

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

**BEFORE HON. JUSTICE J. ENOBIE OBANOR
ON THIS 30TH DAY OF OCTOBER, 2024**

SUIT NO: CV/7627/2023

BETWEEN:

OGAJI EJEH

..... CLAIMANT

(Trading under the name and style of
QUORUM NOMINEES)

AND

ABUJA MUNICIPAL AREA COUNCIL (AMAC)

.....DEFENDANT

JUDGMENT

DELIVERED BY HON.JUSTICE J. ENOBIE OBANOR

The Claimant commenced this suit via an Originating summons dated and filed on the 20th of September, 2024, whereof the Claimant sought the determination of the following questions:

1. Whether the powers conferred on the defendant as a local government under section 7 & the fourth schedule of the 1999 constitution of the federal republic of Nigeria (as amended) includes collection of any bills & levies from the claimant and demand for same is unconstitutional, invalid, null and void and of no effect whatsoever.
2. Whether the defendant's shops, kiosk, trade license, private lock up shop and allied bye laws (no 14) 2012 used to demand payment of

taxes and levies from the claimant, is unconstitutional, invalid, null and void and of no effect whatsoever

The Claimant also sought the following reliefs:

1. A DECLARATION that by virtue of the clear Provisions of Section 7 and the Fourth Schedule to the Constitution of the Federal Republic of Nigeria, 1999, as Amended, the Defendant lacks the vires, authority and/or power to collect any Bills, License Permits or Levies from the Claimant.
2. A DECLARATION that the powers conferred on the Defendant as a Local Government under Section 7 & the Fourth Schedule of the 1999 Constitution of the Federal Republic Of Nigeria (As Amended), does Not include collection of any Bills and Levies from the Claimant; and by virtue of the clear provisions of Section 7 & the Fourth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), it is ultra vires the powers of the Defendant to make laws regulating payment of any Bills, License Permits or Levies from the Claimant.
3. A DECLARATION that the Abuja Municipal Area Council Shops, Kiosks, Trade License, Private Lock-Up Shop And Allied Matters Bye Law (No 14) 2012; made pursuant to Section 7 and the Fourth Schedule to the Constitution of the Federal Republic Of Nigeria, 1999 (As Amended); is unconstitutional, illegal, unlawful, inconsistent with the Constitution and thus a nullity.
4. A DECLARATION that the Demand Notice for shop & kiosk served on the Claimant on the 12th day of July, 2023 directing the Claimant the sum of N50,000.00 (Fifty Thousand Naira) for the

year 2023 is unconstitutional, invalid, null and void and of no effect whatsoever.

5. AN ORDER setting aside the aforesaid demand notice for shop & kiosk served on the Claimant on the 12th day of July, 2023.
6. AN ORDER of injunction restraining the Defendant by itself and/or through its privies, agents, officials subordinates or under any other guise from serving any further demand notices on the Claimant.
7. The sum of N5,000,000.00 (Five Million Naira Only) as exemplary and general damages.

The Originating Summons was filed alongside 4 Exhibits and a Written Address. In response, the Defendant filed a 19 paragraph Counter Affidavit to the Originating Summons deposed to by one Abdullah Abdulrahman which was dated the 14th of May, 2024 and filed on the same day.

Both parties adopted their processes on the 24th of September, 2024.

Briefly, the case of the Claimant is that the Claimant is a law firm and a tenant within Maidabina Plaza Opposite Grand Ibro Hotel Wuse Zone 5, Abuja. On the 12th of July, 2023, agents of the Defendant served the Claimant with a bill tagged "Demand Notice for Shop and Kiosk Zone B issued to Quorum Nominees". The Claimant claims that following the service of the demand letter, agents of the Defendant made it a habit to harass the Claimant's employees with threats of locking up the office if payment is not made. The Claimant also claims that the imposition and demand of N50,000.00 (Fifty Thousand Naira) from the Claimant by the

Defendant is ultra vires and not within the Constitutional powers of the Defendant.

In his Written Address, Counsel for the Claimant raised two issues for determination to wit:

- 1. Whether the powers conferred on the Defendant as a local government under Section 7 & the fourth schedule of the 1999 Constitution of the Federal Republic of Nigeria (as amended) include collection of any bills & levies from the Claimant and if Demand of same is not unconstitutional, invalid, null and void and of no effect whatsoever.**
- 2. Whether the Defendant's shops, kiosk, trade license, private lockup shop and allied bye laws (no. 14) 2012 used to demand taxes and levies from the Claimant is not unconstitutional, invalid, null and void and of no effect whatsoever.**

On issue 1, Counsel argued that where there is an apparent lacuna in the law, the Court will refuse to fill it if that would result in a charge on the citizen. Counsel is relied on **7UP BOTTLING CO. PLC V. L.S.B.I.R (2000) 3 NWLR Pt. 650 Pg. 565, AHMADU V. GOV. KOGI STATE (2000) 3 NWLR Pt. 755** and others. Counsel outlined the functions of the Local Government as outlined in Section 7(3) & (5) and the fourth schedule to the 1999 constitution and argued that the duty of the Defendant is to control and regulate and not to bill, assess, tax or prescribe any levy on the Claimant. Thus, the Defendant's constitutional duty is only limited to regulating the operational activities of shops and

kiosks and not bill, levy, assess or tax same. Counsel argued that the Defendant being the third tier of government cannot impose unconstitutional taxes and levies on companies. Counsel relied on **KNIGHT, FRANK & RUTLEY (NIG) LTD V. ATTORNEY-GENERAL OF KANO STATE (1990) 4 NWLR PT. 143 Pg. 210.**

On issue 2, Counsel argued that by enacting the said bye-law, the Defendant seeks to take over the functions of the National Assembly who has the exclusive legislative power to create or impose any tax or levy on the Claimant within the ambits of the Constitution. Counsel argued therefore that the Shops, Kiosks, Trade License, Private Lock up Shop and Allied Bye Laws (No. 14) 2012 was enacted in flagrant breach of the Constitutional arrangement, set out in Section 7 and the Fourth Schedule to the Constitution of the Federal Republic of Nigeria. Counsel relied on **EZEUDU V. ADEKA & ORS (2016) LPELR – 40807 (CA), EBOHON V. AG EDO STATE & ORS (2016) LPELR 41269 (CA), JABIN ONESA OGAGA V. THOMAS E. UMUKORA & ORS (2011) LPELR – 8229 (SC).** Counsel urged the Court to resolve the issues in favour of the Claimant in holding that the Defendant's Shops, Kiosk, Trade License, Private Lock up Shop and Allied Bye Laws (No. 14) 2012 used to demand taxes and levies from the Claimant is unconstitutional, invalid, null and void and of no effect whatsoever.

In response, Counsel for the Defendant raised a sole issue for determination in its Written Address to wit:

Whether the Claimant is entitled to any of the reliefs sought in its Originating Motion.

Counsel stated that the thrust of the Claimant's Originating Summons is that the Defendant has no constitutional backing to support its bill of fifty thousand Naira issued by the Defendant pursuant to Section 7 and the Fourth Schedule of the 1999 Constitution and the Private Lockup Shop and Allied bye laws (No. 14). Counsel argued that Section 299 of the 1999 Constitution applies to the Federal Capital Territory as if it were one of the States of the Federation and that the local government system is guaranteed under Section 7 of the Constitution. Learned Counsel relied on the case of **AFDIN VENTURES LTD V. AMAC (2014) LPELR 23509 CA** where the Court of Appeal held that if a bye law is a rule or administrative provision adopted for the inter governance of Abuja Municipal Area Council and its external dealings with the public ... the Respondent has the powers to publish or enact bye laws for the implementation of ... the 4th schedule of the Constitution. Counsel further argued that the Federal Capital Territory Laws enacted by the National Assembly made the Niger State Local Government Law of 1976 applicable in the FCT and Section 55 of the law stipulates that the local government is empowered for collection of community tax, property and other rates and other designated revenue. Counsel also relied on the schedule to part III of the Taxes and Levies (approved list for collection) Act Cap 2 LFN 2004. Relying on the case of **CITEC INTEGRATED BUILDING PRODUCTS LIMITED V. AMAC & 3 ORS SUIT NO. FCT/HC/CV/1350/2013** Counsel submitted that the Defendant has constitutional and judicial backing to demand for the levy imposed on kiosks and shops.

The Claimant filed a Claimant's Reply on Points of Law in Opposition to the Defendant's Counter-Affidavit/Written Address dated the 17th day of

October and filed on the same date. The Claimant raised a sole issue for determination to wit:

Whether the Defendant can rely on an act/law, which has been voided by the Court of Appeal to ask for unconstitutional Taxes and Levies from the Plaintiff.

Counsel stated that in the case of **UYO LOCAL GOVERNMENT V. AKWA IBOM STATE GOVERNMENT & ANOR (2020) LPELR – 49691 (CA)**

the Court of Appeal nullified the Taxes and Levies (Approved List for Collection) Act, Cap T2, LFN, 2004 for being inconsistent with the provision of the Constitution of the Federal Republic of Nigeria (as amended). Counsel relied heavily on Section 1(1) & (3) of the 1999 CFRN (as amended). Counsel argued that the imposition of any levy or tax must be authorized by the National Assembly and that the levies taxed by the Defendant on the Claimant have not been approved by the National Assembly. Counsel relied on **PEACE MASS TRANSIT LTD V. FACT & ORS (20145) LPELR – 23740 (CA)**

RESOLUTION

I have perused the pleadings of both parties as well as the applicable legislations and precedent relevant to this case. The gravamen of the Claimant's application is whether the interpretation of Section 7 and the Fourth schedule to the 1999 CFRN (as amended) is to the effect that the Defendant has the authority to make legislation for the collection of the bill of N50,000 (Fifty Thousand Naira) demanded from the Claimant by the Defendant. These provisions are reproduced below:

Section 7(1) & (3) of the 1999 CFRN (as amended)

7. (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

(3) it shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the State.

Fourth Schedule to the 1999 CFRN (as amended)

The main functions of a local government council are as follows:

(a) the consideration and the making of recommendations to a State commission on economic planning or any similar body on -

(i) the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and

(ii) proposals made by the said commission or body;

(b) collection of rates, radio and television licences;

(c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;

(d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;

(e) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;

(f) construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;

(g) naming of roads and streets and numbering of houses;

(h) provision and maintenance of public conveniences, sewage and refuse disposal;

- (i) registration of all births, deaths and marriages;*
 - (j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and*
 - (k) control and regulation of -*
 - (i) out-door advertising and hoarding,*
 - (ii) movement and keeping of pets of all description,*
 - (iii) shops and kiosks,*
 - (iv) restaurants, bakeries and other places for sale of food to the public,*
 - (v) laundries, and*
 - (vi) licensing, regulation and control of the sale of liquor.*
- 2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters -*
- (a) the provision and maintenance of primary, adult and vocational education;*
 - (b) the development of agriculture and natural resources, other than the exploitation of materials*
 - (c) the provision and maintenance of health services; and*
 - (d) such other functions as may be conferred on a local government council by the House of Assembly of the State*

The issue of collection of taxes, levies, rates, etc by the local government is not at the mercy of subjective interpretation. Nigeria operates a three-tier system of government: the Federal, State and Local Government. The import of Section 7(1) is that the state government is to enact legislation for the establishment, structures, composition, finance, and confer functions including those set out in the Fourth Schedule to the Constitution on the Local Government Councils.

See **ETI-OSA LOCAL GOVERNMENT V. JEGEDE (2007) 10 NWLR Pt 1043 Pg.537**. The FCT is a peculiar case because unlike other states of the federation, the FCT does not have a separate legislative body. By Section 299 of the 1999 CFRN (as amended), the legislative powers of the FCT are vested in the National Assembly. By implication, the Local Government Act 2019 has fulfilled the condition of Section 7(1) of the 1999 CFRN (as amended). Section 58(2)(d) of the Act gives the Local Government Council the authority to make bye-laws providing for the issue or supply of licences, permits, certificates and other instruments and documents. Therefore the "Shops, Kiosks, Trade License, Private Lock-Up Shop and Allied Matters Bye Law (No 14) 2012" under Part XV of the Abuja Municipal Area Council Bye-Law is in order.

Now, to the issue of the Taxes and Levies (Approved list for collection) Act. In order to curb the multiplicity in taxation by the three tiers of government, this act (formerly a decree) was enacted. A close perusal reveals that the decree was made during a military regime and it was customary for the military government to oust the provisions of the Constitution. The successive democratic governments have not paid attention to the wordings of this act even after the amendment in 2015 and this has constrained the Court in its interpretation of the legislation. The judgment of the Court of Appeal in *UYO LOCAL GOVERNMENT V. AKWA IBOM STATE GOVERNMENT & ANOR* (supra) is the most recent judgment on this issue and serves as *Stare decisis* for this Court. However, as mentioned above, the Act lists the taxes and levies to be collected by the three tiers of government to put an end to multiplicity in taxation which was becoming over bearing for the citizens of this

Country. Section 1(1) of the Act is in contradiction to the provision of the 1999 CFRN (as amended) and therefore renders it a nullity.

However, in my opinion, this does not invalidate the action of the Defendant. This same constitution guarantees the existence of a democratically elected local government council by a state law, a condition which has been fulfilled in the FCT by the Local Government Act.

This Court will not undermine the responsibility of the citizens to pay taxes or other levies to the government. See **INDEPENDENT TELEVISION/RADIO V. E.S.B.I.R ALL NTC Page 422, Vol. 9**. The mode of collection and the process of determining the amount of the tax or levy is not an issue before this Court and will not be considered by this Court. The issue of the Claimant's firm not being a shop or a kiosk also needs not be over flogged considering that the Claimant renders services and is paid for it.

I hereby order the Claimant to make the payment of N50,000.00 (Fifty Thousand Naira Only) as demanded to the Defendant.

HON. JUSTICE J. ENOBIE OBANOR

PRESIDING JUDGE

Appearances

For the Claimant- Deborah Warrie Esq.

For the Defendant- O. O. Okitika Esq.