explained what the principle of separation of powers under a constitutional structure entails thus-

I must explain that the Constitution sets up a federal system by dividing powers between the Federal and State Governments. It establishes a National Government divided into three independent branches. The Executive branch enforces the law. The legislative branch makes the laws, while the judiciary explains the law. There is no document superior to the Constitution in Democratic Governance. It is the heart and soul of the people....

With respect to the legislature, expressly, section 4 of the CFRN 1999 as amended confers on the National Assembly the power to make laws for the peace, order and good government of Nigeria. Under section 4(1) of the CFRN, 1999 as amended, the legislative powers of the Federal Republic of Nigeria are vested in a National Assembly for the Federation which consists of the Senate and House of Representatives. As reiterated in *Olafisoye v FRN*,¹⁰ therefore, only the National Assembly can legislate to alter the relevant provisions of the Police Act. The ambit of the legislative powers of the Federal Republic of Nigeria vested in the National Assembly is detailed in subsections (2), (3) and (4) of the section 4 of the CFRN, 1999 as follows:

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition, and without prejudice to the powers conferred by Subsection (2) of this Section, the National Assembly shall have powers to make laws with respect to the following matters, that is to say: -

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.'

Following from the above constitutional provisions, it was interpreted in *A-G Lagos State v A-G Federation & Ors*¹¹ that the legislative powers of the Federal Republic of Nigeria thus consists of powers to make laws with respect to any matter included in the (i) Exclusive Legislative List set out in Part I of the Second Schedule of the Constitution and, (ii) Concurrent Legislative List set out in the First Column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column; and, with respect to any matter which it is empowered to make laws in accordance with the provisions of the Constitution. The ambit of the legislative powers of a State of the Federation is, on the other hand, defined by subsection 7 of section 4 of the Constitution. These are the powers to make laws with respect to any matter not included in the Exclusive Legislative List, and with respect to any matter included in the Concurrent Legislative List to the extent prescribed in the List; and the power to make laws with respect to any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.

⁹ (2014) LPELR-22882(SC) (Pp. 79 paras. D).

¹⁰ (2004) LPELR - 2553 (SC).

¹¹ (2003) LPELR-620(SC) (Pp. 252-254 paras. E-E), per Ayoola, JSC.

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Regarding the executive, section 5(1) of the CFRN, 1999 as amended provides that the executive powers of the Federation (a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and (b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws. In the same wise, section 5(2) provides that, subject to the provisions of the Constitution, the executive powers of a State (a) shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and (b) shall extend to the execution and maintenance of this Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws. Thus, as held in *Ugba & Anor v Suswam & Ors* (supra), the executive branch enforces the law. The legislative branch makes the laws, while the judiciary explains the law.

With respect to the judiciary, section 6(1) of the CFRN, 1999 as amended provides that 'The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation while section 6(2) enacts that 'The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.' In essence, the judiciary is the branch of government, popularly known as the third arm of government, that is constitutionally responsible for interpreting the laws and administering justice. As held in *Anozia v A-G Lagos State & Ors*,¹² it is also termed 'judicature', which denotes the act of judging or administering justice, by the application of the rule of law, through duly constituted Courts. In *A-G Federation v A-G Abia State & Ors*,¹³ the Supreme Court, per Tsammani, JSC, restated that the Constitution itself, has in clear terms appointed the judiciary as its guardian or watchman. This can be seen in section 6(6)(a) and (b) of the CFRN, 1999 as amended. The Courts are saddled with the duty and function of determining the meaning, nature and scope of laws made or passed by the legislature. This is done in the exercise of the interpretative jurisdiction of the Courts. The judiciary is therefore, the arm of government responsible for interpreting the Constitution through the cases brought before it for adjudication. The interpretative jurisdiction of the Courts, particularly the Supreme Court, is the Court's greatest weapon and is guaranteed by section 6(6) of the CFRN, 1999 as amended.

As variously shown above, separation of powers is constitutionally sanctioned or introduced to ensure that the three major arms of government (legislature, executive and the judiciary) are not concentrated in one single body whether in functions, personnel or powers. The separation ensures that the powers of each branch of government are not in conflict with others. The intention behind a system of separated powers is to prevent the concentration of powers by providing for checks and balances. This has been meticulously done in such a manner that nowhere have the powers of the any of the arms of government been made subject to the powers of any other arm or branch of government. In *Assistant I-GP & Anor v Gombe*,¹⁴ the Court of Appeal relied on the Supreme Court decision in *Attorney General of Abia State & Ors v Attorney General of the Federation*¹⁵ where it was held that:

The principle behind the concept of separation of powers is that none of the three arms of Government under the Constitution should encroach into the powers of the other. Each arm, the Executive, Legislature and Judiciary is separate and equal and of coordinate department and no arm can Constitutionally take over the functions clearly assigned to the other. Thus, the power and functions Constitutionally entrusted to each arm cannot be encroached upon by the other. The doctrine is to promote in governance by precluding the exercise of arbitrary power by all the arms and thus prevent friction.

It is for this same reason on the doctrine of separation of powers in *Olusegun Adebayo Oni v Dr. John Olukayode*,¹⁶ the apex Court declined invitation to go outside its traditional role of the interpretation of the laws when it held, per Ngwuta, JSC, that a provision of the Constitution may seem out of touch with reality at any particular point of time but in such cases, even when proven, the Court is not competent to intervene. The Court is bound by the doctrine of separation of powers under which the business of law-making is in the exclusive domain of the legislature made up of the upper and lower chambers of the National Assembly. What the principle of separation of powers under a constitutional structure entail was vividly explained in *Obi v INEC & Ors*,¹⁷ wherein Aderemi, JSC held that

I hold the strong view that 'law making', in the strict sense of that term, is not the function of the judiciary but that of the legislature. Let there be no incursion by one arm of the government into that of the other. That will be an invidious trespass. Let me point out that no Constitution fashioned out by the people, through their elected representatives for themselves, is ever perfect in the sense that it provides a clear-cut and/or permanent or everlasting solution to all societal problems that may rear their heads from time to time. As society grows or develops, so also must its Constitution, written or unwritten. Our problems as Judges should not and must

¹² (2010) LPELR-3778(CA) (Pp. 18-19 paras. F).

¹³ (2024) LPELR-62576(SC) (Pp. 137-138 paras. D).

¹⁴ (2016) LPELR-40816(CA) (Pp. 22-26 paras. B).

¹⁵ (2003) 4 NWLR (Pt. 809) 124, Per Belgore, JSC (as he then was).

¹⁶ (2013) LPELR-20671 (SC).

¹⁷ 2007) LPELR-2166(SC) (Pp. 57-58 paras. C). No sympathy!

As TOBI, JSC (of blessed memory) aptly said in *KRAUS THOMPSON ORG. v. N.I.P.S.S* [2004] 17 NWLR (PT 901) 44; (2004) LPELR-171 (SC) pp. 11 - 12, paras G - B, it is not the function of a Court of law to sympathise with a party in the interpretation of a statute merely because the language of the statute is harsh or will cause hardship. That is not the function of the Court but that of the legislature or competent authority.

not be to consider what social or political problems of today require; that is to confuse the task of a Judge with that of a legislator. More often than not, the law, as passed by the legislators, may have produced a result or results which do not accord with the wishes of the people or do not meet the requirements of today. Let that defective law be put right by new legislations but we must not expect the *judex*, in addition to all his other problems to decide what the law ought to be. In my humble view, he (*judex*) is far better employed if he puts himself to the much simpler task of deciding what the law is.

However, it remains to be pointed out that the doctrine of separation of powers is inchoate in the absence of the twin principle of checks and balances. A complete separation of powers, in the sense of a distribution of the three functions of government among three independent sets of organs with no overlapping or co-ordination, will be contrary to the objectives of separation of powers. What the doctrine seeks to achieve is the prevention of tyranny by not conferring too much power on anyone person or body, and the check of one power by another.¹⁸ In essence, the concept of separation of powers is incomplete without the concept of checks and balances. The latter supplements the former; both concepts constitute a dual principle. Any system of government based on the principle of separation of powers that fails to incorporate some elements of the twin principle of checks and balances will lack co-ordination of the three branches of government and risk the possibility of partial tyranny in the form of isolated legislative, executive or judicial abuse. In *A-G Abia State & Ors v A-G of the Federation*¹⁹ Nweze, JSC, (as he then was) noted that it is difficult, if not impracticable, for an individual, no matter how rich, powerful or influential, to constitute a check on a power of government. One power should rather be a counterpoise to other powers. In other words, the theory of separation of powers never envisaged three autonomous governments or three autonomous branches of one government. What is envisaged is one government with three branches. The Constitution, specifically, assigned powers, duties and functions to each branch generally but also constitutes each branch a check on the other branches.²⁰ Consequently, in strict constitutional parlance, judicial autonomy as canvassed by the plaintiffs, is antithetical to the concept of separation of powers and checks and balances. In the Nigerian context, the autonomy of the judiciary, in the plaintiff's contemplation, would be a synonym for vesting of legislative and executive powers on the judiciary with the potentiality of abuses.

4. Supremacy of the Constitution versus the Power of the Legislature to Make, Amend or Repeal Laws

It bothers repeating that the principle of separation of powers under a constitutional structure implies that where there is a separation of power between the executive, the legislature and the judiciary neither organ will invade the province of the other and neither may control, direct or restrain the action of the other. With respect to the legislature, it is settled law that the power bestowed on the legislature to make, enact and pass laws is undiluted so long as any laws passed by it is within its own legislative competence and authority. Not only can the legislature enact laws, it can also amend any existing law passed by that arm of government as circumstances may permit. In *Amoshima v State*,²¹ the Supreme Court held that it is trite law that whereas it is the duty of the legislature to enact law, that of the judiciary is to interpret the laws so made. It follows therefore that where there is dissatisfaction with the State of the laws as it exists, and a desire for a change thereof is expressed by the people, it is the duty of the legislature which made the law in the first place to effect the needed reforms by amendment thereto. The duty both to make and amend laws so made belongs exclusively, by constitutional arrangement, to the legislature as provided under section 4 of the CFRN, 1999 as amended. It therefore stands to reason the power to make laws, and in appropriate cases, amend the laws, is vested in National or State Assembly. However, this is subject to some notable exceptions. It must however be noted that section 4(8) of the CFRN, 1999 as amended provides that

Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of Courts of law and of judicial Tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a Court of law or of a judicial Tribunal established by law.

The above provision is very instructive. The Constitution prohibits the enactment of any law that provides for ouster of Court's jurisdiction. It is well settled that the Courts jealously guard their jurisdiction and any signal of ouster of jurisdiction in any statute must be scrupulously examined and would not be construed, without any express provision, to extend beyond its ordinary meaning.²² Ouster clauses are generally regarded as antitheses to democracy as the judicial system regards them as unusual and unfriendly. When ouster clauses are provided in statutes, the courts invoke section 6 of the CFRN, 1999 as amended as barometer to police their constitutionality or constitutionalism.²³

Furthermore, the power of the legislature to make laws is also subject to the fundamental exception and that the legislature has no power to ignore the provisions of the Constitution relating to law-making which are enjoined upon it. This was the kernel of the decision in *A-G Bendel State v A-G Federation*.²⁴ Whilst the power of the legislature to make and or amend laws remains unfettered, however, there is every power in the Court to declare a law or any provision of an existing law invalid on the ground

¹⁸ O.H. Philips, *Constitutional and Administrative Law* (6th ed). (London, Sweet and Maxwell, 1978) 14.

¹⁹ (2022) LPELR-57010(SC) (Pp. 55-58 paras. B).

²⁰ *A-G Abia State v A-G Federation* (2006) 16 NWLR (Pt. 1005) 265 at 377; A Murtala, "Judicial Power and its Independence" in MM Gidado, et al, (eds) *Constitutional Essays in Honour of Bola Ige- Nigeria Beyond 1999: Stabilizing the Polity through Constitutional Re-Engineering* (Enugu, Chenglo Limited, 2004) 111-114.

²¹ 2001) LPELR 471 (SC).

²² *Nigeria Engineering Works Ltd v Denap Ltd & Anor* (2001) LPELR-2002(SC) (Pp. 25 paras. D)

²³ *Inakoku & Ors v Adeleke & Ors* (2007) LPELR-1510(SC) (Pp. 68 paras. B).

²⁴ (1981) All WR 85 or (1981) 10 SC 1.

of inconsistency with the provision of any other law. In the exercise of the interpretative jurisdiction of the Court, it can strike down any law that is inconsistent with the Constitution or make pronouncements as to the validity of any existing law on ground of inconsistency with the provision of any other existing law. This principle was upheld in by the Supreme Court in *Adigun v. A-G Oyo State*²⁵ and *Osadebay v A-G Bendel State*.²⁶

Having clearly identified the ambit of the lawmaking power of the legislature and that it is subject to dutiful compliance with the Constitution, the next following segment will examine in more detailed terms, using specific examples, the implication and fate of a legislation made in violation of the Constitution. In addition, it will also discuss the arm of government whose responsibility it is to checkmate such constitutional breach or violation occasioned during the exercise of the lawmaking power of the legislature.

5. Power of the Courts where a statute is enacted in breach of the Constitution

Expressly, drawing from the provisions of section 6 of the CFRN, 1999 as amended, the traditional role of the judiciary is interpretation of the laws made by the legislature. In the exercise of its interpretative function, the Court is empowered to question the constitutional validity of a law enacted or amendment of an existing law by the legislature. This is at the heart of the power of the judiciary and consistent with the principle of check and balances. Thus, where a statute is enacted in breach of the Constitution, the Court, upon being seised of it, is under obligation to strike it down as offending the supremacy of the Constitution as erected in section 1(1) and (3) of the CFRN, 1999 as amended. The Supreme Court, per Aboki, JSC, (as he then was) in *Nwokedi v Anambra State Govt & Anor*,²⁷ encapsulated the power of the Courts where a statute is enacted in breach of the Constitution thus-

But where a statute is enacted in breach of the Constitution, the Courts must come in to stop the breach. This the Court can do only by one or more parties seeking the Court's jurisdiction to declare the Statute void. By the express provisions of section 4(8) of the CFRN 1999, as amended, the exercise of legislative powers by the National Assembly or by a State House of Assembly, shall be subject to the jurisdiction of the Court ... See also: *A-G Ondo v A-G Federation* (2002) 9 NWLR (Pt. 772) 222; *A-G Bendel v A-G Federation* (1983) 1 SCNLR 239; *A-G Abia v A-G Federation* (2006) 16 NWLR (Pt. 1005) 265 at 382 - 383 paras E - H and 385 (paras C - D).

Thus, the doctrine of supremacy of the Constitution dictates that any exercise of legislative powers must be exercised bearing in mind that the Constitution is supreme. Legislative powers cannot be exercised in a manner that is inconsistent with the Constitution and any law or instrument enacted which is inconsistent with the Constitution shall be void to the extent of the inconsistency. This is supported by the decision in a long list of cases like *Madumere & Anor v Okwara & Anor*,²⁸ *Marwa & Ors v Nyako & Ors*,²⁹ *First Bank v TSA Industries Ltd*,³⁰ *Olafisoye v FRN*,³¹ and *INEC v Musa*.³²

Invariably, any power conferred on a person or entity by the Constitution cannot be curtailed or shared with anyone else unless the Constitution so provides. This was clearly demonstrated in the notorious case of *Nigeria Police Force & Ors v Police Service Commission*.³³ In that case, there was clash of Paragraph 30 Part 1 of the Third Schedule to the Constitution and section 18 of the Police Act, 2020 over the body with power to recruit constables into the Police Force. The Police Service Commission as established under section 153(1) of the CFRN, 1999 as amended is empowered in Paragraph 30 of Part 1 of the Third Schedule to the CFRN, 1999 as amended to have power to (a) appoint persons to offices (other than office of the Inspector-General of Police) in the Nigeria Police Force; and (b) dismiss and exercise disciplinary control over persons holding any office referred to in sub-paragraph (a) of this paragraph. Thus, by a combined reading of section 153(2) of the CFRN, 1999 and Paragraph 30 of Part 1 of the Third Schedule to the Constitution, the PSC is statutorily empowered to appoint persons to offices (other than office of Inspector-General of Police). Furthermore, section 1 of the Police Service Commission (Establishment) Act, 2001 established the PSC as a body corporate with perpetual succession and a common seal which may sue or be sued in its corporate name. In addition, section 6(a) of the Police Service Commission (Establishment) Act, 2001 reiterates that PSC shall among other things be responsible for the appointment and promotion of persons to offices (other than the office of the Inspector-General of Police) in the Nigeria Police Force. On the contrary, section 18(1) of the Police Act, 2020 provides that the responsibility for the recruitment of recruit constables into the Nigeria Police Force and recruit cadets into the Nigeria Police Academy shall be the duty of the Inspector-General of Police. In section 18(2), it was provided that for the purpose of subsection (1), there shall be the Nigeria Police Recruitment Committee. while under section 18(3), the Nigeria Police Recruitment Committee is responsible for the recruitment of recruit constables into the Nigeria Police Force. The above provisions of section 18 of the Police Act, 2020 assigning the Inspector-General of Police with responsibility for the recruitment of constables into the Nigeria Police Force were in violent conflict with the provisions of combined reading of section 153(2) of the CFRN, 1999 and Paragraph 30 of Part 1 of the Third Schedule to the Constitution, under which the Police Service Commission is statutorily

²⁵ (1987) 1 NWLR. (Pt. 53) 678 at page 705

²⁶ (1991) LPELR-2781(SC) (Pp. 67-68 paras. D).

²⁷ (2022) LPELR-57033(SC) (Pp. 31-33 paras. D).

²⁸ (2013) LPELR - 20752 (SC).

²⁹ (2012) LPELR - 7837 (SC).

³⁰ (2010) LPELR - 1283 (SC).

³¹ (2004) LPELR - 2553 (SC).

³² (2003) LPELR - 24927 (SC).

³³ (2023) LPELR-60782(SC).

empowered to appoint persons to offices (other than office of Inspector-General of Police). The Supreme Court upheld the supremacy of the Constitution by holding that legislative powers cannot be exercised in breach of the Constitution. The apex Court held that the Court of Appeal was right that by dint of the provisions in Paragraph 30(a), of Part 1 of the 3rd Schedule to the CFRN, 1999 as amended the power to employ all officers of the 1st appellant (Nigeria Police Force) except the 2nd appellant (Inspector-General of Police), is vested in the 1st respondent (Police Service Commission); including the recruitment/enlistment of police, recruits/constables into the Nigerian Police Force. In the leading judgment, per Abubakar, JSC, the apex Court in striking down the provisions of section 18(1) (2) and (3) of the Police Act, 2020 held as follows:

The National Assembly made futile effort in enacting the Police Act, 2020 during the pendency of this appeal by specifically enacting *section 18(1) (2) and (3)* all in an effort to vest the power of recruitment in the second Appellant in this appeal. This is another attempt at strangulating the Respondents in this appeal, while it is within the powers of the National Assembly to make laws for the order and good Government in Nigeria, a legislation during litigation purposely made the legislation to meet the demands of power gourmets in flagrant disregard to the provisions of the Constitution. Any legislation made during litigation in contravention of the Constitution and enacted to steal a match against a litigant will be condemned and declared null and void. *Section 18* of the Police Act 2020 is obviously unconstitutional and must be declared null and void, it is so declared.³⁴

On his part, Jauro JSC, while agreeing with the leading judgment, held that section 18 of the Police Act, 2020 offended Paragraph 30 Part 1 of the Third Schedule to the Constitution by providing to the contrary that the responsibility for the recruitment of recruit constables into the Nigeria Police Force and recruit cadets into the Nigeria Police Academy shall be the duty of the Inspector-General of Police instead of the Police Service Commission. He pointed out with dismay that the Police Act, 2020 was enacted by the National Assembly during the pendency of the instant legal tussle. As section 18 of the Police Act, 2020 offended Paragraph 30 Part 1 of the Third Schedule to the CFRN, 1999 as amended, it was therefore declared void for being inconsistent with Paragraph 30 Part 1 of the Third Schedule to the Constitution.³⁵

Furthermore, in *A.-G Abia State v A-G Federation*,³⁶ it was held that powers conferred on any person, authority or entity by the Constitution cannot be enlarged unless the Constitution so provides. The supremacy of the National Assembly is subject to the overall supremacy of the Constitution. Accordingly, the National Assembly which the Constitution vests powers cannot go outside or beyond the Constitution. Where such a situation arises, the Courts will, in an action by an aggrieved party, pronounce the Act unconstitutional, null and void.

6. Conclusion and recommendations

The supremacy of the Constitution is inviolable and trumps or eclipses the supremacy of the legislature in the exercise. The duty both to make and amend laws so made belongs exclusively, by constitutional arrangement, to the legislature provided any laws passed by it is within its own legislative competence and authority. Any legislative power exercised in breach of constitutional provisions is liable to be declared unconstitutional, null and void by the Court. It is therefore, recommended that in the exercise of its legislative responsibilities, the legislature, and indeed all arms of government, must uphold the supremacy of the Constitution as entrenched in section 1(1) of CFRN, 1999 as amended failing which, under section 1(3), the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void. It is further recommended that the judiciary as the bulwark of the Constitution, when presented with the opportunity, should be steadfast in striking down any law made in breach of the sacred principle of supremacy of the Constitution.

³⁴ (2023) LPELR-60782(SC) (Pp. 67-68 paras. C).

³⁵ (2023) LPELR-60782(SC) (Pp. 159-171, paras. A-C).

³⁶ (2002) 6 NWLR (Pt. 763) 264.