

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

(APPEAL DIVISION)

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIPS:

ON WEDNESDAY 28TH DAY OF FEBRUARY, 2024

HON. JUSTICE Y. HALILU - PRESIDING

HON. JUSTICE E. ENENCHE - MEMBER

APPEAL NO.:CVA/108/2023

SUIT NO. AMAC/M/104/2023

BETWEEN:

DOLLAR PHARMACY & SUPERMARKET APPELLANT

AND

ABUJA MUNICIPAL AREA COUNCIL RESPONDENT

JUDGMENT

This is an Appeal by the Appellant (who was the Complainant before the lower court) against the Judgment of Hon. Maryam I. Yusuf delivered on the 4th day of November, 2022.

The Respondent commence this suit vide Summons against the Appellant at the Chief Magistrate Court of the Federal Capital Territory, Abuja demanding against the Appellant to comply with provisions of law and by law as contained on the face of the summons.

The Appellant in response to the suit entered a conditional appearance and raised an objection as to the jurisdiction of the trial court to hear and determine the case.

The grounds upon which this appeal is brought are as follows:-

GROUND OF APPEAL

GROUND ONE

The lower court erred in law and occasioned a miscarriage of justice when it held that the court rightly exercised jurisdiction when it entertained the case initiated by the Respondent when same had no locus standi to do so.

PARTICULARS OF ERROR

1. By the virtue of the provision of Section 299 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) and Section 1(3) & 13(1) of the Federal Capital Territory Act, the only body statutory vested with power to make law for the FCT is the National Assembly. Only laws validly made by the National Assembly are applicable to the Federal Capital Territory, Abuja.
2. The Respondent as an Area Council within the Federal Capital Territory recognized in section 303 of the of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) but subject administratively and politically to the Act of the National Assembly In other words, the National Assembly makes laws for the Federal Capital Territory and not the Respondent.
3. By virtue of Section 4 (b), (h), (i), (i,) (n), (q) & (r) of the Pharmacy Council of Nigeria Act 2022, the Pharmacy Council of Nigeria is the only statutory body of the Federal Government of Nigeria set up to regulate the premises where pharmacies operate and control practice of all pharmacy companies in Nigeria and not the Respondent.

4. The National Assembly enacted Pharmacy Council of Nigeria Act 2022 with the responsibility of regulating and management of pharmaceutical companies which vested the council power to administer and control the practice and operation of pharmaceutical companies in Nigeria.
5. Part XV - Foodstuff and Regulated Premises (Sections 3-23) & Part XVI - Hotel, Guest Inn, Restaurant/Eating Houses, Bake Houses, Dairies Aerated Water Manufactures, Food Preserving Establishment and Places of Sales of Food to the Public and Other Related Matters (Sections 1-24) of Abuja Municipal Area Council By-laws, 2019 which the Appellant was brought to court pursuant under are invalid and unconstitutional
6. Appellant premises does not fall under or within the Foodstuff and Regulated Premises of Abuja Municipal Area Council By-laws, 2019 which the Appellant was brought to court under, as Pharmacy is not included in schedule of list businesses under or within the Foodstuff and Regulated Premises (Sections 3- 23) of Abuja Municipal Area Council By-law, 2019.

7. Abuja Municipal Area Council has no statutory power to make Part XV- Foodstuff and Regulated Premises (Sections 3-23) & Part XVI-Hotel, Guest Inn, Restaurants/Eating Houses, Bake Houses, Dairies Aerated Water Manufactures, Food Preserving Establishment and Places of Sales of Food to the Public and Other Related Matters (Sections 1-24) of Abuja Municipal Area Council By-laws, 2019 for the Federal Capital Territory Abuja.
8. The Respondent had no locus standi to institute the action.

GROUND TWO

The trial court erred in law and misdirected himself when he failed to consider the legal arguments conversed before him when he held in his ruling that:

"The counsel to the Defendant misdirected himself that the National Environmental Health Practice Regulation, (NEHPR) does not apply to the Defendant that the Defendant is not only selling drugs but also selling food and poison.."

And thereby occasioned a miscarriage of justice

PARTICULARS OF ERROR

- a. The ruling did not envisage the provision (Section 9(1) & (2)) of the Registration and licensing of Pharmaceutical Premises Regulations 2021 and Sections 2, 5, 6 and 7 of the Pharmaceutical Premises Location, Inspection, Structure, Monitoring and Enforcement Regulations 2021.
- b. While a court is not bound to agree with the submissions in arguments and addresses, the court is nevertheless bound to consider same before arriving at any conclusion in the case, otherwise, a complete snub would amount to denial of fair hearing since the arguments also form part of the case as held by the apex court. See ***BRITANNIA U NIGERIA LIMITED VS. SEPLAT PETROLEUM DEVELOPMENT LTD. (2016) 4 NWLR (Pt. 1503) 541 SC was cited.***
- c. The trial court arrived at his decisions without considering the legal argument conversed before the court or even look at the authorities provided to guide the court.

GROUND THREE

The trial court erred in law when it refused and/or neglect to specifically consider and pronounce on the issue of jurisdiction relating to Part XV - Foodstuff and Regulated Premises (Sections 3-23) & Part XVI - Hotel, Guest Inn, Restaurants/Eating Houses,

Bake Houses, Dairies Aerated Water Manufactures, Food Preserving Establishment and Places of Sales of Food to The Public and Other Related Matters (Sections 1-24) of Abuja Municipal Area Council By-laws, 2019 which amount to denial of the Appellant's constitutional right to fair hearing.

And thereby occasioned a miscarriage of justice.

PARTICULARS OF ERROR

1. The settled position of law is that courts are under an obligation to properly consider and pronounce on all issues raised by parties before it, to avoid miscarriage of justice and/or denial of fair hearing - ***UZUDO VS. EGIGAH & ORS. (2009) 15 NWLR (Pt. 1163) 1.***
2. The lower court breached the Appellants' rights to fair hearing, when it failed to consider Appellant's contention that the Respondent's has no power to make Part XV- Foodstuff and Regulated Premises (Sections 3-23) & Part XVI- Hotel, Guest Inn, Restaurants/Eating Houses, Bake Houses, Dairies Aerated Water Manufactures, Food Preserving Establishment and Places of Sales of Food to The Public and Other Related Matters (Sections 1-24) of Abuja

Municipal Area Council By-laws, 2019 which the Appellant was brought to court pursuant to.

3. Fair hearing implies that all the parties to an action must be given equal opportunity to present their case before the court the way they know best. The other aspect of fair hearing is that a court in deciding a case, must consider all the issues presented before it by all the parties. The inability of the court to consider the case put forward by the parties in writing the judgment, amounts to denial of fair hearing. See ***HONEYWELL FLOUR MILLS PLC. VS. ECOBANK (2018) LPELR-45127 (SC)***.

RELIEFS SOUGHT FROM THE APPEAL COURT

1. To allow the appeal.
2. To set aside the Ruling of the Magistrate Court of the Federal Capital Territory, Abuja.
3. An Order setting aside the entire proceedings of the lower court for want of jurisdiction, same being brought under invalid by-laws and illegal.

4. An Order setting aside all demand notices issued by the Respondent on the Appellant, same being brought under invalid by-laws and illegal.

Learned counsel for the Appellant proceeded to file brief of argument dated the 1st June, 2023.

Appellant's counsel formulated two issues for determination. The issues are as follows:-

- a. **Whether by the combined effect of section 1(3) and 13(1) of the Federal Capital Territory Act, Section 1 and 17(1)(g) of Abuja Environmental Perfection (sic) Board Act and section 299 of the 1999 Constitution (as amended); Part XV (section 3-23) and Part XVI (section 1-24) of Abuja Municipal Area Council by – laws, 2019 is a valid law that can be enforce by the Respondent without the approval of the National Assembly and /or Hon. Minister of Health and Honourable Minister of Environment as the case may be? (Distill from Ground 1 of the Grounds of Appeal).**
- b. **Whether Pharmacists Council of Nigeria (PCN) is the only competent authority to regulate the premises, license and inspect the operation and control of**

pharmaceutical companies in Nigeria including FCT – Abuja. (Distill from Grounds 2 and 3 of the Grounds of Appeal).

On issue 1, learned counsel for the Appellant argued that by the reliefs sought as effected in the summons at page 1 of the Records of Appeal, the lower court does not have the jurisdiction to defend same, same based on an invalid bye – law. It is the argument of learned counsel for the Appellant that the enacted bye – law cannot be effective without the approval by the Minister of Health, and that through section 55 of the Local Government Act 1976, empowers the Respondent to make laws, same is subject to the provision of other enactments, the Public Health Act of FCT is one of such enactments.

Appellant’s counsel cited section 43 of the Public Health Act, Cap. 542, ***INTERNATIONAL TEXTILE LTD. VS. ADEREMI & ORS. (1999) 8 NWLR (Pt. 614) 268*** in support of his argument to say that the Respondent lacked the power to make bye – laws as Part XV (sections 3-23) and Part XVI (sections 1-24) of Abuja Municipal Area Council bye – laws, 2019 having failed to obtain approval pursuant to section 43 of the Public Health Act. It is the argument of learned counsel for the Appellant that it is the Abuja

Environmental Protection Board that is responsible for the enforcement of all Environmental Regulation and abatement of all forms of environmental degradation and nuisance and not the Respondent (AMAC).

Appellant further argued that (AMAC) Respondent is a Local Government under FCT recognized under section 303 but subject to laws made by the National Assembly.

All powers to make laws in the FCT are vested in the National Assembly pursuant to section 299 of the Constitution of FRN (as amended).

It is further his argument that it is in line with the said section 299 of the Constitution that the National Assembly passed the law establishing the Abuja Environmental Protection Board.

Learned counsel contended that (AMAC) Respondent lack the power to make the said bye – laws.

On issue no. 2, learned counsel argued that by virtue of section 4(3) and item 49 of the Executive Legislative List in the 2nd schedule to the 1999 Constitution, the National Assembly possess the Power exclusively to regulate professional bodies as may be designated by National Assembly, and that such Power has

already been exercised by the National Assembly in respect of the Pharmaceutical Companies in Nigeria through the Pharmacy Council of Nigeria Act 2022, Regulation and licensing of Pharmaceutical Premises Regulation 2021 and Pharmaceutical Premises location, inspection, structure, monitoring and enforcement Regulation 2021.

It is the submission of learned counsel for the Appellant that from the combined effects of the afore- cited laws, the Respondent (AMAC) lacked the power to enact laws to regulate the Pharmacy Profession.

Appellant counsel on the whole urged the court to hold that the said Foodstuff and Regulated Premises (sections 3-23) and Part XVI (sections 1 – 24) of Abuja Municipal Area Council By – laws 2019 is invalid null and void, same being in incompetent with the 1999 Constitution and in view of the fact that the National Assembly has already made a law regulating the Pharmacy Practice which sufficiently covers the field.

COURT:-

We have considered the embodiment of the legal argument contained in the Appellant’s brief of argument which condescends

to these grounds and particulars contained in the Notice of Appeal filed by the Appellant.

It is expedient to put it on record that the Respondent (AMAC) failed and or neglected to join issues with the Appellant in the present Appeal.

We are therefore left with only the process of the Appellant to consider the instant Appeal.

Being an Appeal founded on the provision of law and its interpretation, the two issues formulated by the Appellant for determination are apt and accordingly hereby adopted as those of this court for determinations.

The issues are as follows:-

- a. **Whether by the combined effect of section 1(3) and 13(1) of the Federal Capital Territory Act, Section 1 and 17(1)(g) of Abuja Environmental Perfection (sic) Board Act and section 299 of the 1999 Constitution (as amended); Part XV (section 3-23) and Part XVI (section 1-24) of Abuja Municipal Area Council by – laws, 2019 is a valid law that can be enforce by the Respondent without the approval of the National**

Assembly and /or Hon. Minister of Health and Honourable Minister of Environment as the case may be? (Distill from Ground 1 of the Grounds of Appeal).

- b. **Whether Pharmacists Council of Nigeria (PCN) is the only competent authority to regulate the premises, license and inspect the operation and control of pharmaceutical companies in Nigeria including FCT – Abuja. (Distill from Grounds 2 and 3 of the Grounds of Appeal).**

In the determination of this Appeal, the issues shall be dealt with conjunctively.

There is no gain saying that the Federal Capital Territory is seen as a state in the Federation of Nigeria with the National Assembly as its legislative with the power to make laws regulating affair in the FCT, regardless of the existence of the six Area Councils in the FCT. Section 299 and 303 of the 1999 Constitution of FRN as amended.

Only such laws made by the National Assembly are applicable in the FCT pursuant to section 13(1) of the FCT Act.

It is further instructive to note that the entire of the Federal Capital Territory Abuja, is Urban Area with no area left as non – Urban for same to be regulated by any such Area Council.

Section 49 (1) of the Land Use Act 1978.

See ***ONA VS. ATENDA (2000) LPELR 6861 (CA)***.

It is the Provision of the Land Use Act that the Act shall not apply to land held by the Federal Government or its agency.

Section 51(2) of the Land Use Act vests the power on any land held or vested in the Federal Government on the President who then delegates FCT Minister pursuant to section 297(2) of the 1999 Constitution to oversee the FCT. The said section is in pari materia with section 18 of the FCT Act.

It is then correct to say that the Land Use Act which designates lands as Urban and non – urban is not applicable to the land in the FCT.

Section 299 of the Constitution of FRN 1999 (as amended) is clear on who makes laws for the Federal Capital Territory Abuja.

The said section 299(a) of the 1999 Constitution of the FRN as amended has this to say:-

“All the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the court 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.”

It is though true that under the 4th schedule to the Constitution of FRN 1999 there is provision for Local Government which by implication includes the Area Council in the FCT, on the basis of which the said FCT Area Council make Bye – laws, but in view of the fact the National Assembly has been Constitutionally recognized as legislatively responsible for making laws for the administration of the Federal Capital Territory Abuja, any such bye – laws, so called, made by any Area Council that is in conflict directly or indirectly with any law(s) made by the National Assembly applicable here in the FCT, is null, void and unconstitutional.

It is on record that the Respondent made a bye – law to make Part XV – (Foodstuff) and Regulated Premises (section 3 – 23) & Part XVI – Hotel, Guest Inn, Restaurant/Eating Houses, Bake

Houses, Dairies Aerated Water Manufactures, Food Preserving Establishment and places of sales of food to the public and other related matters (sections 1-24) of Abuja Municipal Area Council By-laws, 2019 for FCT.

We need to further state also that there is a law in the FCT regulating Public Health.

It is called the Public Health Act, Cap. 542 section 43 of the said Act has this provision.

“No bye – laws made by local authority under the Act shall come into operation until has been approved by the minister.”

Supposing without conceding that the Respondent could make the said law pursuant to section 55 of the Local Government Act, 1976, any such bye – laws made must have been approved by the Health Minister in compliance with section 43 of the Public Health Act, Cap. 542. In the absence of such approval, the bye – laws aforementioned, made by the Respondent remains a nullity and ineffective.

Supposing on the other hand that there was such approval sought and obtained by the Respondent, Abuja Environmental

Protection Board Act which is an Act of the National Assembly is established by law to be responsible for the enforcement of all environmental legislations and abatement of all forms of Environmental degradation and nuisance.

It's thus clear that the said bye – laws made by the Respondent is in frontal violation and usurpation of the power of the National Assembly.

Indeed, it is the Abuja Environmental Protection Board and not the Respondent that possess such power to make bye – laws which the Respondent was summoned under.

Supposing the bye – laws met the validity criteria, is there any mention of Pharmaceutical Companies in the bye – laws?

Any item not specifically mentioned in legislation, is excluded.

Jurisdiction is a threshold issue and cannot be glossed over.

Jurisdiction can be raised on the basis of parties, or subject matter both could affect the procedural or substantive jurisdiction of court.

The case of ***KLM ROYAL DUTCH AIRLINES VS. IDEHEN (2017) LPELR – 43576 (CA)***.

In any case, once the issue of jurisdiction is raised, same shall be dealt with frontally to avoid any academic exercise.

It is our conclusion and indeed finding that Abuja Municipal Area Council (AMAC) (Respondent) is not empowered in law to make such regulatory laws as the instant, and having made one, could not have had the competence to enforce same in law. You cannot put something on nothing and expect it to stand. ***UAC VS. MCFOY (1962) 1 AC 1.***

It is also our finding and indeed judgment that only the National Assembly can make laws for the FCT.

Consequently, that Part XV (sections 3 – 23) & Part XVI (sections 1-24) of Abuja Municipal Area Council bye – laws, 2019 is invalid and unconstitutional.

Hon. Justice Y. Halilu
Presiding Judge
28th February, 2024

Hon. Justice E. Enenche
Hon. Judge
28th February, 2024