

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS MONDAY 5TH JUNE, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/CV/2826/2022

BETWEEN:

**THE REGISTERED TRUSTEES OF GOD
ALONE MALL OWNERS ASSOCIATION.....CLAIMANT**

AND

- 1. ABUJA ENVIRONMENTAL PROTECTION BOARD (AEPB)**
- 2. ABUJA MUNICIPAL AREA COUNCIL (AMAC) .. DEFENDANTS**

JUDGMENT

The claimant by an originating summons dated the 26th August, 2022 is claiming the following reliefs against the defendant.

- 1. A declaration that by the combined effect of section 1 (3) of the 1999 constitution of the Federal Republic of Nigeria (as amended) and section 7 (i) (h) of the 4th schedule to the 1999 CFN as (amended) the provision of section 6 (i) (a) (b), (b),(c) (ii) (iv)and (vii) and section 30 (4) of the Abuja Environmental protection board Act 1999 are void and of no effect.**
- 2. A declaration that the 1st defendant not being an Area council within the FCT Abuja has no power to collect waste disposal levy and/or punish the claimant or other occupiers of premises for failing to pay waste disposal levy within the FCT Abuja.**

3. An order of perpetual injunction restraining the 1st Defendant from collecting waste disposal levy from the claimant and/or dealing off or in any other manner however, punishing the claimant for failing to pay waste disposal levy with respect to GA 24/7 by Kingtem Plaza situate at Plot 264-307 Ahmadu Bello way Abuja.

4. Cost of action in the sum of N2,000,000.00 (Two Million Naira) only.

Attached to the originating summons is an affidavit in support of 17 paragraphs deposed to by Eze Ifenacho of Legal Practitioner of suit No. 1001-1004, GA 24/7 Plaza, Ahmadu Bello Way Abuja. Annexed to the affidavit in support are exhibits marked

1. A paragraph 7

2. B paragraph 7

3. C paragraph 9

4. D paragraph 9 E paragraph 15 and a writing address of 7 pages, where in the written address the claimant formulated two issues for the court's determination to wit:

i. Whether by the combined effect of section 1(3) of the 1999 CFRN as (amended) and section 7 (1) (h) of the 4th schedule to the 1999 CFN as (amended) the provision of section 6(1) (a), (b)(c) (ii) (iv) and 30 (4) of the AEPB Act 1997 are not void and of no effect whatsoever.

ii. 2. Whether upon true and current interpretation of section 7(1)(i) (h) of the 4th schedule to the 1999 CFN (amended) the 1st defendant is the proper body to collect waste disposal levy from the claimant.

Filed alongside with the motion on notice is an order of interlocutory injunction with motion No. M/10125/2022 praying the court to restrain the defendant/respondents whether by themselves or through anyone so called from sealing off or locking up GA 24/7 by Kingtem Plaza situate at Plot 264-307, Ahmedu Bello way Abuja. The motion was served on all the defendants, proof of servicedated the 20/10/2022 and 27/10/2022 respectively.

The defendant who did not file any counter to the said motion nor showed any appearance, based on the none appearance of the Defendant in this case the motion was moved and granted.

It was on the date the ruling of the motion was delivered that one C. O. Okoro appeared for the first 1st defendant. Thus he apologised to the court and

informed the court that they have filed their memo of appearance and other processes, and are still within time to respond.

This the claimant counsel did not object and this case was adjourned to 26-01-2023 for hearing.

On the 26-01-2023 when this matter came up for hearing, both counsel were in court apart from the counsel to the 2nd defendant and no representation from the 2nd defendant.

This claimant counsel then informed the court that this matter is adjourned for hearing and that they were ready to proceed.

The 1st defendant counsel informed the court that they were able to resound to the originating application just this morning, owing to the fact that he had some challenges and came in to ensure that he is not aged out and was able to serve the claimant counsel that morning, but they have a motion before the court for regularization and are ready to move same.

The claimant did not object to the motion for regularization the motion was moved and granted.

The claimant counsel then told the court that he is yet to effect service on the 2nd defendant, the court adjourned the matter to the 28-03-2023 for hearing.

On the 28-03-2023 counsel to the claimant and of the 1st defendant were in court. The claimant counsel informed the court that he was unable to effect service on the 2nd defendant and applied to the court for another date.

The 1st defendant counsel did not object but instead applied for a cost of N10,000.00. the claimant counsel did not concede to cost applied for by the 1st defendant counsel reason being that he had never sought for adjournment before this court not even once. That on the last adjournment they indicated interest to proceed with this matter. The court in it's ruling granted the adjournment, but refused to award cost and this matter was adjourned to 10-05-2023 for hearing.

On the 10-5-2023 counsel for the claimant and of the 1st defendant were present in court. The claimant counsel informed the court that the 2nd defendant was served with hearing notice in respect of today's hearing but was not in court. He then applied apply to proceed with the hearing in this case. The 1st defendant counsel did not object and urged the court to proceed with the hearing of this case.

The claimant in proving his case adopted all paragraphs of the affidavit as well as the exhibits attached and the written address.

The claimant is in receipt of the 1st defendant's counter affidavit and submitted in respect of the counter that by exhibit AB5 attached to the counter affidavit and paragraph 16 of the counter affidavit, where the 1st defendant maintains that as from 7th November, 2022 the 2nd defendant (AMAC) has authorised the payment of waste disposal levy in the FCT to be made to the 1st defendant. It is the same 2nd defendant that served the demand notice for the same waste disposal levy on the claimant for the period ranging from January, 2022 to December, 2022, reference exhibit C to the original summons.

On this he submitted that exhibit AB5 specifically directed the Hotel owner's forum association Abuja and not to the claimant. That besides, the 1999 CFRN as (amended) does not in any way empower the 2nd defendant to authorise or delegate another body or persons to collect waste disposal levy in Abuja on his behalf or howsoever. In view of this position of the law as contained in the originating process he prayed the court to uphold their submission and grant all the reliefs sought as per the originating summons.

The defence counsel in response to the originating summons, filed by the claimant, the 1st defendant filed a 6 paragraph counter affidavit, attached to the counter are exhibits marked AB1-AB6.

In compliance with the rules of this court filed a written address which he adopted as it's oral submission in support of the counter affidavit, and urged the court to note that by virtue of exhibit AB6, that this matter is pending before court 5 at Wuse Zone two, and one of the crux of the matter as contained in the affidavit in support and the originating motion where the claimant is claiming that since the inception of it's property. That he has been clearing himself and he is not in flagrant disregard to the existing law i.e. evacuating the waste itself and therefore seeks the protection of this court to shield him for his unlawful Act.

Submitted further, that the defendant cannot be said to be clearing itself as it is not permissible under the law. That the defendant has not even submitted any exhibit that he has paid anything to either the 1st or the 2nd Defendant as such cannot come under this court on the guise of the 1999 CFN as (amended).

He finally urged the court to dismiss the claim of the defendant. As it is the constitution of the law and an attempt to solvent the existing rules and laws of the land.

Now to the main issue before the court, as I stated earlier, that the claimant claims three reliefs and on it's written address formulated two issues distilled for the determination of this court to wit.

1. **Whether by the combined effect of section 1 (3) of the 1999 CFN as (amended) and section 7 (1)(h) of the 4th schedule to the 1999 Constitution of the Federal Republic of Nigeria as (amended) the provisions of section 6(1) (a)(b)(c), (ii) (iv) and (vii) and 30 (4) of the Abuja Environmental Protection Board Act, 1997 are not void and of no effect whatsoever.**
2. **Whether upon true and correct interpretation of section 7(1) (i)(h) of the 4th schedule of the 1999 CFN as (amended) the 1st defendant is the proper body to collect waste disposal levy from the claimant.**

On the other hand, the 1st Defendant filed it's counter affidavit in opposition to the originating summons, where in it's written address formulated a sole issue for determination to wit:

Whether the provision of the AEPB Act 1997 with regard to waste management services is in compliance with the provisions of the constitution of the CFN 1999 as (amended).

From the issue formulated by the claimant and the defendant, which issues are distinct from each other, I shall adopt the issue as mine. This court will tinker within the said issues so as to bring the entitlement of each parties at the end of the judgment.

On the first issue;

1. **Whether by the combined effect of section 1 (3) of the 1999 CFN as (amended) and section 7 (i) (h) of the 4th schedule to the 1999 constitution.as amended the provisions of section 6(1) (a)(b)(c), (ii) (iv) and (vii) and 30 (4) of the Abuja Environmental Protection Board Act, 1997 are not void and of no effect whatsoever.**

On this it is the submission of the claimant by virtue of section 1 (3) of the 1999 CFN as (amended) any law that conflicts with any of the provisions of the constitution is to the extent of it's inconsistency, void. Submit that, the provisions of section 6 (1)(a), (b), (c), (ii) (iv) and (vii) and 30 (4) of the AEPB ACT. 1997 are inconsistent and apparently conflicts with the provisions of section 7(1)(h) of the 4th schedule of the 1999 CFN as (amended). The said sections of AEPB is reproduced below:

6(1) the function of the Board shall cover but shall not be limited to

- a. **The control of removal and disposal of solid waste,**
- b. **The control and disposal of solid wastes.**
- c. **The control of:**
 - ii. **portable and waste water effluent discharge**
 - iv **the use of septic tank and sewage maintenance**
 - vii **public convenience and cemeteries.**

30 (4) the owner or occupier of any tenement shall pay his waste disposal fees to the Board.

On the other hand, section 7(1)(h) of the 4th schedule to the 1999 CFN as (amended) provides as follows

The main function of a local Government councils are as follows

(h) provision and maintenance of public convenience sewage and refuse disposal.

On this he submitted that, the manifest inconsistency of section 6(1) (a)(b)(c), (ii) (iv) and (vii) and the 4th schedule to the 1999 CFN as (amended) and urged the court to resolve issue (1) one in favour of the claimant.

The 1st Defendant in his argument and in answer to the Claimant's issue one, submitted that, it is trite that the Area councils were statutorily empowered to collect sewage and refuse disposal fees in Federal Capital Territory, (FCT) by virtue of the provision of paragraph 7, part 111 of the schedule to the taxes and levies (approval list of collection) at laws of the Federation of Nigeria, 2004, this he referred the court to the case of Oyo Local Government V Government of Akwa Ibom State (2020) LPELR-49691 (CA) nullified the taxes and levies (approved list of collection)Act. Laws of the Federation of Nigeria, 2004. Further that, there remain no superior statutory framework upon which the Area council in FCT may rely upon in imposing levies for waste disposal services, independently, submitted that, sewage and refuse dispose fees are not taxes for compulsory contribution, meant to be levied by an Area Council on all citizen resident or carrying on any activity within the area of jurisdiction of that Area Council, for the support of Government and public needs. Therefore, submitted that for an Area council to have been competent to demand and receive payment of fees for sewage and refuse disposal, the Area council must actually render such services and the beneficiary of the service is thereby obligated to pay the fees for the services enjoyed, to the Area council.

The learned Counsel to the 1st Defendant referred this court to the provisions of section 29 of National Environmental Health Practice Regulations 2016 which provides:

The waste collection shall be responsible for the collection of fees for services rendered to his client.

On this he submitted that, the FCT, AEPB remains the body through which the services and refuse disposal is rendered, and that by virtue of the CFN 1999 (as amended) the Area council in the FCT are saddled with functions of sewages and refuse disposal. Reference to section 1(h) of the Fourth Schedule of the 1999 CFN(as amended), but because of the peculiar, unique and for exceptional circumstances of the FCT, laying host to three different tiers of Government by being the seat of the Federal Government (section 298 of the 1999 CFN) being deemed as a state Government (Section 299 of the 1999 CFN) and also having in existence Area Councils as local Government (section 303 of the 1999 Constitution), it became reasonably necessary to establish a body, through which the Area Council and the FCT Administration are to carry on waste management services, jointly or collectively and not independently. Reference to the following section.

Section 7(1) of the 1999 CFN (as amended) provides:

“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 function of such councils.”

Section 7(5) of the 1999 CFN 1999 (as amended) provides:

“the functions to be conferred by law upon local Government Councils shall include those set out in the fourth schedule to this constitution”

Section 318 of the 1999 CFN (as amended) defines “Law” to mean an enactment by the House of Assembly of a State.

Furthermore, that section 7(1) of the 1999 CFN (AS AMENDED) empowers the House of Assembly of a State to ensure the existence of Local Government Council of a State and to counter Functions on the Local Government Councils, by virtue of statutory enactment and section 7 (5) of the CFN (as amended) also empowers a State House of Assembly to confer, in addition to the State

functions provided for in the fourth schedule of the 1999 CFN. Further submitted that section 7(1) and section 7(5) of the 1999 CFN (as amended) empowers a State House of Assembly to confer the functions of sewage and refuse disposal on Local Court in a State.

He referred this court to section 10(2) of the interpretation Act CAP 123 CFN, 2004 which provides:

“An enactment which confers power to do any Act shall be construed as also conferring all such powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it”

The learned counsel to the 1st Defendant submitted that, not only in a State House of Assembly Constitutionally empowered to confer the function of sewage and refuse disposal in Local Government in a State, a State House of Assembly is also Constitutionally empowered to regulate how the function is to be carried on in the State by the Local Government.

This on the Applicability of the laws in FCT, he submitted that, the National Assembly is deemed to be the State House of assembly of the FCT, Abuja and by virtue of section 318 of the 1999 CFN, Local Government Council includes Area Council. Based on the foregoing submitted, that the combined provisions of sections 7(1),7(5) of the 1999 CFN, section 10(2) of the interpretation Act, CAP 123 CFN, 2004 the National Assembly is empowered to regulate how the Area Councils are to carry on the functions of sewage and refuse disposal within the FCT, and also regulate how the FCT is to be administered. On this he referred to section 303 of the 1999 CFN provides

“the FCT Abuja Shall comprise of six Area Council and the administration and political structure thereof shall be as provided by an Act of the National Assembly”

Learned claimant counsel referred to the marginal note that provides for states “Administration of the Federal Capital Territory, Abuja. He referred to section 303 of the 1999 CFN, where he stated that, the laws of the FCT, contains the AEPB Act CAP 10, 1997 as well as the Local Government Act CAP8, 1976. Thus, AEPB, a product of the AEPB Act CAP 10, 1997, is a child of necessity, birthed by virtue of powers conferred on the National Assembly by the 1999 CFN (as amended). He further argued that by virtue of section 2(1) (b) of the AEBP Act, 1997 six area council s are represented on the Board of AEPB as ex-officio members of the Board i.e. the Act makes the Area Council chairman a permanent board member, and section 2(1)(e)of the AEPB Act, 1997 the FCT,

Administration is represented on the Board of AEPB by director, health services FCT and the Board is the policy making body and give directives with regard to the Administration of the institution and also the approving authority of the institution, on this submitted that, the AEPB Act, 1997 was enacted to provide a platform where the Area Council would carry on the functions of sewage and refuse disposal jointly and or collectively, and the FCT Administration carry on services or piped sewerage system.

Learned 1st defendant counsel, further submitted that, by the Local Government Act, Cap 8, 1976, section 55(b), 36(1)(u), the Local Government is conferred with exclusive Jurisdiction over sewage and refuse disposal, and concurrent Jurisdiction with the state Government over piped sewage system respectively. Thus the FCT Administration being responsible for providing infrastructure in the city centre of FCT, in compliance with international best practices of conveying sewage from the city centre to treatment plants located outside the city centre at wupa, and from the piped sewage system services, fees would be required to be paid by beneficiaries of the services who may be the same persons from whom the AMAC would also be demanding payment for refuse and sewer disposal services. Thus the issue of double demands for payment of waste disposal fee from the Area council and the FCT Administration would arise.

It was further submitted by the learned defence counsel to the 1st Defendant that by virtue of section 12 and section 30 (4) of the AEPB Act, 1997, this mischief is addressed by empowering the board of AEPB to maintain a fund into which such money, as may be payable to the Board in the course of the discharge of it's function under the Act, are paid (section 12(1) and (2)(c) section 30 (4) provides:

“the owner or occupier of any tenement shall pay the waste disposal as and when due to the Board”

In line with the above submission, submitted that, the function of piped sewage is a concurrent function, the Area council, as well as the FCT Administration have the power to engage independent contractors to render the services of evacuation of bleeding sewer manhole and to address this mischief section (35(1) (1) of the AEPB Act, 1997 empowers the board to accredit all waste contractors operating within the FCT or authorised by licence the operation of waste contractors.

Now to the claim/reliefs 1 of the claimant as captured in this judgment, which he wants this court to declare that by the combined effect of section 1(2) of the

1999 CFN, the provisions of sections 6(1) (a) (b) (c) (ii) (iv) and (vii) and section 30(4) of the AEPB, Act 1997 are void and of no effect whatsoever.

I shall reproduce the above provisions for ease of reference:

Section 1(2) of the CFN provides:

“the Federal Republic of Nigeria shall not be government nor shall any person or group of person take control of the Government of Nigeria or nay part thereof, except in accordance with the provisions of this constitutions.

Section 7 (1) (h)

Section 2(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 & function of such council

On the main functions of a local Government Council,

Section (h) 4th schedule provides thus

“provisions and maintenance of public convenience, sewage and refuse disposal”

Section 6(1) (a) (b) (c) (ii) (iv) and (vii) of the AEPB Act provides thus:

6(1) the function of the Board shall cover but shall not be limited to

- a. the control of removal and disposal of liquid wastes.**
- b. The control and disposal of solid wastes,**
- c. The control of**
 - ii portable and waste affluent discharges**
 - iv the use of septic tanks and sewage maintenance.**
 - vii Public conveniences and cemeteries**

Section 30 (4) of the same AEPB Act provides

“the owner or occupier of any tenement shall pay his waste disposal fees as and when due to the Board.

On this it is on the affidavit of the claimant paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

- 5. That I know for a fact that Claimant engaged the services of a private company to carry out waste disposal GA 247 by Kingfem Plaza situate beside Emadeb Filling Station, Ahmadu Bello Way, Kado Abuja.**
- 6. That sometimes in 2021, 1st defendant started serving bills and demand notices for the payment of waste disposal levy with respect to GA 247 by Kingfem Plaza situate beside Emadeb Filling Station, Ahmadu Bello Way, Kado Abuja.**
- 7. That the demand notices and the bills from the 1st defendant for waste disposal levy respect to GA 247 by Kingfem Plaza situate beside Emadeb Filling Station, Ahmadu Bello Way, Kado Abuja are attached hereto and marked EXHIBITS A and B.**
- 8. That also in the year 2022, 2nd defendant served demand notice and bills for the payment of waste disposal levy with respect to GA 247 by Kingfem Plaza situate beside Emadeb Filling Station, Ahmadu Bello Way, Kado Abuja.**
- 9. That the demand notice from 2nd defendant for waste disposal levy with respect to GA 247 by Kingfem Plaza situate beside Emadeb Filling Station, Ahmadu Bello Way, Kado Abuja are hereto and marked EXHIBITS C and D.**
- 10. That I know for a fact that 1st defendant is not an area council within the Federal Capital Territory, Abuja.**
- 11. That I know for a fact that it will amount to double taxation if claimant is made to pay same waste disposal levy to both 1st and 2nd defendants.**
- 12. That I know for a fact that 1st defendant has by it's demand notice dated 16th November, 2021, threatened to embarrass the occupants of GA 247 Plaza situate at plots 264-307, beside Emadeb Filling Station, Ahmadu Bello Way, Kado Abuja; if the bill of N31,966,375.00 (Thirty-one million nine hundred and sixty-six thousand three**

hundred and seventy naira) only, is not paid within 7 (seven) days from the date of receipt of the demand notice.

13. That I know for a fact that 2nd defendant also threatened to seal off GA 247 Plaza situate at Plots 264-307, beside Emadeb Filling Station, Ahmadu Bello Way, Abuja; if the amount of money contained in it's demand notice is not paid without delay.

In response, the learned defence counsel to the 1st Defendant in opposition to the originating summons in it's paragraphs 4, 5, (i)-vii)

Produced below:

- i. That the claimant is a corporate body are unknown to the 1st defendant as it's system does not recognised the claimant as occupants of any premises within kingtem Plaza which is located at Plot 264-307 Ahmadu Bello way Mabushi Abuja.**
- ii. That the claimant occupies a multifaceted tenement within Federal Capital Territory at Plot 264-307 Ahmed Bello way Mabushi Abuja otherwise known as Kingtem Plaza connected and maintained by the 1st defendant since 2019.**
- iii. That by virtue of paragraph (4) (1) above, the 1st Defendant renders services of liquid waste collection and disposal to the claimant by prompt evacuation on it's liquid waste as the claimant building is connected to the central sewage of the 1st defendant till date.**
- iv. That the 1st defendant also evacuated the solid waste being generated by the claimant from it's building to the dump site maintained by the complainant at Gosa FCT.**
- v. That being that the 1st Defendant duly renders services of solid and liquid waste evacuation from the premises of the claimants, it has through it's commercial department environmental and categorized the claimant building under category T3 (traders in corner shop/plaza)**

comprising of the 119 members of Traders in corner shop/plaza, under it's relevant laws and extent Abuja Environmental Protection Board waste management and other charge Regulation 2012.

- vi. That the status which is AEPB, places occupier of any tenement within FCT, to maintain a suitable waste bin within it's premises and to pay it's waste disposal bill as when due to the 1st Defendant.**

- vii. That the fact on ground remains that it is the 1st defendant that is rendering services to the claimant for waste disposed and not anybody else and the else and the 1st defendant is entitled to be paid for it's services through the single Treasury account (TSA) and exhibit D issued to the claimant by the 2nd defendant is not related to waste disposal but fumigation and pest control.**

On this I wish to state that, the constitution clearly delineates legislative powers between the FGN and State Government by providing for two legislative lists: namely: (1) the exclusive legislative list (ELL) set out in part 1 of the second schedule to the constitution and (11) the concurrent legislative list (CLL) set out in part II of the second schedule to the constitution.

The FGN through the National Assembly has executive powers to make the law with respect to any matter contain in the Exclusive Legislative list (ELL) it also has concurrent powers with the State Government to make laws with respect to any matter contained on the concurrent legislative list (CLL) to the extent provided for in the constitution. Further, the FGN has the power to make laws on any matter, as may be prescribed by any specific substantive provision of the constitution and also exercises legislative powers with respect to the Federal Capital Territory, Abuja.

On the other hand, state Government through their respective State House of Assembly have power to legislate on matters contained on the concurrent legislative list (CLL) to the extent prescribed therein. They may also legislate on any matter as may be prescribed by the provisions of the constitution. State government also have exclusive power to legislate on matters that are not contained on either the exclusive legislative list or concurrent legislative list (i.e. residual matter).

By the above provisions of the law, the claimant counsel in it's written address, believes that, the 1st defendant not being an area council within the Federal Capital Territory Abuja is without power to carry out waste disposal, demand payment of levy for said and/or punish the claimant and or/other occupant of premises within the Federal Capital Territory, Abuja for failing to pay such levies; on this he finds support in the provisions of section 7 (1) (h) of the 4th schedule to the 1999 CFN as (amended) and section 1(3) of the same constitution,

These are the crux of this suit, where the claimant counsel wants this court to interpret the above provision of the constitution so that it will be known which of the defendant herein has the power to demand payment of waste disposal levy from the claimant. He submitted that the provisions of section 6 (1) (a), (b) (c) (ii) (iv) and (vii) and 30 (4) of the AEPB Act 1997 are inconsistent and in conflict with the provisions of section 7(1) (b) of the 4th schedule to the 1999 CFN (as amended).

By section 7 of the 1999 CFN (as amended) and taxes and levies (Approval list for collection) Act CAP T2, the 2nd Defendant is legally entitled to demand for payment on licence/permit/levy of owners of offices and shops within GA 247 Plaza situate at Plots 264-307 as one of the legal sources of revenue. The 2nd Defendant is one of the Area Council in the FCT, which is a creation of the National Assembly, and has democratically elected councillors who make Bye-laws for it. The levies complained of by the claimant against the 1st and 2nd defendant relate simply to collection on waste disposal levy byoccupiers of shops plot 2064-307 for failing to pay waste disposal levy within the FCT, Abuja. Also by decree No. 47 of 1997, established the Abuja Environmental Protection Board which membership of the Board by section 1 (2)(i)(b) specified the members of the Board to include,

b. the Chairman of the six Area council of the Territory.

c. the director of Health Services F.C.D.A by section 5, of the AEPB Act, the objectives of the Board shall include.

a. secures the quality of environmentadequate for the health and wellbeing of the residents of the Territory.

b. Conserve and use the environment and it's natural resources for the benefits of the Territory.

c. minimizes the impact of physical development on the ecosystem of the Territory

d. Raise public awareness and promote understanding of essential linkages between the environment and development within the territory and

e. Co-operate with the Federal Environmental Protection Agency and such other States Environmental Protection Agencies to achieve effective prevention or abatement of trans-boundary movement of waste.

While the functions are provided in section 6(1) (a) (b) (c)(ii) (iv)(vii) and (d) (doing such other things as are necessary or expedient for the purpose of enhancing a healthy environment within the territory. Section 8 provides,

The Board shall lease with relevant departments of the authority and such other Government Agencies for the control of burrow pits and quarry sites within the Territory and direct construction companies or individual contractors to refill burrow pits excavated by such companies or individuals and ensure that such places are replanted to avoid soil erosion.

Further to this section 17 creates the offences, relating to tenement, it provides thus:

17(1) the owner, caretaker, or occupier of any tenement within the Territory shall:

- a. Keep clean, neat and free from odour such tenement and the surrounding thereto.**
- d Ensure that drains running through or by his tenement are kept free from blockage.**
- e Ensure that no dirty water or stagnant water is kept in any part of the tenement or the surrounding, thereto.**
- f Ensure that his tenement and surrounding are not kept in a condition which may be injurious to health.**
- g Provide and maintain a suitable dustbin and adequate sanitary Convenience and not cause effluent or liquid waste to be discharged into any drain or any part thereof except at areas so designated by**

the Board or in accordance with such standard as may be set by Federal Government Protection Agency from time to time.

I decided to reproduce this section for understanding the duties of the Abuja Environmental Protection Board within the FCT- Abuja.

The question that begs for answer is whether by the combined effect of section 1(3), of the 1999 CFN as amended, section 7(1) (h) of the 4th schedule to the 1999 CFN (as amended), the provision of section 6(1) a, b, c, ii, iv, and vii and section 30 (4) of the AEPB Act, 1997 are void and of no effect whatsoever.

This court is concerned with the word void being used by the claimant; the Black's law Dictionary 7th edition of page 1568 used the word void as follow:

“objective: (1) of no effect, null whenever technical accuracy is required, void can be properly applied only to those provisions that are of no effect whatsoever, those that are an absolute nullity”

In other words, void could also mean to declare that (something) is not valid or legally binding.

In law, the word void means having no legal effect from the start. Thus a void contract. By this definition can one rightly say that the decree No. 10 section 47 of 1997 is void? This I will answer no in the sense that the decree No. section 47 of 1997 is a creation by the Federal Military Government which to an extent is like the laws created by the National Assembly. Therefore, declaring it void will mean it has no effect whatsoever.

The schedule to the Taxes and levies (Approval list for collection Act, CAP T2 laws of the Federation of Nigeria 2004 in it part I provides for Taxes and levies to be collected by State Government and in part III it provides for taxes and levies to be collected by local Government.

Section 13(1) of the FCT, Act provides that

“in addition to any law having effect or made applicable throughout the Federation, the laws set out in the second schedule to this Act shall from 9th May, 1984, apply in the Federal Capital Territory, “serial No 55 in the second schedule to the Federal Capital Territory Act, is the Niger State Local Government Edict 1976, section 55 of the Niger State Local Government Edict of 1970 (now law) provides.

subject to the provisions of this Act, or any other enactment, a local Government shall have responsibility for and power to make bye laws for all of the following matter that is:

(R) collection of community taxes, property and other rates and other designated revenue.

To this effect, it is the submission of the 1st defendant, in paragraph 5(1)(ii) (iii) (iv) and v, of it's counter affidavit reproduce below:

Paragraph 5

- iii. That the claimant is a corporate body are unknown to the 1st defendant as it's system does not recognised the claimant as occupants of any premises within kingtem Plaza which is located at Plot 264-307 Ahmadu Bello way Mabushi Abuja.**
- iv. That the claimant occupies a multifaceted tenement within Federal Capital Territory at Plot 264-307 Ahmed Bello way Mabushi Abuja otherwise known as Kingtem Plaza connected and maintained by the 1st defendant since 2019.**
- viii. That by virtue of paragraph (4) (1) above, the 1st Defendant renders services of liquid waste collection and disposal to the claimant by prompt evacuation on it's liquid waste as the claimant building is connected to the central sewage of the 1st defendant till date.**
- ix. That the 1st defendant also evacuated the solid waste being generated by the claimant from it's building to the dump site maintained by the complainant at Gosa FCT.**
- x. That being that the 1st Defendant duly renders services of solid and liquid waste evacuation from the premises of the claimants, it has through it's commercial department environmental and categorized the claimant building under category T3 (traders in corner shop/plaza) comprising of the 119 members of Traders in corner shop/plaza, under it's relevant laws and extent Abuja**

Environmental Protection Board waste management and other charge Regulation 2012.

- xi. That the status which is AEPB, places occupier of any tenement within FCT, to maintain a suitable waste bin within it's premises and to pay it's waste disposal bill as when due to the 1st Defendant.**
- xii. That the fact on ground remains that it is the 1st defendant that is rendering services to the claimant for waste disposed and not anybody else and the else and the 1st defendant is entitled to be paid for it's services through the single Treasury account (TSA) and exhibit D issued to the claimant by the 2nd defendant is not related to waste disposal but fumigation and pest control.**

The exhibit D attached to the 1st claimant written address provides thus:

“the management of Abuja Municipal Area Council (Environmental Service Department), fumigation/pest control unit wishes to notify you in accordance with the provisions of section 4, 5, 6, & 7 of the AMAC pest control by law (2012 and other Relevant law of Environmental Health offences 2012---

While exhibit C. demand notice is for indiscriminate dumping of refuse silt and other environmental Health Offences Bye-law No 4 (2014). From exhibit C & D it is clear that, waste disposes, as envisage by the claimant, as the duty of liquid waste disposes rest on the AEPB. Hold that exhibit C& D does not amount to double taxation as claimed by the claimant.

Having said this, for this court declare the act of the 1st Defendant as void, where there is no denial from the claimant as to who was responsible for the evacuation of liquid waste disposed within it's premises. Hold therefore the Act of the AEPB cannot be declared void as the decree No. 10 is a creation of the Federal Military Government, just like laws made by the National Assembly'

I will therefore answer issue one in favour of the Defendant. This also answers relief one of the claimant's claims.

On claim 3, for the court to order perpetual injunction restraining the 1st defendant from collecting waste disposal levy from the claimant and/or sealing off or in any other manner howsoever punishing the claimant for failing to pay

waste disposal levy with respect to GA 247 by Kingtem Plaza situate at Plot 764-307 Ahmedu Bello way Abuja.

On this it is the submission of the claimant counsel, that the 1st defendant not being an Area council within the FCT, Abuja cannot therefore demand waste disposal levy from the claimant. In the same vein, the 1st Defendant cannot punish the claimant or the occupants of Ga 247 Plaza situate at Plot 204-307 beside Emadeb filling Station, Ahmedu Bello, way Abuja in any way for failing to pay waste disposal levy. That is even more so as none of the defendants has carried out waste disposal from GA 247 Plaza situate at Plots 264-307 beside Emadeb Filling Station Ahmadu Bello way Abuja.

On claim3, on the sealing off of the business premises of the claimant. There is no evidence that the 1st & 2nd Defendants business premises at GA 24/7 by Kingtem Plaza, situate at Plot 264-307 AhmaduBello way, Abuja was sealed up by the Officers or staff of AEPB or AMAC and as such, the claimant did not clarify before this court on when was it business premises sealed. All that is before the court is a demand notice for him/her to pay the levy on the waste disposal and nothing more. Therefore, the issue of sealing is mere speculation, these draw a conclusion from an assertion about what the evidence would show, if one were actually to look at it, however, the assertion appears to evidence that has actually been collected or does not actually exist. Here the law as settled by many decisions of the supreme court, it is that the court has a duty not to indulge in conjecture, guesswork or speculation.

In our adversarial system of litigation, in this country, the law places the burden of proving an existing fact which is claimed by a party who would otherwise fail if no evidence at all were given on either side.

Section 131-133 of the evidence Act 2011, requires further that, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that proof of that fact shall lie on any particular person.

Holds that from the affidavit evidence of the learned counsel to the claimant there is nothing to show that the said Plaza was sealed by the 1st Defendant, nor exhibit provided therein showing that the Plaza was sealed.

On this it is the submission of the 1st Defendant, that the defendant does not and has never imposed levy or fine on the claimant and that section 30(4) of the AEPB Act, 1997 does not empower the defendant to impose fine or levy as erroneously submitted by the claimant particularly reliefs No. 4 further that the defendant only demands for payment of waste disposal fees, which may also be

described as rates or charges as contained in the AEPB Act (waste management Rates/charges) Regulation 2012. He Submitted further that since waste management services is carried on in the FCT through the defendant, then the defendant is the proper authority to demand and receive payment of waste disposal fees.

In view of the foregoing, I hold that reliefs No. 4 is answered in favour of the defendants.

In the light of above, I hereby answer reliefs 1, 2, & 3 against the claimant.

The claimant's reliefs lack merit and substances, hence reliefs 1, 2, & 3 is hereby dismissed. The parties shall bear their cost.

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Hon. Justice A. Y. Shafa

Appearance:

1. **J. O. Apeh** for the Claimant.
2. **A. A. Shuabu** for the 2nd Defendant

