

The Rationality of Judicial Precedent in Nigeria's Jurisprudence

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Abstract

The doctrine of judicial precedent or stare decisis is hinged on the fact that the principle of law on which a court bases its facts, or issues before it must be followed by courts lower in hierarchy and may be followed by a court of coordinate jurisdiction or a court which is higher in hierarchy in future similar cases. Thus, when a court is bound by a previous decision, the precedent is said to be binding. On the other hand, when a court has discretion whether or not to follow a previous decision, the precedent is said to be persuasive. Nigeria as an independent nation is an entity made up of conglomeration of different ethnic groups and cultures. The influence of the received English laws in our legal system cannot be gainsaid. Thus, this paper is poised to argue philosophically, that the application of the doctrine of judicial precedent or stare decisis in our legal system is not only an imposition, it is also reductionistic, absolutist, suspect and lacking in substance as no two cases are exactly the same in the question of facts and law and in all the material circumstances of the case. Again, its application on the Nigerian legal system could occasion injustice as a result of its conservatism and failure to admit novelty in deciding cases; it also fosters rigidity; dampening the spirit of experimentation; leading to a repetition of past mistakes and the cumbersome nature of finding binding precedent. It is our submission that the doctrine of judicial precedent or stare decisis in spite of its perceived benefits as making for certainty and uniformity, saving time and prevention of legal chaos in the hierarchical operation of the court system among others ought to be jettisoned as this doctrine is alien to our legal system; also the incidence of travesty of justice cannot be completely overruled. Nigerian legal system will be basically floating on the surface of foreign jurisdiction with a strict application of judicial precedent.

Keywords: Rationality, judicial precedent, jurisprudence

Introduction

This paper is poised to critique the rationality of judicial precedent in the context of Nigerian legal system. Legal system generally is a conglomeration of concepts born from experience which results in body of principles relied upon in dispensing justice in the law court. Thus, one of such concepts is judicial precedent. Again, the notion of judicial precedent is important to courts in the Nigerian legal system. This is because, it is argued that it makes for scientific development of the law since law is not based on haphazard or arbitrary reasoning but on conceptually coherent principles. (Ndifon cited by Uduigwomen, 260).

Hence, the common law system from which the Nigerian legal system borrowed a lot, maintains that previous judicial decisions and law embedded therein are followed by lower courts. This is what is referred to as precedent for precedent. Thus, for precedent to operate effectively, there must be in place a hierarchical court system and a system of law reporting so that past cases can be studied and followed. Judicial precedent can be classified into three broad types: original precedent also called primordial precedent. It is that precedent which knows no other precedent. Declarative precedent refers to a situation where a judge in deciding a case before him states the existing principle of law without broadening or narrowing it. Derivative precedent refers to a situation where a judge extends the application of an existing rule so as to fit the infinite varieties of facts in future similar cases.

In this paper, we are poised to state categorically that Nigeria is an agglomeration of different ethnic groups and cultures. The influence of the received English laws that gave rise to this doctrine of Stare Decisis or judicial precedent cannot be gain said. We submit that its application to our legal system in spite of its advantages is an imposition, absolutist, suspect, reductionistic and it could occasion injustice as no two cases are exactly the same in all material facts and circumstances.

The Concept of Judicial Precedent

The defects of slowness and uncertainty which often affect customs can be overcome if a society comes to accept judicial decisions as a source of law. Thus whenever there is a doctrine or precedent, when a new issue is brought before the courts the decision reached will become binding for later similar cases and in this way will achieve the status of a legal rule without having to wait for the much slower development of a common practice among the population at large. Again, in so far as courts explain and justify their decisions they make them clearer thus avoiding to a certain extent the problems of uncertainty which can plague purely customary rules (252).

Outline of the Main Legal Rules about Judicial Precedents

Under the rules of stare decisis accepted in most common law countries, a court is bound by the ratio decidendi of cases decided by superior courts to which it is subordinate in the hierarchy of courts. This is the case even if the superior court has reached its decision per incuriam. A court has always power to overrule cases decided by a lower court. Appellate courts are usually bound by their own previous decisions, but they can in certain specified cases depart from them.

The English court of Appeal held in *Young v. Bristol Aeroplane Co. Ltd (1994) A. S. 718*, says that it was bound by its own previous decisions, but it identified three exceptions to this general rule in which it could overrule them; decision given per incuriam, issues on which there are conflicting decisions of the court of Appeal and decisions impliedly overruled by the House of Lords. Besides, in criminal cases, where the life or liberty of the subjects are at stake, the court of Appeal could depart from previous decisions when it comes to be of the opinion that these decision had either misunderstood or misapplied the law, notwithstanding that none of the exceptions laid down in *Young v. Bristol Aeroplane Co. Ltd*. Cover the case. The courts in other common law countries and specifically in Nigeria have accepted these rules on stare decisis in the court of Appeal. (*Okegbu v. State (1975) II. S.C. 1p. 23) p. 253*).

The Doctrine of Judicial Precedent

The doctrine of judicial precedent or stare decisis is one of the attributes of the common law system. The very care notion of the precedent system, according to G. W. Paton, is that question ought to be decided today in the same way as they were decided yesterday simply because they were decided that way yesterday. (George White Cross Paton, 181).

In *Clement v. Iwuanyanwu (1998) 3NWLR (Pt. 107), 54 Oputa JSC* said that a precedent is an adjudged case or decision of a higher court considered as furnishing an example or authority for an identical or similar question afterwards arising on similar question of law. It needs to be mentioned, however, that the binding decision needs not necessarily be that of a higher court. Some courts are bound by their own decisions.

Stare decisis (an abbreviation of the Latin phrase, stare decisis et non quieta movere) meaning to abide by a former decision where the same points up again in litigation.

The doctrine of judicial precedent or stare decisis requires that the principle of law on which a court bases its decision in relation to the material factors, or issues, before it must be followed by courts, lower in hierarchy and may be followed by a court of coordinate jurisdiction or a court which is higher in hierarchy in future similar cases. When a court is under obligation to follow a previous decision, the precedent is said to be binding. When a court has discretion whether or not to follow a previous decision, the precedent is said to be persuasive.

Case law or judge-made law is one of the sources of law in common law countries. However, judges do not make law in the sense in which legislators do. Thus, Prof. C. K. Allen has noted:

By no possible extensions of his office can a judge introduce new rules for the compensation of injured employee, for national health insurance, for the rate of taxation, for appropriation of public money. The legislature can project into the future a rule of law which has never before existed. The courts can do nothing of the kind. (Allen, 294).

In any case, when a judge decides a particular case, the blackboard is not wiped out; the decision may stand as an authority for future cases on similar facts. The judge may create new rules in applying law to changed circumstances. And where there is a lacuna or no law governing the situation before a court, the judge may also create new rules. Sometimes judges widen and extend a rule of law.

Possible Merits of Following Precedent:

The practice of following past decisions has been justified on several grounds. On the benefits of the doctrine of judicial precedent, Kalgo, J.S.C. said:

Standing by a previous decision, which has not been grounded to be perverse, or to have been decided per incuriam or proved to be faulty legally or procedurally has a lot of advantages. It fosters stability and enhances the development of a consistent and coherent body of law. In addition, it preserves continuity and manifest respect for the past. It also assures equality of treatment for litigants similarly situated. It likewise spares judge the task of re-examining rules of law, or principles, with each succeeding case, and finally it affords the law a desirable measure of predictability (Global Transprint Oceanic S. A. & Anor v. Free Enterprises Nig. Ltd.(2001)5NSQR 487 at 505).

The advantage of following past decisions in appropriate cases will be considered in greater details as follows:

Certainty and Predictability of Law

In *Comptel International SPA v. Dexson Ltd*, (1996)7NWLR (pt. 459) 170 at 184. Uwaifo J. C.A. (as he then was) said:

The doctrine thrives on the basis that when the court has at one time laid down a principle of law as applicable to ascertained state of facts, it will not unsettle that principle but will adhere to it all future cases where the facts are substantially the same, irrespective of whether the parties and subject matter are the same. This is because there ought to be certainty in legal principles so that individuals may know how to manage their affairs as regards the requirement of the law. (132).

Thus, when the law is reasonably certain, individuals and their legal advisers can predict the future action of the court. Adherence to precedent therefore provides behavioural guidelines. It enables members of the society to plan their activities within legal limits. The ability of prospective litigants to predict the likely outcome of a case based on precedent will encourage them to settle their disputes out of court, because they know what direction the law is likely to follow if the matter goes to trial. Certainty and predictability of what the attitude of the court to a given matter will be.

Certainty in law is highly desirable because since individuals regulate the decisions, the decisions should not be lightly altered because of the inconvenience and mischief which will result from such alteration.

Promotion of Judicial Efficiency

The doctrine of judicial precedent is a convenient practice since it requires that a question once decided should not be subject to re-argument in every case in which it subsequently arises. Thus there is gain of time and resources in not treating as open questions already decided. Cardozo said that “the labour of judges would be increased almost to a breaking point if a settled point could be reopened in every case”. (Cardozo in Ogbu, 133). Decisions will no longer be subjected to personal opinions and parochial views of a certain judge.

Scientific Development of the Law

Application of the doctrine makes for scientific development of the law, if each new case is decided without any consideration of prior cases, law will cease to be a science, for the possibility of prediction which is the hallmark of science will disappear. (Ezeji for in Ogbu, 133).

Prevention of Partiality or Prejudice

Adherence to the doctrine prevents partiality or prejudice on the part of the judge. Because he is required to follow precedent, his personal whims and caprices are brought under check. By making a judge conform to laid down standards, he is prevented from allowing his subjective views, his prejudices and biases to colour his judgments. (133). Decisions will no longer be subjected to personal opinions and parochial views of a certain judge.

It Satisfies the Principle of Equality

Equality before the law, which is an aspect of the rule of law and justice, implies that like cases should be treated alike while unlike cases should receive unlike treatment. Following previous decisions is in consonance with this principle of equality. (Ogbu, 134). Equality principle as a basic right of citizens will be ardently propagated and realized as individuals would anticipate sameness of treatment on issues that are similar.

Respect for the Opinion of One's Ancestors

It is said that following past decisions is a mark of respect for the opinion of one's ancestor who should be presumed not to have acted "wholly without consideration". Succeeding generations leave their work on the law and the effect of their work is not confirmed to the particular disputes that they decide (Ogbu, 134).

Delimitation of Judicial Function

Archbald Cox has pertinently observed that "the wholesale discard of precedent and the readiness to overturn.... Doctrines reaffirmed by the court.... Do no service to the idea of law as something distinct from politics and the arbitrary preferences of individuals". The doctrine of stare decisis restricts judges to their proper role-it separates judicial function from law making and politics. Judges are, in the majority of cases, not elected but appointed. They lack contact with the electorates and therefore cannot understand or fashion out policy direction. As such, reform of the law is the function of the legislators. (Ogbu, 134).

It Reduces Changes of Error

If every judge has to determine all questions before him without reference to previous decisions, there are greater chances of error than if he follows the earlier decision which embody the collective wisdom of the many.

Also, it fosters the Appearance of Justice. Following precedent helps to satisfy the requirement that justice be manifestly seen to have been done. There will be no room for speculation as to the motive for which the judge decided a case if it is shown that he has adhered to precedents in arriving at his decision.

Possible Demerits of Following Past Decisions

The doctrine of judicial precedent is not a bed of roses without thorns. It has the following disadvantages:

Rigidity:

The binding force of precedents may prevent the adaptation of the law to changing social and economic order of the country. The discretion of courts is fettered, and they quite frequently have to give decisions of which they strongly disapprove.

It is said that the doctrine of precedent promotes respect for the opinion of elders and that such respect is desirable. Nevertheless, the wisdom of our ancestors must be located within their time and age. The circumstances that made a particular rule wise may no longer exist in which case it may be folly to continue to follow the rule. (Olaniyan, 283-288).

Danger of Illogical and Technical Distinctions

Over subtle distinctions are sometimes drawn to avoid applying a rule that causes hardship. This leads to technicalities.

Perpetuation of Injustice

The doctrine of precedent may lead to perpetuation of injustice. The doctrine insists that it is more important that the law is settled and settled correctly. The doctrine may therefore give rise to a situation where the courts may be consistently wrong (Ogbu, 135).

Law Reports

The operation of the doctrine depends on the availability of law reports. Law reports may, at times, be unavailable or unaffordable to both lawyers and judges. In such circumstance, there may be chances of reaching wrong decisions by relying on available authorities that might even have been overruled.

Inapplicability to Decision Based on Discretion

The much talked about certainty and predictability of the law resulting from following previous decisions will disappear when the earlier decisions will be based on the discretion of the judge since it has been held that a court is not bound to follow earlier decisions based on discretion. In the case of *Odusote v. Odusote* (1971) All NLR 219 SC., the court held that each exercise of judicial discretion must depend on the facts and peculiar circumstances of each case as previous exercise of discretion is not precedent.

It is not every pronouncement of the judge in the course of a judgment that is a binding precedent, which must be followed. It is only the ratio decidendi that is binding. A statement made in passing which is called 'Obiter dictum' does not constitute a binding precedent. However, it has never been clear what constitutes the previous decision.

The Meaning of Ratio Decidendi The Reason for the Decision

For purposes of the doctrine of judicial precedent, the two elements of a decision are the ratio decidendi and the obiter dictum. It is generally agreed that the former is binding while the latter is of persuasive effect. Nevertheless, there is a cleavage of opinion on the meaning of ratio decidendi. Furthermore, how to find the ratio decidendi of a case is also a question of abiding interest in jurisprudence. What constitutes the ratio decidendi of a collegiate court is another dimension, to the problem.

However, different meanings have been ascribed to the concept of ratio decidendi, R. W. M. Dias postulates that three shades of meanings can be attached to the expression, ratio decidendi. The first, which according to him is the translation of it, is the reason for the decision. (In the Nigerian case of *Agbai v. Okagbue* (1991) (Pt. 204) 391 at 434, the Supreme Court similarly defined ratio decidendi as the reason for the courts decision). To him, even a finding of fact may in this sense be the ratio decidendi. It is difficult, however to appreciate how a finding of fact can be a ratio decidendi. The finding of fact will necessarily be followed by a course of reasoning that leads to the actual decision. The reasoning will normally be based on law or rules having legal effect. Thus, here there is no law governing the situation, the reasoning will now constitute law for future decisions.

Again, the second meaning, according to Dias, is the rule of law preferred by the judge as the basis of his decision. The third sense of the term is the rule of law which others regard as being of binding authority. Thus, the ratio decidendi in this third sense includes subsequent elucidation or interpretation of the previous decision.

Furthermore, Salmond, distinguished what a case decides generally and as against all the world from what is decided between the parties themselves. To him, what it decides generally is the ratio decidendi or rule of law for which it is authority; what it decides between the parties includes for more than just this. On this premise therefore, he described ratio decidendi as the rule of law applied by and acted on, by the court, or the rule which the court regarded as governing the case. (Salmond on jurisprudence, 176-177). Salmond's conception of ratio decidendi thus approximates to Dias second meaning of the term.

Furthermore, Paton appears to be in agreement with Salmond when he said that though specific decision on specific questions are binding, however, such precise decisions will ordinarily be supported by a course of reasoning which establishes a general proposition of law which the court uses to explain and justify its decision. That proposition may properly be called the ratio decidendi of the decision and is binding. This opinion tends to support the earlier assertion that a mere finding of fact cannot constitute a ratio decidendi.

The classical theory or ratio-decidendi is the principle propounded by the precedent judge as necessary for, or as a basis of his decision (Stone, 268). (*Agbai v. Okagbue* (1991) NWLR (Pt 204) 391 at 434).

Julius Stone criticizes this theory because, according to him, it is based on two wrong assumptions, to wit; that there is normally one and only one ratio decidendi of a case, which explains the holding on the material facts; the other is that such a ratio can be delimited from the examination of the particular case itself. The first criticism is quite tenable because many cases have more than one ratio. In this regard, Paton observed pertinently:

It simply not true to say that the only thing binding in a case is the principle upon which it was decided. One case may provide binding authority for many propositions of law. Each judicial decision of a question or issue leading to the determination of the whole case. Whether in interlocutory proceedings or at trial, may provide binding authority. If the same questions arise in subsequent proceedings in a subordinate court, they will bind that court to decide the question in the same way (183).

On the contrary, Julius Stone's second criticism appears misplaced to the extent that it suggests that the ratio of a case can only be explained by future decisions. In some cases the ratio of a case is ascertained by reference to the decision of the precedent court.

Again, the definition of ratio decidendi by Professor Ilochi Okafor, as "the principle of law, based on the material acts of the case, on which the case has been ultimately decided" cannot on the face of rationality, be accepted since it presupposes that a case must have been ultimately decided before a ratio could flow from it. Paton observed that a decision on an issue in a case, even at an interlocutory stage may constitute a ratio decidendi (314).

Thus, in the recent case of *A.I.C. LTD V. NNPC*, Edozie, J.S.C., said that the ratio decidendi of a case represents the reasoning or principle or ground upon which a case is decided. This definition suffers the same pitfall as the definition by Professor Ilochi Okafor. In *Ajibola vs. Ajadi* (2004) All FWLR, 1273 at 1289, Mikailu, J.C.A. delivering the lead judgement of the court of Appeal, defined ratio decidendi as the enunciation of the reason or principle on which a question before a court has been decided. In other words, it is the general reason given for the decision or the general ground on which it is based, detached or abstracted from the specific peculiarities of the particular case which gave rise to the decision. This definition corresponds with Salmond's conception of ratio decidendi and explains why a case can be authority for another case whose facts, though similar, are not the same.

In *Clement v. Iwuanyanwu* (1989) 3 NWLR pt 107, 54, Oputa JSC conceived ratio decidendi in *Dias* second sense. He said:

Courts attempt to decide cases on the basis of principles established in prior cases. Thus, prior cases which are close in facts or legal principles to the case under consideration are called precedents. The two cases (the one under consideration and the other used as precedent) must be closer in facts-the facts must be similar for the doctrine to apply.

His Lordship went further to distinguish between principles and rule as follows: 'As I said earlier on, courts attempt to decide cases on the basis of principles established in prior cases. These now serve as authorities. But an accepted principle may not necessarily decide the outcome of a dispute. Principles are wider than rules. Rules apply in all or dimension. Either the decision falls within the antecedent portion of the rule in which case it must be dealt with as the rule dictates; or it does not in which case it is unaffected by the rule. Rules dictate results, come what may. Principles do not operate that way. Principles merely incline decision one way but not conclusively. Principles survive intact even when they do not prevail in any particular instance. As principles are distilled from the facts of the case, in which they were promulgated, as principles draw their inspiration and strength from the very facts which framed the issues for decisions; it follows that when the facts are not similar the principle need not apply or be applied to the new case. It needs to be added, however, that what is required is not necessarily that the facts of the previous and the subsequent cases should be the same or similar; it is sufficient if the same question decided in previous case arises in a subsequent case.

Thus, in the final analysis, ratio decidendi may be defined as the reasoning or principle or ground or general proposition of law on which a case or an issue in a case is decided or subsequent interpretation of the reasoning or principle or ground or the proposition of law in future cases. In fact, the future interpretation may expand or narrow down the ratio of a case.

Finding the Ratio Decidendi

In practice, it is difficult to identify the ratio of a case. The traditional approach is to identify the principle or principles of law propounded by the judge as the basis of his decision. Prof. A. L. Goodheart propounded criteria for ascertaining the ratio decidendi. They are:

1. The principle of a case is not found in the reasons given in the opinion.
2. The principle is not found in the rules of law set forth in the opinion.
3. The principle is not necessarily found by a consideration of all the ascertained facts of the case and the judge's decision.
4. The principle of the case is found by taking account of (a) the facts treated by the judge as material, (b) his decision as based on them.
5. In finding the principle, it is also necessary to establish what facts were held to be immaterial by the judge, for the principle may depend as much on exclusion as it does on inclusion.

According to Goodheart, the main reasons for these general rules are that as regard (a), the courts often state their reasons too widely and sometimes incorrectly but the cases are nevertheless authoritative as regards (2), sometimes there is no rule stated, as regards (3), (4) and (5), it is the fact which the trial judge regards as material which is important. According to Goodheart, "it is by his choice of material facts that the judge creates law".

The criticism of Goodheart's theory is that it presupposes that the facts of a case must have been found before the ratio of a case can be deduced. Some cases are actually decided on assumed facts and yet the legal reasoning leading to the decision will constitute a ratio decidendi.

In practice; in determining the ratio decidendi of a case, the courts usually consider any one of the following factors: the reason or reasons for the decision as stated by the judge; the ground or grounds or the principles of law stated or implied by the judge as that on which the decision on the case or an issue in the case was based, and the actual decision in relation to the material facts.

In addition, the court may consider the interpretation of the case in any later case determined after the instant case. (Obilade, 115-116).

Obiter Dictum

The word 'Obiter' simply means in passing, incidental, cursory – per Edozie JSC in *A. I. C. Ltd v. N. N. P.C* (2005) II NWLR (pt 937) 563 at 589. An obiter dictum is what a judge says in his judgment that goes beyond what is necessary to decide the particular case. It is an expression of opinion made in giving a judgment by the judge, but not necessary for his decision and accordingly cannot form part of the ratio decidendi of the judgment. Accordingly, Obiter dictum, not being a decision, cannot be made a subject of an appeal. (*Abacha v. Fewehinmi*) (2002) 6 NWLR (pt 660) 228). Also, Professor A. L. Goodheart following his theory of ratio decidendi said that an obiter dictum is a conclusion based on a fact the existence of which has not been determined by the court. It is argued by Ogbu that this view cannot be supported. It is argued that there is a distinction that can be drawn between statements based on facts the existence of which has not been determined by the court. The latter may arise where the courts give a preliminary ruling on a point of law on assumed facts. In such cases, therefore, the ruling can be regarded as ratio decidendi, whereas in cases where the facts are derived by the court the statements are purely obiter. Also, there may be reference to a higher court of some questions of law before the facts of the case have been ascertained. The ratio decidendi of such decisions are binding.

Furthermore, attempts have been made to categorize obiter dicta as follows: Dicta that are manifestly tangential to the case in which they occur are called *gratis dicta*. Dicta that relate to a collateral issue are called *judicial dicta*. Also, where in order to settle the law on a particular point, the court asks counsel to address it on the law and then makes general statements about the law, these statements are regarded as superior species of obiter dicta.

Accordingly, the weight to be given to an obiter depends on the following factors: the rank of the court, the prestige of the judge, whether it was a considered judgment; the date of the decision; whether there were different ratio for the same decision; whether action was opposed or the point was argued by counsel; the reliability of the reporter (Philip O. H. quod by Ogbu, 155-156).

Thus, if a judge is a luminary of high standing, his obiter dictum may in due course crystallize to good law. On the other hand, if it is the contrary, the dictum will sooner than later be ignored completely – Per Achike, JSC in *Oshodi & 2 Ors V. Eyi Fumi* (2000)3 NSCQR 320 at 377) (Ogbu, 156). In allusion to this, Uduigwomen avers:

It is not every pronouncement by the judge in the course of arriving at a judgment that constitutes precedent, rather, it is his pronouncement in law as it relates to the material facts of the case before the judge that constitutes a precedent. Any other pronouncement outside this is referred to as an obiter dictum, meaning 'a statement by the way' – and this does not constitute part of the reason for the decision. (264-265).

Uduigwomen is of the view that it is the judge's pronouncement in law as it relates to the material facts of the case before the judge that constitute precedent, which may be binding or persuasive depending on the hierarchy of the court.

The Principle of Stare Decisis

The principle of stare decisis et non quanta movere (Stare decisis, for shot), meaning 'keep to what has been decided previously' requires that where a judge finds that a case before him is materially similar to a previously decided case he has no option but to adopt and apply that principle, of law formulated even if he does not approve of it. (Uduigwomen, 265). Obilade observes that there is a general rule under the doctrine of stare decisis of which a court is bound to follow the decision of a higher court in the hierarchy. On the contrary, a lower court is not bound to follow the decision of a higher court which has been overruled.

Thus, in the circumstances where the decision of a higher court is in conflict with a decision of another court which is above such high court in the hierarchy, a lower court is not bound by such decision. Again, in principle, a lower court is entitled to choose which of the two conflicting decisions of a higher court or of higher courts of equal standing it would follow (Obilade, 115).

Furthermore, Ndifon has put forward the standard conditions for the smooth operation of stare decisis as follows:

1. There must be in operation a hierarchy of courts.
2. The issue of fact and law in prior decision must be similar to the precedent case.
3. The decisions of the higher courts must bind the lower courts.
4. Law report should be available. (Ndifon, 212-213).

The above cataloguing posture by Ndifon was aimed at ensuring the smooth operation of judicial precedent in our judicial system.

The Principle of Distinguishing

This principle states that the decision of court does not constitute a binding precedent for any subsequent case if the cases differ with regard to material facts. Thus, in a situation where the previous case is cited as authority, the court in the subsequent case would have to state the difference so as to show that the principle in the previous case does not apply in the present one. Hence, when this happens, the court is said to have distinguished the previous case. (Uduigwomen, 266).

Furthermore, the doctrine of stare decisis is based first and foremost on the relevant likeness between cases – the previous case and the one before the court. Thus, where there is no relevant likeness between the two, it is an idle exercise to consider whether the previous one should be followed or departed from (*Adisa v. Oyinola* (2000) 10 NWLR (pt 3,) 3-7).

Thus, it is argued that where a previous decision is cited to a court in a future case as a binding precedent, the court has a duty to examine the facts of the instant case in relation to the facts of the previous case sought to be relied on as a precedent. Again, where the court finds some material difference in the facts of the two cases, the court may distinguish the previous decision and will therefore not follow it. Thus, in *Chief Mene Kenon & 2 Ors v. Chief Albert Tekan & 5 Ors* (2001)14 NWLR (pt 732)45 at 89, the Supreme Court per Ejiwunmi, JSC, held that for a previous decision to be binding on a future court, the facts and issues pronounced upon in the earlier case must be on all fours with the facts and issues in the subsequent case. However, Niki Tobi, JSC argues that factual distinctions or differences in cases can only avail a party when they are germane or material to the stare decisis of the case. Stare decisis..... is based on a certain state of facts need not be on all fours in the sense of exactness or exactitude. Thus, there can hardly be any two cases where the facts are exactly the same, and the doctrine of Stare decisis in our judicial system over the years does not say that the facts must be exactly the same. Thus, there could be inarticulate differences that will not necessarily hinder the application of the doctrine. (*Oladeji (Nig) Ltd. v. Nigerian Breweries Plc* (2007) 5 NWLR (pt 1027), 415 per Niki Tobi, JSC). Osita Ogbu argues that it is submitted that the opinion of Niki Tobi is preferable. Again even in the *Chief Mene Kenon* case, Ogundare, JSC, in his concurring judgment talked of similarity between the facts of the earlier case and the facts of the subsequent case (Ogbu, 157).

Besides, Distinguishing involves the assertion of the difference between cases as a justification for not following the ratio decidendi of a previous case which otherwise should have been binding. Hence, the court in the subsequent case will mention the difference in order to show that the principle in the previous case is not applicable.

However, this differs from a refusal to follow and overruling of, the previous case, which are courses open only to a court which is not bound to follow a decision of the earlier court. Thus, in distinguishing, the hierarchy of the court that gave the earlier decision or of the court distinguishing such decision is irrelevant.

However, distinguishing is not limited to identification of the factual differences between cases and reliance on these differences as a ground for not following the earlier decision. Professor Granville Williams calls this non-restrictive distinguishing. He argues, non-restrictive distinguishing occurs where a court accepts the expressed ratio decidendi of the earlier case and does not seek to curtail it, but finds that the case before it does not fall within this ratio decidendi because of some material differences of fact. On the other hand, restrictive distinguishing, cuts down the expressed ratio decidendi of the earlier case by treating as material to the earlier decision some fact, present in the earlier case, which the earlier court regarded as immaterial, or by introducing a qualification (exception) into the rule stated by the earlier court.

Evaluation and Conclusion

We cannot deny the fact that judicial precedent has been a major source of law. Thus some argue that the doctrine ought to be observed if justice is to be attained. Their argument was hinged on the fact that the application of this doctrine makes for uniformity, consistency, certainty and sanity of judicial decisions. Thus, the philosophical doctrine of stare decisis which underlies the notion of judicial or legal system of a country. (Dada, 72; Lion Brett, 74; Uduigwomen, 268) precedent merely implies official practice. It means no more than an earlier happening, decision taken as an example or rule for what comes later. Oputa JSC in *Clement Iwuanyanwu v. State* (1989) 3 NWLR, 54, argues that precedent is an alleged case or decision of a higher court or a court of coordinate jurisdiction considered as furnishing an example or authority for an identical or similar case arising afterwards on a similar question of facts. (Ndifon, 138). Again, it provides the tendency to follow past practices because it provides a ready made solution to the problem in hand.

The Nigerian legal system is a very complex one. In spite of the influence of the English law upon its growth, its complexity cannot be gainsaid because of the laws governing the thirty-six states and that of the Federal Capital Territory, Abuja. A strict application of the principle of judicial precedent will not ease a composite jurisprudential development, especially, in a country that is bedeviled with corruption, ineptitudeness in leadership, ethno-religious crises, socio-political instability and the likes. The judiciary all over the world is seen to be the last hope of the common man. This paper does not see the strict application of judicial precedent as capable of addressing the country's peculiar circumstance, especially, as the principle is resting on foreign logic.

In as much as the Nigerian country endeavours to flourish with other countries of the world with high and responsible judicial system, the country's judiciary should be developed and based on the basic principle of reason, using the country's local circumstance to judge and address each case. No two cases can be the same with the same reason. And no two judges will have the same reasoning posture. There must be differences in reasoning and opinion by the judges and these differences mark the novelty in cases, evidence of research and judicial competence with full elimination of mental barrenness which strict application of stare decisis seems to promote. The judicial system must be propagated and developed alongside the country's cosmological and ontological bearing. This if followed, would enhance and ensure the promotion of Nigeria's jurisprudence.

Thus, judicial precedent philosophically can occasion injustice when the past decisions of a judge is used to apply recent cases. This is because, no two cases or situations are alike in material detail. Again, incidence of rigidity, not being open to novelty in adjudication of cases, repetition of past mistakes and the cumbersome process of finding precedent are some of the arguments against it. Nigeria is a conglomeration of different ethnic nationalities. Thus, using the doctrine of judicial precedent to determine the justice of a particular case is foreign to our indigenous laws and hence, it is ipso facto, a genuine ratio for the determination of justice; at most, it could occasion travesty of justice.

Above all, it is an imposition, unjust and reductionistic and it is susceptible to occasioning injustice since no two cases are exactly the same in material facts and circumstances.

The principle of judicial precedent cannot beautifully address the cases of injustice in our judicial system. It is old fashion and does not conform to the 21st century logic that is hinged on novelty.

Again, as a product of common law principle, it does not afford the Nigerian legal environment the opportunity to develop her own-home-grown legal logic that takes cognizance of her peculiar circumstance. It also, defeats the very essence of justice as people's circumstances are not properly considered and examined before passing judgment on them hence, the principle of judicial precedent is a clog on the wheel of judicial progress in Nigeria's legal development.

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