

Appraising the Evolution and Sources of Co-operative Societies Law in Nigeria

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Abstract

This work traces the evolution and the sources of co-operative societies law in Nigeria and notes that, although the co-operative concept itself is not alien to Nigeria, the first co-operative societies law in Nigeria was fashioned after the classical British-Indian pattern, which even after independence, still retains its colonial vestiges. The paper also notes that contrary to vehemently opposed views the Nigerian Co-operative Societies Act, 2004 is the supreme law on co-operative societies in Nigeria and regrets that a law made to address the socio-economic adversity of a largely rural population does not have customary law as one of its sources.

Keywords: byelaw-constitution-co-operative-Nigeria-precedent-regulation-societies

Introduction

The International Co-operative Alliance defines a co-operative society as an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and democratically controlled enterprise. The fundamental basis of co-operation lies in the law under which it has to be carried on,¹ Co-operative societies law helps to regulate the activities and defines ways of setting up co-operative societies and their operating practices amongst others. Co-operative societies legislation take different forms depending on the country. Countries like Germany, Brazil, Ghana, Cote d'Ivoire, Kenya among others prefer to adopt a single law applicable and valid for all co-operative societies, while countries like Japan, France and Romania have specific laws for a given type or sector of co-operative societies separately. In Switzerland and Belgium, co-operative societies are regulated by specific chapters of more general codes, like the civil code or the commercial code.²

The Nigeria co-operative legislation is an example of legislation with a single valid applicable law for all types of co-operatives. This work which appraises the evolution and sources of co-operative societies law in Nigeria, employs the term sources of co-operative societies law to mean the legal sources from which the sundry binding rules and regulations for the formation, operation and winding up of co-operatives societies can be located. The history of co-operative societies law in Nigeria is however examined before the expose on the legal sources.

History of Co-operative Societies Law of Nigeria

The Nigeria co-operative societies law has antecedents totally alien to local social and economic conditions. Although the co-operative concept itself is not totally alien to Nigeria,³ it has been harangued that, it received both modern co-operation and its laws ready-made from abroad.⁴ In fact, both were not received by Nigeria direct from the original sources, namely, England and Germany where the earliest co-operative societies laws were formulated and from where most countries sourced their co-operative societies laws. For example, India was one of the earliest dependent countries to adopt the co-operative system and law based on the British and German patterns.⁵

¹ Henry H. (1998) *Framework for Co-operative Legislation*, Geneva: International Labour Office p.18

² Tchami. G (2007) *Handbook on Co-operatives for use of Workers' Organizations*, Transl. by Macdonald J. S. Geneva: International Labour office p. 93

³ Yorubas, Hausas and Ibos have traditional associations with co-operative underpinnings from time immemorial. Ante, pp1-3

⁴ Oluyede, P.A (1988) *Nigeria Administrative Law*, Ibadan: University Press Plc, p.172

⁵ Munkner, H. H. (1971) *New Trends in Co-operative Law of English Speaking Countries*, Marburg:

The classical British-Indian pattern of co-operation has come into being by 1904 and spread to other British colonial territories thereafter. Under the classical British-Indian pattern of co-operation, co-operative societies are state-sponsored, although the ultimate idea is to create autonomous self-reliant co-operatives of the Raiffeisen and Rochdale type in the long run, but to substitute the lacking technical knowledge and initiative of the rural population for a transition period by the know-how of officials of a specialised government agency headed by a Registrar of co-operative societies.⁶

The enactment of the first co-operative societies law in Nigeria is traced to the report of C.F. Strickland, a co-operative expert who had worked extensively in India and was commissioned by the then colonial government of Nigeria in 1933 to advise on the possibility of introducing co-operative societies into Nigeria.⁷ The recommendations of the study, culminating in a draft co-operative ordinance which was submitted on the 17th of April 1934 and was promulgated into law in 1935, as the Co-operative Societies Ordinance, No. 39 of 1935 fashioned after the Tanganyikan (Now Tanzania) Ordinance and that of several British colonies and dominions which were inspired by the Indian Co-operative Societies Act of 1912. In 1936, Major E.F.G Haig was appointed the first Registrar of Co-operative Societies for Nigeria⁸ and the stage was set in 1937 for the registration of the Gbedun (Ibadan) Co-operative Produce and Marketing Society Limited, as the first co-operative society in Nigeria.⁹ The Ordinance was amended in 1938 to accommodate the appointment of a Registrar for the whole territory known as Nigeria and subsequently revised and re-enacted as the Co-operative Societies Ordinance, Cap. 39 of 1948. Through Colonial Order 47 of 1951, significant provisions were introduced into the law, to allow decentralisation of registration and regulation of co-operative societies. This, in essence, placed co-operatives on the concurrent legislative list. The order also dealt with issues like, ‘Evidence of Registration’, that is, the certificate of Registration, the authority or person to sign and the conditions for the enforcement of its powers.¹⁰ It also gave co-operative societies power to make their own bye-laws and placed some restrictions on their credit operations.

In 1954, the Nigeria (Constitution) Order in Council was promulgated under which a federal constitution was introduced into Nigeria. By section 57 of this Federal Constitution, any ordinance, including the Co-operative Societies Ordinance of 1935 as revised and re-enacted in 1948, which was in force as at the 1st day of October, 1954:

“ Was to be deemed... a law made by the federal legislature or a law made by a regional legislature or a law made separately by the federal and regional legislatures, in accordance with the distribution of legislative powers under the constitution.”

Under the above legal framework, all the regions published their respective co-operative societies laws, beginning with the Western Region Co-operative Societies Law of 1953, with its Rules being re-enacted in the Laws of Western Nigerian Nigeria, 1959 Cap. 26. The Northern Region Co-operative Societies Law with its Rules followed in 1956, while the Eastern Region of Nigeria Co-operative Societies Law with its Rules came out in 1963. Also, in 1963 with the birth of Midwestern Region excised from the Western Region, the former also enacted its own co-operative societies law. The subsequent fragmentation of Nigeria into twelve states in 1967 by the military following their incursion into governance in 1966, led to twelve co-operative movements and corresponding co-operative societies law, while the nineteen states structure which evolved in 1975 witnessed the emergence of nineteen co-operative movements, eliciting equal number of co-operative societies legislations. When additional states were created leading to thirty states, each of the states created, made its co-operative societies law from the existing laws of the former states. The situation is no different under the current societies law from the existing laws of the former states. The situation is no different under the current thirty-six states structure.¹¹

Institute of Co-operation in Developing Countries, p.4.

⁶ Ibid

⁷ Bello, M.S. *op. cit.*, p. 57; Ihimodu I. *op. cit.*, p.1. Before the Colonial attempt, there had been some efforts by indigenous cocoa farmers to form associations. The Ibadan Agricultural Society is an example of such effort.

⁸ Ihimodu I. (1963) *Co-operative Economics: A Concise Analysis in theory and Applications*. Ilorin: Unilorin Press, p. 51.

⁹ Bello M.S. *op. cit.*, p. 5.

¹⁰ *Ibid*

It is important to stress that the trend of evolution of series of co-operative societies laws after the 1935 ordinance, did not change in substance from the progeniting ordinance. Observed changes are only in respect of nomenclature, in conformity with the political development in Nigeria, formalisation of some functions of the Registrar of Co-operative societies and transfer of some ultimate powers of the Registrar to the Minister or Commissioner in charge of Co-operatives. The only attempt at a radical change in the framework of the co-operative societies law and regulations, was the 1978 report of the Review Panel on Co-operative Principles, Laws and Regulations in Nigeria¹² and the Government's views on the report.¹³ The white paper on this Report accepting almost all the recommendations made therein, was fifteen years later enacted as the Nigerian Co-operative Societies Decree No.90 of 1993, which is now re-enacted as Nigerian Co-operative Societies Act, 2004, Cap N 98, Laws of the Federation of Nigeria.

Sources of Co-operative Societies Law of Nigeria

The legal sources from which the sundry authoritative rules and regulations for the formation, operation and winding-up of co-operative societies in Nigeria can be obtained from the underlisted sources which are discussed extensively *in seriatim*:

- a) General provisions of the Constitution of the Federal Republic of Nigeria, 1999.
- b) The Nigeria Co-operative Societies Act, 2004 Cap N98.
- c) States Co-operative Societies Law and Regulations made pursuant to the State laws
- d) Bye-laws of individual societies.
- e) Judicial precedents
- f) International Co-operative Law.

General Provisions of the Constitution

The Constitution of the Federal Republic of Nigeria, 1999 includes oblique reference to co-operative societies, with the only mention of them in Item 32 of the Exclusive Legislative List thus:

“Incorporation, regulation and winding up of bodies corporate, other than co-operative societies, local government councils and bodies corporate established directly by any law enacted by a House of Assembly.”

Section 4 of the 1999 Constitution, vests the legislative powers of the Federation in the National Assembly with powers to make laws on any matter in the Exclusive Legislative List. The section when read with Item 32 of this Exclusive Legislative List, it has been suggested means that, the Federal Government is expressly, precluded from making laws on co-operative societies.¹⁴ This view does not exactly represent the interpretation of the item 32, because such a view has a wider implication of precluding the Federal Legislature from legislating on co-operative societies in the Federal Capital Territory, a territory over which it has indisputable legislative hegemony.¹⁵

¹² In the early 1930s when the movement was established, agricultural marketing and credit societies were pre-dominant, but gradual and remarkable increase in co-operative societies and diversification of their activities made it necessary to call for a review in the existing laws and policy to meet the needs of the increased number of co-operatives and their diversified activities; and by the mid 1970s, the inadequacies of the existing co-operative law as enacted in 1935 as reviewed, amended and adapted by the constituent states became apparent and on the 2nd of August, 1977 a 12 – member panel consisting of accomplished co-operative officials and stakeholders, was inaugurated by the Federal Government to review all existing principles, bye-laws and regulations on co-operatives and make recommendations to the Federal Government. The words of the Federal Commissioner for Co-operatives and Supply in his address to the inaugural meeting of the panel on August 2, 1977, encapsulate this mission: In this connection it is pertinent to note that although legislation has to be resorted to as a way of matching our needs to modern day demands, it is a stark fact that since 1935 when the first co-operative ordinance was promulgated under the Colonial Administration, no significant and realistic steps had been taken in the country, such as the national level to harmonise the law along the lines of a fast developing economy such as ours. I believe you all agree that after well over 40 years of introduction of co-operatives into this country, a review of the co-operative laws and evolution of an articulated and goal oriented policy on co-operatives is long overdue”. Caxton –Idowu (1978)*Report of the Review Panel on Co-operative Principles Laws and Regulations in Nigeria*, p. 5

¹³ *Government Views on the Report of the Review Panel on Co-operative, Principles, Laws and Regulations in Nigeria*, (1978) Lagos; Federal Ministry of Information, p.5.

¹⁴ Emiaso, M. (2011) *Co-operative societies Law and Practice in Nigeria*, Lagos: Peakmans Ltd. p.30

¹⁵ Section 4 of the Constitution of the Federal Republic, 1999 section 4

An accurate interpretation of Item 32, it is suggested, is that, the federal legislative power does not extend to matters relating to the incorporation, regulation and winding-up of bodies corporate including co-operative societies established by a law enacted by a House of Assembly. The implication of this suggestion is that, while the National Assembly reserves the power to legislate on co-operative activities in the Federal Capital Territory, the State Assemblies have corresponding prerogatives in their various domains.¹⁶

The Nigerian Co-operative Societies Act, 2004

The Nigerian Co-operative Societies Act, 2004 was originally enacted in 1993 by the Federal Military Government as the Nigerian Co-operative Societies Decree No. 90 of 1993. The 1979 Constitution of the Federal Republic of Nigeria removed co-operative societies from the Exclusive Legislative List and made it a matter to be governed by laws enacted by the various State governments.¹⁷ The Decree however made no pretence to its mission of legislating for the whole country, when it provided thus:

“A decree to provide for the registration and operation of co-operative societies throughout the Federation and for related purposes.”

The question has arisen as to whether the Federal Military Government had the requisite legislative powers to promulgate the Nigerian Co-operative Societies Decree, in view of Decree No.1 which did not suspend the legislative lists even when it suspended the legislatures.¹⁸ Emiaso posits that, the making of Decree 90 of 1993 was clearly *ultra vires* the legislative powers of the Federal Military Government, since it offended Item 30 of the Exclusive Legislative List in part I of the second schedule to the 1979 constitution, which was the constitution then in force and which list precluded the Federal Government from enacting laws on co-operative societies. This assertion is not judicially supported. Bello CJN affirms the supremacy of military decree over other laws including the constitution when he stated:

Under our present condition, decrees are the supreme laws in Nigeria and all other laws including the current constitution are inferior to the decrees made by the Federal Military Government. (Supremacy and Enforcement of Powers) Decree 1984.¹⁹

Proffering a rationale for military absolutism, Professor Nwabueze submitted in his book:²⁰

“The military government was not a creation of the constitution since its birth, existence and power were not derived from the constitution. The pre-existing constitution was kept alive if at all by the discretion of the military government as part of the new order. The old constitution was no longer the grundnorm of the military order so as to control or limit its power.”

In the light of these authorities, it can be safely asserted that, the Federal Military Government’s power to make Decree 90 was legally unassailable, and therefore the Nigerian Co-operative Societies Decree, 1993 contrary to Emiaso’s opinion, was not *ultra vires*, the powers of the Military Government of the day.

According to the extant Nigerian constitution, any law or enactment which was in force immediately before the coming into force of the Constitution is deemed an Act of the National Assembly and thereby rendering it an existing law.²¹ The extant constitution came into force on the 29th of May, 1999 and the Nigerian Co-operative Societies Decree, came into effect on 25th August, 1993 and it is on this score that, it is contained in the 2004 edition of the Laws of the Federation as deemed enacted by the National Assembly. Whether or not the Decree qualifies as a valid existing law in the light of the apparent contradiction between some of its provisions and the 1999 Constitution of Nigeria remains a moot question.²²

¹⁶ See below for a fuller discourse.

¹⁷ See Constitution of the Federal Republic of Nigeria, 1979, Item 30 which is *in pari materia* with Item 32 of the 1999 Constitution.

¹⁸ Emiaso, *op. cit.*, p. 52

¹⁹ *Attorney-General of Anambra State & 13 Others v Attorney-General of the Federation & 16 others*. [1993]6 NWLR 693 at 714; See also *E.O Lakanmi & Anor v Attorney-General Western State & Others*. CAN/35/68.

²⁰ Nwabueze, B.O. (1982) *Constitutional History of Nigeria*, London: Christopher Hurst & Co.

²¹ Constitution of the Federal Republic 1999, section 305

²² Emiaso writes that, the Act is invalid for being *ultra vires*, but its usefulness in the comparative study of the law on co-operative societies in Nigeria cannot be ignored. Emiaso, *M. op. cit.*, p. 56

The Nigerian Co-operative Societies Act, purports to legislate for the whole of the federation, while Item 32 of the Constitution precludes the National Assembly from making laws on Co-operative Societies, established by any law enacted by a House of Assembly.²³ The Constitution provides that, to qualify as an existing law or a deemed Act of the National Assembly, the particular enactment must be made; subject to the provisions of the Constitution, modified to bring it into conformity with the provisions of the Constitution, and must be a law which the National Assembly is empowered by the constitution to make.²⁴ To make the enactment subject to the provisions of the constitution, means and includes, making it come under the provisions of section 4 (2) thereof, which is that, it must be a law with respect to a matter included in the Exclusive Legislative List as set out in Part I of the Second Schedule to the Constitution, which is a list of matters over which the Federal Government exercises exclusive legislative powers and as argued above, Item 32 of this list expressly precludes the National Assembly from making laws on co-operatives societies incorporated under state laws, but with unlimited powers in respect of co-operative societies incorporated within the Federal Capital Territory.²⁵

In effect, legislating for both the states and the federation as evinced by the contents of the Nigerian Co-operative Societies Act 2004 is at variance and inconsistent with provisions of section 4 (2) of the 1999 Constitution and therefore may undermine the status of the Act as an existing or deemed Act of the National legislature. It is argued that,²⁶ even if the Act survives as an existing law, any court in Nigeria, especially any of the High Courts, will find no difficulty in declaring it and or all its provisions invalid on the ground of inconsistency with the provisions of section 4 (2) of the 1999 Constitution.²⁷ We pause here to observe that, the Act is a more modern day enactment on the subject and reflects and addresses in some of its provisions, current trends and problems associated with co-operative societies and against this backdrop, are we on firm ground in not joining to throw away both the baby and the bath water, especially in the light of our earlier argument regarding the unassailability of the National Legislatives powers, with respect to co-operative societies in the Federal Capital Territory as opposed to those within the legislative competence of states?

The Act could be saved, by applying the “blue pencil” rule,²⁸ whereby the provisions of the Act which offends aspects of the constitution, are severed from the valid aspects, so as to invalidate the offensive ones, without rendering the entire legislation nugatory. In respect of the Act, if the “blue pencil” is run over the aspects of the impugned legislation relating to the usurpation of powers of State Assemblies, the residue of the legislation can stand on its own and apply solely to co-operatives in the Federal Capital Territory, over which as stated the National Assembly has prerogative.²⁹ Therefore, there is no justification for the invalidation of the whole Act as articulated vigorously by Emiaso.³⁰ But assuming, the Nigerian Co-operative Societies Act, 2004 has failed to survive as an existing law (which it does not as has been demonstrated above), it is trite that, until a court or any tribunal established by law declares invalid any provision of an existing law on the ground of its being inconsistent with the provision of any other law, including any provision of the constitution, it remains a valid law.³¹ In this vein we submit humbly that, the Nigerian Co-operative Societies Act, is the supreme source of law on the subject of Co-operative Societies in Nigeria, to the extent that any law made by a State House of Assembly which is inconsistent with it, shall be void to the extent of its inconsistency.³² In spite of the vigorous discussions on the constitutionality or otherwise of the Act, the provisions of the Act and the States enactments are substantially *in pari materia*, and their chances of collusion forlorn. The States enactments which are all virtually lifted from the 1935 Co-operative Ordinance, engage our focus as the next source of co-operative societies law.

²³ *Ante*

²⁴ Constitution of the Federal Republic of Nigeria, section 315(1)

²⁵ See *ante*

²⁶ Emiaso, M. *op. cit.*, p. 56

²⁷ Section 315(3) of the 1999 Constitution provides that, nothing in the constitution must be construed as affecting the power of a court of law or any tribunal established by law, to declare as invalid any provision of an existing law, on ground of its being inconsistent with the provisions of any other law including any provision of the constitution.

²⁸ This is the rule whereby the court severs the bad provisions of a law from the good ones, holding the good valid while invalidating the bad ones without invalidating the entire legislation. Ukeji, R.N (2002), *Nigeria Judicial Lexicon*. Lagos: Ecowatch Publications (Nig) Ltd. p. 37.

²⁹ The classic example of the application of this rule is: *Balewa v Doherty* (1963) 2 SCNLR 155 which was relied on in *AG Ondo State v AG Federation* (2002) NWLR (pt.772) 310

³⁰ Emiaso, *op. cit.*, p. 55 – 56.

³¹ *AG Abia State & Others v AG Federation & Others*. ICLC 94 at 161 – 162.

³² Constitution of the Federal Republic, 1999 section 4(5)

States Co-operative Societies Laws and Regulations

Another valid source of the law on co-operative societies in Nigeria, are the laws and regulations on co-operatives passed by the constituents states of the federation of Nigeria pursuant to powers derived from the Constitution,³³ first as regions and later as states, These political enclaves, fashioned their co-operative societies law on that of the 1935 Ordinance³⁴ and because these states laws are *in pari materia*, implying that reference to the provisions of one of them is as good as a reference to any of the others, this work will rely on the Co-operative Societies Law (Cap. C 13), Laws of Ekiti State, 2010, which throughout the remaining part of this work shall be referred to as “the law” while mention of “the Act” refers to the Nigerian Co-operative Societies Act, 2004. The Act or Law, sets forth the fundamental nature and the general principles of co-operatives, but this legislative instrument is difficult to adapt and generally does not go into detail and therefore must necessarily be accompanied by Regulations. These Regulations are in the form of delegated legislation vesting in an authority of State and in Ekiti State for example, the Commissioner for Industries, Commerce and Co-operatives is empowered to draw up regulations as may be necessary for the purpose of carrying out or giving effect to the provisions of the co-operative societies law.³⁵ Such delegation of legislative powers by the legislature or House of Assembly which is constitutionally imbued with powers to make laws,³⁶ is not an abdication of duty, but in living with the exigencies of the modern state, which have made it absolutely necessary for the legislature to delegate its powers, because it can no longer bear the burden of law making alone.³⁷ Many factors today make such delegations necessary and reasonable; and even when it delegates, it generally does not pull out completely. It prescribes the framework within which the power delegated should be exercised, and usually it stands by to supervise and control the making of such subsidiary laws as they are called. Furthermore, in a number of other cases, it actually vets or scrutinises laws made by its delegates. Therefore, it cannot reasonably be said that it has abdicated its powers. The practice of delegating legislative powers to the executive is justified, not necessarily by any constitutional provision, but by necessity.³⁸

Many laws required today in social and economic fields, demand extensive executive discretion, because there is need to deal with issues as they arise. For example, many commercial corporations and social welfare establishments demand extensive powers to deal with matters on their merit. Those concerned with the management of these matters are generally allowed some discretionary powers to enable them function efficiently.³⁹ The regulations made sequel to these laws with respect to co-operative societies, are rife instances of when delegation of legislative function becomes inevitable. Accordingly, most states legislations contain regulations published as subsidiary legislation immediately after the law⁴⁰. However, since the Act does not contain regulations,⁴¹ any allusion hereafter to regulation, is to the Co-operative Societies Regulations of Oyo State,⁴² which is substantially identical with those of states with enacted co-operative societies regulations.

³³ Item 32 of the Exclusive Legislative List, permits State Assemblies to make enactments on co-operative societies.

³⁴ Compare the co-operative societies law of: Oyo State (Cap 35 2000); Osun State (Cap 31, 2001); Lagos State; (Cap 29, 1973) Delta State (Cap 42, 2007); Ekiti State (Cap. C13, 2010) for examples

³⁵ Co-Operative Societies Law section 56(1)

³⁶ Section 4(6) of the Constitution of the Federal Republic, 1999 vests the legislative powers of a state in the House of Assembly of that state.

³⁷ Okany M.C (2007); *Nigerian Administrative Law*, Onitsha: Africana Fep Publishers Ltd. p.41

³⁸ A number of reasons have been adduced in support of delegated legislation, viz: “First, the area may be one which is technically complex, making it extremely difficult to set out all the permutations in the original statute. Secondly, the subject matter may be novel. Time may be needed to experiment and so determine how the legislation is operating. Only then can all the details be filled in. This process may best be carried out over a period of time, making delegated legislation the most appropriate tool. Thirdly, even where the area is well known, the executive may wish to implement the legislation at a later stage or to alter its detail. Delegated legislation is a useful mechanism for achieving these ends. A fourth reason is the advantage which such legislation gives to the executive. For a government with an onerous legislative timetable, there is always the temptation to pass skeleton legislation with the details being etched in by the minister. The details may in fact contain important aspects of the legislation and the legislative scripting may not always be effective”, (Craig, pp. (1999) *Administrative Law*, 4th ed. London: Sweet and Maxwell p. 366

³⁹ Iluyomade B.O and B.U. Eka (1980) *Cases and Materials on Administrative Law*, Ile-Ife, Uni-Ife Press. p.27

⁴⁰ Co-operative Societies Law of Oyo State, 2000 Cap. 35 section 52.

⁴¹ There are no regulations made pursuant to the Act despite the provisions of section 56(1) thereof requiring the making of regulations.

⁴² Co-operative Societies Regulation Cap 35 (Oyo State)

Co-operative Bye-Laws

Co-operative bye-laws are in the nature of a constitution. It is similar in effect to what the memorandum and articles of association is to a company registered under the Companies and Allied Matters Act.⁴³ It corresponds to the articles of association of a registered company by being in the nature of rules made for the regulation of a society's internal affairs, but includes the objects which completely define and restrict the society's activities. The law itself does not empower a society to include bye-laws, it must have them before it is registered.⁴⁴ The bye-laws when registered are binding on the members of the society. In case of conflict between the regulation and a bye-law, the regulation prevails.⁴⁵

Judicial Precedent

Generally judges do not make laws, but simply apply them as and when the need arises. Thus, the function of the judge is *jus dicere*, not *jus dare*.⁴⁶ The primary duty of making laws is that of the legislature and judges do not go about making laws in the same manner and with the same ease as the legislators do. But they are not altogether detached from the law making process.⁴⁷ A judge who is confronted with a legal problem does not have to resign hopelessly where the established laws are inadequate in resolving the problem. It is a cardinal maxim that, where there is a wrong there must be a remedy. Judges are therefore, encouraged to formulate fresh rules of law or to extend the existing ones to deal with novel cases.⁴⁸ In doing so, they add to the *corpus* of existing laws through their judicial pronouncements. This law making function of the court is sustained by the operation of the doctrine of judicial precedent.⁴⁹ The material fact and the decision of the earlier court thereupon constitute the reason for the decision (*ratio decidendi*) which forms the main plank of judicial precedent.⁵⁰ These precedents form a veritable source of co-operative societies law.

Apart from decisions of local courts, case law is boosted by foreign decisions which come handy, because of the numerous yet to be tested provisions of the Nigerian Co-operative Societies Act. It is acceptable for Nigerian courts to rely on English authorities while construing provisions of Nigerian statutes with English equivalents.⁵¹ However, as a general caution, the Supreme Court has emphasised the need to prefer Nigerian decisions, where available and only to utilise the foreign decision as a last resort when local authorities are unavailable.⁵² The words of Tobi, JSC are instructive in this respect:

“Foreign decisions will continue to be useful in the expansion of the frontiers of our jurisprudence, but this Court cannot invoke such decisions where it thinks they are contrary to the judgments of the Court which are correctly decided. Of course this court will not hesitate to use any foreign decision if it is correct, even though contrary to our decision; if the Court comes to the conclusion that its decision is wrong. In such a case, this Court will in the light of the foreign decision overrule itself and choose to go by the foreign decision which is correctly given. Subject to the above, the state of the law that foreign decisions are persuasive authority will remain and for all times and forever.”⁵³

⁴³ Emiaso, M. *op. cit.* P.69

⁴⁴ Co-operative Societies Law Cap C13, Law of Ekiti State, 2010 section 6(3)

⁴⁵ *Ramsubramaniam v Salem Urbank Bank* [1945] A.I.R 434.

⁴⁶ “To state or declare the law, not to give law”

⁴⁷ For instance as noted in *Global Transport Oceanico S.A. v Free Enterprise Nig. Ltd.* [2001] WRN 136 (S.C.) at p. 153, judges in the course of interpreting a law do make useful comments which later turn out to influence an amendment to that law.

⁴⁸ The principle of strict liability established in *Rylands v Fletcher* (1886) L.R. 3 H.L. 330 and the “neighbour principle” established in *Donoghue v Stevenson* [1932] AC 562 were all judge made.

⁴⁹ An earlier happening or decision, taken as an example or rule for what comes later. Umoh, P.U. (1984) *Precedent in Nigerian Courts*, Enugu: Fourth Dimension Publishers Ltd. p.5

⁵⁰ *UTC Nigeria Ltd. v Pamotei* [1989]2 NWLR 244; *Egbo v Laguma* [1988]3 NWLR 109. On the guiding principles for determining what constitutes *ratio decidendi*, see *Albion Construction Ltd v Rao Investment and Property Ltd.* [1992] NWLR 583.

⁵¹ *Iwuchukwu v Nwisu* [1994] 7 NWLR 379

⁵² *Ajomale v Yaduat* (No 2) [1991] 5 NWLR 266.

⁵³ *Araka v Egbuen* [2003] 33 WRN 1 at 18

In effect, the Supreme Court and other Nigerian courts will respect decisions and opinions not only from English courts, but all foreign courts. Such decisions and opinions are only persuasive and are of no avail on issues where the Supreme Court has its own opinions in existence.

International Co-operative Law

The International Co-operative Alliance statement,⁵⁴ the United Nations Guidelines aimed at creating a supportive environment for the development of co-operatives adopted in 2001 and the International Labour Organisation's Recommendation No.193,⁵⁵ containing the co-operative values and principles, form the core of the public international co-operative law. The binding force of these instruments has long been questioned.⁵⁶ Although a recommendation is not binding on the member states in the same way a convention is, if ratified and incorporated in municipal laws, member states are obliged in terms of the constitution of the International Labour Organisation to have regard to its recommendations and conventions, even if not ratified.⁵⁷ The fact that Recommendation No. 193 was adopted by an overwhelming majority, with only two abstentions lends to its authority.⁵⁸ In addition, governments are accountable to the International Labour Organisation Committee of Experts on the Application of Conventions and Recommendations. Today, many of these recommendations have been incorporated into national policies and laws and accordingly remain authoritative sources of international co-operative law.⁵⁹ The view that these instruments are not legally binding is therefore not totally tenable.

Conclusion

We have in this work surveyed the history and discussed *in extenso* the sources of co-operative societies law of Nigeria and have arrived at the following conclusion:

- i) Although the co-operative concept is not totally alien to Nigeria, it received its co-operative law ready made from abroad and based on the British-Indian pattern.
- ii) On independence and thereafter, significant changes have not been made to co-operative laws in Nigeria. Its colonial vestiges still linger and regrettably, a law made to address the socio-economic adversity of a largely rural populace does not have customary law as one of its sources.
- iii) Contrary to a vehemently expressed opinion, the Nigerian Co-operative Societies Act, 2004 is the supreme law on co-operative societies in Nigeria.
- iv) International instruments on co-operative societies are very important and must be given due regard.

⁵⁴ International Co-operative Alliance (1995) "Statement on the Co-operative identity" adopted in Manchester, UK, September 23, 1995. The ICA is a non-governmental body representing the international co-operative movement. Its statements represent a source of International Customary Law.

⁵⁵ ILO Recommendation No.193 on the promotion of Co-operatives, 90th Session, June 3 2002; Roalants, B. (2003) "The First world standards on Co-operatives and on their promotion" *Revue internationale de l' economie sociate*, No.289 p.1

⁵⁶ Henry H. (2005) "Co-operative Law as an Instrument of Good Governance" *Sri Lanka Journal of Co-operative Development* p. 5-6.

⁵⁷ Theron J. (2010), "Co-operative Policy and Law in East and Southern Africa: A Review". *Co-operative Africa Working Paper*, p. 8

⁵⁸ Henry H. *Loc. cit.*

⁵⁹ The Nigeria government recently threw its weight behind calls for African nations to maximize the opportunity in the United Nations Declaration to institute reforms for co-operative development and sustainability, at the launching and commissioning of the Revised Co-operative Policy and the Nigeria Co-operative law – pointblanknews.com/pbn/articles-opinions/cooperatives-and-president-jonathan-economic-transformation-agenda posted on 23 September, 2012- visited on December 2, 2012.