

The Nigerian Supreme Court now has a Specialist in Conflict of Laws

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On December 21, 2023, the Nigerian Senate in line with Section 231(2) of the 1999 Constitution, confirmed the appointment of Honourable Justice Habeeb A.O. Abiru ("Justice Abiru"), alongside ten other justices, to the Nigerian Supreme Court, following the recommendation of the National Judicial Council and the Nigerian President. This appointment fills the vacancy created by recent retirements or deaths of some justices.

Justice Abiru's appointment is particularly significant for conflict of laws enthusiasts. Our research suggests that he is the first Nigerian Supreme Court Justice in recent times who is a specialist on conflict of laws. Initially appointed as a judge at the Lagos State High Court in 2001, Justice Abiru was later elevated to the Court of Appeal in 2012.

Justice Abiru briefly served as a law academic at the Lagos State University before his judicial appointment. He equally studied conflict of laws during his LLM at the University of Ife from 1986 to 1987. 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.

Given recent criticisms of judgments from Nigerian appellate courts concerning conflict of laws, Justice Abiru's background is pivotal. Various scholars ([Okoli and Oppong](#), [Yekini](#), and [Bamodu](#)) have raised concerns about the quality of judgments from appellate courts regarding conflict of laws. These concerns arise, especially due to the position taken by the Nigerian Supreme Court (and the

Court of Appeal) in several cases, stating that, by the provisions of the Nigerian Constitution, the jurisdiction of each State High Court and the High Court of the Federal Capital Territory, Abuja, is restricted to matters that occur within their respective territory. (see for example, *Capital Bancorp Ltd v Shelter Savings and Loans Ltd* (2007) 3 NWLR (Pt. 1020) 148; *Dairo v Union Bank of Nigeria Plc* (2007) 16 NWLR (Pt. 640) 99). Okoli and Oppong argue that: “This approach is wrong; there is no provision of the Nigerian Constitution that circumscribes the jurisdiction of the State High Court and the High Court of the Federal Capital Territory to matters that occur within its territory, provided the defendant is present or resident in the jurisdiction or is willing to submit to it. In essence, these appellate decisions ignore the principle of conflict of laws which is part of Nigeria’s common law legal system.” (See also Yekini, and Bamodu).

During his tenure at the Nigerian Court of Appeal, Justice Abiru consistently drew attention to the importance of addressing conflict of laws issues, often overlooked by legal practitioners and judges.. While dealing with the issue of territorial jurisdiction in *Muhammed v Ajingi* ((2013) LPELR-20372(CA), his Lordship notes that: “the concept of territorial jurisdiction is one of the most misunderstood concepts. This has always been due to lack of appreciation of the approach to dealing with the concept. The first step in the approach to dealing with a question of territorial jurisdiction of a Court is to always understand that where there is a dispute as to the proper venue of hearing a matter that has inter-State elements, it is an issue of conflict of laws or what is called private international law.” Needless to say, *Ajingi*’s case is one of the recent instances where the courts got the question of territorial jurisdiction right. In addition, his 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.

Justice Abiru has contributed extra-judicially to critiques of the state of conflict of laws in Nigeria. (see [here](#) and [here](#)). In his foreword to Okoli and Oppong’s “Private International Law in Nigeria” (2020), he submitted that: “The legal practitioners and the Courts in Nigeria have over time struggled with the resolution of legal actions which have such foreign elements. The law reports are replete with decisions showing clear evidence of the struggle. The reason for the struggle has been the failure of the lawyers and Courts to appreciate that it is the rules of private international law that are applicable to these situations.”

The addition of Justice Abiru to Nigeria's Supreme Court is a positive development that strengthens Nigeria's bench. While acknowledging that a strong bench is not the sole criterion for a developed conflict of laws system, it undoubtedly contributes to building trust in Nigeria's judicial system, both locally and internationally. As stressed elsewhere, if Nigerian and African courts and arbitral panels want to compete favourably with other countries, especially in attracting litigation and arbitration business, Nigeria's judiciary needs ongoing institutional reforms, addressing issues like infrastructure, legal system quality, funding, delays, regular training, and corruption.

In conclusion, Justice Abiru's appointment to the Nigerian Supreme Court is a step in the right direction for the development of Nigerian conflict of laws.