

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CV/3574/2024
DELIVERED ON THE 15/04/2025**

BETWEEN:

BIO-ROYAL HOSPITAL LTD.....CLAIMANT

AND

ABUJA MUNICIPAL AREA COUNCIL.....DEFENDANT

JUDGMENT

The Claimant by Originating Writ of Summon dated the 13/08/2024 and filed same date approached this Hon. Court and formulated a lone question for determination to wit: **“Whether the principle of covering the field does not apply to the demand notice for operational permit/trade license dated 12/03/2024 served on the Claimant by the Defendant and whether same does not amount to double taxation”**.

The Claimant seeks the following reliefs from the Court to wit:

- (1) A Declaration by this Hon. Court that the Demand Notice for payment of operational permit/license dated 12/03/2024 served on the Claimant by the Defendant amounts to double taxation.*
- (2) An Order of this Hon. Court setting aside the demand Notice for operational permit/trade license dated the 12/03/2024 served on the Claimant by the Defendant as same is void.*
- (3) A Perpetual Injunction restraining the Defendant from further serving any notice for the payment of operational license on the Defendant.*

(4) An Order directing the Defendant to pay the Claimant the sum of Five Million Naira for cost of this action.

In support of the originating writ of summons, is an affidavit of 16 paragraphs duly deposed to by one Mrs. **Grace Adeyemi**, a litigation Secretary in the Law Firm of Claimant's Counsel.

The Claimant avers that it is a registered Hospital under the extant laws of Nigeria and carries on business under the jurisdiction of this Hon. Court. The Claimant stated that it was served with Demand Notice by the Federal Capital Territory Administration under the auspices of the Health and Human Services Secretariat Abuja, Department of Medical and Diagnostics (Private Health Establishment Registration and Monitoring Committee) for payment of its Annual Renewal of Registration license and upon payment, a Certificate covering the year 2024 was issued to him. The said Certificate was annexed as **Exhibit 'A'**.

That sometime in May, 2024 the Defendant also issued the Claimant a Demand Notice for Operational Permit/Trade License vide **Exhibit B**.

The Claimant stated that the demand Notice served by the Defendant is of one and the same in form and nature with the one issued by the Federal Capital Territory Administration and that the field in respect to the Demand Notice for Registration license has already been covered by the Federal Capital Territory Administration and the Notice amounts to double taxation on the same subject matter. The Claimant annexed a pre-action Notice as **Exhibit 'C'**.

The Claimant filed a written address wherein a sole issue was formulated for determination to wit;

“Whether the principle of covering the field does not apply to the demand notice served on the Claimant and whether same does not amount to double taxation”

Learned Counsel argued that by virtue of section 4 of the 1999 Constitution of the Federal Republic of Nigeria, if any law enacted by the House of Assembly of a state is inconsistent with any law validly

made by the National Assembly, the law made by the National Assembly would prevail and that other law shall to the extent of the inconsistency be void.

It is important to state from the onset that by the proof of service before the Court, the Defendant was served on the 20/11/2024 but has failed and or neglected to put in appearance and or cause same to be enter for them.

The law is elementary that a plaintiff can only succeed on the strength of his case and not on the weakness of the Defendants case. Furthermore, he who assert must prove. Where a Claimant seeks declaratory reliefs, the burden is on him to prove his entitlement to those reliefs on the strength of his case. *ALAGBAOSO VS. INEC & ORS. (2022) LPELR 58889 (CA)*.

It is trite that proceeding may be begun by originating summons where the sole or principal questions at issue is or likely to be one of the constitutions of a written law or other documents or some other question of law. The very nature of an originating summons is to make things simple for hearing. It is available to any party claiming interest under a deed, will, or other written instruments whereby he will apply by originating summons for the determination of any question of construction arising under the instrument for declaration of his interest. It is a procedure where the evidence in the main suit is by way of documents and there is no serious dispute as to their existence in the pleading of the parties to the suit. See *KEHINDE VS. CAN & ORS. (2012) LPELR 14821 (CA)*.

The grouse of the Claimant before the Court is related to the Demand Notice for Operational permit/Trade License served on him by the Defendant. The Claimant sought to know whether by virtue of doctrine of covering the field, the Defendant can still serve demand Notice on him where he has paid to the Federal Capital Territory Administration already.

The basis of the doctrine of covering the field is such that where a main, principal or superior law has covered a given field or area, any other subsidiary law made in that area cannot operate side by side with the main/principal superior law. If it is inconsistent, it has to be declared void to the extent of its inconsistency. See **PPP VS. INEC & ORS. (2015) LPELR 25706 (SC)**.

Indeed, the legal framework of the Federal Capital Territory, is an Act enacted by the National Assembly under Federal Capital Territory Act, third schedule, section 3(1) which stated as thus:

“The Secretariat may register under license and monitor private health institutions and establishments in accordance with private Hospital and other health establishment (Registration and licensing) regulations (1989) Federal Capital Territory Abuja Nigeria Edict”.

Indeed, the law above empowering the Federal Capital Territory Administration under the auspices of the Health and Human Services Secretariat, Department of Medical and diagnose to collect monies for the renewal and issuance of Registration license to the private business.

It is instructive to state here that by virtue of section 4 of the 1999 Constitution of the Federal Republic of Nigeria. If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly would prevail and that other law shall to the extent of the inconsistency be void.

The essence of the doctrine of covering the field is to support the principle of the hierarchy of the Legislation as a practical demonstration of the supremacy of the Federal Act when Federal and State legislation touch upon the same subject matter. See **OKAFOR VS. OKONKWO (2002) 17 NWLR (PT. 798) PART A – B**.

Indeed, the Claimant has complied with demand Notice issued by the Federal Capital Territory Administration and defrayed same. The 2nd

Demand Notice issued by the Defendant on the same subject matter certainly amount to double taxation.

I shall for this purpose grant the reliefs sought by the Claimant same having not been challenged by the Defendant.

Judgment therefore is entered in favour of the Claimant as follows:

- (1) A Declaration **is hereby made** that the Demand Notice for payment of operational permit/license dated 12/03/2024 served on the Claimant by the Defendant amounts to double taxation.
- (2) An Order of this Hon. Court setting aside the demand Notice for operational permit/trade license dated the 12/03/2024 served on the Claimant by the Defendant as same is void is hereby granted.
- (3) A Perpetual Injunction restraining the Defendant from serving same notice on the Claimant is hereby granted.
- (4) General damages of ₦ 5 Million is granted.

SIGNED:
HON. JUDGE
15/04/2025.

APPEARANCE:

Ijeoma Madu, Esq, with Culbert Esene, Esq, for the Claimant

Defendant absent and not represented