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An Examination of the Extent of the Courts' Powers to make Consequential Orders in Nigeria[1]

1. Introduction

Every Court that is endowed with a particular jurisdiction has inherent powers not necessarily derivable from any law. Such powers are necessary to enable that court act effectively within such jurisdiction and properly enforce its rules of practice; suppress any abuses of its process and ensure a free flow of justice to end users.[2] It is from these inherent powers that a court derives the jurisdiction to make consequential orders to give proper effect to its decisions.

To what extent this power can be exercised has been a cause for much contention in many legal disputes. This article sets out to examine the extent to which a court can exercise its jurisdiction to make consequential orders and at what point such jurisdiction could be exceeded by the court.

2. Meaning Of Consequential Orders

A consequential order is an order, which is not specifically prayed for, but is made by the court to give effect to its judgment or order. To qualify as a consequential order the order must be directly traceable to or flow from that judgment or order duly prayed for and granted by the Court based on the evidence adduced before it. It is not merely incidental to a decision properly made, but is one which is made so as to give effect to that decision.[3] In **Eagle Super Sack (Nig) Ltd v. African Continental**

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2 See, Ugba & Anor v. Suswam & Ors (2014) LPELR-22882(SC) (pp 109 - 109 paras A - C).
3 Egbuta & Anor v. Elekwachi & Anor (2013) LPELR-20666(CA).

Bank Plc,[4] the Supreme Court stated that a consequential order is an order that follows as a result of an earlier order, which can be referred to as the main order and is appurtenant to the main order. It must arise logically and inevitably as a direct consequence of the decision given by the Court.[5]

3. Nature And Purpose Of Consequential Orders

A consequential order must flow necessarily, naturally, directly and consequentially from a decision or judgment delivered by a Court in a cause or matter. It is essentially an order which would make the principal order effectual and effective. In other words, a consequential order must have a bearing on the main relief or reliefs claimed by a party.[6]

The purpose of a consequential order is to give teeth to the decision of the court, so that a party would not be left with a mere declaration of right, which gives him no actual benefit. This ensures that judgments are meaningful and enforceable by providing remedies that align with and protect the established rights.[7] The essence is to protect the judgment, particularly declaratory or the non-executory judgments, in favour of the plaintiff.

4. Consequential Orders And The Principle Of Functus Officio

Many times, questions arise as to whether a court upon delivering its judgment on the substantive issues submitted to it by the parties still has the jurisdiction to make consequential orders to give effect to its decision, having become *functus officio*.[8] This issue came up in **Statoil Nig. Ltd v. Inducon (Nig.) Ltd. & Anor**[9] and the Court of Appeal laid bare the correct position of the law when it held as follows:

> *A Court has the inherent jurisdiction to grant consequential orders so that proper effect is given to its judgment. A Court therefore, is not functus officio in granting ancillary reliefs that will ensure that its judgment is complied with. The Plaintiff asked for account reliefs, therefore the trial Court had the power and was not functus officio to*

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4 (2006) 19 NWLR (Pt 1013) 20.

5 Bauchi State Governor & Anor v. Yusgate (Nig) Ltd & Ors. (2017) LPELR-43306(CA) (pp 23 - 24 paras E - E).

6 *Ibid.*

7 See, Plateau State Board of Internal Revenue v. Marah (2020) LPELR-50324(CA) (pp 35 - 42 paras D - A).

8 *Functus officio* is a Latin phrase, which literally means, "having performed his or her office." In the context of the Judge, it means that the duty or function that the Judge was legally empowered and charged to perform, has been wholly accomplished and that the Judge has no further authority or legal competence to revisit the matter.

9 (2012) LPELR-7955(CA) (pp 47 - 48 paras B - F).

grant consequential reliefs to ensure that the appointed auditor can properly carry out his duties in determining the actual proceeds from the oil concessions in issue and the actual proportion of the proceeds the Respondents are entitled to…. Thus, where a person has not specifically asked for a relief from a trial Court, a trial Court has power to grant such a relief as a consequential relief.

5. Consequential Orders And The Principle Of *Ubi Jus Ibi Remedium*

Based on the principle of *ubi jus ibi remedium*, the Court has what appears to be a very wide latitude to make consequential orders and grant reliefs which the circumstances and justice of a case dictate even where such relief is not specified by law. This principle was espoused by the Supreme Court in **Amaechi v. INEC & Ors**.,[10] when it stated that if the Court is satisfied that a person has suffered a legal injury, it will surely provide a remedy irrespective of the fact that no remedy is provided either at common law or by statute, if from the facts available before the Court it is satisfied that: (i) the defendant is under a duty to the plaintiff; (ii) there was a breach of that duty; (iii) the defendant suffered legal injury; (iv) the injury was not too remote.

An example of the exercise of this somewhat radical power can be seen in the case of **Eze & Ors v. Gov. of Abia State & Ors**.,[11] where the Supreme Court ordered that the appellants should be paid their salaries and allowances even though the appellants did not specifically make a claim for that relief. In that case, the appellants had taken out an originating summons challenging the dissolution of the local government councils in Abia State before the end of their tenure as elected officials of the local government councils, and also sought an order of reinstatement. Both the trial court and the Court of Appeal found that the dissolution of the local government councils was unlawful but refused to order the reinstatement of the appellants since their tenure had expired. On appeal to the Supreme Court, the apex court held that having found that the dissolution of the local government councils was unlawful and that the appellants could not be reinstated, the lower courts ought to have ordered that the appellants be paid their salaries and allowances even though they did not make any claim for it since there cannot be a right without a remedy. According to the Supreme Court, if the appellants are left with the declaration that they were entitled to a three year tenure, which had long lapsed without a

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[10] Amaechi v. INEC & Ors (2008) LPELR-446(SC) (pp 96 - 97 paras B - A).
[11] (2014) LPELR-23276(SC). See also, Plateau State Board of Internal Revenue v. Marah (2020) LPELR-50324(CA) (pp 35 - 42 paras D - A).

consequential order by way of payment of salaries and allowances to them for the unexpired period they would have served, the mere declaratory order would confer no material benefit on them, which situation would not serve the ends of justice.[12]

6. When A Consequential Order Should Not Be Made.

A consequential order should not detract from the judgment which it is supposed to give effect or contain extraneous matter.[13] It can only relate to the matters adjudicated upon by the court.[14] In **Awoniyi v. Registered Trustees of AMORC**[15], the Supreme Court held that the purpose of a consequential order is to give effect to the decision or judgment of the Court but not to grant an entirely new, unclaimed, or incongruous relief which was not contested by the parties at the trial or which neither fell in alignment with the original reliefs claimed in the suit nor was in the contemplation of the parties that such a relief would be the subject matter of a formal executory judgment or order against either side to the dispute.[16]

Also, the Court of Appeal in **Plateau State Board of Internal Revenue v. Marah,**[17] stated that the inherent power of a Court to make consequential orders does not include the power to grant a clearly fresh substantive or principal relief that the nature of the case in the pleading necessitates should be asked for as part of the cause for the action and without which the action fails ab initio.

Similarly, where a party has not proved his case, the court cannot by way of a consequential order grant such unproved relief. A case in point is the case of **John Andy Sons Co. Ltd. v. NCRI**,[18] where the trial court after having found that the plaintiff did not prove his claim went ahead to make a consequential order that the parties should go into fresh negotiations and endeavor to arrive at some acceptable sum to be paid to the plaintiff. On appeal to the Supreme Court, the Supreme Court strongly deprecated the decision of the trial court when it held as follows:

> *It is therefore difficult to understand why the trial judge made the utterly irregular orders that the parties and their counsel should go and further negotiate and that if they could not agree they could 'revive' the case in Court. The judge it would seem had confused himself unwillingly. Having found that the appellant did not show a breach of*

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12 See also, Plateau State Board of Internal Revenue v. Marah *ibid* note 7.
13 See, Statoil Nig. Ltd v. Inducon (Nig.) Ltd. & Anor (2012) LPELR-7955(CA) (pp 47 - 48 paras B - F).
14 See, *ibid* note 5 at pp 11 - 13 paras D - A.
15 (2000) LPELR-655(SC) (pp 33 - 33 Paras D - G).
16 *Ibid* note 7
17 (2020) LPELR-50324(CA) (pp 35 - 42 paras D - A).
18 (1997) 3 NWLR (Pt. 491) 1.

contract, the need to compensate appellant for any such breach would not arise and there was nothing over which parties needed to enter into further negotiation.

A similar decision was reached in **Adekunle v. UBA Plc**[19] where the claimant had brought an action at the trial court seeking, among other things, a declaration that he was entitled to all his salaries, allowances, bonuses, emoluments and other perquisites of office from the date that he was suspended by the defendant till the date that his employment would be lawfully terminated and an order that he be paid those entitlements. At the end of the trial, the court granted the declaratory relief, but refused to make an order that the claimant be paid the entitlements because being in the realm of special damages, the claimant failed to lead evidence to prove what his entitlements were. Aggrieved by the decision, the claimant appealed to the Court of Appeal and argued that the trial court, having declared that he was entitled to be paid his salaries, allowances and other emoluments, ought to have on the authority of **Eze v. Gov. Abia State**[20] made a consequential order for the payment of those entitlements despite his failure to prove same. The Court of Appeal in a considered decision rejected that argument and distinguished the case from the case of **Eze v. Gov. Abia State**, holding that the claimants in **Eze v. Gov. Abia State** had a tenured employment and did not make a specific claim for their salaries and allowances whereas the claimant in the instant case made a specific claim for his salaries and allowances which he failed to prove, and did not have a tenured employment. In the circumstances, the court held that to turn around and make any consequential order for the payment of the said entitlements to the claimant would amount to granting what the trial Court found not to have been proved.

The point has to be made here that it is difficult to reconcile the decision in this case with the principle of *ubi jus ibi remedium*, which demands that a claimant should not, where the justice of the case demands, be granted a mere declaration of right without any means to enjoy such a declared right. It is the opinion of the writer that in the circumstance where the court found that the claimant had an established right, the court should have made the necessary consequential order which would ensure that the claimant enjoyed the benefit of his established right instead of leaving him empty-handed. A similar situation played out in a subsequent Court of Appeal decision in **Plateau State Board of Internal Revenue v. Marah**[21] and the Court came to a different conclusion. In that case, the High Court of Plateau State had declared that

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19 (2016) LPELR-41124(CA) (pp 39 - 40 paras B - C).
20 *Ibid* note 11.
21 *Ibid* note 7.

the appellant should pay to the respondent his salaries and allowances pertaining to the office of Director of Taxes from 23rd October 2007 until his employment is validly or lawfully terminated. The appellant failed to pay the respondent and did not appeal against the judgment. The respondent then commenced the present action and claimed specific sums that he believed represented the said salaries and allowances. The Court found in its judgment that the respondent failed to lead credible evidence to prove that the sums claimed were the sums due to him as his salaries and allowances as Director of Taxes of the appellant for the periods claimed. The Court, however, went ahead to direct the appellant to calculate the rightful emoluments due to the respondent as its Director of Taxes, bearing in mind the promotions he would have had, if any, from the 23rd October 2007 till date or till the date his employment would have been statutorily severed by retirement and to pay same over to the respondent. Aggrieved by this decision, the appellant appealed to the Court of Appeal. The Court of Appeal upheld the decision of the trial court and held that it was not out of place, on these set of facts and circumstances, for the trial court to have made the consequential order in question. The consequential order, the Court of Appeal said, only served to give effect to the declaration already made in favour of the respondent by the High Court and which declaration was still subsisting and valid because to do otherwise would be to leave the respondent with a declaration of a right that has no remedy. We believe that this is the course that should have been taken by the court in the **Adekunle v. UBA Plc** case.

7. Conclusion

The power to make consequential orders is one of the inherent powers of a court of competent jurisdiction. It is designed to enhance the effectiveness of its judgments and provide necessary remedies as the justice of the case demands by ensuring that rights are not just declared but are also actionable. This ensures that justice is not only done, but is seen to be done. As the case laws have revealed, while courts have a somewhat wide jurisdiction to make consequential orders, they must exercise their powers within the confines of established facts.

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