

*Hotel Licensing and other related matters  
Powers of Lagos State House of Assembly to legislate on  
Constitutionality of*

IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA  
ON FRIDAY THE 19<sup>TH</sup> DAY OF JULY, 2013  
BEFORE THEIR LORDSHIPS

ALOMA MARIAM MUKHTAR  
IBRAHIM TANKO MUHAMMAD  
JOHN AFOLABI FABIYI  
SULEIMAN GALADIMA  
(LEAD JUDGMENT)  
NWALI SYLVESTER NGWUTA  
MUSA DATTIJO MUHAMMAD  
STANLEY SHENKO ALAGOA

HON. CHIEF JUSTICE OF NIGERIA  
JUSTICE, SUPREME COURT  
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SC. 340/2010

BETWEEN:

HON. MINISTER FOR JUSTICE AND  
ATTORNEY-GENERAL OF FEDERATION

PLAINTIFF

AND

HONOURABLE ATTORNEY-GENERAL OF  
LAGOS STATE

DEFENDANT

*“The Federal Government lacks the Constitutional vires to make laws outside its legislative competence which are by implication residue matters for the State Assembly: the National Assembly cannot, in the exercise of its powers to enact some specific laws, take the liberty to confer power or authority on the Federal Government or any of its agencies to engage in matters which ordinarily ought to be the responsibility of a State Government or its agencies. Such pretext cannot be allowed to enure to the Federal Government or its agencies so as to enable them*

*encroach upon the exclusive constitutional authority conferred on a state under its residual legislative power:"*

Pursuant to Section 4(2) (3) item 60(d) Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Assembly enacted the Nigerian Tourism Development Corporation Act 1992 . The Act created the Nigerian Tourism Development Corporation whose functions were to register, classify, grade and regulate all Hotels, Motels, Hospitality and tourism enterprises, and tour operators. In 2003, the Lagos State Government passed into law the Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003, which conflicted with the mandate of the Nigerian Tourism Development Corporation Act. In 2009, the Lagos State Government published a public notice that registration of hotels and tourism related establishments in Lagos State was the exclusive responsibility of the Lagos State Ministry of Tourism and intergovernmental relations. The law was subsequently amended by the Hotel Licencing (Amendment) Law; Lagos State of Nigeria Official Gazette dated 20<sup>th</sup> July, 2010.

Based on the foregoing, the Nigerian Tourism Development Corporation issued a public notice advising all operators of hotels, and companies alike to disregard the earlier notice issued by the Lagos State Government. In this regard, the Attorney-General of the Federation (AGF), on behalf of the Federal Government, commenced this action at the Supreme Court against Attorney-General of Lagos State (A-G Lagos State), by way of originating summons challenging the validity of the laws enacted by the House of Assembly of Lagos State.

The issues for determination were: (i) Whether regulation, registration, classification and grading of Hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishments are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos State House of Assembly; and (ii) Whether the laws enacted by the Lagos State Government on the subject are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act.

The Plaintiff's counsel contended that by the provisions of item 60(d) of the Second Schedule, Part 1 of the 1999 Constitution (as amended), matters pertaining to the regulation, registration, classification, and grading of Hotels, Motels, Guest inns, Tour operating outfits, Restaurants, Travel Agencies, Fast Food Outlets and other tourist related establishments were under the exclusive legislative list. Thus, the Lagos State Government has no power to legislate and promulgate laws on those matters. The Plaintiff's counsel fortified his position by reference and reliance on the provisions of the "Tourist Traffic Act" 1939 of the Republic of Ireland which dealt essentially with items such as enumerated in the exclusive legislative list of the 1999 Constitution of the Federal Republic of Nigeria. The Plaintiff urged the court to declare the three enactments by Lagos State Government illegal, null and void.

In response, the Defendant's counsel submitted that a scrutiny of the Constitutional provisions revealed that the power of National Assembly over tourist related matters was limited to regulation of "tourist traffic" as provided in item 60(d). He also noted, the expression - "tourist traffic" is not defined in the 1999 Constitution; therefore, the Plaintiff's definition as contained in the Republic of Ireland's Tourist Traffic Act of 1939 was misleading and totally irrelevant. Moreso, as the Constitutions of the two countries are dissimilar in their system of Government, relying on the decision of *Ogugu v. The State (1994) 9 NWLR (pt.366) 1 at 43*.

On the first issue, the Honourable Justice Galadima found in favour of the Defendant. His Lordship considered the intention of the lawmakers and relied on Oxford Advanced Learners Dictionary 7<sup>th</sup> Edition, which defines "tourist" **as a person who is travelling** or visiting a place while traffic is **movement of people or goods** from one place to another. Applying the definitions, His Lordship was of the view that the words in item 60(d) confines the powers of the National Assembly to the regulation of only "tourist-traffic", and held that the contention of the Plaintiff could not be sustained.

He stated further that Nigeria as a Federal Republic cannot adopt definitions from Republic of Ireland which practices a Unitary system of Government. In effect, the Apex court held that the National Assembly cannot take the liberty to confer power or authority on the Federal Government to engage in matters which ordinarily ought to be

the responsibility of a State Government or its agencies under its residual legislative power. *A-G Lagos State v. Attorney-General Federation (2003) 12 NWLR (Pt.833) 1 at 195-196.*

On the second issue, the Apex Court identified that the pedestal upon which the claim is also anchored is the Nigerian Tourism Development Corporation Act, an enactment deriving its authority from the provisions of the Constitution, with specific powers to register classify and grade hospitality and tourism enterprises. The Supreme Court noted that the three Laws promulgated by Lagos State are not items in the Exclusive and Concurrent lists but are rather Residual matters for the State; hence, the Laws enacted by the Lagos State Government are *intra vires* the powers of the State Government.

The Court also considered the subject introduced in the 2010 Amendment of the Hotel Licensing Law and opined thus: *"I have carefully studied the main law the Hotel Licensing Law of 2003. I do not think its provisions have to do with grading or regulating of hotels generally, other than licensing. It has nothing to do with tourism perse but the October amendment of 2010 incorporated the licensing and grading of hospitality sector such as eateries, bars, casinos, hotels and event arenas etc. Clearly this is legislation by a state legislature..."*

Relying on Section 4(7) of the 1999 Constitution (as amended), where a State House of Assembly is empowered to make laws for the peace, order and good government of its state, the Supreme Court held that it was not in doubt the provision was considered by the Lagos State Government before enacting the laws.

On reliance of the Plaintiff on the doctrine of *"covering the field"*, His Lordship held such is only applicable to where a matter legislated on is in the concurrent list and the State enactment is inconsistent with the legislation of the Federal Government. *Attorney- General Ogun State v. Attorney-General Federation (1982) 13 NSCC 1 at 35.*

On this note, the Supreme Court refused declarations and injunction sought by the Plaintiff holding that the case fails in its entirety and therefore dismissed same.

Counsel

T.O. Busari Esq. and Egondú Nnoke Esq. for the Plaintiff.

Adeola Ipaye (Attorney-General, Lagos State) with Lawal Pedro SAN (Solicitor-General, Lagos State) for the Defendant.