

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN**

**MONDAY, JANUARY 14, 2019**

**SUIT NO. FCT/HC/CV/2030/2017**

**BETWEEN:**

**ABUJA ELECTRICITY DISTRIBUTION COMPANY PLC ... PLAINTIFF**

**AND**

**KUJE AREA COUNCIL ... DEFENDANT**

**J U D G M E N T**

**BY AN ORIGINATING SUMMONS** dated 30/5/17 but issued out of the Registry of this Court on 31/5/17, the Plaintiff herein, *Abuja Electricity Distribution Company PLC* (hereinafter AEDC) has posed the following three (3) queries:

- i. Whether in light of the provisions of the Fourth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), 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?
- ii. Whether the imposition of Taxes, Levies, Charges and Rates by the Defendant being a Local Government Council in Nigeria, apart from 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 ₦250,000.00 [Two Hundred and

Fifty Thousand Naira) and ₦290,000.00 [Two Hundred and Ninety Thousand Naira) respectively for Sanitation fees, Outdoor Advertisement, Operational Permits and Corporate Parking are ultra vires its powers and therefore unconstitutional, illegal and of no legal effect?

Upon the determination of the above questions, the Plaintiff [AEDC] seeks 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 statutes i.e. 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).
- (b) A Declaration that the demand for payment under the heads of taxes, namely: Sanitation fees, Operational Permits and Corporate Parking via the Demand Notices dated November 15, 2015 and October 26, 2016 respectively, by the Defendant on the Plaintiff are in contravention of and inconsistent with the provisions of 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 (as amended), and therefore to the extent of their inconsistencies they are illegal, null and void and of no legal effect.
- (c) A Declaration that the provisions of Constitution of the Federal Republic of Nigeria, 1999 (as amended) 1999 Constitution (as amended) [sic], and the Taxes and Levies [Approved List for Collection) Act Cap. T2, LFN, 2004 (as amended) do not contemplate the imposition of/demand for charges for Sanitation fees, Operational Permits and Corporate Parking by the Defendant on the Plaintiff; whilst Outdoor Advertisement fee [provided for in Section 2 of the Kuje Area Council Delegation of its Control and Regulation of Outdoor Advertisement and Signage Powers to Abuja Signage and Advertisement Management Services Bye-Law, 2012 - which is to the

effect that: “no person shall display an advertisement and/or signage within the Kuje Area Council without a permit...” does not apply to the Plaintiff.

- (d) A Declaration that the Demand Notices issued and served on the Plaintiff by the Defendant for the sum of ₦250,000.00 [Two Hundred and Fifty Thousand Naira) and ₦290,000.00 [Two Hundred and Ninety Thousand Naira) respectively for Sanitation fees, Outdoor Advertisement, Operational Permits and Corporate Parking by the Defendant is 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 based on heads of tax, charges, rates and levies such as Sanitation fee, Outdoor Advertisement fee, Operational Permits and Corporate Parking fee, same having not been contemplated in the enabling statutes; and/or not applicable to the Defendant (sic); or from further threatening to disrupt or disrupting the business operations 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- 3 annexed thereto.

The Defendant 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 the Defendant’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 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 Adebeye, 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.

Three (3) issues are distilled in the Plaintiff's written address in support of the originating summons 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 the sums of ₦250,000.00 [Two Hundred and Fifty Thousand Naira) and ₦290,000.00 [Two Hundred and Ninety Thousand Naira) respectively for Sanitation fees, Outdoor Advertisement, Operational Permits and Corporate Parking are not ultra vires its powers and therefore unconstitutional, illegal and of no legal effect.

It is averred in the supporting affidavit deposed by *Chukwuma Okoroafor* that the Plaintiff [AEDC] is an electricity distribution company (DISCO) licenced by the Electricity Regulatory Commission [“the Commission”] to carry on the business of electricity distribution and trade in North Central Nigeria comprising the Federal Capital Territory [FCT] Abuja, Niger, Kogi and Nasarawa States; that the Defendant [which is one of six Area Councils in the FCT created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and listed in Part II of the First Schedule thereto] issued and served on it Demand Notices dated 15/11/15 and 26/10/16 [Exhibits AEDC 1 and 2] demanding ₦250,000.00 and ₦290,000.00 respectively as sanitation fee, outdoor advertisement fee, operational permit and corporate parking fee for 2015 and 2016; that in a bid to coerce the Plaintiff into paying the sums demanded, the Defendant is threatening to disrupt the Plaintiff’s business activities by shutting down its offices; that the main functions of Local Government Councils, including the Defendant, are set out in the Fourth Schedule to the Constitution, whilst the taxes and levies collectible by the Federal, State and Local Governments are as listed in the Taxes and Levies (Approved List for Collection) Act; that the Nigerian Electricity Regulatory Commission [NERC] is the authority statutorily empowered under and by virtue of the Electric Power Sector Reform Act, 2005 (“the EPSR Act”) to licence the business of electricity distribution and trade in Nigeria; that having been duly licensed by the NERC at all material times, the Plaintiff does not require operational permits or any permits whatsoever from the Defendant as it is neither engaged in any business/operations other than the distribution and trade of electricity, nor does it carry out outdoor advertisement by way of billboards or otherwise; that it has become expedient for this Honourable Court to make a pronouncement on the constitutionality or otherwise of the actions of the Defendant whose agents, servants and staff are bent on making good their threat to disrupt the Plaintiff’s 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 the Plaintiff but also to end users of electricity; that having been served with a statutory pre-action notice dated 4/6/17, the Defendant will not be prejudiced and it will be in the overall interest of justice to grant the reliefs claimed by the Plaintiff.

I have given a careful and insightful consideration to the three (3) issues distilled for determination in the Plaintiff's written address, which are essentially the very same queries posed in the originating summons. Kuje area Council [KAC] is one of the six (6) area councils in the Federal Capital Territory (FCT) created under and by virtue of ss. 3 and 303 and listed in Part II of the 2<sup>nd</sup> Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended). 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*". This makes it clear beyond peradventure 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 is that the FCT should be 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**. Indeed, s. 318 of the 1999 Constitution provides that "*Local Government Area*" or "*Local Government Council*" includes an Area Council. Thus, the Constitution

recognises that the incidence of devolution of power between States and Local Government Councils in each of the States of the Federation equally applies in the FCT (which is deemed to be a State), save that the equivalent of local government councils are designated as 'area councils' as aforesaid. There is therefore no gainsaying that the 4<sup>th</sup> 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 the Federal, State and Local Governments] apply to the six area councils in the FCT, including the Defendant herein.

It is forcefully agitated on behalf of the Plaintiff that in the light of the 4<sup>th</sup> Schedule to the 1999 Constitution (as amended) and Part III of the Taxes And Levies (Approved List For Collection) Act, there is no constitutional or legal basis for the imposition of heads of taxes not contemplated therein, as such the Demand Notices dated 15/11/15 and 26/10/16 [Exhibits AEDC 1 and 2] demanding ₦250,000 and ₦290,000 respectively as sanitation fee, operational permit and corporate parking fee for 2015 and 2016 are *ultra vires* the Defendant and consequently null and void for being not only inconsistent with the provisions of 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***; that the Defendant has usurped and arrogated to itself the legislative powers vested in the National Assembly under s. 9(1) of the 1999 Constitution to amend the 4<sup>th</sup> 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, which is not permissible; and that the plain unambiguous words of the Constitution and the

Taxes and Levies Act which have clearly enumerated the taxes the Defendant can collect should be construed strictly according to their natural and ordinary meaning, placing reliance on the cases of **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**. The Plaintiff further contends that having been granted the requisite licence or permit to carry on the business of electricity distribution and trade by the Nigerian Electricity Regulatory Commission [NERC] under ss. 62 and 67 of the EPSR Act, the Defendant is not empowered under extant laws to impose on or demand from the Plaintiff any fee for operational permit; 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 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, citing 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 evidence and argument 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 the Defendant's internal revenue generation activities; and I cannot but bemoan the fact that the Court was denied the benefit of the complete submissions in this intriguing matter. I will however hasten to underscore the point that the respondent's



absence in an application for judicial review such as the present does not mean that the applicant would have a smooth sail by reason thereof. The reliefs sought by the Plaintiff [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.

This case interrogates the constitutionality/legality *vel non* of the Demand Notices dated 15/11/15 and 26/10/16 [Exhibits AEDC 1 and 2] by which the Defendant demanded the payment of ₦250,000 and ₦290,000 respectively from the Defendant as sanitation, operational permit, outdoor advertisement and corporate parking charges or fees for 2015 and 2016. The *Taxes and Levies (Approved List For Collection) Act* provides in s.1 thereof that “[n]otwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979 as amended, or in any other enactment or law, the federal government, state government and local government shall be responsible for collecting the taxes and levies listed in Part I, Part II and Part III of the Schedule to this Act respectively”. It would seem that the Taxes and Levies (Approved List for Collection) Act is not a piece of legislation that imposes taxes/levies *per se*, but merely prescribes the tier of government responsible for the collection [as distinct from imposition] of specific taxes/levies listed in the Schedule thereto. There are legitimate anxieties as to whether the Taxes

and Levies (Approved List for Collection) Act [promulgated as Decree No. 21 of 1998 but which is now an existing law deemed to have been enacted by the National Assembly] is not inconsistent with the 1999 Constitution to the extent that it purports to regulate residual matters within the legislative competence of the House of Assembly of a State. But since the legislative powers of the FCT are vested in the National Assembly by virtue of s. 299 of the 1999 Constitution (as amended) the FCT is clearly exempt from these anxieties. Item 9 of the Concurrent Legislative List in Part II of the Second Schedule to the 1999 Constitution provides that: "*A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of tax, fee or rate or for the administration of the law providing for such collection by a local government council*". Since local government councils have no taxing powers of their own, the power to do so must be expressly delegated by either an Act of the National Assembly or a Law enacted by the House of Assembly of a State. In this regard, there must be a specific legislation[s] enacted by the National Assembly or the House of Assembly of a State on matters falling within their respective legislative competences which empower local government councils [such as the Defendant herein] to enact bye-laws for the imposition and/or collection of one form of tax/levy or the other.

In the instant case, it is stated in the Demand Notices [Exhibits AEDC 1 and 2] issued and served by the Defendant on the Plaintiff that the demand is made "*in accordance with the Kuje Area Council Revenue Bye Laws and the provisions of the 4<sup>th</sup> Schedule, section 7 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Taxes and Levies Act*". But save for 'outdoor advertisement', other heads of taxes [i.e. sanitation fees, operational permits and corporate parking] contained therein are conspicuously absent in Part III of the Taxes and Levies Act which enumerates the taxes collectible by a local government or area council such as the Defendant. I have also not been

fortunate enough to chance upon, nor has my attention been drawn to, any Act of the National Assembly authorising the Defendant to enact byelaws for the imposition of the taxes or levies therein contained. Ditto for the said “*Kuje Area Council Revenue Bye Laws*’ cited by the Defendant in Exhibits AEDC 1 and 2. Fundamentally, the Plaintiff’s counsel furnished the court with the acknowledgment copy of a letter dated 20/3/2017 applying “for a copy of *Kuje Area Council Bye Laws*”, to which the Defendant did not respond. What this implies is that save for ‘outdoor advertisement and hoarding’ there is scarcely any distinct legal authority pursuant to which the Defendant acted in imposing and/or demanding the other levies contained in Exhibits AEDC 1 and 2. I cannot but lend judicial imprimatur to the Plaintiff’s contention that the Nigerian Electricity Regulatory Commission is the governmental agency empowered under ss. 62 and 67 of the Electric Power Sector Reform Act of 2015 to grant operational licence or permit for carrying on the business of electricity distribution and/or trading in electricity. Certainly not the Defendant. Also, even though it is quite arguable that ‘corporate parking’ can be categorised as falling under Item 9 in Part III of the Taxes and Levies Act relating to ‘motor park levies’, I find no legal or factual basis for the imposition of corporate parking levy or charge on the Plaintiff which [as deposed in paragraphs 9 and 10 of the supporting affidavit] is neither a transport company nor engaged in transport business. See **AEDC v AMAC (2018) 35 TLRN 35**.

Even as it relates to outdoor advertisement charges [which falls under s. 1(k) (i) of the 4<sup>th</sup> Schedule to the Constitution dealing with ‘*control and regulation of out-door advertising and hoarding*’, Item 20 in Part III of the Taxes and Levies Act relating to ‘*signboard and advertisement permits*’, as well as the “*Kuje Area Council Delegation of its Control and Regulation of Outdoor Advertisement and Signage Powers to Department of Outdoor Advertisement and Signage (DOAS) Bye-Law 2012*”], the Plaintiff contends that there is no valid legal basis for

imposing on or demanding from it any such outdoor advertisement charges as contained in the Demand Notices (Exhibits AEDC 1 and 2). Whereas s. 2 of the said Bye-Law provides that “no person shall display an advertisement or signage within the Kuje Area Council without a permit issued by the Department of Outdoor Advertisement and Signage (DOAS)”, it is deposed in paragraphs 10 and 11 of the affidavit in support of originating summons that the Plaintiff does not display any outdoor advertisement of its business on billboards within the Defendant’s Area Council to warrant the imposition of tax/levies for outdoor advertisement. Since the Defendant did not file any counter affidavit in these proceedings, the above deposition remains uncontroverted and deemed as having been admitted by the Defendant, and this court is 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, the inescapable conclusion to which I must come is that the Defendant acted *ultra vires* in imposing taxes/levies that are outside the ambit of Part III of the *Taxes and Levies (Approved List for Collection) Act* by issuing and serving on the Plaintiff the demand notices marked as Exhibit AEDC 1 and 2 in these proceedings for payment of the sums stated therein or any other sums for that matter. The case of **ETI-OSA LOCAL GOVERNMENT v JEGEDE supra at 558** donates the proposition that Local Governments [or Area Councils in the case of the FCT] have no legislative power of their own to impose or determine taxes and levies outside the Taxes and Levies Act which was promulgated to check indiscriminate levies and taxes imposed on the citizens by the three tiers of government; and any attempt by a local government to act outside the ambit of Part III of the Taxes and Levies

(Approve List for Collection) Act would be an exercise in futility. The concomitant effect is that the Demand Notices dated 15/11/15 and 26/10/16 [Exhibits AEDC 1 and 2] issued and served by the Defendant on the Plaintiff ought to be set aside for being *ultra vires*, null and void and of no effect whatsoever.

In the light of everything that has been said in the foregoing, I return a negative answer to the first and third queries posed by the Plaintiff in the originating summons, and a positive answer the second query. Judgment is accordingly entered as follows:

1. It will be and is hereby declared that the Defendant herein, *Kuje Area Council* has no legislative 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 the 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 of or demand for charges for Sanitation fees, Operational Permits and Corporate Parking by the Defendant on the Plaintiff; whilst Outdoor Advertisement fee [provided for in Section 2 of the *Kuje Area Council Delegation of its Control and Regulation of Outdoor Advertisement and Signage Powers to Abuja Signage and Advertisement Management Services Bye-Law, 2012* does not apply to the Plaintiff.
3. The Demand Notices dated 15/11/15 and 26/10/16 issued and served by the Defendant herein [*Kuje Area Council*] on the Plaintiff [*Abuja Electricity Distribution Company PLC*] for payment of ₦250,000.00 and ₦290,000.00 respectively as sanitation fee,

operational permit, outdoor advertisement and corporate parking fee for 2015 and 2016 will be and are hereby set aside without any further assurance.

4. The Defendant herein [*Kuje Area Council*] acting through its officers, employees, servants, agents or otherwise howsoever will be and is hereby restrained from issuing and serving on the Plaintiff, *Abuja Electricity Distribution Company PLC* any demand notices based on heads of tax, charges, rates and levies such as Sanitation fee, Outdoor Advertisement fee, Operational Permits and Corporate Parking fee in a manner not contemplated by extant statutes; and/or from harassing, intimidating or disrupting the Plaintiff's business in connection with such charges/levies.
  
5. There shall be no order as to costs.

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**PETER O. AFFEN**  
Honourable Judge

**Counsel:**

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

Defendant absent and unrepresented.