KWARA STATE UNIVERSITY, MALETE

...the Green University for Community Development and Entrepreneurship

The fourteenth (14th) *Inaugural Lecture*

Title:

THE JURISPRUDENCE OF OUR CONSTITUTION, RULE OF LAW AND TECHNICALITIES: THE NIGERIA DILEMMA

By

Professor Abiodun Amuda-Kannike SAN

LL.B (Hons) ABU; B.L (Hons) (Lagos); LL.M (Hons) (R.S.U); Ph.D (Nig);
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PROF. ABIODUN AMUDA-KANNIKE SAN SIGNING THE OATH UPON BECOMING SENIOR ADVOCATE OF NIGERIA (SAN) IN 2014. PRESIDING WASHON JUSTICE MARIAM ALOOMA MUKHTAR, GCON, CJN (RTD).

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Members of the Faculty of Law,
Gentlemen of the Press,
Great KWASU Students,
Ladies and Gentlemen.

PREAMBLE

In the name of Allah, the only master of the universe. I stand before you to present the 14th in the series of inaugural lectures of the Kwara State University, Malete, the green university for community development and entrepreneurship. I give thanks to Allah for His guidance. All my adoration goes to Him for making today's inaugural lecture a reality.

Mr. Vice-Chancellor, I joined this great university on the 1st day of August, 2018 as a Professor of Jurisprudence and International Law in the Department of Jurisprudence and Public Law in the then new College of Law (Now Faculty of Law), which I started

from the beginning as the pioneer Provost of Law and pioneer Dean of Law. I am most grateful to Prof. Abdulrasheed Na'Allah, the Pioneer Vice-Chancellor of this University, who saw the need for me to come home, to serve my community, my state. He is indeed a great man. Mr. Vice-Chancellor Sir, we really suffered to build the Faculty to standard. We are indeed grateful to Almighty God.

My presence here today marks the presentation of the First inaugural lecture from the Faculty and being the First Professor of Law, the First Inaugural Lecture from the Department of Jurisprudence and Public or any Department in the Faculty of Law. Mr. Vice-Chancellor Sir, the issues as raised in this inaugural lecture, is important for the continuous existence of this great country including my little contributions as will be seen in course of this presentation. No one knows it all except Almighty God, in view of that, works of other scholars were referred to in order to support this work.

1.0 INTRODUCTION

Mr. Vice-Chancellor Sir, today, we embark on a profound exploration of a subject that lies at the very heart of our nation's identity, governance, and pursuit of justice. In the grand tapestry of Nigeria's socio-legal landscape, where principles of law intersect with the complexities of governance and the pursuit of justice, we find ourselves entwined in a perpetual dilemma, a nexus of ideals, realities, and challenges. This dilemma, encapsulated in the title of our discourse, ***"The Jurisprudence of Our Constitution, Rule of Law, and Technicalities: The Nigeria Dilemma,"*** serves as the compass for our intellectual journey.

Nigeria, a nation blessed with vast diversity, rich history, and boundless potential, is a microcosm of the global legal conundrums that beset modern democracies. Our Constitution, the bedrock of our democratic order, embodies the aspirations of a

united and just society. The rule of law, a pillar of democracy, promises equality, accountability, and protection of individual rights. Yet, as we navigate the intricate labyrinth of legal practice and governance, we find ourselves grappling with the enigmatic realm of legal technicalities a terrain that both safeguards and challenges the very principles we hold dear.

In the pages of this discourse, we shall journey through the annals of our legal heritage, dissecting the foundations of Nigerian jurisprudence, probing the intricacies of the rule of law, and confronting the paradoxical nature of legal technicalities. We shall engage in a dialogue that transcends the boundaries of academia and resonates with the lived experiences of our fellow citizens. For, our quest is not merely academic, it is a clarion call to reconcile the ideals we profess with the realities we face.

As we venture forth, we shall cast a discerning eye on the historical legacies that have shaped our legal system, from colonial influences to indigenous traditions. We shall grapple with the challenges that undermine the rule of law, from corruption to delayed justice, and examine how they intertwine with the very fabric of our society. Moreover, we shall navigate the labyrinthine maze of legal technicalities, pondering the fine line between justice and injustice that they tread.

In this journey, we seek not only to understand but also to pave the way forward. Our pursuit is one of enlightenment, introspection, and transformation. We aim to identify the imbalances, injustices, and inefficiencies that plague our legal system and explore avenues for reform. We aspire to strike the delicate equilibrium that is "*The Nigeria Dilemma*" - wherein the rule of law, our Constitution, and the intricacies of legal technicalities harmonize to create a more just and equitable society.

Ladies and gentlemen, as we embark on this intellectual odyssey, let us remember that our collective pursuit of a balanced jurisprudence is not a solitary endeavor. It is a shared aspiration that calls upon all stakeholders, legal practitioners, policymakers,

scholars, and citizens to engage in dialogue, collaboration, and action. Together, we can illuminate the path towards a Nigeria where justice is not a mere promise but a tangible reality, where the rule of law reigns supreme, and where the enigma of legal technicalities yields to the imperatives of justice.

1.1 Foundation of Nigerian Jurisprudence

To grasp the essence of Nigerian jurisprudence, we must first explore its historical roots, shaped by colonial legacies and indigenous legal traditions. Nigeria's legal system is a unique fusion of common law, customary law and Islamic law. Understanding this blend is essential in comprehending the intricacies that define our nation's legal landscape.

1.2 Colonial Legacies

One of the primary foundations of Nigerian jurisprudence is the legacy of British colonial rule. Nigeria, like many other African nations, was once a British colony. During the colonial period, the British introduced their legal system, which was rooted in common law principles, to Nigeria. This introduction left a lasting impact on Nigeria's legal structure and jurisprudence. The British legal system emphasized principles such as the rule of law, the independence of the judiciary, and the importance of written laws and precedents. These principles laid the groundwork for Nigeria's legal framework and continue to influence the country's legal culture to this day.

1.3 Customary and Indigenous Legal Traditions

Nigeria's legal landscape is not solely based on British common law principles. It is also shaped by the rich tapestry of indigenous legal traditions and customary laws that existed long before colonialism. These traditions vary significantly across Nigeria's diverse ethnic groups and regions. Customary law, often rooted in oral traditions and community practices, plays a crucial role in

resolving disputes within many Nigerian communities. Indigenous legal systems are known for their flexibility and adaptability to local contexts. They are still relevant in many aspects of daily life, particularly in rural areas.

1.4 Islamic Law (Sharia)

In some parts of Nigeria, particularly in the northern states, Islamic law, or Sharia, is a significant component of jurisprudence. Sharia is based on Islamic religious principles and covers areas such as family law, inheritance, and personal conduct. The coexistence of Islamic law alongside common law and customary law creates a complex legal environment in Nigeria.

1.5 Legal Education and Institution

Nigeria has a well-established legal education system, with law schools and universities that produce lawyers and judges. The Nigerian Bar Association (NBA) plays a significant role in legal practice and advocacy, helping to shape legal standards and professional ethics.

1.6 Legal Pluralism

One of the defining features of Nigerian jurisprudence is its legal pluralism. This means that Nigeria operates under a system where multiple legal systems coexist and interact. Common law, customary law, Islamic law, and statutory law often overlap and intersect, leading to complex legal situations that require careful consideration and adjudication.

The foundations of Nigerian jurisprudence are deeply rooted in a complex interplay of historical legacies, colonial influences, indigenous legal traditions, religious practices, and modern legal frameworks. Understanding these foundations is essential to navigate the multifaceted nature of Nigeria's legal system and its ongoing development.

1.7 The Nigerian Constitution

The jurisprudence of the Nigerian Constitution refers to the body of legal principles, doctrines, and interpretations that surround and guide the understanding and application of Nigeria's constitutional law. This jurisprudence is vital in determining the rights and responsibilities of individuals, the powers and limitations of government institutions, and the overall framework of governance in Nigeria. The Nigerian Constitution, particularly the 1999 Constitution, serves as the supreme law of the land and provides the framework for the country's legal system. It outlines the powers and responsibilities of the various branches of government, including the executive, legislative, and judicial branches. The Constitution also enshrines fundamental human rights and freedoms, which are essential in shaping the jurisprudential landscape. Idayat Hasaan stated and we do agree with her that in May and June 2021, committees from both chambers of Nigeria's National Assembly, Senate and the House of Representatives, spent a substantial part of their time crisscrossing the country for public hearings on issues relating to the 1999 Constitution. Sitting in centres across the country's six geo-political zones, they held sessions to collate the views, ideas and opinions of a broad spectrum of Nigerians on 16 key issues including devolution of powers, the administration of government, resource control, judicial reform, and national security.

As previously analysed on constitution, this is not the first substantial effort directed toward altering key aspects of the 1999 Constitution. Despite significant expenditure, the process ultimately failed after the amendments, which were submitted as a single bill, were vetoed by President Goodluck Jonathan. Hassan further stated and we agree that taking a cue from its predecessors and wary of a potential presidential veto, the, eighth National Assembly (2015- 2019) adopted a piecemeal approach to the review process by setting up two separate committees, one for the House of Representatives and another for the Senate, with the hope

that multiple bills proposing different amendments would have more chance of being passed into law than a single bill. But not all of the amendments could be pushed through before the National Assembly's tenure lapsed. With the efforts so far falling, the groundswell of critical voices and stakeholders continues clamoring for a people-drive ostensibly to address mounting civil society pressure.

Many of Nigeria's ethnic nationalities and interest groups believe that the content and character of the 1999 Constitution has been stifling their growth and development. As a result, the current Constitution has been openly rejected by socio-cultural group, especially those representing various ethnic groups, civil society, and professional groups within the Nigerian polity. Importantly too, anger remains, especially seeing the lie told in the preamble of the 1999 Constitution that "we the people" of Nigeria came together to deliberate upon and collectively approve the nation's constitution, when such debates and genuine public input did not occur at all.

With many Nigerians continuing to clamor for a fresh, people-driven template to drive democracy and good governance, even the public engagement efforts of the current review process are unlikely to be far-reaching enough to gain sufficient popular legitimacy and backing for proposed constitutional changes. We now have five (5) alterations / amendments to the 1999 constitution.

The word Jurisprudence comes from the Latin words called "*Juris prudentia"*. What *Juris* means is "Knowledge" while "*prudentia"* connote "of law". It goes on further to be expressed as *"juris prudentia est divinarum alque humanarum rerum notitia, justi atque injusti scientio"*. What this actually mean is; "jurisprudence is the concept of things divine and human; it is the knowledge of the just and also of the unjust".

Jurisprudence is also seen as the legal connections existing in any of the body of knowledge. Once a knowledge exist, any aspect of

such knowledge connected with law is Jurisprudence. No wonder we have jurisprudence in various fields of knowledge among which are;

(i) Medical Jurisprudence
(ii) Dental Jurisprudence
(iii) Architectural Jurisprudence
(iv) Criminal Jurisprudence
(v) Political Jurisprudence
(vi) Jurisprudence of Law and Society
(vii) Islamic Jurisprudence
(viii) Jurisprudence of Liberty
(ix) Jurisprudence of International Law
(X) Constitutional Jurisprudence
(Xi) Jurisprudence of Rule of Law and Technicalities

1.8 Key Aspects of the Jurisprudence of the Nigerian Constitution

i. **Constitutional Text:** The Nigerian Constitution itself, as amended, is the primary source of constitutional jurisprudence. It lays out the fundamental principles of the state, the structure of government, and the rights and freedoms of citizens.

ii. **Precedent and Case Law:** The decisions of Nigerian Courts, particularly the Supreme Court, play a significant role in shaping constitutional jurisprudence. These decisions establish legal precedents that help interpret the constitution's provisions and clarify their application in various situations.

iii. **Legal Commentary and Scholarship:** Legal scholars and experts in Nigeria contribute to the jurisprudence through academic writings, commentaries, and analysis of constitutional issues. Their insights and interpretations help refine the understanding of constitutional law.

iv. **Amendments and Evolving Society:** The Nigerian Constitution has been amended several times to reflect changing societal norms and needs. Constitutional

jurisprudence must consider both the original intent of the constitution's framers and the evolving interpretations that adapt to contemporary challenges.

v. **International Law and Treaties:** Nigeria is a signatory to various international treaties and conventions. Constitutional jurisprudence also takes into account how these international agreements intersect with domestic laws and rights.

vi. **Federalism and the Division of Powers:** Nigeria's federal system of government introduces complexities in constitutional jurisprudence. The allocation of powers between the federal and state governments, as well as the relationship between different tiers of government, is a critical area of focus.

vii. **Fundamental Rights and Freedoms:** The jurisprudence of the Nigerian Constitution emphasizes the protection of fundamental rights and freedoms, such as freedom of speech, the right to a fair trial, and equality before the law. Courts play a central role in safeguarding these rights.

viii. **Judicial Independence:** Upholding the independence of the judiciary is essential to ensure a fair and impartial interpretation of the constitution. This independence is a cornerstone of constitutional jurisprudence.

It's important to note that the jurisprudence of the Nigerian Constitution is continually evolving as new legal challenges arise and society changes. Legal practitioners, scholars, and the judiciary all contribute to shaping and refining this jurisprudence to ensure that the constitution remains a relevant and effective framework for governing the nation.

Key areas identified for Constitutional Review

Federal Restructuring

There are several issues raised on the structural infirmities occasioned by the state's arrangement. In response, several

governments have introduced mechanisms to address these challenges, including the creation of states, resource control, and several constitutional review processes. However, since the return to democracy in 1999, the call for federal restructuring has gained prominence due to sentiments of marginalization, inequality and exclusion. Most of the ethnic nationalities in southern states and across the middle belt have been strident in calling for the restructuring of Nigeria to increase regional autonomy. Groups, including umbrella social-cultural bodies like the *Afenifere* (Yoruba), *Ohaneze Ndigbo* (Igbo) and the Middle Belt Forum, have consistently argued that the concentration of power in the center is suffocating subnational entitles in the polity. At the heat of demand for restructuring is resource control, which the groups have advocated, if more decentralized, would make Nigeria more productive, economically buoyant and less dependent on oil. Despite these agitations, the National Assembly does not appear to be very keen on the restructuring of the country and the conversation has assumed more of the historical North, a unified position to the constitution review process, proposing the conversion of the current six geopolitical zones into federating units (hence, consolidating the current 36 states). Nevertheless, the challenge of big states, including the memory of the Biafra war continue to generate resistance for reform.

Local Government Autonomy

Just as they were in the constitutional reform processes, the quest for local government autonomy has again cropped up as one of the issues for amendment. The agitation for a democratic local government provided for in Section 7(1) of the 1999 Constitution as amended should be reinforced by specific provisions that would preclude the mass dissolution of local government areas (LGAs), remove the power of state governors to replace elected representatives at the LGA level, and remedy the failure by successive governors to conduct local government election.

Instead of elected officials, caretaker committees made up of loyal party stalwarts are appointed by the governors.

During the public hearing, many presenters place emphasis on the need to ensure the LGAs become more democratic. Nigeria cannot claim to be practicing democracy without representative government at the local level. To do this, LGAs must be untied from the apron strings of state governments. The revenue sharing formula statutory allocation from the federation account stipulates that the federal government takes about 52 percent, 27 percent for the states, and the local governments receive 21 percent. However, section 162 of the constitution provides for a State Joint Local Government Account (SJLGA). In practice, the state governors appropriate the entire 48 percent and disburse as they deem fit to the local government. The lack of democracy at the local government level has led to an abysmal delivery of public goods and services at that level. There are also calls in some quarters for the SJLGA to be abolished, to allow local government to directly access their funds as a front-line charge from the national consolidated account.

Revenue Allocation

The process of allocation of revenue between the three tiers of the government remains a bone of contention. Although there were no clearly stated proposals on what percentage of allocated revenue should go to which tier of government, the consensus was that the federal government currently takes too much to the detriment of state and local governments. Under the current revenue sharing formular, the federal government takes 52.68%, the states take 26.72% and 20.60% is received by the local governments. The oil producing states in addition receive 13% share from revenue from oil extracted in the relevant state.

State Police

Many of the interest groups called for the Nigerian Constitution to

expressly recognize the need for states to have their own police forces. Given the level of insecurity pervading the country, with persistent conflicts between herders and farmers, and bandits running amok in part of the country, this is hard to dispute. In fact, in some parts of the country, regional security structures such as the *Amotekun* in the South-West, *Ebube-Agu* in the South-East, and the Civilian Joint Task Force in the North-East are already, informally at least, in place and operational.

Removal of Immunity Clause

Section 308 of the constitution grants immunity against civil or criminal proceedings for public office holders such as the President, the Governors, and Deputies, while in office. Nigerians have rallied against this provision on the ground that it has been grossly abused and should be removed to allow for swift dispensation of justice.

Strengthening Independence of Institutions

There are proposals to alter Section 121 of the Constitution that would grant financial independence and more oversight powers to the office of Accountant General of the Federation and Auditor General of the Federation, which is believed would strengthen accountability.

Citizenship and Indigeneity

The current constitutional provisions privilege indigeneship at the expense of citizenship. The result is that residents who have inhabited an area for centuries cannot lay claim to rights and entitlements simply because he/she does not share common ancestry with those considered original natives, or indigenes. This has led to exclusion and discrimination against certain citizens politically, economically and socially in parts of the country they deem to be their home. There are therefore calls to reform the constitutional benefits attributed based on indigeneship.

Another issue raised at the hearings is unequal transmission of citizenship via marriage. The constitution allows citizenship by registration for a woman married to a Nigerian man but precludes a Nigerian woman married to a foreign man to confer citizenship on him. This provision remain unaltered despite advocacy. A foreign man married to a Nigerian woman may pursue the option of citizenship by naturalization based on fifteen years' residence in the country.

Constitutional Roles for Traditional Rulers

The 1999 Constitution makes no provision for traditional rulers. With the spate of insecurity in the country, there is a push for traditional authority to be returned to the constitution as it was in the 1960, 1963 and 1979 constitutions, as traditional rulers are the closest to the citizens and can play important roles in security matters in their communities.

Electoral Reform

Nigeria has conducted lots of general elections since the return to civil rule in 1999. Each successive election has had areas of commendation and areas for improvement. However, there are critical areas such as the determination of pre-election matters, which are currently handled at the Federal High Court as opposed to election petition tribunals. Some of the items up for amendments include expansion of the time for elections to the National Assembly, State Houses of Assembly, the office of President, and office of Governor, and amendment of the time for the determination of pre-election matters so as to provide sufficient time for the conduct of party primaries and final determination of pre-election matters by the courts prior to the election day.

Public Participation: Genuine Engagement or Lip service?

Given public sentiment that the 1999 Constitution was thrust upon Nigeria by the military regime, genuine and extensive

public engagement is key to ensuring legitimacy of this process and acceptance of any resulting proposals for constitutional reform. However, at the public hearings held by the Senate Committee in May 2021, people who were given the opportunity to make presentations were only allocated three minutes. Furthermore, citizen complained that invitations to the public hearing were issued with insufficient time for preparation, there have not been attempts to strategically communicate the review process in local languages. Gender considerations have largely been ignored with the drivers of the process being mostly men. Persons with disabilities have also been excluded, with no sign language interpreters present at the engagement sessions. These are just some of the observable gaps, which point to the lack of depth in terms of citizens' participation and inclusion. Also there exist circumstances which can be described as undemocratic antics, wherein some members of the committee in public hearing centres gave the impression that they had already made up their minds about the areas they are inclined to amend prior to citizens providing their input. In fact, there is little to indicate that the outcomes of the review process will radically alter the current drift in the polity. The entire review process, like the efforts before it, has mainly come across as a talk shop for the political elite, with a thin veneer of public participation. Across the country, the popular sentiment is that the process lacks the rigor to birth a document which will address demands for true federalism and devolution of powers from the current bloated and outsized federal centre. There are some persons who used the review process to express their view on what the direction of the country should be, many others simply condemned the exercise as a sheer waste of time. Considering the ingrained flaws, and the largely incurable defects in the current basic law, they argue that Nigeria's best option is to adhere to the admonitions of well-meaning statesmen and women who have called for an urgent national dialogue to douse tensions and chart a road map for the unity, stability and orderly governance of the country. To derive the legitimacy of the people

at the grassroots, the proceedings and agreed points from such a dialogue should be presented clause by clause for the Nigerian people to vote on and would bear the true stamp of "we the people".

Fragile time to amend the constitution

The ongoing discussions about constitutional amendment are happening at a point in time where there are strident calls for secession in the southern parts of Nigeria. The Indigenous People of Biafra (IPOB) are agitating for a separate state of Biafra more fiercely than any time after the Biafra war. IPOB has also established a security arm christened the Eastern Security Network. The ESN is accused of killings and destruction of federal government infrastructures in South-East Nigeria. In the South-West, Sunday Igboho has championed the rights of Yoruba people who claim to be under attack from northern Fulani herdsmen. Efforts by the Department of Security Service to arrest Sunday Igboho led to his arrest at Benin Republic though released now, his followers were killed and his property damaged.

With ethnic nationalities calling for the determination of the Nigerian state either through demands on power sharing, revenue sharing and even secession, it remains quite a delicate time to attempt to amend the constitution. Although this is an opportunity to address previous imbalances, the current approach of Nigerian legislators suggests that the process is unlikely to address such thorny issues. And the cycle of significant investment in public review, with disappointing results, will continue. The processes have not yielded the much desired amendments that could cure the aversion of young and old, male and female to the current 1999 constitution as amended. Possible amendments that may sail through the National Assembly include electoral reforms concerning the Independent National Electoral Commission, State Police, and revenue allocation, but these may still be vetoed by the President. Currently Nigerians do not have faith in the ongoing amendment process, many has called it an exercise in

2.1 The Jurisprudence of Rule of Law and its Challenges

The rule of law stands as the bedrock of any thriving democracy. Yet, in Nigeria, this principle often faces formidable challenges. From issues of corruption to delayed justice, our nation grapples with upholding the true spirit of the rule of law. We explore these challenges and their profound implications for the Nigerian society. The rule of law is a fundamental principle in democratic societies that ensures that government authority is exercised in accordance with established laws and procedures, and that all individuals, regardless of their status, are subject to and accountable under the law. It encompasses key elements such as legal equality, fairness, due process, transparency, accountability, and the protection of human rights.

2.2 The General Principles of the Rule of Law

The great philosopher A. V. Dicey, stated that the rule of law has three fundamental attributes or principles 'which together established the rule of law: (1) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power; (2) equality before the law or the equal subjection of all classes to the ordinary law of the land handled by the ordinary courts; and (3) the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts'.

Furthermore, it can be understood that the general principle of the rule of law therefore, can be broadly collated as follows:

1. Legal duties, and liability to punishment of all citizens, are determined by the ordinary (regular) law and not by any arbitrary official fiat, government decree, or wide discretionary powers;
2. Disputes between citizens and government officials are to be determined by the ordinary courts applying ordinary law and everybody are treated equally; and,
3. Fundamentally, rights of citizen (e.g. freedom of the person,

freedom of associations, freedom of speech) are rooted in actual law, and are not dependent on any abstract constitutional concept, declarations or guaranty.

Putting it in a more wider sense of it, an American legal scholar Fuller, (1997), identifies eight elements of the rule of law which, according to him, have been recognized as necessary for any society aspiring to institute the rule of law as a guiding principle to its administration. Fuller stated the followings;

1. Laws must exist and those laws should be obeyed by all, including government officials.
2. Laws must be published.
3. Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct was passed.
4. Laws should be written with reasonable clarity to avoid unfair enforcement.
5. Law must avoid contradictions.
6. Law must not command the impossible.
7. Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.
8. Official action should be consistent with the declared rule.

2.3 The General Principles of Rule of Law and the Nigerian Situation

The rule of law is a veritable aspect of every democratic system of government throughout the world, Nigeria inclusive especially in the 1999 Constitution of the Federal Republic of Nigeria (as amended). Prof. B.A Haruna and Amana Mohammed Yusuf really addressed the issue of conceptual analysis of the rule of law in Nigeria and their work is well appraised.

2.3.1 Dicey's Conception of Absolute Supremacy or Predominance of Regular Law as Opposed to the Influence of Arbitrary Power in Nigeria

The supremacy of the Constitution as expounded by A. V. Dicey is provided for in Section 1(1) the 1999 Constitution of the Federal Republic of Nigeria (as amended), which is thus:

> *"This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."*

The Supremacy of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative or even wide discretionary powers on the part of government. What this means is that the above provision must be exercised in accordance with provision of the Constitution which is the basic law of the land. Supremacy of the constitution in Nigeria received judicial affirmation by the Supreme Court of Nigeria, per Sir Udo Udoma JSC (as he then was) in the case of *Nafiu Rabiu vs State* while commenting on the provisions of Section 1(1) of the 1979 Constitution which is *peri materae* with the provisions of Section 1(1) of the 1999 Constitution, held thus:

> *"...the present Constitution has been proclaimed the supreme law of the land; that it is a written, organic instrument meant to serve not only the present generation, but also several generations yet unborn; that it was made, enacted and given to themselves by the people of the Federal Republic of Nigeria...that the function of the constitution is to establish a framework and principles of government, broad and general in terms..."*

Viewed against the above background, Mr. Vice-Chancellor Sir, Dicey's exposition shows that power must be used in conformity with the basic and ordinary laws of the land. It also presupposes that there must not be executive lawlessness in any country where the rule of law is in operation. The law therefore, must be allowed

to reign freely and every action must be done according to law. To this effect, the 1999 Constitution provides that any law that is inconsistent with the provision of the constitution shall be void and the provisions of the constitution shall prevail. The conception of the rule of law as against the rule of arbitrariness has received judicial affirmation in lots of Nigerian cases. In the case of *Military Governor of Lagos State vs Ojukwu,* the Supreme Court stated that, the essence of the rule of law is that, it should never operate under the rule of force or fear. To use force to seek court's equity is an attempt to infuse timidity into the court and operate a sabotage of cherished rule of law. It can never be. The court further stated that, the rule of law presupposes that: the state is subject to the law; the judiciary is a necessary agency of the rule of law; government should respect the right of individual citizen under the law; the judiciary is assigned both by rule of law and by the constitution the determination of all actions and proceedings relating to matters in dispute between persons and between government and any person in Nigeria.

A cursory look at the 1999 Constitution of the Federal Republic of Nigeria (as amended) shows it recognized the rule of law and recognizes various constitutional principles in that regard. Notwithstanding this, there are several instances in Nigeria where there exist questioning of the scope of the application of the rule of law; for example, the function of legislative oversight in the Constitution ordinarily should propel checks and balances, enthrone financial discipline, good governance, accountability and transparency in public offices, through the constant review of executive actions by the legislature in carrying out their legislative mandates and ultimately entrenching the rule of law. Critically examined, this function has been subject of abuse by the legislature. One instance was the House of Representative probe of the Capital Market and Institution collapse, where the committee chairman and the other members were alleged to have asked for gratification in order to influence the probe and the head

of the Capital Market refused to agree, the Agency budget for that year was not passed by the National Assembly. Many such other instances can be seen; in the heat of political tussle and the struggle for the control of power in Rivers State between the wife of the President, Patience Jonathan and the governor of the State, Rotimi Amaechi, the governor as at then was prevented from accessing his office by the State Commissioner of Police on the 'instruction of order from above'. Also in 2013, the Lagos State government in ambush and to overreach a pending court judgment of the legality of imposing tolls on roads in Lagos, commenced the collection of tolls on one of the bridges it built before the date fixed for the judgment. These actions have clear implications on the rule of law and its application in Nigeria.

2.3.2 Relating Dicey's Conception of Equality before the Law in Nigeria

What is meant by equality before the law meant chiefly the subjections of public officials to the general law, as administered by the ordinary common law courts. Rule of Law is threatened more, not by mere conferment of discretionary powers on public officials but by the absence of judicial safeguards against their abuse. Dicey, A. V. (1950), while crafting his three 'kindred conceptions' argued that the rule of law is founded on the idea that 'all people are equal before the law, and that all, particularly government officials and clergymen, must be tried under the same law in the same courts as ordinary men'. This is meant to:

> *...ensure that all citizens no matter how well connected,rich or powerful- are judged for their action by the same laws, equally applied. Equality before the law is one of the core ways in which citizens can ensure that government officials, the rich, the powerful, and the well-connected do not become a caste apart.*

The practicability of the rule of Law in Nigeria is a far cry from this. Nigerians long legal history has shown that it is only on paper

that the idea of equality before the law is obtained. Quite apart from the ever expanding fact of the widening divide between the rich and the poor, the ever growing poverty in the country has so many repercussions. One of which is an aberration to the rule of law, is that there is a law for the rich and another for the poor. The cost of attaining justice using the formal adversarial process is so prohibitively expensive that the ordinary man would choose to rather sleep on his right or watch it go by than dream of suing to secure such right especially in civil matters. Technicalities, delays, endless adjournments, gimmicks by the lawyers and the hierarchy to climb from the lower court to the Supreme Court each stage with its attendant cost is something that does not appeal to the ordinary man.

This situation is worsened in the circumstances where the rich, the powerful and governmental official find favor in being excused from the application of the law. The fact that they have the 'means' simply indicate that they can 'buy' their way out and can afford the almost prohibitive expenses of going to court, paying for lawyers and short circuiting the unduly prolonged time it takes for decisions to be handed down. The level of official corruption in Nigeria also suggests that the knowledge and appreciation of the core ideal of the rule of law having a general inter play will, for generations to come, remain practically a myth than a reality or ideal for the mass of Nigeria's populace. It is also an essential requirement of the rule of law that equality before the law should also include the requirement for upholding the rights of marginalized groups, such as women, racial and religious minorities, who must also be treated as equal before the law. This is one of the most visible instances where the rule of law in its practical and realistic sense in Nigeria is a myth.

Mr. Vice-Chancellor Sir, effectively, as far as equality before the law percepts are concerned in Nigeria, it will be naive to even think that the Nigerian succeeding governments have the slightest idea of the true meaning and implication of the rule of law as they

persistently have been laying claims as respecters of the rule of law and at the same time adopting the rule of law as laying at the center and the main policy focus of their administration. Consequently, one can hardly fail to agree that in transnational and developing countries, 'the lack of equality before the law- the feeling that there are not “equal laws, for the noble and the base”- is a prime complaint'- (in the case of Nigerians an altruism) that is often believed so strongly that ordinary people do not even attempt to test the principle with a time-consuming and expensive court case.

3.1 The Jurisprudence of Technicalities in the Nigerian Judicial/Legal System

The jurisprudence of technicalities in the Nigerian judicial and legal system refers to the practice and interpretation of legal rules and procedures that focus on strict adherence to formalities, often at the expense of substantial justice. While these technicalities are intended to ensure the orderly and fair administration of justice, they can sometimes lead to outcomes that appear overly rigid or unfair. Here are some examples and aspects of the jurisprudence of technicalities in Nigeria:

I. **Procedural Technicalities:** Nigerian jurisprudence often places a strong emphasis on strict adherence to procedural rules. Failure to follow prescribed legal procedures, such as filing deadlines or proper notice requirements, can result in cases being dismissed or judgments being set aside. For example, if a litigant misses a filing deadline due to a minor technical error, their case may be dismissed without consideration of its merits.

ii. **Service of Process:** Proper service of court documents is crucial in legal proceedings. Failure to serve documents correctly, even if the substance of a case is valid, can lead to the dismissal of a case. For instance, if a summons is not served in accordance with the rules, a court may not have jurisdiction over the defendant.

iii. **Adherence to Legal Forms:** Nigerian jurisprudence often requires strict adherence to legal forms and formats, including the formatting of court documents. Failure to follow these forms precisely can lead to legal challenges. For example, a court document might be rejected if it doesn't conform to specific formatting requirements.
iv. **Limitation Statutes:** Nigeria, like many jurisdictions, has limitation statutes that restrict the time within which a legal action can be initiated. Failure to file a lawsuit within the prescribed limitation period can result in the claim being barred, regardless of the merit of the case.
v. **Locus Standi (Standing to Sue):** In some cases, Nigerian jurisprudence requires that a party have a direct and specific interest (*locus standi*) to bring a legal action. This can limit access to the courts for certain individuals or groups, even when they have a legitimate grievance.
vi. **Jurisdictional Technicalities:** Jurisdictional issues are critical in the Nigerian legal system. Courts must have the proper jurisdiction to hear a case. Filing a case in the wrong court or before a court without the requisite jurisdiction can lead to the case being dismissed.
vii. **Strict Interpretation of Statutes:** Courts in Nigeria sometimes strictly interpret statutory provisions, which may lead to outcomes that appear overly formalistic. For example, if a statute uses precise language, the courts may be reluctant to interpret it broadly to address novel situations.
viii. **Interpretation of Contracts:** Nigerian jurisprudence can be quite formalistic in contract interpretation. Courts may strictly construe the terms of a contract, even if doing so results in a harsh or unintended outcome for one of the parties.

While these technicalities are intended to maintain the integrity of the legal system, they can also be criticized for occasionally leading to unjust outcomes or for being overly burdensome,

especially for individuals without legal representation. Balancing the need for adherence to legal procedures with the pursuit of substantive justice is an ongoing challenge within the Nigerian judicial system and legal jurisprudence.

3.2 The Paradox of Legal Technicalities

Legal technicalities refer to specific legal rules, procedures, or requirements that must be followed precisely in legal proceedings. They are often complex and detail-oriented aspects of the law that can affect the outcome of a case. These technicalities are in place to ensure fairness, protect individual rights, and maintain the integrity of the legal process. Legal technicalities, while essential for ensuring fairness and justice, can sometimes serve as a double-edged sword. We analyze cases where technicalities have been employed to thwart justice and cases where they have upheld it. Striking the right balance between technicalities and justice is a dilemma we must address.

3.3 Protection of Rights Vs Impediment to Justice

Legal technicalities can serve as a double-edged sword. On one hand, they are designed to protect the rights of individuals and ensure that legal proceedings are conducted fairly and in accordance with the law. However, in some cases, strict adherence to technicalities can lead to perceived injustices. For instance, a minor procedural error might result in a case being dismissed, even when the substance of the case is meritorious. This tension between protecting rights and potentially impeding justice is at the heart of the paradox.

3.4 Complexity and Accessibility

Legal technicalities are often complex and require a deep understanding of the law. This complexity can make the legal system less accessible to individuals who do not have the resources to hire legal representation. In such cases, the paradox

arises when individuals are unable to navigate these technicalities effectively, leading to unequal access to justice.

3.5 Abuse and Delay

In some instances, legal technicalities can be abused by parties to delay proceedings or gain an advantage. For example, filing multiple motions or appeals on technical grounds can prolong a case unnecessarily, causing frustration and additional expenses for all parties involved. This can undermine the efficient administration of justice.

3.6 Rigid Vs Flexible Interpretation

The interpretation and application of legal technicalities can vary. Some judges and legal practitioners may adopt a rigid approach, strictly enforcing technical rules, while others may take a more flexible approach, considering the broader context and substance of a case. This disparity in interpretation can lead to inconsistent outcomes and raise questions about the predictability of the legal system.

3.7 Public Perception of Justice

The paradox of legal technicalities can impact public perception of the legal system. When technicalities are perceived to favor the wealthy or well- connected, it can erode trust in the judiciary and the rule of law. People may believe that justice is not served, leading to disillusionment with the legal system.

3.8 Balancing Act

Addressing the paradox of legal technicalities requires a delicate balance between upholding the integrity of the legal process and ensuring that justice is accessible and fair. Legal reforms and judicial discretion can play a role in achieving this balance. Reform efforts may focus on simplifying procedural rules and promoting alternative dispute resolution mechanisms.

In jurisprudence, the paradox of legal technicalities underscores the ongoing challenge of reconciling the need for rigorous adherence to legal procedures with the pursuit of justice and fairness. Achieving this balance requires ongoing reflection, legal reforms, and the commitment of legal practitioners, judges, and policymakers to uphold the rule of law while mitigating the unintended consequences of overly rigid application of technicalities.

3.9 Towards a Balance Jurisprudence

In seeking solutions to the Nigeria dilemma, we must strive for a jurisprudence that harmonizes our constitutional values, the rule of law, and the judicious use of legal technicalities. This balance can pave the way for a more just and equitable society. Balanced jurisprudence refers to the pursuit of equilibrium in the legal system, where the principles of justice, fairness, and the rule of law are harmonized with the practical realities of legal practice and the efficient administration of justice. It involves striking a thoughtful balance between various legal considerations to ensure that the law serves its intended purpose while avoiding unintended consequences.

The Supreme Court on their own stated that a court of law does not expend its energy on academic issue, as it does not exercise its jurisdiction in vein as stated in the case of *Adalma Tankers Bunkering Services Ltd v CBN (2022) 13 NWLR (part 1846)1.*

With all due respect to the learned Justices of the Supreme Court, we don't agree with this constant bashing of the academic as if it is a contest between "academic" and the court. The academic especially legal academic have been of great importance to the development of the law and our Justice delivery system. May I with all due respect to lawyers and learned jurists commencing from Magistrate Courts, Sharia Courts, Sharia Court of Appeal, Customary Court of Appeal, High Courts, Federal High Courts, National Industrial Courts, Court of Appeal and Supreme Court

to use the words "this will be an exercise in futility" than saying "this is an academic exercise" because academic exercise gave to them, more opportunity to know the Law, develop the law and appreciate their mistakes.

Even the Supreme Court went further in the case of *Timinimi V INEC (2023) 17 NWLR (part 1882) 108 at 116 esp at 126* when the court said;

"The Supreme Court has shifted from the hitherto conservation stance on locus standi. It would be a lacuna in the system of a public law if a pressure group, a single public spirited tax payer, or as in this case, a group of politicians involved in the electoral process, are prevented by outdated technical rules of locus-standi from bringing a matter to the attention of the court to vindicate the rule of law and get an unlawful or wrongful conduct stopped."

But with respect, also, the restriction of the interpretation of who to bring up pre-election matter and what constitute pre-election matter is quite unfortunate because we believe the interpretation of the electoral Act and the constitution should not have stopped an individual who may not have participated in a pre-election matter to have come before the court to ventilate his grievance.

We therefore give kudos to Hon. Justice D.V Okorowo of the Federal High Court in the case of *Chief Densu Oyefa Koloma v Chief Sylva Timipre Marline & Ors (unreported judgment in Suit No.: FHC/ABJ/CS/821/2023* decided on 9th day of October, 2023, who really expanded the scope of the definition of pre-election matter but unfortunately, both the Court of Appeal and Supreme Court with all due respect truncated this "Judicial activism" thereby reducing the development of our legal jurisprudence.

Hon. Justice Okorowo, a jurist per excellence, he earned and still earning my respect.

On the technical issue of mistake of counsel, which the courts in the cases of *Emmanuel. S. Daniang v Teachers Service Commission (1996) 5 NWLR (part 446) 97, Doherty v Doherty*

(1984) 1 All NLR 279, Akinyede v Appraiser (1971) 1 All NLR 162, Bowaje v Adediwura (19776) 6 SC 143, Princewill v Usman (1990) 5 NWLR (part 150) 174 and Iroegbu v Okwordu (1990) 6 NWLR (part 159) stated that it is a general practice of the courts not to punish litigant for the mistakes, blunder, negligence or inadvertence of his counsel. The position of the court here is to protect the litigant, avoid injustice and technicalities.

The situations above were abandoned again by the courts in *Bowaje v Adediwura (Supra)* as mentioned above, where the Supreme court accepted technicality by stating that it is not in all cases that the argument that a litigant will not be punished for the inadvertence of counsel especially in appropriate cases where what is alleged to be inadvertence on the part of counsel is evidently incompetence. With all due respect to the Learned Justices of the Supreme Court, where is justice in those cases because the incompetence of a lawyer is likely not known to the litigant, he didn't cause the incompetence, why must he suffer for the incompetence? Certainly, he ought not to have suffered.

With respect, the same unfortunate situation occurred in the case of *Chief Boniface Amadi Ogbuehi & 3 ors v The Gov. of Imo State & 3 ors (1995) 9 NWLR (part 417) 53 at 95* where the court of Appeal stated that the usual dominant and general instruction to conduct the litigation in court to finality in carrying out the instruction, counsel functions as an independent contractor who exercises his skill and judgment and is free to act as he considers fit within the instruction in the interest of his client. However, counsel acting within the scope of authority, express or implied, can bind the client. In the instant case, the failure of the learned counsel for Appellant to invoke section 192 of the Evidence Act to buttress his application for the call of a witness binds the Appellants as counsel hopeful control of litigation.

With due respect to the Learned Justice of the Court of Appeal including the decisions in similar cases of *Oyewole v Lasisi (2000) FWLR (part 10) 1006 and Edozien v Edozien (1993) 1 NWLR (part 272) 678 at 702,* the strict adherence to the

technicality of scope of authority with regards to the issue of mistakes of counsel are rather technical justice than justice which goes against the interest of litigants whose counsel mistakes have caused injustice and the courts insisting that the injustice is good. The position, we took in criticizing the cases above is borne out of the decisions of the courts also in the cases of *British American Insurance Co. Ltd v Edema Sillo (1993) 2 NWLR (part 277) 670 637, Okonjo v Odje (1985) NWLR 10, SC 267, Surakatu v NHDS (1981) 4 SC 20, Obadiaru v*
Uyigue (1986) 3 SC 39, State v Gwonto (1983) 1 SCNLR 142, and Osita Nwosu v Imo State Environmental Sanitation Authority & Ors (1990) 2 NWLR (part 135) 688 at 717 where it was stated that the current trend of legal opinion is that cases should be decided on their merits and not based on unnecessary technicalities. This is because the court as a court of justice should not sacrifice justice on the alter of technicalities.

The court did justice to issue of technicality in the issue of procedure, when it stated in *Falobi v Falobi (1976) 9-10 SC 1 at 13 -14 and Majekodunmi v Wapco Ltd (1921) 1 NWLR (part 219) p.556* that the fact that a party brings an application under a statute other than the applicable one does not disentitled him to the relief or reliefs, he is seeking as long as the relief is provided for by any written law or by common law or even equity.

Also in the cases of *Egbo v Agbara (1997) 1 NWLR (part 481) 293, Ezeoke v Nwagbo (1988) 1 NWLR (part 72) 616, Eboh v Akpotu (1968) 1 All NLR 220, Ojiegbe v Okwaranyia (1962) 2 SCNLR 358 and Kossen (Nig) Ltd v Savannah Bank of Nigeria Ltd (1995) 9 NWLR (part 420) 439* the courts stated that it is not every irregularity that automatically nullifies an entire proceedings particularly where the irregularity did not in any way materially affect the merits of the case or occasion a miscarriage of justice or where in any case, it is much too late in the day for a party to complain about such irregularity. However, notwithstanding the position of the law as stated above the

questions arising are;

i. why has technicalities been prevalent in the following cases;

a. where a counsel signs his signature on top of his office address, the cases has stayed in court for years up to Supreme Court and based on that the merit of the cases are not considered but struck out on technicalities of the mistakes of counsel.

b. where the Appellant counsel mistakenly failed to apply for leave of court to appeal on fact or facts or mixed law and facts and the cases have stayed long in court, yet cases were eventually struck out. Where lies justice in those cases?

c. In an election petition failure to file pre-trial forms within a prescribed time or including witness subpoena leading to the petition being struck out and not considered on the merit. Where lie the interest of justice? Why should technical justice be prevalent?

Mr. Vice-Chancellor Sir, one of the major unfortunate situation occurs in oil spillage matters by giving room to technicalities rather than justice and this can be seen in the following situations;

i. there must have been a demand and through a written letter for compensation not special or general damages.

ii. once it is communal claim, you must claim; for themselves and as "representing other members/majority members of …. family".

iii. the claim must be for "compensation" and not "general" or "special" "damages".

On this aspect of technicalities is the court of Appeal case of *Nigerian Agip Oil Company Ltd v Mr. Onyemachi Ogbu, Appeal No: CA/PH/387/11.* In this case, is an appeal against the decision of the Federal High Court, Port Harcourt Judicial Division delivered on the 29th day of July, 2011 in *Suit No: FCH/PH/CS/174/2006* wherein the Learned trial Judge I.N Buba J, as he then was, awarded compensation in the sum of Three

Billion, Six Hundred and Sixty- Two Million, Three Hundred and Seventy-Five Thousand Naira in favour of the Respondents for alleged pollution of his family land by the Appellant. The respondent claims includes;

i. special damages
ii. general damages
iii. costs

Part of the Respondent case was that the Appellant acquired a portion of his family land on which he paid compensation and built an oil location called "Ebocha" Oil well location 9. The Respondent family owned the land surrounding the location which consisted of ponds, creeks, farm lands, fishing channels and economic trees.

It is also the case of the Community that in the course of the Oil Company operations at Ebocha oil well location, it permitted noxious and lethal chemical and oil waste to be discharged unto his family land from a waste pit located at the said oil well location, thereby killing crops, trees, fishes in the surrounding fishing creeks, channels, and blocking their land and waterways which led to stoppage of economic activities.

The Oil Company denied the Community claims and facts. The parties called witnesses and testified and the Learned trial Judge granted the Community reliefs, judgment was given in favour of the Community against the Oil Company.

Mr. Vice-Chancellor Sir, as expected the oil company (Appellant) appealed to the court of Appeal which heard the Appeal, it set aside the decision of the Learned Trial Judge, not because those facts as led by the Respondents are not believed but on ground of technicalities against the interest of justice. No wonder, the agitation and civil unrest in the Niger-Delta Area of Nigeria continues unabated as the citizens there do not see the court doing justice to their cases but dismissing their cases against oil companies in the region on the ground of technicalities rather than

looking at the merits of their cases.
Mr. Vice-Chancellor Sir, the Appellant, the oil company, raised the following issues for determination before the Court of Appeal;

1. whether the trial court was right to have assumed jurisdiction to hear and determine the suit having regard to the Respondents claim as set out in his pleadings and all the issues raised before the court?
2. whether the Respondent successfully proved that he was entitled to the special damages awarded in his favour by the trial court?
3. whether the trial court exercised its discretion judiciously and judicially when it awarded general damages in favour of the Respondent?

Mr. Vice-Chancellor, the Court of Appeal unfortunately resolved the Appeal against the Respondent in the following manner; that is, one that strikes at the root of the case as it raises the question of jurisdiction of the trial Court to have entertained the suit when it did. Jurisdiction is a matter of law. It is conferred by the Constitution or Act establishing the Court. It is trite that conditions for the exercise of jurisdiction may be specifically or by the tenor of a law may be indicated.
The Plaintiff/Respondent herein made his claims for compensation under the oil pipeline Act. The averments in his statement of claim discloses the nature of complaints expressly provided in the Act as may be made by a person against the holder of an oil Pipeline license which the Plaintiff/Respondent is.
The Oil Pipelines Act Cap 07, Law of the federation of Nigeria by its long titles states thus:-
"An Act to make provisions for licenses to be granted for the establishment and maintenance of pipelines, incidental and supplementary to oil fields and oil mining and for purposes ancillary to such pipelines". It also states ***"The Act shall apply throughout the Federation".*** The Act confers and donates extra ordinary and far reaching powers to the holder of the license or

even an applicant for a license. For the enormity of the rights conferred and damages that may be occasioned to owner or person in possession/use of land subject of oil license or not by the acts/omissions of the license holder or agent, a regime of compensation is specially and specifically provided by Section 11(5) of the Oil Pipelines Act thus:-

"(5) A holder of a license shall pay compensation (a) to any person whose or interest in land (whether or not it is land in respect of which the license has been granted) is injuriously affected by the exercise of the right conferred by the license, for any injurious affection not otherwise made good; and *(b) to any person suffering damage by reason of any neglect on the part of the holder or his agents, servants or workmen (c) to protect, maintain or repair any work, structure or thing executed under the license, for any injurious; affection not otherwise made good*; and *(d) to any person suffering damage (other than on account of his own default or on account of the malicious act of a third person) as a consequence of any breakage of or leakage from the pipeline or an ancillary installation, for any such damage not otherwise made good. And if the amount of any such compensation is not agreed between any such person and the holder, it shall be fixed by a Court in accordance with part IV of this Act.*

6. For the removal of doubt, it is hereby declared that the powers granted to the holder of a license under this Act shall be exercisable only subject to the provisions of this Act and of any other enactment or rule of law".

From the aforequoted provisions, it is patently clear that the Oil Pipelines Act has provided for redress in favour of any person injured in the event of any damage cause by the operation of a holder of an Oil Pipeline license or its agent and under the circumstances as stipulated in the Act.

Those Obligations and liabilities, cum rights to redress and whereat and when to, have been stipulated. Subsection 6 of

Section 11 of the Oil Pipelines Act specifically delimits and canalizes the exercise and consequential effects of the powers conferred on the holder of a license under the oil pipelines Act thus: Any acts, or actions under any other enactment or Rule of Law, is subject to the Oil Pipelines Act. It appears to me from the tenor of the Phrase *"the power conferred shall be exercisable only subject to the provisions of this Act and of any other enactment or Rule of Law"* evinces the legislative intent that the provisions of the Oil Pipelines Act, any similar law or Amendment or Rule of Law in the like effect and purport shall constitute the applicable law, governing the subject matters provided. To re-enforce this view, is the opening words --- *"For the removal of doubt"* -
-- as used In Section 11 (6) thereof.

Mr. Vice-Chancellor Sir, the court stated further; *that being the situation, it is my view that an aggrieved person (party) under the Oil Pipelines Act who has a complaint on damages caused must comply strictly with the provisions of the said Act and exhaust the procedure therein before approaching a Court for any relief. By Section 11 (5) it is clear that it is only when the damages caused or complained of remains unredressed, in the event of dispute as to quantum or amount of damages that a Court may be approached. Even then, it shall be a claim for compensation and not Damages.* That being the case, a Court will not have jurisdiction to entertain a suit lodged in respect of damages caused when the condition precedent for the assumption of jurisdiction had not been satisfied and when the appropriate relief was not sought. In *Madukolu v Nkemdilim (1962)1 All NLR 561.*

Mr. Vice-Chancellor Sir, no wonder in the "Special Report" of The Nation newspaper of Friday, December 30th, 2022, the Deputy News Editor, Joseph Jibueze examines how these procedural relics undermined justice as he stated thus;

> *"The Nigerian Judiciary seems to be living in the past while the rest of the World is moving on. Antiquated rules and procedures and undue reliance on technicalities, still*

hold the institution down leaving many scratching their heads as to the manner of justice being done."

Mr. Vice-Chancellor Sir, also, the I.C.P.C Boss, Prof. Bolaji Owasanoye SAN on 5th October, 2023 (as he was then) stated that the rule of law is important because the judiciary is the fulcrum of the Rule of Law.

The court has been able to rely more on justice than technicalities in the following situations;

i. the rule of fundamental right enforcement was amended to jettison leave to enforce fundamental rights, rather, one can go to court straight away, because if it was before, such cases will be struck out on the ground of technicality of not obtaining leave to file/sue.

ii. the rules of court have been amended to avoid the technicalities of seeking leave to bring motion for leave to apply for certiorari, prohibition or mandamus. This is to give credence to justice rather than technicalities. In the case of Francis Tabai & Anor v The V.C Rivers State University of Science and Tech, PH (1997) 11 NWLR (part 529) 373 at 379 where the court stated that before an application for certiorari is made, the law requires that the applicant must seek leave for and obtain leave of court and in most instances through Ex-parte motion. This is no longer the position of the law as justice is more important.

iii. there is now the opportunity of electronic services of documents unlike before where most cases will not go on because of non- service of hearing notice and even some cases will be set aside no matter how meritorious they are just because of non-service.

4.1 Summary

In summary, the jurisprudence of our Constitution, the rule of law, and the intricacies of legal technicalities are the threads that weave the fabric of our nation's legal system. As we navigate the Nigeria dilemma, let us remember that the pursuit of justice and

fairness should always be at the forefront of our endeavors. It is my hope that this inaugural lecture sparks critical conversations and inspires a deeper understanding of our legal landscape. Together, we can work towards a Nigeria where the rule of law prevails, and justice is accessible to all.

The foundations of Nigerian jurisprudence are deeply rooted in a complex interplay of historical legacies, colonial influences, indigenous legal traditions, religious practices, and modern legal frameworks. Understanding these foundations is essential to navigate the multifaceted nature of Nigeria's legal system and its ongoing development. While the rule of law is a foundational principle in Nigeria, it faces significant challenges that require attention and concerted efforts to address. Tackling corruption, improving the efficiency of the legal system, protecting judicial independence, and ensuring equal access to justice are among the critical steps needed to strengthen the rule of law in Nigeria and uphold the principles of democracy and justice. In jurisprudence, the paradox of legal technicalities underscores the ongoing challenge of reconciling the need for rigorous adherence to legal procedures with the pursuit of justice and fairness. Achieving this balance requires ongoing reflection, legal reforms, and the commitment of legal practitioners, judges, and policymakers to uphold the rule of law while mitigating the unintended consequences of overly rigid application of technicalities.

Towards a balanced jurisprudence in Nigeria is an ongoing journey that involves a commitment to upholding the rule of law, ensuring access to justice, and promoting fairness and efficiency in legal proceedings. It requires collaboration among legal professionals, policymakers, and civil society to address challenges and advance the principles of justice and equity in the legal system. By striving for this balance, Nigeria can strengthen its legal framework and contribute to a more just and prosperous society.

5.1 My Contributions to the Development of the Nigerian Constitution

- In 2014, Amuda-Kannike, A. discussed the inadequacies of the 1999 constitution concerning environmental protection in Nigeria. This discussion was published in the Natural Resources and Environmental Law Journal, Volume 6.
- In 2009, Amuda-Kannike, A. examined the weakening of the jurisdiction of the Federal High Court in matters related to oil. This analysis was published in the Petroleum, Natural Resources, and Environmental Law Journal, Volume 1 (No.3).
- Amuda-Kannike, A. explored issues of human rights, police brutality, extrajudicial killings, and corruption in 2015. This exploration was published in parts 1 and 2 of the Ife Journal of International and Comparative Law.
- In 2018, Amuda-Kannike SAN, along with Bello .S and Raimi .A, provided a feminist jurisprudential perspective on the status of women in Nigeria. Their perspective was published by the India Institute of Comparative Law, Volume XLIV.
- Abila .S and Amuda-Kannike SAN examined constitutional democracy, security, and human rights during Nigerian President Muhammadu Buhari's term in 2018. This examination was published in the African Journal of Law and Human Rights, Volume 2.
- In 2020, Amuda-Kannike Abiodun SAN and Abila Sylvanus Elijah conducted an examination of the legislative-executive relationship from a Nigerian legal standpoint. Their findings were published in the Ife Juris Review by the Department of Jurisprudence & Private Law at O.A.U Ife.
- In 2021, Abiodun Amuda-Kannike SAN and Olugbemi Fatula reviewed various constitutional issues in Nigeria. Their review was published in the Ife Juris Review Journal of Contemporary, Legal, and Allied Issues.

- In 2022, Abiodun Amuda-Kannike SAN and Abdulfatai Abdulkareem explored the jurisprudence of the right to privacy in Nigeria. Their exploration was published by the Faculty of Law at Kwara State University.
- In 2011, Amuda-Kannike published a textbook and practice guide on human rights law with Sabcos Publishers.
- In 2008, Amuda-Kannike, A. contributed a chapter on fair hearing in De-Novo Trials to the book "Law, Oil and Contemporary Issues in Nigeria: Essays in Honour of Late Hon. Justice Emmanuel Joel Igoniwari," published by Malt House Law Books.
- In 2023, Abiodun Amuda-Kannike, Yusuf Amuda-Kannike Esq, and Gloria Oluchi Jude-Akaraonye explored the application of the Pure Theory of Law Grundnorm in Nigeria's constitutional jurisprudence. Their exploration was published as Chapter 2 in the book "Current Issues of Law, Justice, and Society: Essays in Honour of Hon. Justice Sulyman .D. Kawu OFR, Former Chief Judge of Kwara State."
- In 2023, Prof. A. Amuda-Kannike SAN contributed a reflection on the Nigerian national motto, "Unity and Faith, Peace and Progress," in a book chapter.
- In 2023, Prof. Abiodun Amuda-Kannike SAN presented a paper on the constitution, citizenship, and women's rights in Nigeria at a conference organized by the National Institute for Legislative and Democratic Studies (NILDS) in collaboration with Konrad Adenauer Stiftung (KAS) and UN Women International.

5.2 MY CONTRIBUTIONS TOWARDS THE FOUNDATIONAL COMMENCEMENT AND GROWTH OF THE FACULTY OF LAW, KWARA STATE UNIVERSITY, MALETE

- I served as the inaugural Provost of the College of Law at Kwara State University.
- I held the position of the first Dean of the Faculty of Law at Kwara State University.
- I was the first professor within the Faculty of Law and was recognized as a Senior Advocate of Nigeria.
- I oversaw the graduation of the first three sets of law students.
- I played a pioneering role in the admission process and organization of current students into their respective levels within the Faculty of Law.
- I spearheaded the establishment of essential facilities such as the Law Library, Moot Court, Law Clinic, and Welfare Platform for the Faculty of Law.
- I secured approval from the Senate for the initiation of Postgraduate Programs within the Faculty of Law.
- I facilitated numerous public lectures, seminars, and student participation in competitions.
- I played a pivotal role in securing support and assistance from the Kwara State Government for the accreditation of the Faculty.
- Prominent legal practitioners donated many books to the faculty.
- I personally contributed many books to the faculty's library.
- I established the Faculty of Law E-Library.
- I invested personal funds for the development of the faculty, some of which were reimbursed, while others remained as personal contributions.
- During my tenure as Dean, Professor Najeem Ijaiya joined as a full Professor and headed the Islamic Law Department.
- Professor Y.D.U Hambali joined as an Associate Professor

and headed the Jurisprudence and Public Law Department, eventually attaining the position of full Professor.

- Professor Elesin initially served as an Associate Professor and later achieved full Professorship in Islamic Law.
- Under my leadership, many staff members were promoted and obtained their Ph.D. qualifications.

5.3 MY CONTRIBUTIONS IN THE GROWTH OF THE KWARA STATE UNIVERSITY, MALETE

- I served as a member of the Governing Council at Kwara State University.
- I chaired the KWASU Encroachment Committee within Kwara State University.
- I was a member of the A & PC (Appointments and Promotions Committee) at Kwara State University.
- I served as a member of the Tenders Board at Kwara State University.
- I was a member of the Technical Committee of the Governing Council at Kwara State University.
- I served as a member of the Disciplinary Committee of the Governing Council at Kwara State University.
- In efforts to enhance the reputation of Kwara State University, I delivered three convocation lectures across two different universities in Benin Republic in 2021, 2022, and 2023 respectively.
- I developed four theories on Entrepreneurship and Intrapreneurship, which have endured over time and are accessible on the internet to date.

5.4 MY CONTRIBUTIONS TOWARDS DEVELOPMENT OF JURISPRUDENCE AND INTERNATIONAL LAW

Mr. Vice-Chancellor, my contributions in this regard are;

- In 2017, Amuda-Kannike, A. conducted an analysis of the Corporate Affairs Commission's authority to investigate companies' affairs. This analysis was published in the Gravitas Review of Business & Property Law Journal, Vol. 8, No. 3.
- Amuda-Kannike, A. explored the use of expert evidence within the Nigerian legal system in 2015. This exploration was published in the Al-Hikmah Law Journal.
- In 2015, Amuda-Kannike, A. examined the Nigerian criminal justice system and its role in combating corruption. This examination was published in the Juris Review at O.A.U, Ife.
- Amuda-Kannike, A. discussed issues related to assets declaration, verification, and corruption in Nigeria in 2016. This discussion was published in the Ife Juris Review at O.A.U, Ile- Ife.
- Abiodun Amuda-Kannike SAN, Yusuf Amuda-Kannike Esq, and Gloria Oluchi Jude-Akaraonye conducted an examination of Nigerian climate change laws and policies in 2023. Their examination, titled "Stagnation or Progress?" was published by the Asian Research Institute Law and Humanities Quarterly Review.
- E.E Egba, A. Amuda-Kannike, Oyesola Animashaun, and Yusuf Amuda-Kannike Esq investigated the impacts of oil and gas extraction on the environment in Nigeria in 2023. Their study was published in the Asian Research Institute Law and Humanities Quarterly Review, Volume 2, Number 3.
- In 2013, Amuda-Kannike, A. evaluated the adjudicatory relevance of the African Convention on Human Rights. This evaluation was published by the Faculty of Law at Nnamdi Azikiwe University, Awka.

- Amuda-Kannike, A. examined the incidental effects of the law of ratification on international diplomatic relations and trade in 2016. This examination was published in the World Journal of Juristic Policy (India).
- In 2015, Amuda-Kannike, A. discussed the commercialization of state action and restrictive immunity in national courts. This discussion was published by Legal Mirror (India).
- Amuda-Kannike, A. explored the process of confirmation of charges before the International Criminal Court in 2016. This exploration was published in the World Journal of Juristic Policy, published in India.
- Amuda-Kannike SAN, along with Aaron and others, conducted an examination of the enforcement of International Court of Justice decisions through regional organizations and specialized agencies in 2017. This examination was published by the Journal of Law, Policy, and Globalization (New York).

6.0 RECOMMENDATIONS

1. The need to amend the entire provision of the 1999 Constitution

There is the need to amend the entire provision of the 1999 Constitution and allow citizens full participation in the new constitution. This will be better than the piece-meal amendment of the constitution called "Alteration". Lots of people have criticized the opening part of the constitution which states that "we the people hereby give ourselves this constitution". They have denied being a party to the constitution, therefore, the confidence of the people in the constitution is of no "significance".

2. The need to create at least one additional state for the people of the South-East to balance the regional interest

There is the need to amend the constitution along with the utmost urgent need to create at least an additional one state for the people of the South- East. This agitation has been on for a long time now,

and I believe that if Nigeria will truly do justice, there should be the opportunity to allow one more state to be created in the South-East in order to meet up with what is obtainable in the other regions of the country Nigeria.

3. There is the need to increase the numbers of the Supreme Court Justices from twenty-one to thirty-seven or as much as the states exist in Nigeria.

This increase in the number of Supreme Court justices is to create a sense of belonging to all the states in the Federation including the Federal Capital Territory. This will not be a case of one particular state dominating in appointment from a region. After-all, the Federal Character Principle/Act recognised states, the constitution recognised states and even appointment of Ministers by the Executive are not based on the issue of regions but on the state representations. The cases on appeal going to the Supreme Court should be reduced drastically by amending the constitution.

4. There should be strict adherence to the rule of law by all the Arms of Government with punitive penalty for violation

The rule of Law is well known by everyone be it the government or citizens. What has always happened is the lust to breach the rule of Law always, especially by the government and its agencies and the opportunity to go-Scott-free from punishment or penalties. There is the need for strict enforcement of rule of Law.

5. There is the need for the Establishment of Agencies or Ministries for enforcement of rule of law

The establishment of this special form of agencies of ministries is like the establishment of I.C.P.C, E.F.C.C, Police, Civil Defence, etc. This will really ensure that the compliance with the rule of law as far as enforcement is concerned will be total. If the rule of law and strict adherence to its observance is important to us rather than pretending about it, then we really need an Agency to enforce it or a complete Ministry. This is because, even the

I.C.P.C, E.F.C.C, Police, Civil Defence, etc, requires a body to monitor them and enforce rule of law against them as the procedure for contempt of court and enforcement of fundamental human right have proved inadequate or insufficient.

6. There should be a national conference with the task of removing from our laws, technicalities, technical laws and technical jurisprudence

As at today, most of Nigerian jurisprudence are clothed with technicalities and it is so funny when we say that what is paramount to us is justice. The question is; why then do we rely more on technicalities than justice, up till now as we have seen in this lecture? Therefore, in order to have a peaceful society, less civil disobedience and the believe of citizens in our constitution, rule of law and a good democratic settings, undue adherence to technicalities must give way to justice.

7. There should be more Judicial Activisms

Our judges must be ready to give decisions and judgments which will be in tandem with justice rather technicalities. It is unfortunate when a judge states that the court have shifted away from technicalities to justice but either in that decision or subsequent decisions, the same technicalities which the court said they have moved away from, is still what they eventually use to dismiss most cases or Appeals. This will stand out my Lords, as the protector of rule of Law and justice and not technicalism.

8. Nomenclature or mistakes of counsel should not defeat the course of justice.

At any rate, Mr. Vice-Chancellor, this should be the work to be done at the national conference to be called as a matter of urgent necessity, but because of the level of injustice, it is important to address some, not all those issues here thus;

I. Is it not technical justice to throw away a case because the family name does not contain the words "for themselves and on behalf of other members of Amuda-Kannike family"? Some of this cases must have been 15 to 20 years before being heard at the Supreme Court.

ii. Is it not technical justice to throw away a case because the town name does not contain the words for themselves and on behalf of other members of ---- community of Ilorin East Local Government Area of Kwara State? Some of the cases must have spent 15 20 years before being heard at the Supreme Court.

iii. Is it not technical justice to throw away a case on the ground that in an Oil Spillage matter, a claimant must ask for only the relief for "compensation only" and not "special or general damages"? Some of this cases must have spent between 15 20 years before being heard at the Supreme Court, meanwhile Blackslaw Dictionary stated emphatically that the word "compensation" also means "damages" whether special or general damages.

iv. Is it not technical justice to differentiate between "genuine mistakes of a lawyer not to be visited on his client" and "in-genuine mistakes of a lawyer to be visited on a client?" Is a client to suffer from the mistakes of a lawyer?

9. Rely more on plea bargaining, avoid technicalities of proof beyond reasonable doubt, block corruption outlets.

7.0 CONCLUSION

In the course of our intellectual journey through the intricate terrain of Nigerian jurisprudence, we have traversed the historical, navigated the paradoxical, and sought to chart a course towards a more just and balanced legal system. "The Jurisprudence of our Constitution, Rule of Law, and Technicalities: The Nigeria Dilemma" has been a voyage of reflection, inquiry, and enlightenment, a voyage that calls us to action and reform.

We embarked on this journey to unravel the complexities that define our legal landscape, and we have discovered that our jurisprudence is an intricate tapestry woven from the threads of colonial legacies, indigenous traditions, and modern constitutional ideals. It is a living testament to our diversity and resilience as a nation.

We have examined the rule of law, a cornerstone of democracy, and understood that its steadfast adherence is essential to ensure equality, accountability, and the protection of individual rights. However, we have also acknowledged the daunting challenges that threaten its very essence, from corruption's corrosive grip to the agonizing delays in the administration of justice.

The paradox of legal technicalities has been our enigmatic companion on this journey. We have come to appreciate its role in safeguarding rights and ensuring fairness, but we have also grappled with its potential to obstruct justice and create disillusionment. It is a realm where precision must be balanced with pragmatism, where rigor must coexist with compassion.

As we conclude our discourse, we are left with a profound awareness of the Nigeria dilemma - a nation standing at the crossroads of tradition and modernity, of ideals and realities, of promise and challenge. Yet, we are not mere observers of this dilemma; we are its architects. We bear the responsibility to transform it from a conundrum into an opportunity - a crucible in which our ideals are tested and refined.

To navigate this dilemma, we must work collaboratively and persistently. We must enact legal reforms that simplify procedures and enhance efficiency without sacrificing justice. We must uphold the independence of our judiciary as a bulwark against political interference. We must strive to make justice accessible to all, regardless of their station in life, through legal aid services and alternative dispute resolution mechanisms. We must root out corruption from our legal institutions and instill a culture of integrity.

Our commitment to a balanced jurisprudence is not an abstract aspiration; it is a call to action. It is a pledge to ensure that our Constitution, the rule of law, and the intricacies of legal technicalities converge not in contradiction but in harmony - a harmony that resonates through every courtroom, every legal document, and every facet of our society.

In the pursuit of a more just and equitable Nigeria, we must remember that our journey is ongoing. It is a journey that requires continuous dialogue, introspection, and adaptation. It is a journey that beckons us to transcend our differences and unite in the common cause of justice.

As we conclude this discourse, let us carry forward the torch of enlightenment and reform. Let us be the agents of change, the champions of justice, and the stewards of a balanced jurisprudence. Together, we shall navigate "The Nigeria Dilemma" and forge a path towards a brighter, more just, and more equitable future for our beloved nation.

Thank you for joining us on this intellectual odyssey, and may our collective efforts bear fruit in the noble pursuit of justice.

In closing, this conclusion emphasizes the importance of collective action and ongoing efforts to achieve a balanced jurisprudence in Nigeria, a journey that holds the promise of a more just and equitable society for all its citizens. Please note that after acknowledgment, I still have a final conclusion.

8.0 ACKNOWLEDGMENT

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I want to use this opportunity to recognize the Kannike community who are indigenes of Ogun State, the Kannike community who are indigenes of Iwo, Osun State. The Kannike community who are indigenes of Ibadan, Oyo State. The Kannike community, called Kannike-Martins who are indigenes of Lagos State. The Great Kannike Clan of Ilorin who are indigenes of Ilorin, State capital of Kwara State.

The Kannike indigenes of; Nigeria, Estonia, United States, Jamaica, England, UAE, Finland, France, India, Spain and Uganda, I greet you all, we are one regardless of the indigenes you now belong to. We traced our route to the same origin. I love you all. It is a fact however that fifty- eight percent (58%) of the Kannikes lives in Africa. Mr. Vice- Chancellor, I am grateful to Almighty God that notwithstanding this number, I have taken first position to be a lawyer, a Senior Advocate of Nigeria and a Professor of Law among other first.

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Mukhadam of Ilorin "Dan-Bornu". Great Law Graduates of 2020/2021, 2021/2022 and 2022/2023, thanks for your patience, by the grace of Almighty God, you will go to Law School.

9.0 FINAL CONCLUSION

Mr. Vice-Chancellor Sir, my story is tied to both the Faculty of Law and Kwara State University. In the course of service, I didn't make money, I became poorer but not in penury, Alhamdullilahi, I became a cleaner, a Sweeper, and repairer, I abandoned luxury for sacrifices, I had knelt down for those who were my Juniors, those who were my mates and those who were my Seniors , I have cried , wept, I have been abused, tortured, and risked my life including being given bad names in the course of building the Faculty and my contributions to Kwara State University, Malete, Nigeria, yet my story is successful Mr. Vice-Chancellor.

Once more, the Vice-Chancellor, distinguished ladies and gentlemen, thank you for your presence and patience. I appreciate you all.

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