

SCOPE AND POWERS OF PROFESSIONAL DISCIPLINARY TRIBUNALS IN NIGERIA

Idowu Adelana Akinloye*

Abstract

Statutes have identified and given recognition to some professions that are very important and exceptionally necessary for the development of a nation. As important as these professions, so also the decorum that must be maintained by the persons to be admitted to practice the professions. Sequel to this, the statutes established disciplinary tribunals to investigate and discipline any member of such professions who is found guilty of any misconduct contravening the codes and standards of the professions. The rationale for the establishment of these disciplinary tribunals which is, to ensure and apply the religious and moral beliefs peculiar to these professions in the discipline of their members is a welcome development, there are however some limitations and lacunas in some of the establishing statutes that need be examined, if justice must be attained as intended. It is these lacunas that this paper examines with the aim of offering the way forward.

Key words: Tribunal, justice, professional, statutes, adjudication, and jurisdiction.

Introduction

The pillar upon which the relationships between the Executive, Legislature and Judiciary rest is on the principle of *separation of powers*. This principle has been adopted by most nations of the world as the basis of exercising their governmental powers. One of the proponents of the principle, Baron Montesquieu (1689 – 1755) had argued that, to allow the concentration of legislative, executive and judicial powers of the state in one person or body of persons would ultimately lead to tyranny.¹ Hence, powers should be shared among different persons or organs of government. Many other philosophers, among whom

* LL.B, LLM, BL., Lecturer, Faculty of Law, Ajayi Crowther University, Oyo, Nigeria. Email: idakinloye@gmail.com

¹ Charles Louis de Secondat, *Baron de La Brede et de* and author of *Espirit de Lois* (1748) XI ch. VI, 2nd Ed, Vol. 1, p. 200.

was Ivor Jennings, also followed the truism of this principle, when he related it to the *rule of law*. According to Jennings, he observed that, the rule of law implies also separation of powers, since the fusion of powers in one authority is dictatorship or absolutism, which according to liberal ideas is potential tyranny.²

Since Nigeria got her independence, the principle of separation of powers had been fully received within the context of her constitutional democratic governance. Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (CRFN) vests the legislative powers of the Federation in the National Assembly, comprising of the Senate and House of Representatives. The legislative powers of the federating states on the other hand, are vested in the House of Assembly of the states. Under the provisions of section 5 of the same Constitution, the executive powers for the Federation is vested on the President and such executive powers may be exercised by him directly or through the Vice President and the ministers of government of the Federation. The Judicial powers are vested in the Courts established for the Federation and for the federating states.³

The Constitution further provides in its section 6 subsection 5 paragraphs (a) - (i) for nine designated *superior courts of records*⁴ while paragraphs (j) and (k) of the same subsection provides for two other categories of courts that may be created. The said paragraphs j and k provide thus:

- (j) such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and

² Jennings Ivor, *The Law of the Constitution* (London, University of London Press, 1961) p. 49.

³Constitution of the Federal Republic of Nigeria 1999 (CFRN) (As Amended) s. 6(1)(2); see also CFRN (Third Alteration) Act, 2010, s. 2.

⁴Superior Courts are courts of general or exclusive jurisdiction, as distinguished by inferior courts. The Courts to which the section relates include: the Supreme Court, Court of Appeal, Federal High Court, High Court of the Federal Capital Territory (FCT), State High Court, Sharia Court of Appeal of the FCT, Sharia Court of Appeal of the State, Customary Court of Appeal of the FCT, Customary Court of Appeal of the state and the National Industrial Court.

- (k). such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.

Thus, pursuant to the combined exercise of the provisions of section 4 and section 6(6) paragraphs j and k, many courts⁵ and tribunals⁶ have been established for the Federation and the states for the purpose of administering justice. Examples of such tribunals and courts include *inter alia*: Rent Tribunals of different states, Fire Arms and Robbery Tribunal, National Industrial Court. These tribunals and such other similar adjudicatory bodies so created have been extended to certain professional bodies. This is because the legislature had found the necessity to intervene in the statutory control of certain sensitive professional bodies and institutions by statutorily establishing machineries through which the members of these professional bodies can be judicially controlled and disciplined whenever they breach the ethics and codes of their professions.⁷

Thus, the intention of this paper is to focus on the examination of the scope and effects of powers exercisable by some of these professional disciplinary bodies and tribunals. Their constitutions and their subjection to the exercise of judicial review

⁵ It must be noted that “courts” as used in the provisions of the constitution is not limited to court *simpliciter*, but rather it includes such other tribunals and adjudicatory bodies performing judicial functions.

⁶ For the purpose of this paper, “tribunal” will be used interchangeably as Administrative Tribunal / Statutory Tribunals / Disciplinary Tribunal/Adjudicatory Body.

⁷ The right of access to the courts is indeed an important safeguard for the citizen, but the machinery of the courts is not suited for settling every dispute arising out of the work of government. One reason for this is the need for specialized knowledge if certain disputes are to be resolved fairly and economically... which require innumerable decision to be made by officials trained in those specialisms. See A. W. Bradley and K. D. Ewing *Constitutional and Administrative Law* (14th Ed. England, Pearson Longman, 2007) p. 695; Chris Taylor, *Constitutional and Administrative Law* (Revised Ed. England, Pearson Longman, 2009) p. 128; O. Hood Phillips and Jackson, *Constitutional and Administrative Law* (8th Ed. Sweet and Maxwell) p. 686.

by the High Court will also be examined with the aim of suggesting how they can best be used to discharge their adjudicatory roles in the interest of justice and for the protection of professionals' integrity and reputation.

Establishment of Professional Disciplinary Tribunals

Most professions, if not all, have in-house machineries for the purposes of; controlling the conducts of their members, preventing acts of professional misconducts, jealously guarding their professions' reputation, and maintaining high standard in the performance of their assignments.

These machineries function either as *statutory* or *domestic* tribunal. As for the latter, Halsbury had confirmed their existence when he observed that:

Various bodies have set up their own domestic tribunal for administrative purpose and for settling dispute between or exercising disciplinary control over their members.⁸

The legislature have however recognized the need not to leave the holistic processes of adjudication and trial of certain professionals to the whims of these bodies alone, hence, the rationale for the enactment of statutes creating *statutory tribunals* for the discipline of those professional members who infract their professional codes. Thus, since these tribunals are the creature of statutes, their jurisdiction, and powers are usually confined and circumscribed in the laws establishing them.⁹

The basic difference between the statutory tribunals and domestic disciplinary bodies established by each professional body is that, the former is established under a statute while the latter may be established under the profession's rules or constitution. However, in both circumstances, attempts are often made to ensure that basic rules applicable to each tribunal are fashioned in such a

⁸*Halsbury's Laws of England* 4th Ed. Vol., paragraph 13.

⁹ *Mayor of Westminster v. London & North Western Railway Co.* (1905) AC 426 at 430.

manner as to reflect the customs and peculiarities of practices of the respective profession.¹⁰

Among the existing statutory professional disciplinary tribunals include, Association of National Accountants of Nigeria Disciplinary Tribunal¹¹, for the discipline of accountants; Legal Practitioners Disciplinary Committee¹² for the discipline of legal practitioners; Registered Engineers Disciplinary Tribunal¹³ for registered engineers; Pharmacist Disciplinary Committee¹⁴ for pharmacists; Medical and Dental Practitioners Disciplinary Tribunal¹⁵ for the discipline of dental and medical practitioners, and so on.

Scope and Powers of Statutory Professional Disciplinary Tribunals

Generally, the primary duty of these tribunals is to consider and determine any case referred to them or any case to which the tribunals have cognizance under the provisions of the statutes creating them. These tribunals are neither courts of law exercising jurisdiction in criminal matters under the provisions of the Criminal Code¹⁶ and Penal Code¹⁷ nor are they pre-trial investigators. Rather, they are administrative bodies created by statutes and vested with quasi-judicial jurisdiction to consider and determine cases, charging respective professionals with misbehavior or breach of codes of conduct of the profession. Their decisions and directions are however equivalent to sentence passed by a court of law after conviction of a finding of guilt.¹⁸ The effect

¹⁰ Ese Malemi, *Administrative Law* (4th Ed. Ikeja, Princeton Publishing Company) p. 216.

¹¹ Association of National Accountants of Nigeria Act, Cap. A₂₆, LFN. 2010, s. 11(1).

¹² Legal Practitioners Act, Cap. L₁₁, LFN. 2010, s. 10.

¹³ Engineers (Registration Etc.) Act, Cap. E₁₁, LFN 2010, s. 10(1).

¹⁴ Pharmacist Act, Cap. P₁₇, LFN 2010, s. 10.

¹⁵ Medical and Dental Practitioners Act, s. 15(1).

¹⁶ Cap. C₃₈, LFN, 2010.

¹⁷ Cap. P₃, LFN, 2010.

¹⁸ *LPDC v. Fawehinmi*(1985) 2 NWLR (Pt. 7) p. 200; *Ndukwe v. LPDC* (2007) 5 NWLR (Pt. 1026) p. 1 S.C.

of this is that, they do not exercise ordinary criminal jurisdiction but what can be regarded as quasi- criminal jurisdiction.¹⁹ This is the reason why the standard of proving any allegation before them is the standard of proof in civil proceedings which is on the balance of probabilities (or proof by preponderance of evidence)²⁰ as against proof beyond reasonable doubt obtainable in ordinary criminal trial.²¹

Where a *prima-facie* case has been made against any member of a profession to a respective statutory tribunal, usually a notice for the hearing of the case would be sent to the parties to the proceedings. However, where the charges preferred against a member can only be proved by facts that would amount to an offence or crime under the Penal Code, Criminal Code or other similar statutes, the tribunals must decline jurisdiction. To assume jurisdiction in such an instance would mean exercising criminal jurisdiction, which is outside the scope of their powers. The Supreme Court had confirmed this in *Okonkwo v. Medical and Dental Practitioners Disciplinary Tribunal*,²² when Ayoola JSC stated as follows:

Where an allegation of infamous conduct made against a practitioner cannot be established without proving facts that would amount to an offence covered by the criminal code, the tribunal should yield to the courts established for the trial of such offence. To hold otherwise may lead to a conflict of verdicts, where a tribunal had first tried the matter and found the practitioner not guilty of infamous conduct, while on

¹⁹*Alalade v. Accountants Disciplinary Tribunal* (1975) 4 S.C. 59

²⁰Evidence Act, 2011, s. 134; *Bamaiyi v. Bamaiyi* (2005) 15 NWLR (Pt. 948) p.334; *Charles Okike v. LPDC* (2005) 15 NWLR (Pt. 945) p.475; *NBA v. Rotimi Williams Akintokun* (LPDC, BB / DCNB / 033) (2006), All FWLR (Pt. 1720) p. 138.

²¹ Evidence Act., s. 135.

²² (2001) 7 NWLR (Pt. 711) p. 206 at 235; *Sofekun v. Akinyemi* (1981) 1 NCLR at p. 135; *Denloye v. Medical and Dental Practitioners Dicipinary Committee* (1968)1 All NLR 306 at 312

the same set of facts a criminal court finds him guilty of a criminal offence and convicts him, or vice versa.

However, where the alleged member *agrees* or *accepts*²³ his guilt that he committed the alleged infamous conduct which also amounts to a crime. Then, the tribunals will be justified in exercising jurisdiction in such circumstance. This is an exception to the general rule. The Supreme Court had also affirmed this exception in *Ndukwe v. LPDC*²⁴ where Onnoghen JSC observed as follows:

Where a charge or complaint against a person before administrative tribunal or body doubles as a crime under the Criminal Code and the person accused admits that he or she committed the offence or offences the administrative tribunal or body has the jurisdiction to proceed to sanction the person without first referring the matter for trial and determination before a court of competent jurisdiction because the admission of guilt discharges the burden of proof placed by law on the accuser. This is an exception to the general rule that where an allegation against a person before an administrative tribunal is also an offence under the Criminal Code, the administrative tribunal cannot hear the complaint except the criminal aspect of same has been heard and determined by a court of competent jurisdiction.²⁵

It is however in the writer's view that before this exception will be exercisable by any tribunal, such a tribunal should be able to

²³Italics for emphasis.

²⁴ *Supra*; *Geidam v. NEPA* (2001) 2 NWLR (Pt. 696) p. 45 at 59-60; *Dangtoe v. C.S.C Plateau State* (2001) 9 NWLR (Pt. 717) p. 132; *Abia State University v. Anyabe* (1996) 2 NWLR (Pt. 347) p. 598; Akin Olujimi "Fair Hearing in Nigeria: The Current State of the Law" in Yakubu J. A.(ed) *Administration of Justice in Nigeria* (Lagos: Malthouse Law Books, 2000) p. 12.

impose the punishment prescribed for that infamous conduct which also doubles as a crime.

It must be noted that, the nature of charge that are being preferred in these tribunals are not, and cannot mean formal charges as in criminal procedure for criminal trial before the regular courts of law. For though, the proceedings under their various rules are adversary proceedings, they are nevertheless not criminal in nature, at best they are *quasi-criminal*.²⁶ What is necessary is to be known to the alleged member, the substance of the allegations or complaints made against him in the language he understands before the commencement of proceedings against him.²⁷ It is not mandatory for the charge preferred to stipulate any alleged breach of particular professional rule. It is sufficient if it discloses essential elements of the infamous conduct.²⁸

These statutory disciplinary powers given to the professional tribunals cannot be delegated except where the statute creating them expressly makes provision for authority to delegate.²⁹

Applicability of the Principles of Natural Justice

Notwithstanding the fact that the professional disciplinary tribunals exercise merely disciplinary jurisdiction and not criminal, they must be guided by the principles of natural justice and fair hearing as enshrined in the constitution, particularly the principles of *audit alta rem patem* (hear the both sides) and *nemo iudex in causua sua* (you cannot be a judge in your own cause or matter).³⁰ The standard of impartiality require of a full time judge is the same as those required by persons who adjudicate in administrative tribunals. Thus, where a tribunal fails to observe these principles,

²⁶*Charles Okike v. LPDC* (supra).

²⁷*NEPA v. Akinola Arobieke* (2006) All FWLR (Pt. 316) p. 284; CFRN, section 36(6)(a).

²⁸*Okonkwo v. MDPDT* (supra).

²⁹*Obayan v. University of Ilorin* (2005) 15 NWLR (Pt. 947) p. 123; *Bamgboye v. University of Ilorin* (1999) 10 NWLR (Pt. 622) 290.

³⁰*LPDC v. Fawehinmi* (1985) 2 NWLR (Pt. 7) p. 300 SC.; Ese Malemi, *op. cit.* p. 215.

its decisions will be set aside.³¹ To ensure that these principles are adhered to, most of the statutes establishing these disciplinary bodies usually guarantee the rights of the parties before them to be represented by legal practitioners to ensure that rights of the parties are protected.³²

In furtherance to ensuring that there is fair play and coherence in the tribunals' proceedings, it is usually provided for, that all the members of the panels or tribunals that commenced the hearing and the enquiry of a particular proceeding must complete same. Any variation in the membership of the tribunals will affect the decision of the tribunal. However, where after all the enquiries and proceedings had been concluded and the tribunals are about to give their direction, then if there is any variation in the composition of the tribunals this will not affect the inquiry conducted and neither will it affect the direction nor the decision of the tribunals.³³

It has also been held that, where the decision of a tribunal is reduced into writing and signed by the chairman of the tribunal alone, who read the same in the public in the presence of the majority of the members of the tribunal who heard evidence during the proceedings of the tribunal and where none of the members expressed a contrary opinion, then, the decision as read by the chairman of the tribunal constitutes the decision of the tribunal.³⁴

Effect of the Constitution of Professional Disciplinary Tribunals

³¹*Gyang v. C.O.P. Lagos State* (2014) 3 NWLR (Pt. 1395) 547 S.C.; *Charles Okike v. LPDC* (supra) at p. 531; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) p.599; *Ndukwe v. LPDC* (supra). "... in reality, the essential qualities of adjudication apply to both tribunals and courts" A. W. Bradley and K. D. Ewing, *op.cit.* p. 696.

³² See for instance, paragraphs 2(2) of the Registered Engineers (Disciplinary Assessor Rules); paragraph 1(2) of Pharmacists (Disciplinary Committee Assessor Rules) 1975; paragraph 6(2) of Medical and Dental Practitioners Disciplinary Tribunal and Assessor Rules. Paragraph 2(2) of the Third Schedule to Institute of Chartered Accountant Act.

³³*Ndukwe v. LPDC* (supra).

³⁴*Ibid.*; *Adeigbe v. Kusino* (1968) All NLR 248.

The statute creating a particular professional disciplinary body usually prescribes for its constitution as per composition and qualification of members that will constitute such a tribunal. Giving the composition of the members of all the existing statutory professional disciplinary bodies will be a superfluous and a prolix exercise. Hence, provisions relating to Accountants Disciplinary Tribunal (ADT) created under the Institute of Chartered Accountant Act (ICAA) and Registered Engineers Disciplinary Tribunal (REDT) created under the Engineers (Registration Etc.) Act will be used as references for the purpose of this paper.

Section 11(2) of ICAA prescribes for the composition of ADT as consisting of the chairman of the Council³⁵ of the Institute of Chartered Accountants of Nigeria and six other members of the Council appointed by the Council. The quorum of the tribunal is four members of whom at least two must be chartered accountants. Similarly, section 10(2) of ERA provides that the REDT shall consist of the Chairman of the Council³⁶ and eleven other members of the Council and having the same quorum with ADT.

After a scrupulous observation of the two statutes under consideration, it is observed that all the members of these tribunals are professional men, either as a professional accountants or certified engineers as the case may be. It is presumed in the writer's view, that what must have motivated the legislature in determining the composition of the tribunal is predicated on an attempt to give room to the *sui generis* and peculiarities of each profession.³⁷

³⁵ Section 3 of ICAA created the Council for the Institute, comprising of twenty persons all being professional accountants either as fellow or associate members of the Institute.

³⁶ Section 1(1) of ERA created the Council for the Regulation of Engineers in Nigeria (COREN) with all the members as certified engineers.

³⁷ "The technical nature of the issues involved in a given dispute may demand the attention of experts in the field. The issues involved may be scientific, engineering, accounting, etc., and not being strictly or primarily legal, may be better studied and dealt with by experts in that particular field. In such a case justice would be done if only the true facts are understood and sorted out. Only those who are well informed about a given situation may more effectively

However, when the peculiarity of the membership of these tribunals (being professional men) is juxtaposed with the judicial duties bestowed on them, that is, the application and interpretation of rules of law, have led to the justification why the statutes usually provide to the effect that, a legal practitioner with at least seven years post call experience should be appointed as an assessor for the purpose of *advising*³⁸ the tribunals on questions of law arising in the proceedings before the tribunals.³⁹ Such assessors are often appointed either generally or for any particular proceedings or class of proceedings and will hold and vacate office in accordance with the terms of the instrument by which they are appointed.⁴⁰ These provisions that provide for the appointment of an assessor is understandable, because it would have been a threat to justice to imagine a panel of only engineers, or accountants or pharmacists who know little or nothing about judicial processes to embark on such an adjudicatory voyage.

It must however be noted that, despite the appraisal of these provisions appointing assessors into the tribunals' proceedings, the provisions still have two fundamental limitations. First, the legal practitioners usually appointed are mere assessors and not members of the tribunal. They only render *advice*; the advice may either be accepted or rejected by the members of the tribunals.⁴¹ In other words, their advice as to the rules of procedure is not binding on the tribunal, hence their presence in the proceeding has a minimal contribution in ensuring and enforcing due and proper adjudicatory processes by the tribunals.

It would have been more acceptable and acceptable if the assessors are members of the tribunals. There is high tendency that the members without a legal practitioner being members may not understand and appreciate all the niceties of fair hearing as

expose various aspects by the witness.” Okany M.C. in his book *Nigerian Administrative Law* (Onitsha, Africana First Publishers) 2007), p. 134.

³⁸ Italics for emphasis.

³⁹ Paragraph 4(1) of the Third Schedule ICAA; see also paragraph 4(1) of the Second Schedule ERA.

⁴⁰ *Ibid.* Paragraph 4(3) ICAA and ERA.

⁴¹ *Ibid.*, Paragraph 4(2)(b).

required by the law. It has been observed that the proliferation of tribunals vested with adjudicatory powers has led to a wave of violation of the right to fair hearing and many of the instances of these violations arise from the impatient and ignorance of the disciplinary committee or their religious or moral belief. To these tribunals, the usual delays of the regular courts are an anathema.⁴² Okany observes this challenge when he noted as follows:

Although members of an administrative tribunal may be experts in their own fields, yet they lack the requisites judicial or legal training for the adjudicatory functions they perform.⁴³

Secondly, the statutory limit of professional experience required of an assessor is very small when compared with the sensitive responsibility bestowed on him. One could imagine a situation whereby a professional alleged to have conducted himself in an unprofessional manner is legally represented by a very seasoned and senior lawyer under the right conferred on the alleged professional in the statutes to be represented by a legal practitioner of his choice. In such a situation, a lawyer who is just about seven years post call experience may be unable to appreciate all the procedural technicalities that may be implored by such an experienced lawyer representing the professional facing the charge. It is hereby submitted that if an assessor would be appointed, he should be such a legal practitioner who possesses qualification as regards years of experience required to appoint a Senior Advocate of Nigeria⁴⁴ or a Judge of the High Court.⁴⁵

⁴² *Oyelana v. University of Lagos* (2002) 2 NIPLR p. 955; Shaibu O. Raymond, "A Critical Appraisal of the Doctrine of the Fair Hearing and University Discipline. A Long Essay Submitted to the Faculty of Law, Kogi State University, Anyigba, August, 2011, p. 22.

⁴³ Okany M.C. *op. cit.* p. 137. See also, B.O. Iluyomade and B.U. Eka, *cases and Materials on Administrative Law in Nigeria* (2nd Ed. O.A.U Press, 1992) p. 191.

⁴⁴ Rule 2, Part II of the Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria (SAN) Rules 2008 which provides for the criteria of eligibility for the appointment of SAN to be legal practitioners of at least ten years post call active legal practice.

Another important provision of some of the statutes creating these professional disciplinary tribunals is the one that provides for where appeals from such tribunals lie. For instance, section 12(5) of ICAA which has *impair materia* provisions with section 11(5) of ERA provides that appeals from the tribunal lie to the Court of Appeal. It provides as follows:

The person to whom such a direction relates may, at any time within twenty eight days from the date of service on him of notice of the direction, appeal against the direction to the Court of Appeal; and the tribunal may appear as respondent to the appeal and, for the purpose of enabling directions to be given as to the costs of the appeal and of proceedings before the tribunal shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.⁴⁶

This above provision has also raised two fundamental questions. First, have the statutes creating these tribunals already clothed them with the status of a superior court as having co-ordinate jurisdiction with the High Court? Second, if the first question is answered in the affirmative, how possible then is the exercise of judicial control of these tribunals by the High Court.

With respect to the first question, the Court of Appeal in *J. A. Nwani v. Dr B. N. Amanira*⁴⁷ had stated as a general rule that “a tribunal, no matter how highly clothed with power is an inferior court.” However, Emiola has taken a contrary view. He observed that, not all tribunals are inferior courts. He formulated three criteria for determining whether a court or tribunal has a status of superior court. According to him, the three criteria are:

1. The language used in creating or establishing the court;

⁴⁵ Sections 250(3) and 271(3) CFRN provides “for minimum of ten years post call experience for any lawyer to be appointed as Federal or State High Court Judge.

⁴⁶ Similar provisions are provided for in section 16(6) of Medical and Dental Practitioners Act and Section 11(5) of the Pharmacist Act.

⁴⁷ (1991) 8 NWLR (Pt. 207) p. 68

2. Whether tribunal's or court's decision is subject to judicial review by prerogative orders; and
3. The higher court to which an appeal from its decision lies.⁴⁸

The theme of the three criteria as enunciated by the learned author is that, where the words of the statute establishing a tribunal provide in clear and in unequivocal terms that appeals from a tribunal or court shall lie to the Court of Appeal, then such a tribunal or court has the status of a superior court even though the statute have not expressly stated so. In such an instance, the nomenclature of the name that the adjudicatory body bears will be of no effect. The learned author in his work specifically states:

In Nigeria, appeals from magistrate, customary courts and tribunals lie to the High court or courts of co-ordinate status, some tribunals however have the power and status of superior court of records within the jurisdiction conferred in them without the law expressly saying so. These include the Code of Conduct Tribunal, Election Petition Tribunal, The Military Court Marshal. Appeals from there go to the Court of Appeal and their decisions are not renewable by the prerogative orders of prohibition or certiorari.⁴⁹

Emiola justified his opinion by relying on the position obtainable in the Constitution of the United States of America from where Nigeria took her cue. To be precise, the author stated as follows:

The fact that *all courts* other than the Supreme Court are designated in the American Constitution as “inferior courts” does not deny them as we all know in practical terms, the status of “superior court of record.” For apart from case involving foreign ambassadors, consuls and other public ministers and “in which a state shall be a

⁴⁸Emiola A., *Extent of Legislative Powers of Nigeria's National Assembly*. (Emiola Publishers, 2013) pp. 10-11.

⁴⁹*Ibid.*, p. 12

party in respect of which the Supreme Court exercises original jurisdiction, in all other cases... the Supreme Court shall have only appellate jurisdiction both as to Law and Equity.” It is unthinkable that any person would suggest that all the courts in the United states, including all District Circuit and Federal Courts, are not superior courts of record simply because the constitution refers to them as “inferior courts”.⁵⁰

Malemi also seems to be settled with Emiola’s assertion when he confirmed that:

Generally, a High Court has power of judicial review over the findings of a tribunal... However, the statute establishing a tribunal may provide that all appeals from the decision of the tribunal shall lie directly to the Court of Appeal *especially where the tribunal is the equivalent of a High Court*⁵¹, in which case, the Court of Appeal is the relevant court to review the findings of such tribunal.⁵²

This Emiola’s view has been fortified also by the Nigerian constitution whereby it recognizes the fact that an appeal can lie from a tribunal to the Court of Appeal, as long as such tribunal is created pursuant to any Act enacted by the National Assembly.⁵³ Section 240 of the Constitution provides thus:

⁵⁰*Ibid.*, p. 10

⁵¹ For emphasis.

⁵² Ese Malemi, *op. cit.* at p. 211; Okany described these type of tribunals as “Court-like tribunals”. He said further that every such tribunal had the powers of a high court to compel the attendance of witnesses and the products of documentary and other forms of evidence, and impose the penalties prescribed by the appropriate decree. Okany M.C. *op. cit.* p. 140.

⁵³ It should be noted that this provision is limited and restricted only to those tribunals established by federal legislature hence, those created by laws made by Houses of Assembly of a state are not inclusive.

Subject to the provision of this constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory Abuja...*or other tribunal as may be prescribed by an Act of the National Assembly.*⁵⁴

This position was given judicial nod by the Court of Appeal in the case of *In Stabilini Visioni Ltd v. F.B.I.R.*⁵⁵ when it held that the Value Added Tax Tribunal created by virtues of Value Added Tax Act was not a mere administrative tribunal, since appeals from there did not lie to the Federal High Court but to the court of Appeal.

From all the above postulations, it can be deciphered that as a general rule, every tribunal including professional disciplinary tribunal ought to be an inferior court, but the statute creating the professional tribunals in contemplation may impliedly cloth them with the status of superior courts, since appeals lie from them to the Court of Appeal. With that, they can be equated with other tribunals created in the constitution as having superior court status, such as Code of Conduct Tribunal.

On the second question, that is, the possibility of High Court exercising the power of judicial review on the professional tribunals since it has been established that they are superior court themselves. Generally, the principle of law is that High Court has power to exercise judicial control *over all inferior courts and tribunals.*⁵⁶The Nigerian Court of Appeal noted in the case of *Nigerian Breweries Ltd v. Oyo State Revenue Court and Anor*⁵⁷ as follows:

⁵⁴ Italics for emphasis.

⁵⁵ (2009) 13 NWLR (Pt 115) 200.

⁵⁶ Italics for emphasis.

⁵⁷(2003) 7 WRN 128; *Chief L.U Okeahialam Anor v. Nze J. U. Nwamara*, (2003) 12 NWLR (Pt. 835) p. 598 at 611.

The law is settled that one of the very important powers which every High Court has is the supervisory power it has on all inferior courts or tribunals acting strictly within the jurisdiction conferred on it by the enabling laws.⁵⁸

However, going by the literal rule of interpretation of statute, which is to the effect that where the words of the statutes are in themselves clear and unambiguous, the words used should be given their ordinary meaning. Nothing should be imported into the provisions of the statute. Its provisions should be interpreted as they are and not as they ought to be.⁵⁹ Hence, from the provision of section 12(5) of ICAA and other similar provisions, it is clear and uncontroverted that the intendment of the legislature is to create exception to the general rule as illustrated in the *Nigerian Breweries Case*. It therefore means that, since the High Court do not hear appeals from these professional tribunals, they cannot similarly exercise the power of judicial review by way of *prohibition* or *certiorari* on them. This also is a great lacuna. This is because in all instances where High Courts are empowered to grant prerogative orders, they are also have empowered to hear their appeals. For instance, High Courts do not hear appeals from Legal Practitioners Disciplinary Committee, Code of Conduct Tribunals, and Election Petition Tribunals and similarly they do not control them by means of prerogative orders.

At this juncture, it must be clarified that the rationale while appeals from code of conduct tribunal and Election Petition Tribunals lie to the Court of Appeal and from Legal Practitioners Disciplinary Committee to the Supreme Court as the case may be, can reasonably be justified on the premise of the characters of

⁵⁸ *Ibid.*, at 136; similarly, in *J.A Nwani v. Dr B. N. Amanira* (supra) at p. 68, the court states that “a tribunal, no matter how highly clothed with power is an inferior court and subject to the supervisory jurisdiction of a superior court of record.” Per Kolawole JCA; see also *WAEC v. Mbamadu* (1992) 2 NWLR (Pt 230) p. 481 at 494.

⁵⁹ *Onyeanusu v. Miscellaneous Offences Tribunal* (2002) 12 NWLR (Pt 781) p. 227 at 250.

personnel that form the composition of such adjudicatory bodies. Usually, in such tribunals, their chairmen, or sometimes all the members of the tribunals are retired or serving justices⁶⁰ or very senior member of the bar⁶¹ that are versed in knowledge of adjudicatory process and administration of justice.

It is submitted that, the legislature has created a vacuum in the statutes by limiting the likelihood of ensuring justice in these professional disciplinary tribunals that are basically presided over by only professional men, who may be professionally expert but nevertheless laymen as far as adjudicatory processes are concerned. More so, that what would have been amelioration to the lapses in their composition being the presence of legal practitioners as assessors has been jeopardized by the fact that the assessors are not members of the tribunals, rather, they only render advice.

One could imagine a situation where a professional member alleged of misconduct is represented by a very senior lawyer, what would professional engineers or accountants or pharmacists know or do when such a lawyer starts unleashing legal lexicon and terminologies before them? More so that the rules under which these tribunals operate allow them to apply rules of evidence provided for in the Evidence Act. More particularly, when the parties before the tribunals cannot approach the High Court for prerogative orders to stop the tribunals when they are not following due process in the conduct of their adjudication or check their excesses in the course of the proceeding. This is even made worse when it is considered that the Court of Appeal where the appeals lie does not hear evidence but only looks into the record of the lower court before allowing or rejecting the appeal. Hence, once error has been made in the trial, it is not in all circumstances that appeal may remedy same.

It is hereby submitted that professional disciplinary tribunals affected by these statutory compositional deficiencies

⁶⁰ See paragraph 15(2) of the Fifth Schedule to the Nigerian Constitution for the composition of the Code of Conduct Tribunal and the Sixth Schedule for the composition of the Election Petition Tribunals.

⁶¹ See section 10 of the Legal Practitioners Act for the composition of the Legal Practitioners Disciplinary Committee.

ought to have been presided over by at least a judge of a High court or such other senior men of the bar. This is necessary because of the seriousness of the roles these quasi-judicial bodies play in the administration of justice, since they are created to have concurrent jurisdiction with the High Court.

Two alternative suggestions will be made here, first, that the law establishing these tribunals be amended to the effect that the composition of the tribunals should manifestly show the fact that the tribunals have been clothed with a status of superior court of records by the inclusion of capable personnel in their membership. Alternatively, the law should be made to subject these professional disciplinary tribunals to prerogative orders of the High court and to make appeals lie thereto.⁶²

Thus, because of the limited number of cases usually instituted in these professional tribunals, it is also recommended that a specialized court having full potential of a superior court and having judicial divisions in all the states of the federation can be created to adjudicate on all forms of professional misconduct. Such court will have jurisdiction all over matters arising from breach of codes and ethics of various professional bodies. The court should be presided over by at least a serving judge. However, depending on the type of the professional member and the profession involved in a particular suit that will determine the choice of other members of the court that will sit with the presiding judge to adjudicate over that particular suit. In other words, while there will be a permanent presiding judge, there will be an adhoc complimentary members of the court depending on the profession involved in the suit. The operation of the court will function in a nature similar to the exercise of the National Industrial Court.⁶³ With this type of court in place, both the sanctity of adjudicatory process and the uniqueness of each profession will be preserved.

⁶²This is what is obtainable under the Registered Mining Engineers and Geoscientists Disciplinary Committee created under section 22 of the Council of Nigerian Mining Engineers and Geoscientists Act 1990. See particularly, section 27.

Conclusion

In the course of this paper, some professional disciplinary tribunals have been identified to be empowered to investigate and adjudicate on the misconduct of members of such professions. It was also observed that while the rationale for their creation can be justified, some provisions regarding their establishment and operations are however objectionable and can be queried. For instance, provisions relating to the appointment of a legal practitioner as a *mere assessor* and the years of experience required of an assessor; the technical limitation of power of the High Court to judicially review the decisions of the tribunal and most importantly, the court to which appeal lies from the disciplinary tribunals. Several suggestions have been proffered in the course of this paper, which if adopted will ensure the intendment of justice in the disciplinary tribunals without eroding the sanctity and *sui generis* of each profession.