**CHRISTOPHER OKEKE**

**V.**

**SECURITIES AND EXCHANGE COMMMISSION AND OTHERS**

IN THE COURT OF APPEAL OF NIGERIA

THE 29TH DAY OF JANUARY, 2013

CA/L/13/2009

**LEX (2013) - CA/L/13/2009**

OTHER CITATIONS

2PLR/2013/40

(2013) LPELR-20355(CA)

**BEFORE THEIR LORDSHIPS**

AMINA ADAMU AUGIE, JCA

IBRAHIM MOHAMMED MUSA SAULAWA, JCA

SIDI DAUDA BAGE, JCA

**BETWEEN**

CHRISTOPHER OKEKE - Appellant(s)

AND

1. SECURITIES AND EXCHANGE COMMMISSION

2. ADMINISTRATIVE PROCEEDINGS COMMITTEE OF THE SECURITIES & EXCHANGE COMMITTEE

3. AMOS I. AZI (SECRETARY, ADMINISTRATIVE PROCEEDINGS COMMITTEE - Respondent(s)

**ORIGINATING**

FEDERAL HIGH COURT, LAGOS JUDICIAL DIVISION

**REPRESENTATION**

O. SOWEMIMO, (SAN) WITH HIM EZETAH & O. ADIGUN - For Appellant

AND

RESPONDENT ABSENT - But served with the Hearing Notice - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMPANY LAW:- Publicly quoted company - Misstatement in the published accounts and other related matters of a criminal nature – Powers of the Securities and Exchange Commission through its Administrative Proceedings Committee to investigate accusations of a criminal nature against a corporate body – Company and Allied Matters Act and Investments And Securities Commission Act – Where there is consistency between the two legislations – How resolved – Constitutional aid to the question - Relevant considerations

COMPANY LAW:- Provisions of Sections 331 - 333 of the CAMA – Imposition of a duty upon a company to keep proper and accurate records of accounts and the penalties for non-compliance therewith - Sections 334 - 337 – Imposition of a duty upon Directors of the Company to prepare annual accounts - Sections 345 - 348 of the Act - Duty on Directors to deliver financial statement, and the penalties for non-compliance therewith – Whether matters relating to the operations of a company the Management and assets thereof and thus within the jurisdiction conferred by the Constitution on the Federal High Court.

CAPITAL MARKET:- Publicly quoted company - Allegations of complicity in the misstatements in the statutorily required Annual Accounts filed with the Security and Exchange Commission other related matters of a criminal nature – Court/Tribunal with jurisdiction to entertain same – Whether Federal High Court or Investment and Securities Tribunal - Company and Allied Matters Act and Investments And Securities Commission Act – How inconsistencies between provisions of the two legislations are resolved

CAPITAL MARKET LAW: Provision of Section 310 of the Investments And Securities Commission Act – Whether can override the provision of Section 251 (i) (e) of the 1999 Constitution (supra) – Whether the Securities and Exchange Commission has no judicial power under its establishment Act to constitute a panel to adjudicate over causes involving the determination of legal rights of persons, such as criminal allegations levied against a person - Section 6 (6) of the 1999 Constitution - Whether such judicial power falls within the ambit of the exclusive jurisdictional competence of the Federal High Court. See Section 251 (1) (e) of the 1999 Constitution

CONSTITUTIONAL LAW:- Supremacy of the Constitution – Section 1(3) of the Constitution - Whether constitutional provisions prevail over any other law that is inconsistent with its provisions- Breach of constitutional provisions as to fair hearing rights – Effect

CONSTITUTIONAL LAW:- Judicial powers of the Federation – Section 6 (6) of the 1999 Constitution – Power to adjudicate over causes involving the determination of legal rights of persons, such as criminal allegations levied against a person – - When such judicial power falls within the ambit of the exclusive jurisdictional competence of the Federal High Court. See Section 251 (1) (e) of the 1999 Constitution – Whether can be taken away by an Act of the National Assembly and conferred on another body

ADMINISTRATIVE AND GOVERNMENT LAW:- Securities and Exchange Commission and Administrative Proceedings Committee Of The Securities & Exchange Committee - Whether an administrative body is vested with criminal jurisdiction – Whether only a court is competent to decide questions bordering on the commission of a crime

**PRACTICE AND PROCEDURE ISSUES**

JURISDICTION:- Fundamental nature of - Need for it to be accorded the highest degree of consideration and priority over and above any other issue – Where a court embarks upon a decision in any given matter without the requisite jurisdiction – Whether decision is null and void, and liable to be set aside – Whether the issue of jurisdiction can be raised at any stage of the trial, and at any point in time, either at the trial or on appeal in the court of appeal, or Supreme Court – Whether can be raised suo motu by court

COURT - JURISDICTION OF AN APPELLATE COURT:- Where a plea of lack of jurisdiction and/or breach of the right of fair hearing has been raised, determined and successfully upheld on appeal - Whether the appellate court lacks the vires or jurisdictional competence to proceed to determine the remaining issues on the merits thereof

JURISDICTION - JURISDICTION OF THE FEDERAL HIGH COURT:- Exclusive jurisdiction conferred upon the Federal High Court, under Section 251 (1) (e) & (r) of the 1999 Constitution as amended (supra) - Whether cannot be whittled down or taken away by an ordinary Act of the National Assembly, in the absence of any amendment to the Constitutional provision

INTERPRETATION OF STATUTES:- Sections 1(3) and 251 (1) (e) & (r) of the 1999 Constitution as amended – Interpretation thereof

**MAIN JUDGMENT**

IBRAHIM MOHAMMED MUSA SAULAWA, J.C.A. (DELIVERING THE LEADING JUDGMENT):

This is an appeal against the Judgment of the Federal High Court of Lagos State, Judicial Division, which was delivered on September 26, 2008 in Suit No. FHC/L/CS/483/2008 by Abdullahi Mustapha, CJ. By the judgment in-question, the lower court came to the conclusion that the Appellant's right to fair hearing had not been breached. Consequent whereupon, the lower court dismissed the said suit.

**BACKGROUND FACTS:**

The facts and circumstances surrounding the appeal are gleanable from the records of appeal. In June, 2003, the Appellant was appointed a non-executive director of CADBURY NIGERIA PLC. In June 2006, the Annual Report Accounts of Cadbury Nig. Plc. was sent to the 1st Respondent. Upon reviewing the said report, the 1st Respondent expressed some concerns regarding declining profitability, worsening leverage ratio misstatements in the company's accounts, et al.

Consequent thereupon, the chairman of Cadbury Nig Plc. appointed an independent firm, Pricewaterhousecoopers Ltd, to investigate the said allegations.

The report of Pricewaterhousecoopers was later sent to the 1st Respondent. Upon the receipt of the report, the 1st Respondent constituted an in-house committee and Administrative Proceedings Committee (2nd Respondent) to investigate the alleged mis-statements in Cadbury's accounts. However, Cadbury, the auditors and Directors thereof challenged the competence of the 2nd Respondent to conduct the said investigation. Thus, an action was instituted at the Federal High Court, Abuja. The 2nd Respondent proceeded with the investigation and delivered the decision thereof to the 1st Respondent on April 8, 2008.

Consequent upon which, the Appellant applied to the lower court for a judicial review of the decision of the APC, thereby seeking the following reliefs:-

(a) A DECLARATION that the Respondents lacked the competence or jurisdiction to entertain or adjudicate over the allegations concerning the misstatement in the published accounts of Cadbury Nigeria Plc (2002 -     2005), as detailed in a Hearing Notice dated May 7, 2007 reference no SEC/1&E/APC/51/Vol. 1/002A, and the  Memorandum of facts attached thereto, as the allegations touched and concerned matters arising from     the operations of Companies and Allied Matters Act Cap C20 Laws of the Federal Republic of Nigeria 2004, a matter reserved exclusively to the Federal High Court by virtue of section 251 (i) (e) of the Constitution of the Federal Republic of Nigeria 1999.

(b) A DECLARATION that the indictment and trial of the Applicant by the Respondents based on the allegations levelled against him have been undertaken in breach of the Applicants constitutional right to fair hearing and is unconstitutional null and void.

(c) A DECLARATION that the Respondents acted ultra vires their powers in making their decision in respect of the alleged misstatement in the accounts of the Cadbury Nigeria Plc as contained in the Respondent's letter to the Applicant dated April 8, 2008 ref. no. SEC/1&E/APC/51/08/46 as the decision touched and concerned matters arising from the operations of Companies and Allied Matters Act Cap C20 Laws of the Federal Republic of Nigeria 2004, a matter reserved exclusively to the Federal High Court by virtue of Section 251 (i) (e) of the Constitution of the Federal Republic of Nigeria 1999 and the 2nd Respondent is not constitutionally empowered to exercise judicial powers.

(d) A DECLARATION that the Respondents' aforesaid decision is null and void as it is unreasonable and excessive and founded on a wrong premise that the applicant was an Executive Director.

(e) AN ORDER OF CERTIORARI bringing up before this honourable court for purposes of being quashed, the decision of the Respondents in respect of the alleged misstatement in the accounts of the Cadbury Nigeria Plc as contained in the Respondent's letter to the Applicant dated April 8, 2008 ref no. SEC/1&E/APC/51/08/46 especially as the decision was based on the false premise that the Applicant was an Executive Director of Cadbury Nigeria Plc.

(f) AN ORDER OF INJUNCTION restraining the Respondents, their servants, agents, privies or  otherwise howsoever from implementing in any manner howsoever the decision of the said second Respondent contained in its letter of April 8, 2008 ref no. SEC/1&E/APC/51/08/46.

The Respondents' counsel filed a notice of preliminary objection challenging the jurisdiction of the lower court to entertain the Suit in question.

On September 26, 2008, the lower court delivered the vexed judgment, thereby dismissing the action on the following grounds:

It has been known that SEC in order to maintain efficiency separated investigative committee from the hearing committee so that each committee has functions and members separate from each other and that members of the committee were drawn from the Respondents and the capital market operators.

There is further nothing to show that members of the in-house Investigation Team also sat as members of the Administrative Proceedings Committee.

None of the Applicants succeeded in reading out a case of breach of the principles of natural justices.

In the final analysis, I hold as follows:-

1. That the Suit of OLUBUNMI OLADAPO ONI must be dismissed and it is hereby dismissed.

2. That the Suit of Ayo AKADIRI must be dismissed and it is hereby dismissed.

3. That the Suit of CHRISTOPHER OKEKE must be dismissed and it is hereby dismissed.

On 10/10/08, being dissatisfied with the said judgment, the Appellant filed the notice of appeal which is predicated on 9 grounds, seeking the following reliefs:-

"Reversal of the judgment of Justice Abdullahi Mustapha and in substitution therefore a judgment granting reliefs sought by the Appellant on the application for judicial review with costs against the Respondents."

Upon the appeal being entered, the Appellant filed the brief of Argument thereof on 13/3/09, but which was deemed properly filed on 09/02/11. The Respondents equally filed the brief thereof on 24/09/09, but deemed properly filed on 09/02/11. The Appellant's reply brief was filed on 04/11/09, but equally deemed properly filed on the said 09/02/11.

At long last, when the appeal came up for hearing on 06/10/12, both learned counsel adopted the argument contained in their respective briefs. Thus, resulting in reserving the appeal for delivery of judgment.

In the said brief thereof, the Appellant's learned counsel, Oluseyi Sowemimo, SAN has distilled six issues from the 9 grounds of appeal, for determination, viz:-

(i) Whether the learned trial judge was right in holding that the APC had jurisdiction to adjudicate over the allegations of complicity in the misstatements in the Annual Accounts of Cadbury Nigeria Plc in view of the provisions of Section 251 (1) (e) of the Constitution of the Federal Republic of Nigeria 1999. (The question flows from ground 1 of the Notice of Appeal).

(ii) Whether the treatment of the Appellant as an Executive Director by the Administrative Proceedings Committee, was not clearly an error on the face of the Records and if so whether the learned trial judge gave due consideration to this issue? This question flows from grounds 2 and 3.

(iii) Whether the learned trial judge was right in affirming the decision of the APC in the light of the evidence led and applicable principles of law. This question flows from grounds 2, 6, 7 and 9 of the Notice of Appeal.

(iv) Whether the learned trial judge was right in holding that the Appellant's right to fair hearing had not been breached. This question flows from ground 4 of the Notice of Appeal.

(v) Whether the allegations levelled against the Appellant and the punishment meted to him by the APC did not  constitute criminal offences and whether the Committee was competent to try such matters. This question flows from grounds 5.

(vi) Whether the learned trial judge is right in giving a single judgment on the three applications before him, albeit consolidated. This question flows from ground 8.

The totality of the argument on the six issues is covered on pages 3 - 15 of the Record.

On issue No.1, the crux of the Appellant's argument, in a nutshell, is that the lower court ought to have resolved the issue of whether or not the APC had jurisdiction to entertain the complaints concerning mis-statements of accounts of Cadbury Nig. Plc by virtue of Section 25 (1) (i) e of the 1999 Constitution vis - a - vis the Companies And Allied Matters Acts. It was contended that only the Federal High Court has jurisdiction to entertain the matter to the exclusion of all other courts. See Section 334 - 337 of CAMA; SKEN CONSULT VS. UKEY (1988) 1 SC 6 at 31. Thus, it was contend that:-

3.15 The Administrative Proceedings Committee clearly lacked jurisdiction to adjudicate over the allegation made against the Appellant and the learned chief judge was in error in upholding the jurisdiction of the committee to entertain the allegations.

On issue No.2, it was submitted, inter alia, that the Appellant was appointed a non-executive Director of Cadbury Nig. Ltd, vide letter of appointment thereof, dated 16/6/03 (pages 319 - 320 of Record). Executive Directors normally receive severe punishment of 5 years back while non Executive Directors receive one year ban.

That, the conclusion unsupported by facts, constitutes an error of law, thus ought to be reverse. See R VS MEDICAL APPEAL TRIBUNAL; EXPARTE GILMORE (1957) 1 QB 574; FA; FAWEHINMI VS. ABACHA (1996) 9 NWLR (Pt. 475) 710 at 748; OKONJI VS. NJOKANMA (1991) 7 NWLR (Pt. 202) 146; OWODUNNI VS. REGD TRUSTEES OF THE CCC (2000) 10 NWLR (Pt. 675) 315 at 347 - 348.

The court has been urged to quash the decision of the APC, on the ground made.

It has occasioned & miscarriage of justice.

On issue No.3, it was contended, inter alia, that the APC committee took a parochial view of the Cadbury's accounts. They did not take into consideration the fact that the alleged misstatements were matters of business judgment which had been approved at the general meetings of the company over the years.

Regarding issue No.4, the lower court has not only misconceived the issues placed before it, but also acted on facts outside the records thereof. That, the refusal to grant the Appellant's application for adjournment has offended the rule of prudence. See OJUKWU VS. GOVERNOR OF LAGOS STATE; SULLOVAN VS. DEPT OF TRANSPORTATION (1978) 1 ALD 385; LPDC VS. FAWEHINMI (1985) 2 NWLR (Pt. 7) 300, et al.

The court is urged to set aside the decision of the lower court and hold that the APC acted in violation of the process by not affording the Appellant sufficient opportunity to present the case thereof.

On, issue No. 5, it was contended, inter alia, that by trying the allegations and adjudging the Appellant liable, the APC had exercised judicial powers. The allegations in question border on crimes. See Sections 348, 563(i) CAMA; WATERSIDE WORKS FEDN OF AKSTRAKA VS. JW ALEXANDER LTD. (1918) 25 CLR 434 at 442; DOHERTY 46 BALE WH (1961) ALL NLR; (1963) 1 WLR 949.

Regarding issue No.6, it was contended, that the lower court ought to have delivered separate judgments in respect of the three Suits. See CHIME VS. EZEA (2009) 2 NWLR (Pt. 1125) 263 at 314.

In conclusion, the court has been urged to allow the appeal and enter judgment for the Appellant, in accordance with weight of evidence and precis of law.

On the other hand, the Respondent has raised a total of 8 issues at pages 5 - 6 of the brief thereof thus:-

(1) Whether exclusive jurisdiction is vested on Investment & Securities Tribunal in respect of disciplinary measures exercised by the Respondents as contained in  Section 284 (1) of Investment & Securities Act 2007.

(2) Whether the Federal High Court is bound by the decision of the Court of Appeal, Abuja Division in AJAYI  VS. SECURITIES & EXCHANGE COMMISSION SUIT NO. CA/A/200/M/2005 where it was held that exclusive jurisdiction is vested on Investment & Securities Tribunal pursuant to Section 242 of Investment & Securities Act, 2007. That the Federal High Court has no jurisdiction, even if the action was commenced by way of Judicial Review, Certiorari and prohibitions.

(3) Whether the Respondents have the powers to regulate the Nigeria Capital Market pursuant to Section 13, 300 and 310 of Investment & Securities Act 2007 and Sanction erring Capital Market Operators, including Board of Directors of Public Company.

(4) Whether the Appellant who was duly served with hearing Notice to appear before Administrative Proceedings Committee on May, 21 & 22, 2007 by 10:00am each day for his defence and who declined could be heard to complain of sanction meted out against him, most especially as the decision of Administrative Proceedings Committee did not state that he was sanctioned as an Executive Director of Cadbury Nigeria Plc.

(5) Whether the failure to write different judgments in a consolidated case, where all the issues in each case, Counsel's address and evidence properly evaluated could result in an appeal being allowed.

(6) Whether a Court of Law and equity would sheepishly act on the contents of affidavit hook, line and sinker when     the documentary evidence before the Court contradicts same.

(7) Whether the Companies & Allied Matters Act and the Criminal Code precluded Securities & Exchange Commission from regulating Public Companies as it  relates to the Capital Market Operators, Companies whose shares are quoted at the Nigerian Capital Market Pursuant to Sections 54 to 66 of the Investment & Securities Act 2007.

(8) Whether the fair trial of the Appellant was breached by the Respondents.

On issue No.1, it was postulated then by virtue of Sections 284 (1) and 294 of the investment & Securities Act, 2007, exclusive jurisdiction was conferred on the SEC Tribunal in disciplinary matters regarding regulation of the Nigerian capital market. Issue of jurisdiction can be served at any time. JERIC NIG. LTD VS. UBN (2000) 4 NSCQR 254 at 263. The court is urged to strike out the appeal for want of jurisdiction.

Regard the issue No.2, it was contended, that based on the doctrine of judicial precedence, the lower court is bound by the decision of this court in AJAYI VS. SEC. CA/A/200/M/2005. Pursuant to Section 16 of the Court of Appeal Act, the court is urged to strike out the case and refer it to SEC Tribunal for trial.

On issue No. 3, it was contended, that by Sections 13, 300 & 310 of SEC Act 2007. And that section 304 investment And Securities Act 2007, the 1st Respondent is enforced to refer offenders to EFCC, as was done in this case.  
On issue No.4, it was submitted that the Appellant was duly invited to appeal before the 2nd Respondent on 21/5/07 as per Exhibit "CO3". He had the opportunity to file sworn statements deposing that he's a non executive member of the Board of Directors: Exhibit "CO8". The Appellant constituted Suit No. FHC/ABJ/M/349/2007. That, the 2nd Respondent did not state that the Appellant was sanctioned in capacity of executive Director.

On issue No. 5, it was submitted that failure to write different judgments in a consolidated case would not result in an appeal being allowed where all the issues have been evaluated. See OYEKOLU VS. DUROSINMI (2001) 1 SCNLR 149. AGHADUNINO VS. OFOEDU (2003) 48 WRN 112 at 137.

On issue No. 6, it was argued that the Appellant's argument is misconceived as evidence must condescend upon particulars clearly and specifically; otherwise it would be resolved against the matter. See COTIA COMMERCIO E. IMPORTACAO. S.A. VS. SANUSI BROS (NIG) LTD (2000) 2 SCNQR (Pt. 2) 1515 at 1527.

The submission on issue No.7 is to the effect that the Appellants reliance on Section 251 (i) (e) of the 1999 Constitution is misconceived. That section does not cover filing false or misleading statement.

On issue No. 8, it was contended, that the Appellant was afforded fair hearing by the Respondents. That, the onus of proving that the same persons performed the sole of the in-house investigative team And Administrative Proceedings Committee lies on the Appellant pursuant to Sections 135, 136 & 137 Evidence Act. See OKEKE VS. LEGAL PRACTITIONERS DISCRIPLINARY COMMITTEE (2005) 15 NWLR (Pt. 949) 471.

Finally, the court has been urged to dismiss the appeal. The Appellant has filed a reply brief spanning 12 pages to the conclusive effect that:-

The contention of the Respondent that there has been no miscarriage of justice cannot be justified. The Administrative Proceedings Committee lacked the jurisdiction to entertain the matter, failed to give the Appellant a fair hearing and proceeded to sanction in on the false premises that he was an Executive Director of Cadbury Nigeria Plc. It is for these several reasons that we respectfully urge this Honourable Court to allow the appeal.

I have amply considered the nature and circumstances leading to this appeal, the argument of the learned counsel to the parties contained in their respective briefs of argument vis-a-vis the record of appeal, as a whole.

In determining the appeal, I have adopted the six issues formulated by the

Appellant in the brief thereof.

**ISSUE NO. 1**

The first issue raises the vexed question of whether the lower court was right in holding, as it did, that the 2nd Respondent had the jurisdiction to adjudicate over the allegations of complicity in the misstatements in the Annual Accounts of Cadbury Nig. Plc., in view of the provisions of Section 251 (i) (e) of the 1999 Constitution. The said first issue was indicated to have been distilled from ground 1 of the notice of appeal.

Instructively, by virtue of the provisions of the Investment And Securities Act Laws of the Federation of Nigeria, 2007, the Investment And Securities Commission was established as the apex regulatory organization for the Nigerian Capital Market. Most especially, the functions and powers of the commission have been provided under Section 13 of the Act, to the effect, inter alia, thus:

13. The commission... shall carry out the functions and exercise all the powers prescribed in this Act and, in particular, shall:

a. regulate investments and securities business as defined in this Act;

d. register securities of public companies;

g. register and regulate corporate and individual capital market operators as defined in this Act;

h. protect the integrity of the securities market against all forms of abuses including insider dealing;

(i) intervene in the management and control of capital Market operators which it considers has failed, is failing or in crisis including entering into premises and doing whatsoever the commission deems necessary for the protection of investors;

x. in furtherance of its role of protecting the integrity of the securities market, seek judicial order to freeze the assets (including bank accounts) of any person whose assets were derived from the violation of this Act, or any securities law or regulation in Nigeria or other jurisdictions;

z. conduct research into all or any aspect of the securities industry.

(aa) prevent fraudulent and unfair trade practices relating to the securities industry;

(bb) disqualify persons considered unfit from being employed in any arm of the securities industries.

The decisions of the commission, in the exercise of the power thereof, are subject to the jurisdiction of the Investments And Securities Tribunal duly established under the Act. The jurisdiction of the Tribunal is provided under Section 284 of the Act, to the effect, thus: 284 -

(1) The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:

a. A decision or determination of the commission in the operation and application of this Act, and in particular, relating to any dispute;

(i) Between capital market operators;

(ii) Between capital market operators and investment and their client;

(iii) Between an investor and a securities exchange or capital trade point or clearing and settlement agency;

(iv) Between capital market operators and self regulatory organization;

b. the commissioner and self regulatory organization;

c. capital market operator and the commission;

d. an investor and the commission;

e. an issuer of securities and the commission; and

f. disputes arising from the administration, management and operation of collective investment schemes.

By the provisions of Section 310 of the Act, the commission is cloaked with the power to:

"1 ... appoint one or more committees to carry out, on its behalf such of its functions as the commission may determine."

However, by virtue of the provision of subsection (3) of Section 310 of the Act (supra):

"A decision of a committee of the commission shall be of no effect until it is confirmed by the commission."

Now, the pertinent question raised under issue No.1, is whether the provision of Section 310 of the Investments And Securities Commission Act (supra) can override the provision of Section 251 (i) (e) of the 1999 Constitution (supra). To address this fundamental question, I think there's a need to equally reproduce, in verbatim, the well set out provision of Section 251 (i) (e) of the 1999 Constitution, thus:

251. - (1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

(e) arising from the operation of the Companies And Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies And Allied Matters Act.

As the ultimate Grundnorm, the 1999 Constitution as amended is undoubtedly supreme, and takes precedent over and above all other enactments in this country. Thus, if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail. And that other law shall, to the extent to the inconsistency, be void. See Section 1 (3) of the 1999 Constitution, as amended (supra).

In the instant case, as alluded to above, consequent upon the receipt of the report of CADBURY NIGERIA PLC in June 2006, the 1st Respondent constituted the 2nd Respondent to carry out a thorough investigation on the allegations regarding misstatements in the account of CADBURY NIGERIA PLC, to the tune of about N13 Billion. The 2nd Respondent indeed did sit on 21/5/07, 13 & 14/02/08, respectively, to hear the complaint. And on 27 & 28/3/08, the 2nd Respondent understated the findings and decisions to the effect thus:

DECISIONS OF THE ADMINISTRATIVE PROCEEDINGS COMMITTEE AT ITS SITTING OF MARCH 27, 2008.

I. Allegations against the 1st to 19th Respondents

1. That the 1st - 19th Respondents, being the company, Directors and persons in charge of, and responsible for the running of the 1st Respondent and or audit Committee members filed and or authorized the filing of a document with the Commission to wit: 2005 Annual Report and Account of the 1st Respondent which contained false /misleading statements and thereby violated Rule 3 (4) SEC Rules and Regulations 2000 as amended in 2005 which forbids filing of any paper, document or information with the commission that contains misleading information and thereby liable under Rule 3 (4) and Rule 7 and Schedule VII, Rule 11 of SEC Rules and Regulations 2000 as amended in 2005.

2. That the 1st Respondent as Issuer and the 2nd - 16th Respondents as directors of the 1st Respondent, in 2005 issued and or authorized the issuance of a Rights Circular dated 24 August, 2005 containing an untrue statement and thereby contravened Rule 3 (4) SEC Rules and Regulation 2000 as amended in 2005 which contravention renders the Respondents liable under Rules and Regulations 2000 as amended in 2005.

3. That the 1st Respondent failed / refused and / or neglected to deliver funds en-bloc to the 21st Respondent for the payment of dividends declared to shareholders within 7 working days after the Annual General Meeting and thereby violated provision of Rule 204 of the SEC Rules and Regulations 2000 as amended in 2005 which contravention renders the 1st Respondent liable under Rule 7 and Schedule VII, Rule 11 of SEC Rules and Regulations 2000 as amended in 2005.

4. That the 2nd to 16th Respondents failed and / or neglected to abide by the provisions of the Code of Corporate Governance in Nigeria.

Consequent upon the investigation thereof, the 2nd Respondent found the Appellant and some others culpable. Consequently, the 2nd Respondent came to the conclusion, inter alia, thus:

Decisions:

4. The 5th - 8th Respondents be and are hereby disqualified from operating in the Nigerian Capital Market, being employed in the financial services sector and holding directorship positions in any public company for a period of 5 years from the date of this decision.

8. The 2nd to 16th Respondents be and are hereby referred to the Economic and Financial Crimes Commission (EFCC) for further investigation and prosecution.

By virtue of the serious (criminal) nature of the allegations made against the Appellant, there is every cogent reason for me to hold that the 2nd Respondent lacks the jurisdictional competence to conduct the investigation, let alone make the above far-reaching incriminating findings and decisions.

Undoubtedly, the 1st Respondent has no judicial power under the Act to constitute a panel such as the 2nd Respondent to adjudicate over causes involving the determination of legal rights of persons, such as the instant criminal allegations levied against the Appellant. See Section 6 (6) of the 1999 Constitution (supra). Inarguably, such judicial power falls within the ambit of the exclusive jurisdictional competence of the Federal High Court. See Section 251 (1) (e) of the 1999 Constitution (supra).

The provisions of Sections 331 - 333 of the CAMA impose a duty upon a company to keep proper and accurate records of accounts and the penalties for non-compliance therewith. Likewise, Sections 334 - 337 impose a duty upon Directors of the Company to prepare annual accounts. Sections 345 - 348 of the Act have equally imposed a duty on Directors to deliver financial statement, and the penalties for non-compliance therewith.

The phrase -

"arising from the operation of Companies and Allied Maters Act or any other enactment."

as couched in Section 251 (i) (e) of the 1999 Constitution (supra), has been accorded a considerable judicial interpretation by the Supreme Court. In the notorious case of SKENCONSULT VS. UKEY (1988) 1 SC 6, the Apex Court was recorded to have aptly, and rather authoritatively, held thus:

“I was inclined to agree with Chief Williams that operation of the companies can mean no more than operation of the companies Decree (now Act) in relation to the companies incorporated thereunder. This includes Management of such companies and their assets.” Per Idigbe, JSC at 31.

In the instant case, as alluded to above, the (Criminal) allegations levied against the Appellant (and Co-defendants) by the 1st Respondent, and which were purportedly established by the 2nd Respondent, relate to the operations of Cadbury Nigeria Plc, the Management and assets thereof.

The purported criminal allegations levied against the Appellant were brought pursuant to the provisions of the Investments And Securities Act (supra). Nonetheless, the purported allegations in question still remains within the league of matters that are subject to the well set out and unequivocal provisions of the Companies And Allied Matters Act (supra). It is trite, that all Companies, including Cadbury Nigeria Plc, incorporated under CAMA are subject to those provisions. See Sections 331 - 337 & 344 - 344 of CAMA (supra).

I have adverted my mind to the submission of Respondent under issue No.2, at page 7 of the brief thereof. By that submission, this court is urged to be bound by the decision thereof in the case of AJAYI VS. SECURITIES & EXCHANGE COMMISSION: Appeal No.CA/L/200/M/2005 (Judgment) delivered on 08/5/07 by the Abuja Division of this court. By the said decision, the appeal against Federal High Court's Ruling transferring a similar case to the Investments And Securities Tribunal, was dismissed.

In the instant case, in determining the vexed fundamental issue of jurisdiction, the lower court held, inter alia, at page 652 of the Record thus:

"I hold that this court has jurisdiction to hear and determine these suits."

I think, I cannot agree more with the above finding of the lower court, for some obvious reasons. The Respondent's contention that the Federal High Court lacks jurisdiction to entertain the instant case due to the Court of Appeal decision in AJAYI VS. SECURITIES COMMISSION (supra), is utterly misconceived, to say the very least! Instructively, the Court of Appeal's stand in a plethora of decisions is to the effect that the Federal High Court still does have jurisdiction in matters pertaining to the provisions of Section 251 (1) (r) 1999 Constitution (supra). Some of such authorities are: MINISTER OF INTERNAL AFFAIRS VS. ALIYU (2005) 3 NWLR (Pt. 911) 30; CENTRAL BANK OF NIGERIA VS. SYSTEMS APPLICATION PRODUCTS NIG. LTD. (2005) 3 NWLR (Pt.911) 152. Both the above decisions followed the Supreme Court's decision in NEPA VS. EDEGBERO (2002) 18 NWLR (Pt. 798) 79 at 97.

I think, the point which ought to be made clear, for the avoidance of doubt, is that the exclusive jurisdiction conferred upon the Federal High Court, under Section 251 (1) (e) & (r) of the 1999 Constitution as amended (supra) cannot be whittled down or taken away by an ordinary Act of the National Assembly, in the absence of any amendment to the provision in question. Undoubtedly, the 1st Respondent (and by extension the 2nd Respondent) is an agency of the Federal Government within the purview of Section 251 (1) (r) of the 1999 Constitution (supra). And by the well set out, and rather unequivocal provisions, of Section 251 (1) (r) (supra), the Federal High Court shall have and exercise jurisdiction, to the exclusion of any other court, in civil causes and any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of the agencies thereof.

Curiously, under Section 284 of the Investments And Securities Commission Act 2007 (supra), the Investments And Securities Tribunal has been conferred with an exclusive jurisdiction to entertain and determine any dispute or matter regarding the 1st Respondent and capital market operators, et al, as well as disputes arising from the administration, management and operation of collective investment schemes.

Instructively, by virtue of the provision of Section 6 (1) - (3) of the 1999 Constitution (supra), the judicial powers of the Federation or a State shall be duly vested in courts being courts established for the Federation or State. However, by virtue of the provision of subsection (4) of the said Section 6 –

(4) Nothing in the foregoing provisions (i.e subsections (1), (2) & (3)) of this section shall be construed as precluding-

(a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court;

Thus, inarguably, it's pursuant to the above provisions of Section 6 (4) of the 1999 Constitution (supra) that the National Assembly deemed it fit to enact the Investments And Securities Commission Act (supra). Whereas, by virtue of Section 274 of the said Act, the Investments And Securities Tribunal duly came into being, thus:

"274. There is established a body to be known as the Investments And Securities Tribunal (in this Act referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this act."   
Under Section 284 of the Act, it's been provided thus:

284. - (1)     The Tribunal shall, to the exclusion of any other court of law or body in Nigeria, exercise jurisdiction to hear and determine any question of law or dispute involving:

a. a decision or determination of the commission in the operation and application of this Act, and in particular, relating to any dispute:

(i) Between capital market operators;

(ii) Between capital market operators and their client;

(iii) Between an investor and securities exchange or capital trade point or clearing and settlement agency;

(iv) Between capital market operators and self regulatory organization;

b. the commission and self regulatory organization;

c. a capital market operator and the commission;

d. an investor and the commission;

e. an issuer of securities and the commission; and

f. disputes arising the administration, manage and operation of collective investment schemes.

2. The Tribunal shall also exercise jurisdiction in any other matter as may be prescribed by an Act of the National Assembly.

3. In the exercise of its jurisdiction the Tribunal shall have the power to interpret any law, rules or regulation as may be applicable.

It is a trite principle, that the ever recurring vexed issue of jurisdiction is not merely important, but very fundamental. Thus, it ought to be accorded the highest degree of consideration and priority over and above any other issue. This is definitely so, because where a court embarks upon a decision in any given matter without the requisite jurisdiction, that decision is null and void, and liable to be set aside. The issue of jurisdiction can be raised at any stage of the trial, and at any point in time, either at the trial or on appeal in the court of appeal, or Supreme Court. And because of the crucial and fundamental nature thereof, the issue of jurisdiction need not necessarily be raised suo motu by parties alone. It can be raised even by either the trial or appellate court itself. See LABIYI VS. ANRETIOLA (1992) 8 NWLR (Pt. 157) 139. OBADA VS. MIL. GOV. KWARA STATE (1980) 6 NWLR (Pt. 157) 482; KOTOYE VS. SARAKI (1994) 7 NWLR (Pt. 357) 414; MADUKOLU VS. NKEMDILIM (1962) 2 SC NLR 341; AG FEDERATION VS. GUARDIAN NEWSPAPERS LTD. (199) 9 NWLR (Pt. 618) 187. SPDC (NIG.) LTD. VS. SIRPT - ALUSTEEL CONST. LTD. (2007) 1 NWLR (Pt. 1067) 128 at 157 - 158 H - C; 158 F - G, respectively.

Interestingly, ever since the notorious case of BUKAR MANDARA VS. AG. FEDERATION (1984)1 SC NLR 31, the challenges to the ever widening jurisdictional sphere of the Federal High Court have become rather heightened. The instant case is undoubtedly one of the numerous of such cases. Yet, it's axiomatic, that jurisdiction is never conferred in obscurity by a statute. Undoubtedly, the language of the law conferring same, upon a court, must be clear and positive. Thus, no microscopic aid ought to be required in order to discern jurisdiction, wherever it's conferred. See BUKAR MANDARA VS. AG FEDERATION (supra); NWOBODO VS. RSPEB (2008) 1 NWLR (Pt. 1069) 537 @ 560 paragraphs A - B; EHIRIM VS. I.S.I.E.C (2008) 15 NWLR (Pt. 1111) 443 @ 482 paragraph E.

In the instant case, the jurisdictional question raised in issue No.1 is not so much about whether the Federal High Court (lower court) had jurisdiction to try the case. No! it's about whether the lower court was right in holding, as it did, that the APC (2nd Respondent) had jurisdiction to adjudicate over the allegations of complicity in the misstatements in the Annual Accounts of Cadbury Nigeria Plc, in view of the provisions of Section 251 (1) (e) of the 1999  Constitution (supra).

I think in the light of the above far-reaching postulations, I have no further hesitation in arriving at the inevitable conclusion that the answer to issue No.1 is in the negative, and same is hereby resolved in favour of the Appellant.   
Having resolved issue No.1 in favour of the Appellant, I think, there is reason for me to move on to issue No.4 at this point in time.

**ISSUE NO. 4**

The issue No.4 raises the fundamental question of whether the lower court was right in holding, as it did, that the Appellants' right to fair hearing had not been breached. The said 4th issue was distilled from ground 4 of the Notice of Appeal.   
Allegedly, by empanelling the 2nd Respondent to try the allegations (against the Appellant), the 1st Respondent had acted as a judge in its own cause. The mysterious and rather questionable interlocking relationship of the 1st and 2nd Respondents, and the manner in which the proceedings were hastily undertaken, has amounted to a clear violation of the due process, thus prejudicial to the Appellant's right to fair hearing. I have painstakingly, albeit dispassionately, gone through the entire two volumes of the Records of appeal vis-a - vis the argument of learned counsel, contained in the respective briefs thereof. Most curiously, there is nothing on record to show that the names of the members of the 2nd Respondent were known to the Appellant and Co-Respondents, throughout the period the comical trial lasted. The identities of the members of the 2nd Respondent have ever remained shrouded in mystery! They are like the proverbial masquerades whose identities were known only to the 1st Respondent.

Ironically, the 'PUBLIC NOTICE', with reference NO. SEC/CA/PN/32/07, served on the Appellant is neither dated nor bears the names of the purported signatory thereof. Secondly, the proceeding, (dated 08/04/08), though signed by one 'Amos I. Azi Esq. Secretary APC', does not bear the names of the purported members of the 2nd Respondent. As rightly contended by Appellant at page 10 of the brief thereof -

The names or status of the other members do not appear anywhere in the processes (neither in the complaints sheet or (sic) Ruling). The learned trial judge, with respect, acted on facts within his peculiar knowledge and not on the facts placed before him.

It's equally evident, on the face of the records that the 2nd Respondent failed, for reasons best known thereto, to accord the Appellant sufficient opportunity to conduct the case thereof. Paragraphs 13 - 20 of the Appellant's affidavit (30/04/08), contained at pages 174 - 177 of Volume I of the Record and exhibits C04 - C011, attached thereto, are most instructive! See OJUKWU VS GOVERNOR OF LAGOS STATE; SULLIVAN VS. DEPT. OF TRANSPORTATION (1978) 1 ALD 383; NTUKIDEM VS. OKO (1986) 5 NWLR (Pt. 45) 909; IRETI VS. ENA NWLR (1976) 2 SC 23; LPDC VS. FAWEHINMI (1985) 2 NWLR (Pt. 7) 300.

In the case of EKE VS. MIL. ADMINISTRATOR IMO STATE (2007) 13 NWLR (Pt.1052) 531 at 564 paragraphs D - F, it was aptly held by this court that -

"Where an appellate court comes to the conclusion that a party was entitled to be heard before a decision was reached but was not given the opportunity of being heard, the judgment thus entered is bound to be set aside."   
Per Saulawa, JCA. See also BAMAIYI VS. THE STATE (2001) 8 NWLR (Pt. 715) 270.

Instructively, the facts deposed to in the said affidavit vis-a-vis the annexures thereto, were not challenged in any counter affidavit. Yet, the lower court in its own wisdom came to the conclusion, inter alia, thus:

There is further nothing to show that members of the in house investigation Team also sat as members of the Administrative proceedings committee. None of the Applicants succeeded in making out a case of breach of the principles of natural justice. See page 672 of volume 2 of the records.

I am unable, with due respect, to appreciate, let alone, uphold the above erroneous findings of the lower court. The reason being that the above findings of the lower court were speculative, and rather unsupported by the obvious evidence on the records, as alluded to above.

In the light of the above postulations, the answer for issue No.4 is inevitably in the negative, and same is, thereby resolved in favour of the Appellant.

Hence, in view of the fact that both issues 1 & 4 have been resolved in favour of the Appellant, there is no gainsaying the fact that the appeal ought to be allowed without the need to determine the remaining issues 2, 3, & 6. My view is predicated upon the well settled principle, that where a plea of lack of jurisdiction and/or breach of the right of fair hearing has been raised, determined and successfully upheld on appeal, as in the instant case, the appellate court lacks the vires or jurisdictional competence to proceed to determine the remaining issues on the merits thereof. See ARAKA VS. EJEAGWU (2000) 15 NWLR (Pt. 692) 684; EWO VS. ANI (2004) 3 NWLR (Pt. 826) 592; NWAKANMA VS. OJUKWU (2007) ALL FWLR (Pt. 395) 504; DIDE VS. SELEILETIMIBI (2008) 15 NWLR (Pt. 1110) 221 @ 243 paragraphs A - B.   
Hence, having held that the appeal is meritorious, it's hereby allowed by me. The judgment of the Federal High Court, delivered on 26/9/08 regarding the present Appellant's Suit No. FHC/L/CS/483/2008, is hereby set aside.

There shall be no order as to costs.

**AMINA ADAMU AUGIE, J.C.A.:**

I have read before now the lead judgment just delivered by my learned brother, Saulawa JCA, and I agree with him that the appeal should be allowed.

He has addressed the issues canvassed, and I have nothing useful to add except to emphasize the point made that under our laws, the 2nd Respondent cannot adjudicate over any matter with criminal flavor - see Baba v. N.C.A.T.C. (1991) 5 NWLR (Pt.192) 388, where Nnaemeka-Agu, JSC, observed as follows -

"When a person is accused of a crime, once the hearing body is anything less than a jurisdiction body vested with criminal jurisdiction, an administrative body lacks the jurisdiction and competence to try the issue. For such a body is not a Court, much less a criminal Court. Only a Court vested with criminal jurisdiction is competent to hearing and determine such an issue".

Jurisdiction is everything, and without jurisdiction, this action cannot survive see Utih v. Onoyivwe (1991) 1 NWLR (Pt.166) 166 SC, where Bello, JSC, said:-

Jurisdiction is blood that gives life to the survival of an action in a Court of law, and without jurisdiction, the action will be like an animal drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be abortive exercise".

Thus, the lower court clearly erred when it held that the 2nd Respondent had jurisdiction to adjudicate over the said allegations. It is for this and the other reasons in the lead judgment that I also allow this appeal. I also abide by the consequential orders in the lead judgment including the order as to no costs.

**SIDI DAUDA BAGE, J.C.A.:**

His Lordship, I. M. M. Saulawa JCA availed to me in advance his lead judgment in this appeal, I completely agree with the reasonings and the conclusion reached by the lead judgment. I have nothing more useful to add. I have found the appeal to be meritorious, and same is also allowed by me. The judgment of the Federal High Court delivered on 26/9/08 regarding the present Appellant's suit No. FHC/L/CS/483/2008 is also aside by me.

I abide with the order as to costs contained in the lead judgment.