

A Rejoinder to Dr Cosmas Emeziem’s “Conflict of Laws and Diversity of Opinions—A View of The Nigerian Jurisdiction”

In this blog post, I respond to a recent critique by Dr. Cosmas Emeziem of a blog post co-authored by Dr. Abubakri Yekini and myself. Our post celebrated the elevation of Justice H.A.O. Abiru to the Nigerian Supreme Court and highlighted its significance for the development of Nigerian conflict of laws.

Dr. Emeziem argues that institutional expertise should be prioritised over individual expertise. He states, “[I]t is essential to stay focused on institutional capacities, expertise and competence and how to enhance them—instead of individualized expertise, which, though important, are weak foundations for enduring legal evolution and a reliable PIL regime.” He concludes that: “Thus, the idea that “an expert in conflict of laws is now at the Supreme Court after a long time” is potentially misleading—especially for persons, businesses, and investors who may not know the inner workings of complex legal systems such as Nigeria.”

Yekini and I in our blog post , clearly stated: “Nevertheless, this is not to suggest that Justice Abiru’s expertise is limited to conflict of laws, *nor that other Nigerian judges do not possess expertise in conflict of laws*. The point being made is that his Lordship’s prominence as a judicial expert in conflict of laws in Nigeria is noteworthy.” [emphasis added]. The work of a judge is challenging, and academics should recognize and celebrate their expertise.

Celebrating judicial expertise is beneficial. For instance, Dr. Mayela Celis on 24 November 2021 in one blog post praised the appointment of Justice Loretta Ortiz Ahlf - a private international law expert - to the Mexican Supreme Court. Celis concluded in her blog post that: “This appointment will certainly further the knowledge of Private International Law and Human Rights at the Mexican Supreme Court.”

It is common for judges to specialize in certain legal fields, especially at the appellate level. This specialization enables them to provide leading judgments in

relevant cases. This is particularly true in common law jurisdictions, where judges are known for their individual attributes and often provide separate decisions, which can result in a diverse range of opinions even within the same case. For example, in the English case of *Boys v Chaplin*, the House of Lords was unable to provide a coherent ratio decidendi due to differing opinions regarding the law applicable to torts when applying English law to heads of damages.

In *Sonnar (Nig) Ltd v Partenreedri MS Norwind* (1987) 4 NWLR 520 at 544 Oputa JSC of the Nigerian Supreme Court, although concurring, expressed a separate view that as a matter of public policy, Nigerian courts “should not be too eager to divest themselves of jurisdiction conferred on them by the Constitution and by other laws simply because parties in their private contracts chose a foreign forum.” Many other Nigerian judges have since followed this individual approach taken by Oputa JSC, despite the majority of the Nigerian Supreme Court in *Sonnar* unanimously, and repeatedly in *Nika Fishing Company Ltd v Lavina Corporation* (2008) 16 NWLR 509, and *Conoil Plc v Vitol SA* (2018) 9 NWLR 463, expressing preference for the enforcement of a foreign jurisdiction clause, except where strong cause is advanced to the contrary. In this context, the influence of an individual judge in decision-making in conflict of laws cannot be undermined.

In England, former United Kingdom Supreme Court Judges like Lord Collins and Lord Mance are renowned for their expertise in conflict of laws. Indeed, Lord Collins’ academic prowess in conflict of laws is internationally renowned, as he is one of the chief editors of the leading common law text on the subject. Nevertheless, this is not to suggest that judges who are not specialists in conflict of laws cannot make significant contributions to the subject. For instance, Lord Goff, known for his expertise in unjust enrichment, significantly contributed to the principle of forum non conveniens, delivering the leading judgment in the seminal case of *Spiliada Maritime Corp v. Cansulex Ltd*. The point being made is that judges’ specialization in a subject significantly enhances the quality of judicial decisions, a fact that scholars should celebrate.

The rise of international commercial courts in Asia and the Middle East, which resemble arbitral tribunals, underscores the importance of individual judicial expertise. These courts, including those in Hong Kong, Singapore, Dubai, Qatar, Kazakhstan, and Abu Dhabi attract top foreign judicial experts to preside over and decide cases, thereby instilling confidence in international commercial parties (Bookman 2021; Antonopoulou, 2023). For instance, Lord Collins a former non-

permanent Member of the Hong Kong Court of Final Appeal, delivered the leading judgment in the significant cross-border matter of *Ryder Industries Ltd v Chan Shui Woo*, with the agreement of all other judges on the panel.

Yekini and I stated in our blog post, that Justice Abiru's "dissenting opinion in *Niger Aluminium Manufacturing Co. Ltd v Union Bank* (2015) LPELR-26010(CA) 32-36 highlights his commitment to addressing conflict of laws situations even when the majority view falls short." If the bench in the conflict of laws case where Justice Abiru dissented had been conversant with private international principles in Nigeria, a different outcome might have been reached. This is crucial in the context of the numerous *per incuriam* decisions by Nigerian appellate courts, which hold that in inter-state matters, a State High Court can only assume jurisdiction over a cause of action that arose within its territory, regardless of whether the defendant is present and/or willing to submit to the court's jurisdiction (Okoli and Oppong, Yekini, and Bamodu) . The key point is that having more specialists in conflict of laws in Nigerian courts will significantly enhance the quality of justice delivery in cross-border issues.

In conclusion, while Justice H.A.O. Abiru is not the entire Nigerian Supreme Court for conflict of laws, there is nothing wrong with emphasizing and celebrating his specialization in this field. Therefore, I stand by my co-authored blog post and will continue to highlight such expertise.