

those listed in Part III of the Schedule to the Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN; 2004 and the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015 is not ultra vires its powers and therefore illegal and of no legal effect?

- iii. Whether the actions of the Defendant in issuing and serving Demand Notices on the Plaintiff for the sum of ₦2,700,000.00 [Two Million, Seven Hundred Thousand Naira) for Trade Permit and Liquor Licence is not ultra vires its powers and therefore unconstitutional, illegal and of no legal effect?

Upon determination of the above queries, AEDC prays the court for the following reliefs:

- (a) A Declaration that the Defendant being a Local Government Council in Nigeria has no legislative power and competence to create and impose new heads of taxes, levies, rates and charges, outside the enabling Act i.e. the Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN, 2004 (as amended).
- (b) A Declaration that **Section 1 of the Part III** of the Bwari Area Council Trade Licence Private Lockup Shop and Allied Matters Bye Law (No. 3) 2016 that purportedly created and imposed the said taxes, rates, charges and levies on the Plaintiff is in contravention of and inconsistent with the provisions of the Fourth Schedule of the 1999 Constitution and Part III of the Schedule to the Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN; 2004 (as amended), and therefore to the extent of its inconsistencies, it is illegal and therefore null and void and of no legal effect.
- (c) A Declaration that the provisions of the 1999 Constitution (as amended), and the Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN, 2004 (as amended) do not contemplate the imposition of demand for tax for Liquor Licence by the Defendant on the Plaintiff; and that the provision of **Section 1 of the Part IX** of the

Bwari Area Council Liquor Licencing Bye Law (No. 9) 2016 does not apply to the Plaintiff.

- (d) A Declaration that the Demand Notices issued and served on the Plaintiff for the sum of ₦2,700,000.00 [Two Million, Seven Hundred Thousand Naira) for Trade Permit and Liquor Licence by the Defendant are illegal and therefore of no legal effect.
- (e) An Order of perpetual injunction restraining the Defendant, its officers, servants, contractors, employees and privies from further issuing and serving Demand Notices on the Plaintiff based on **Section 1 of the Part III** of the Bwari Area Council Trade Licence Private Lockup Shop and Allied Matters Bye Law (No. 3) 2016 and **Section 1** of the **Part IX** of the Bwari Area Council Liquor Licencing Bye Law (No. 9) 2016; or from further threatening to disrupt or from disrupting the business operations of the of the Plaintiff in any way or form.”

The originating summons is supported by a 17-paragraphed affidavit deposed by one *Peter C. Okoroafor*, a Legal Practitioner in the Law Firm of *Solola & Akpana*, with Exhibits AEDC 1- 4 annexed thereto. BAC consistently failed or neglected to enter appearance or take any steps in the proceedings notwithstanding that the originating court processes as well as hearing notices were duly served on it against virtually every court fixture as ordered by the court, and the case was eventually heard without BAC's participation. It is not one of the many duties of a court of law to wait *ad infinitum* on parties to put across their case insofar as the enabling environment is created for them to take advantage of, as was done in the instant case. See **NEWSWATCH COMMUNICATIONS v ATTAH [2006] 12 NWLR (PT. 993) 144 at 171, 179 & 181.**

At the hearing of the originating summons on 16/10/18, *Ademola Adeboye, Esq.* of counsel for the Plaintiff (who appeared with *C. P. Okoroafor, Esq.*)

relied on the 17-paragraphed supporting affidavit and adopted the written address filed in support of the originating summons. He placed reliance on the case of **AEDC v AMAC (2018) 35 TLRN at pp. 35 – 64** and urged the court to resolve the queries posed in favour of the Plaintiff and grant the reliefs sought.

AEDC's case [as can be gleaned from the supporting affidavit deposed by *Peter C. Okoroafor*] is that the Defendant [BAC] issued and served on it three (3) Demand Notices dated 14/12/16 [Exhibits AEDC 1, 2 and 3] demanding the total sum of ₦2.7m as trade permit and liquor licence fee at its offices in Bwari, Katampe and Kubwa; that BAC has been threatening to disrupt its business and/or shut down its offices; that the main functions of the Local Government Councils, including BAC are as listed in the 4th Schedule to the Constitution, and the taxes and levies collectible by the Federal State and Local Governments are as enumerated in the Taxes and Levies (Approved List for Collection) Act; that AEDC is duly licensed to distribute and trade in electricity within and around the Federal Capital Territory [FCT], Abuja by the Nigerian Electricity Regulatory Commission [NERC] which is the body statutorily empowered to issue such licences pursuant to s. 67 and 68 of the Electric Power Sector Reform Act, 2005; that AEDC neither produces/trades in liquor nor is it involved in any business other than electricity distribution and trade; that it has become expedient for this Honourable Court to make a pronouncement on the constitutionality *vel non* of the actions of BAC whose agents, servants and staff are bent on making good their threat to disrupt its business operations by shutting down its offices, which will ultimately result in the disruption of electricity supply to the FCT, Abuja, and invariably occasion unquantifiable financial and economic loss not only to AEDC but also to end users of electricity; that having been served with a statutory pre-action notice dated 4/6/17 [Exhibit AEDC 4], BAC will not be prejudiced in any way

and it will be in the overall interest of justice to grant the reliefs claimed by the Plaintiff.

In the Plaintiff's written address in support of the originating summons, three (3) issues for determination are formulated as follows:

1. Whether in light of the provisions of the Fourth Schedule to the Constitution of the Federal Republic of Nigeria (as amended) and Taxes and Levies [Approved List for Collection] Act Cap. T2, LFN, 2004, the Defendant being a Local Government Council in Nigeria is vested with legislative powers to create and impose taxes and levies not contained/contemplated therein?
2. Whether the purported creation and imposition of Taxes, Levies, Charges and Rates apart from those listed in the Fourth Schedule to the 1999 Constitution and Part III of the Schedule to the Taxes and Levies [Approved List for Collection] Act Cap. T2, LFN, 2004 and Schedule to the Taxes and Levies (Approved List for Collection) Act (amendment) Order, 2015 by the Defendant is not ultra vires its powers and therefore illegal and of no legal effect?
3. Whether the actions of the Defendant in issuing and serving Demand Notices on the Plaintiff for a total sum of ₦2,700,000.00 [Two Million, Seven Hundred Thousand Naira) for Trade Permit and Liquor Licence is not ultra vires its powers and therefore unconstitutional, illegal and of no legal effect?

I have given a careful and insightful consideration to the three (3) issues distilled for determination in AEDC's written address, which are essentially the very same queries posed in the originating summons. As stated hereinbefore, BAC is one of the six (6) Area Councils in the (FCT). By s. 299 of the Constitution, the legal status of the FCT is *"as if it were one of the States of the Federation and all the legislative powers, executive powers and judicial powers vested in the House of Assembly, the Governor of a State and in the Courts of a*

State shall, respectively, vest in the National Assembly, the President of the Federation and in the Courts which by virtue of the foregoing provisions are Courts established for the Federal Capital Territory, Abuja". What this implies is that the legislative powers of the FCT are vested in the National Assembly; and although the executive powers of the FCT are vested in the President of Nigeria, they are statutorily delegated to the Honourable Minister of the FCT. See *s. 18, Federal Capital Territory Act, Cap F6, Laws of the Federation of Nigeria, 2004 ("FCT Act")*. The clear intendment of the 1999 Constitution therefore is that the FCT is a separate administrative unit distinct from the Government of the Federal Republic of Nigeria. See **OKOYEDE v FCDA [2005] 27 WRN 97 at 125, FMBN v OLLOH [2002] 9 NWLR (PT. 773) 475 and FAWEHINMI v BABANGIDA [2003] 3 NWLR (PT. 808) 604 at 623**. There is therefore no gainsaying that the 4th Schedule to the 1999 Constitution [which highlights the main functions of Local Government Councils in Nigeria] and Part III of the Taxes and Levies (Approved List For Collection) Act [which enumerates the various heads of taxes and levies collectible by a Local Government] apply *mutatis mutandis* to the Area Councils in the FCT, including the Defendant herein.

It is contended on behalf of the Plaintiff that in the light of the 4th Schedule to the 1999 Constitution (as amended) and Part III of the Taxes And Levies (Approved List For Collection) Act, there is no constitutional/legal basis for the imposition of heads of taxes and levies not contemplated therein, as such the Demand Notices dated 14/12/16 [Exhibits AEDC 1, 2 and 3] by which BAC demanded the sum of ₦2.7m from AEDC as Trade Permit and Liquor Licence fees are *ultra vires* and consequently null and void for being not only inconsistent with the 4th Schedule to the Constitution but also offending against s. 2(1) of the Taxes and Levies Act, citing the cases of **ETI-OSA LOCAL GOVERNMENT v JEGEDE [2007] 10 NWLR (PT. 1043) at 537 at 558 B-D** and **MOBIL PRODUCING NIGERIA UNLIMITED v TAI LOCAL GOVERNMENT**

COUNCIL & 2 ORS (2004) 10 CLRN 100. The Plaintiff maintained that it is not permissible for BAC to usurp and arrogate to itself the legislative powers vested in the National Assembly under s. 9(1) of the 1999 Constitution to amend the 4th Schedule to the Constitution, as well as the powers conferred by s. 2(1) of the Taxes and Levies Act on the Minister of Finance on the advice of the Joint Tax Board (JTB) to alter the list of collectible taxes in the Schedule thereto; and that the plain and unambiguous words of the Constitution and the Taxes and Levies Act which have clearly enumerated the taxes collectible by the Defendant should be construed strictly according to their natural and ordinary meaning, placing reliance on **UWAGBA v FRN [2009] 15 NWLR (PT. 1163) 91 at 113 - 114** and **7UP BOTTLING CO PLC v L.S.I.R.B. [2000] 3 NWLR (PT. 650) 565 at 591-592.** AEDC pointed out that the heads of taxes/levies to which the Demand Notices relate are either not provided for in the 4th Schedule to the Constitution as well as Part III of the Schedule to the Levies and Taxes Act or inapplicable to the Plaintiff in that whereas Trade Permit [provided for in s. 1 of the Part III of the Bwari Area Council Shops, Kiosks, Trade Licence, Private Lockup Shops, Private Schools and Allied Matters Bye Law (No. 3) 2016] is not provided for by the said Statutes, Liquor Licence [as can be gleaned from Section 1 of the Part IX of the Bwari Area Council Liquor Licencing Bye-Law (No. 9) 2016].

The further contention of AEDC is that having been granted the requisite licence by NERC to undertake the business of electricity distribution and trade pursuant to ss. 62 and 67 of the ESRA Act, it does not require any trade or other operational permit from BAC to carry on its business; that assuming without conceding that the Defendant lays claim to some legislative competence to licence the business operation of the Plaintiff and impose taxes and levies on it, the law is well settled that where identical legislations on the same subject matter are validly passed by the legislature at both the Federal

and State levels by virtue of their respective constitutional legislative powers, the law passed by the State legislature will be invalidated on the ground that the Federal legislature has already covered the whole field of that particular subject matter, placing reliance on *s. 4(5) of the 1999 Constitution* and ***OSENI v DAWODU [1994] 4 NWLR (PT. 339) 390 at 406.***

As stated hereinbefore, the Defendant did not take any steps in the proceedings despite being served with hearing notices against virtually all court fixtures. This Court was thus treated to a one-sided case flowing from the Plaintiff's side alone with nothing on the Defendants' side to place on the imaginary scale of justice. See ***MOGAJI v ODOFIN (1978) 4 SC 91 at 96-97.*** This is unfortunate in the extreme, especially in a case such as the present which borders on BAC's internal revenue generation activities; and I cannot but bemoan the fact that the Court was denied the benefit of complete submissions in this intriguing matter. I will however hasten to underscore the point that BAC's non-participation in these proceedings does not mean that AEDC would have a smooth sail merely by reason thereof. The reliefs sought by AEDC [which are set out hereinbefore] are declaratory in nature and it is well ingrained in our adversarial jurisprudence that a claimant seeking a declaration, which is a solemn affirmation of a right or status by a court, must succeed on the strength of his own case and not on the weakness (or absence) of the defence. The courts do not make a practice of granting declarations on the basis of admission or the weakness of the defence without hearing evidence and being satisfied with such evidence. See ***BELLO v EWEKA (1981) 1 SC 101 at 102, OBAWOLE v WILLIAMS [1996] 10 NWLR (PT. 477) 146*** and ***AKANIWO v NSIRIM [2008] 9 NWLR (PT.1093) 439.*** The Claimant is therefore duty bound to discharge the burden of establishing his entitlement to the reliefs sought even in the absence of any defence put up by the Defendant.

Now, I have given a careful and insightful consideration to the depositions in the supporting affidavit and counsel's submissions in the written address filed in support of the originating summons *vis-à-vis* the main functions of Local Government Councils set out in the 4th Schedule to the Constitution and Part III of the Schedule to the Taxes and Levies Act, No. 21 of 1998. The identical Demand Notices dated 14/12/16 [Exhibits AEDC 1, 2 and 3] each demanding the sum of ₦900,000 as Trade Permit and Liquor Licence for the year 2016 from the respective Managers of AEDC offices at Bwari, Kubwa and Katampe state that: *"Pursuant to the provision of section 7 and the fourth schedule to the Constitution of the Federal Republic of Nigeria 1999 and other relevant sections of the Local Government Act, Laws of the Capital Territory, Abuja 2006 and Act CAP 503 LFN 2004(Vol.3) as amended: Taxes and Levies Act CAP T2, LFN 2004 and the Bwari Council Bye-laws which invested powers on the Council as regards to Trade Permit, Signboard and Liquor, we hereby forward to you the demand notice for payment of Trade Permit and Liquor Licence"*. The type of business AEDC undertakes is clearly stated in the notices as *"Power Distribution"*.

It is provided in s. 1, Part III of the *Bwari Area Council Trade Licence Private Lockup Shop and Allied Matters Bye Law (No. 3) 2016* that *"as from the commencement of this Bye-Law, it shall be an offence for any person to establish or operate private schools, workshop or carry on any business, trade or occupation without obtaining a licence from the Area Council"*. It cannot escape notice that the above provision of the Bwari Area Council Bye-Law is all-embracing and encompasses *'any business, trade or occupation'* whereas the regulation of power distribution is neither one of the main functions of Local Government stated in the 4th Schedule to the Constitution nor can it be pigeonholed into one of the twenty (20) items in Part III of the Schedule to the Taxes and Levies Act for which a Local Government Council [such as BAC] could collect tax or levies. By the clear provisions of ss. 67 and 68 of the

Electric Power Sector Reform Act, 2005 ["EPSR Act"], the issuance of licences [or permits] for electricity distribution and trade falls squarely within the statutory province of the Nigerian Electricity Regulatory Commission [NERC] and outside of the items listed in Part III of the taxes and Levies Act for which BAC could validly impose or collect any taxes/levies. It is therefore patently *ultra vires* the Defendant to purport to arrogate to itself *carte blanche* taxing powers to issue licences or 'trade permits' for all 'businesses, trades or occupations' [including power distribution and trade].

As it relates to Liquor Licence, it occurs to me that "*On and Off Liquor Licence Fees*" is listed as Item 3 in Part III of the Schedule to the Taxes and Levies Act dealing with taxes/levies collectible by Local Government Councils, and BAC cannot be accused of having created a tax head that is different from or inconsistent with those enumerated in the Taxes and Levies Act by enacting the *Bwari Area Council Liquor Licencing Bye Law (No. 9) 2016* which exacts payment of liquor licence fee within its jurisdiction. The relevant enquiry therefore is not as to whether the BAC could demand or collect liquor licence fee. Rather, it is whether BAC can validly impose liquor licence fee on the Plaintiff? As stated hereinbefore, the nature of AEDC's business is clearly stated in the Demand Notices as "Power distribution", whereas s. 1 of Part IX of the *Bwari Area Council Liquor Licencing Bye Law (No. 9) 2016* provides that "*as from the commencement of this Bye-Law, no person shall carry out the sale of any liquor without a licence issued by the Bwari Area Council for that purpose*". It therefore seems to me obvious that the Liquor Licencing Bye Law (No. 9) 2016 is targeted at '*persons carrying out the sale of any liquor*', but not an entity such as AEDC which is engaged in the business of power distribution. For good measure, it is deposed in the supporting affidavit that AEDC neither produces/trades in liquor nor is it involved in any business undertaking other than electricity distribution and trade. Since the Defendant did not file any counter affidavit in these proceedings, the above deposition remains

uncontroverted and is deemed as having been admitted by the Defendant; and I am eminently entitled to accept and act upon it without further assurance. See **NWOSU v IMO STATE ENVIRONMENTAL SANITATION AUTHORITY [1990] 2 NWLR (PT. 135) 688 at 727, FIRST BANK OF NIGERIA PLC v TSOKWA [2000] 13 NWLR (PT. 685) 521, AGBAJE v IBRU SEAFOOD LTD (1972) 5 SC 50** and **PHILLIPS v OWOLABI [2003] FWLR (PT. 148) 1364 at 1377**. This being so, there is neither legal nor factual basis for the Defendant to call upon AEDC which is engaged in electricity distribution and trade [rather than the sale of liquor] to pay liquor licence fee!

The rationale for the Demand Notices issued and served by BAC on AEDC in the instant case is lost on me, and I entertain no reluctance whatsoever in answering the first query posed by AEDC in the negative, and the second and third queries in the affirmative. In different words, the three questions raised in the present Originating Summons are resolved in favour of AEDC against BAC; and judgment is entered accordingly in the following terms:

1. It will be and is hereby declared that the Defendant herein [*Bwari Area Council*] has no legislative power or competence to create and impose new heads of taxes, levies, rates or charges outside the ambit of Part III of the Schedule to the *Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN, 2004 (as amended)*.
2. It is equally hereby declared that the provisions of Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN, 2004 (as amended) do not contemplate the imposition on, or demand from, the Plaintiff [*Abuja Electricity Distribution Company PLC*] of any Trade Permit and/or Liquor Licence fee by the Defendant [*Bwari Area Council*]; and s. 1 in **Part IX** of the *Bwari Area Council Liquor*

Licensing Bye Law (No. 9) 2016 does not apply to the Plaintiff [*Abuja Electricity Distribution Company PLC*].

3. The identical Demand Notices dated 14/12/16 issued and served by the Defendant herein [*Bwari Area Council*] on the Plaintiff [*Abuja Electricity Distribution Company PLC*] for payment of a total sum ₦2,700,000.00 as Trade Permit and Liquor Licence Fee will be and are hereby set aside without any further assurance.
4. The Defendant herein [*Bwari Area Council*] acting through its officers, employees, servants, agents or otherwise howsoever will be and is hereby restrained from further issuing and serving on the Plaintiff [*Abuja Electricity Distribution Company PLC*] any demand notices based on **s. 1 in Part III** of the *Bwari Area Council Trade Licence Private Lockup Shop and Allied Matters Bye Law (No. 3) 2016*; or **s. 1 in Part IX** of the *Bwari Area Council Liquor Licensing Bye Law (No. 9) 2016*; and/or from harassing, intimidating, disrupting or threatening to disrupt the Plaintiff's business operations in any way or form in connection with the said unauthorised taxes/levies.
5. There shall be no order as to costs.

PETER O. AFFEN
Honourable Judge

Counsel:

Ademola Adeboye, Esq. (with him: **C. Peter Okoroafor, Esq.**) for the Plaintiff

Defendant absent and unrepresented