

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON TUESDAY THE 19TH DAY OF JULY 2020
BEFORE THE HONOURABLE
JUSTICE I.N OWEIBO
JUDGE

SUIT NO: FHC/L/CS/1599/2020

BETWEEN:

ASSOCIATION OF NIGERIAN BOOKMAKERS ---- PLAINTIFF

AND

- 1. THE NATIONAL LOTTERY REGULATORY COMMISSION**
- 2. NATIONAL LOTTERY TRUST FUND**
- 3. LAGOS STATE LOTTERIES BOARD**
- 4. ABIOLA BASHIR ARE**
(Sued as representative of Association of State Gaming regulators)
- 5. ECONOMIC AND FINANCIAL CRIMES COMMISSION**
- 6. INSPECTOR GENERAL OF POLICE**

---- DEFENDANTS



JUDGMENT

By an originating summons dated 12th November, 2020 and filed on 16th November, 2020, the Plaintiff sought answers to the following questions -

- A. Whether section 7 of the National Lottery Act 2005 as amended by Section 14 of the National Lottery (Amendment) Act 2017 is in conflict with Part II, Section 5 of the Schedule to the Taxes

and Levis (Approved List for Collection) Act, Cap T2 Laws of the Federation of Nigeria with respect to regulation of and collection of taxes and levies from sports betting business.

- B. Whether considering Section 7 of the National Lottery Act 2005 as amended by the National Lottery (Amendment) Act 2017 and Section 9 of the Lagos State Lotteries (Amendment) Law 2008, the regulation of betting business by the 1st – 3rd Defendants in Lagos State amounts to dual regulation.

If question B I answered in the affirmative

- C. Whether the dual regulation of sports betting business by the 1st – 3rd Defendant in Lagos State violates Section 4 Schedule 3 of the 1999 Constitution as amended.

If question C is answered in the affirmative

- D. Whether the dual regulation sports betting business by the 1st and 2nd Defendants; and the members of the 4th Defendant in their States across the federation violates Section 4 and schedule 2 of the 1999 Constitution as amended.

- E. Whether the national regulation of sports betting business is within the powers of the 1st and 2nd Defendants pursuant to Section 4 (2) (3) (4) and Schedule 2 of the 1999 Constitution as amended.

- F. Whether the 3rd Defendant has the power to regulate sports betting business in Lagos State via Section 9 of the Lagos State Lotteries (Amendment) Law 2008 pursuant to Part II, Section 5 of the Schedule to the Taxes and Levies (Approved



List for Collection) Act, Cap T2 Laws of the Federation of Nigeria and Section 4 (6) and (7) of the 1999 Constitution as amended.

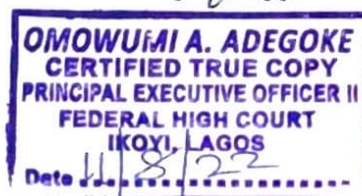
If question F is answered in the affirmative

- G. Whether the members of the 4th Defendant have the powers to regulate sports betting business in this State by their State lottery laws pursuant to Part II, Section 5 of the Schedule the Taxes and Levies (Approved List for Collection) Act, Cap T2 Laws of the Federation of Nigeria and Section 4 (6) and (7) of the 1999 Constitution as amended.

In anticipation of the questions being answered in its favour, the Plaintiff sought the following reliefs -

1. A Declaration that Section 7 of the National Lottery act 2005 as amended by Section 14 of the National Lottery (Amendment) Act 2017 is in conflict with Part II, Section 5 of the schedule to the Taxes and Levies (Approved List for Collection) Act, Cap T2 Laws of the Federation of Nigeria with respect to regulation of and collection of taxes and levies from sports betting business.
- 2a. A Declaration that the regulation of lottery business in Lagos State by the 1st – 3rd Defendant pursuant to Section 7 of the National Lottery Act 2005 as amended by the National Lottery (Amendment) Act 2017 and Section 9 of the Lagos State lotteries (Amendment) Law 2008 amounts to dual regulation.

If relief 2a is granted



- 2b. A Declaration that the regulation of sports betting business across the federation by the 1st and 2nd Defendants pursuant to Section 7 of the National Lottery Act 2005 as amended by the National Lottery (Amendment) Act 2017 and the regulation of sports betting business by the members of the 4th Defendant in their states via their states lottery laws amount to dual regulation.
- 3a. A Declaration that the dual regulation of sports betting business in Lagos State by the 1st-3rd Defendant pursuant to Section 7 of the National Lottery Act 2005 as amended by the National Lottery (Amendment) Act 2017 and Section 9 of the Lagos State Lotteries (Amendment) Law 2008 is contrary to Section 4 and Schedule 2 of the 1999 Constitution as amended.

If relief 3a is granted

- 3b. A Declaration that the dual regulation of sports betting business across the federation by the 1st and 2nd Defendants via the National Lottery Act 2005 as amended by National Lottery (Amendment) Act 2017; and the members of the 4th Defendant in their states via their states lottery laws is contrary to Section 4 and Schedule 2 of the 1999 Constitution as amended.
- 4a. A Declaration that the 1st and 2nd Defendants have the power to regulate sports betting business across the federation pursuant to Section 7 of the National Lottery Act 2005 as amended by the National Lottery (Amendment) Act 2017 and Section 4 (2) (3) and (4) of the 1999 Constitution as amended.

ALTERNATIVELY

- 4b. A Declaration that the 3rd Defendant has power to regulate sports betting business in Lagos State via the Lagos State Lotteries (Amendment) Law 2008 pursuant to Part II, section 5 of the



Schedule to the Taxes and Levies (Approved List for Collection) Act, Cap T2 Laws of the Federation of Nigeria and section 4(6)(7) of the 1999 Constitution as amended.

If relief 4b is granted

- 4c. A Declaration that the members of the 4th Defendant have the powers to regulate sports betting business in their states via their states lottery laws pursuant to Part II, Section 5 of the Schedule to the Taxes and Levies (Approved List for Collection) Act, Cap T2 Laws of the Federation of Nigeria Section 4 (6) and (7) of the 1999 Constitution as amended.
- 5a. An Order of perpetual injunction restraining the 1st, 2nd 5th and 6th Defendants jointly and severally by themselves and or their agents, servants and privies from demanding and collecting regulatory fees, taxes and levies from sports betting companies in Lagos State.

ALTERNATIVELY

- 5b. An Order of perpetual injunction restraining the 3rd Defendant by herself and or her agents, servants and privies from demanding and collecting regulatory fees, taxes and levies from sports betting companies in Lagos State.

If relief 5b is granted

- 5c. An Order of perpetual injunction restraining the members of the 4th Defendant by themselves and or their agents, servants and privies from demanding and collecting regulatory fees, taxes and levies from sports betting companies in their respective states.

In support of the originating summons, the Plaintiff filed a 40 paragraphs affidavit deposed to by **Olabimpe**



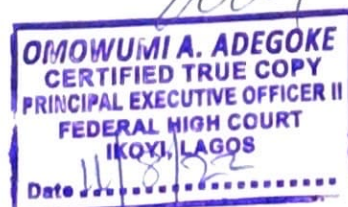
Akingba, the Executive Secretary of the Plaintiff, and exhibiting various documents.

The 1st Defendant filed a counter affidavit of 12 paragraphs deposed to by **Ayodeji Olodo** with one exhibit on 11th March 2022. The 2nd Defendant also filed a counter affidavit in opposition; it is of 18 paragraphs deposed to by **Igweh Robert** on 25th March, 2021. The 3rd Defendant filed counter affidavit of 33 paragraphs deposed to by **Damilola Oyegoke** on 30th June 2021. The 4th Defendant filed a counter affidavit of 22 paragraphs deposed to by **Abiola Bashir Are** on 21st June, 2021.

The 5th Defendant was served the originating processes on 11th February, 2021 as shown in the affidavit of service filed by **T.K. Lawal**, a Bailiff of the Court. The 6th Defendant was served the originating processes on the 18th January, 2021. The 5th and 6th Respondents did not file processes in opposition and did not also attend the Court proceedings.

FACTS

The Plaintiffs is an association made up of Sports Betting Companies in Nigeria, and is incorporated under the Companies and Allied Matters Act.



The National Assembly enacted the National Lottery Act which created the 1st Defendant and vested it with the responsibility of regulating the operation of the National Lottery in Nigeria and the 2nd Defendant-the National Lottery Trust Fund into which taxes from companies are paid.

The 3rd Defendant is created by the Lagos State Government under the Lagos State Lotteries Law 2004.

The 4th Defendant is a representative of Association of State Gaming Regulators in Nigeria. The association comprises of regulators of lottery and gaming business in 20 State across the Country for the purposes of protecting revenue accruing to the States.

The 1st Defendant issues licenses to persons or organizations who are engaged in the business of sports betting, which license is used nationwide. The 3rd Defendant is also insisting that persons who carry on the business of sports betting in Lagos State are to also apply for and obtain license of the State to carry on the business.

In a press release issued by the 1st Defendant, it condemned the act of State Governments, particularly the Lagos State Lotteries Board, in declaring licensees of the



1st Defendant operating in the State illegal. The press release stated that companies which have been licensed by the 1st Defendant are entitled to operate in any part of the Federation. The press release is Plaintiff's *Exhibit E*. In reaction to the press release the State Lottery Regulatory Bodies through the 4th Defendant issued a communiqué admonishing the 1st Defendant to respect the rights of the State regulatory bodies pursuant to Part 2 Section 5 of the Taxes and Levies (Approved List for Collection) Act. The said publication is Exhibit G. they stated that the insistence of the 1st Defendant infringes on the right of the State to generate revenue.

It thus appears that the Plaintiff and its members are aggrieved as they are made to pay double taxation to the Federal Government and to the States.

The Plaintiff said that with a view to enforcing its own laws, the Kaduna State Internal Revenue Service wrote to lottery and gaming companies carrying on business in the State with the licence of the 1st Defendant to apply for licence and pay regulatory fees in the State, and threatened to close down the premises of any company that does not comply; that in furtherance of that threat, the Kaduna State

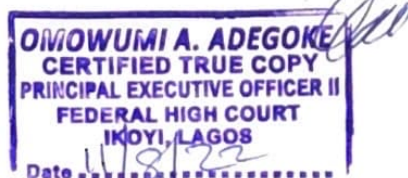


Government closed down and sealed the offices of the members of the Plaintiff.

The Plaintiff exhibited publications by the Head of the Internal Revenue in Kaduna State, **Zaid Abubakar** claiming that betting companies are owing the State over 500 Million Naira, and that the exercise will continue until all the offices are shut down. The publications are *Exhibit H1 and H2*.

Plaintiff further stated that the Minister of Special Duties and Governmental Affairs, Senator **George Akume** also indicated that there is a backlog of over N100B revenue from the lottery and gaming sect the government was making efforts to recover, and called on those owing to pay their outstanding liabilities or risk the revocation of the permits and licenses; that the Minister in furtherance of that, inaugurated an 11 man Ministerial Task Force to recover the alleged unremitted lottery funds from operators. The publications are *Exhibits I and J*.

The Plaintiff said that the dual regulation of lottery and gaming business by the 1st, 2nd, 3rd and 4th has created much pain, confusion, high set of cost, complex reporting/regulatory interface, among others, and has led to multiple taxation and uncertainty of regulatory frame work,



hardship, loss of profit and great inconvenience; that there is therefore need for the court to interpret section 4 and Schedule 2 of the 1999 Constitution to prevent a situation whereby the members of the Plaintiff are impeded by unnecessary exposure to dual regulatory regime, dual taxation and arbitrary charges.

The Plaintiff exhibited copies its Certificate of Incorporation *Exhibit A1*, the constitution of the Plaintiff- *Exhibit A2*, the National Lottery Act 2005 -*Exhibit B1* the National Lottery (Amendment) Act- *Exhibit B2*; the Lagos State Lotteries (Amendment) Law 2008, Licenses and receipts for various payments.

The case of the 1st Defendant is that this case is a duplication of Suit No. SC/1/2008 now pending before the Supreme Court between the ***A.G of Lagos State Vs. The A.G of the Federation & Anor***; that the instant Suit constitutes an abuse of Court process and therefore should be struck out or adjourned sine die pending the decision of the Supreme Court.

The 1st Defendant denied all the allegations made in the originating summons. I note however that the counter affidavit did not deny the depositions in the affidavit in support



of the originating summons, rather, the 1st Defendant was denying the questions for determination and the reliefs sought. The basis for the denial is that the questions for determination and reliefs sought are before the Supreme Court.

The 1st Defendant attached a copy of the originating processes of the Suit before the Supreme Court though it is not marked as an exhibit.

The 2nd Defendant denies most of the depositions in the affidavit in support. The 2nd Defendant said that the National Lottery Act as amended prescribes the percentage of proceeds payable by lottery operators periodically, which is not done on monthly basis; that the issuances of licenses to lottery operators including those engaged in sports betting is statutorily regulated by the National Lottery Regulatory Commission nationwide pursuant to the National Lottery Act, 2005 as amended; that the proceeds of the operators paid into the trust fund are utilized for the purposes set down in the Act.

The 3rd Defendant admitted most of the facts deposed to in the affidavit in support, except those in paragraphs 21, 22 and 39.



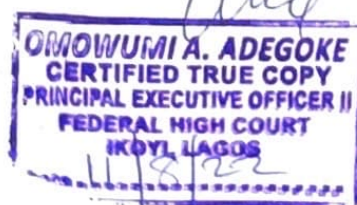
The 4th Defendant said that it is saddled with the responsibility of regulating gaming and lottery activities in their States; that members of the 4th Defendant have the sole power to license, collect tax and levies from members of the Plaintiff operating in the respective States; that it is also the responsibility of the members of the 4th Defendant to protect and collect revenue accruing to their respective State Governments from lottery and gaming industry within their state jurisdictions; that the 1st and 2nd Defendants do not have authority to issue license or regulate any entity engaging in lottery and gaming business in Nigeria.

1ST DEFENDANT'S PRELIMINARY OBJECTION DATED 29TH

JUNE, 2021

The 1st Defendant's preliminary objection seeks for -

1. An Order of this Honourable Court striking out this Suit for being incompetent and an abuse of Court process.
2. An Order of this Honourable Court adjourning this Suit sine die pending the decision of the Supreme Court.



The grounds for the objection are set out in the Notice. in support is a 4 paragraph affidavit deposed to by Ayodeji Olodo, exhibiting one document.

The Plaintiff opposed the preliminary objection with a counter affidavit of 15 paragraphs deposed to by Olabimpe Akingba. The 3rd Defendant also filed a counter affidavit of 5 paragraphs in opposition deposed to by Christopher Friday on 22nd November, 2021. The 4th Defendant filed a counter affidavit of 14 paragraphs in opposition of the preliminary objection of the 1st Defendant, deposed to by Adebayo Ojedapo on 13th July, 2021.

In their written address signed by Ayodeji Obayomi, Learned Counsel for the 1st Defendant one issue for determination was identified -

“Whether in the circumstances of this case, this Honourable Court ought to strike out this Suit for being incompetent, and an abuse of Court process or in the alternative adjourn this Suit sine die pending the decision of the Supreme Court.”

Learned Counsel submitted that this Suit is an abuse of Court process in view of the matter before the Supreme Court



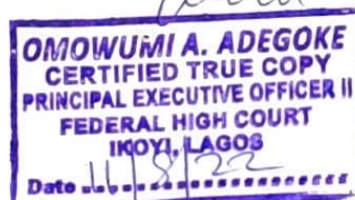
in Suit No: SC/1/2008 between the Attorney General of Lagos State vs. The Attorney General of the Federation & Anor on the same subject matter in this Suit.

Counsel referred to the case of *UBA Plc. vs. Dana Motors Ltd (2018) LPELR – 44101 (CA)* on what constitutes an abuse of Court process. Counsel also referred to *Olatirin vs. Agaka (1998) 6 NWLR (Pt. 554) 366*; *NV Scheep vs. MV "S" Araz (2001) FWLR (Pt. 1934) 543*.

Learned Counsel referred to the questions for determination in the Suit before the Supreme Court and argued that that Suit will be dispositive of the case before this Court, citing *Ikpeazu vs. PDP & Ors. (2017) LPELR – 42611 (CA)*.

Counsel urged the Court to uphold the preliminary objection and strike out this case or in the alternative adjourned the case sine die to await the decision of the Supreme Court.

Learned Counsel for the Plaintiff, Ola Faro Esq., also raised one issue for determination -



“Whether or not this Suit is an abuse of Court process”

Counsel referred to *Saraki vs. Kotoye* on the circumstances that will give rise to an abuse of judicial process. Counsel argued that the case of *UBA Plc. Vs. Dana Motors Ltd (Supra)* cited by Counsel for the 1st Defendant is not on all fours with this case and therefore should be discountenanced; that the parties and reliefs sought in this Suit and Suit No. SC/1/2008 are different; that 1st Defendant has failed to show how this Suit is an abuse of Court process. He urged the Court to dismiss the preliminary objection.

In his written address Learned Counsel for the 3rd Defendant also identified and argued on the issue.

“Where or not the application of the 1st Defendant/Applicant is meritorious”.

Counsel submitted that a case of abuse of Court process has not been made out. Counsel relied on *Ogboru vs. Uduaghan (2013) 13 NWLR (Pt. 1370) 46; CBN vs. Ahmed (2011) NWLR (Pt. 224) 373*, and other judicial authorities on when abuse of Court process is said to arise. Counsel urged the Court to dismiss the preliminary objection of the 1st Defendant.





Eze Okan, of Counsel for the 4th Defendant also proffered arguments in support of his contention that this Suit is not an abuse of Court process in that the parties, subject matter and issues in this Suit are not the same as those in Suit No: SC/1/2008 before the Supreme Court. Counsel referred to a number of authorities as well, including *Oyeyemi & Ors vs. Owoeye & Anor (2017) LPELR-41903 (SC)*; *Lokpobiri vs. Ogola (2016) 3 NWLR (Pt. 1499) 328*.

I have considered the objection and the submissions of learned counsel including the reply on points of law dated 6th October, 2021. I notice that the Plaintiff did not address the Court on the application by the 1st Defendant to adjoin this Suit sine die to await the decision of the Supreme Court.

The nature of abuse alleged by the 1st Defendant is the existence of multiplicity of actions; that there is pending before the Supreme Court in its original jurisdiction Suit No: SC/1/2008 instituted by the Attorney General of Lagos State against the Attorney General of the Federation and the National Assembly.

Where the abuse alleged is based on multiplicity of actions, it must be shown that the parties, subject matter and issues are the same in the actions and that the filing of the



subsequent action was done maliciously, with intention of annoying or irritating their opponent: see *Ikiné vs. Edjerode* (2001) 18 NWLR (Pt. 745) 466; *Bello vs. Surajo* (2021) LPELR-55542 (CA).

Looking at Exhibit A of the 1st Defendant, it is seen that none of the parties in the instant case is part of the matter in the Supreme Court. On the above I find that this Suit does not constitute an abuse of Court process.

I now come to the alternative prayer of adjourning this case sine die pending the decision of the Suit in the Supreme Court. Looking at the questions for determination and reliefs sought in Suit No: SC/P/2008, I agree with the 1st Defendant that a decision in that case by the Supreme Court would affect this case, but it will take cover all the issues in this Suit.

Moreover, there are decisions of the Court of Appeal which have dealt with the major issues in this case and these I am bound to follow. The objection is accordingly overruled.

1ST DEFENDANT'S 2ND PRELIMINARY OBJECTION

The 2nd preliminary objection of the 1st Defendant is dated 6th October, 2021 challenging the competence of this Suit. The ground for the objection is the failure of the Plaintiff to serve the 1st Defendant a pre-action notice prior to the filing

of this Suit. The preliminary objection is supported by an affidavit of 4 paragraphs deposed to by Ayodeji Olodo.

In opposition the Plaintiff field a written address dated 21st October, 2021. The 3rd Defendant filed a counter affidavit of 5 paragraphs, which in the main are legal arguments instead of facts.

The 4th Defendant also opposed the preliminary objection and filed a counter affidavit of 7 paragraphs deposed to by Adebajo Ojedapo on 19th November, 2021 which is also mainly filled with legal arguments.

I have considered the objection and the evidence before the Court and the submissions of Learned Counsel. The National Lottery Act which establishes the 1st Defendant in section 50 (3) required the service of a pre action notice of one month.

The fact that the requisite pre actions notice was not served prior to the filing of this action is not denied. The contention of the Plaintiff is that the law in section 50 (3) has listed out the persons to be served the pre action notice; that going by the provision and interpreting same literally, the law did not mention the National Lottery Commission or National Lottery Trust Fund as those to be served. In contrast, counsel



referred to section 12 (2) of the Nigerian National Petroleum Corporation Act and section 92(1) Nigeria Ports Authority Act.

Secondly, counsel contended that section 50(3) of the Act required service of pre action notice where the subject matter of the Suit relates to the acts, neglect or default or damage or injury done by the officials of the 1st Defendant; that this Suit is only for the interpretation of the law in respect of the taxes and levies Act and the 1999 Constitution; that this Suit does not come under Section 50(3) of the National Lottery Act.

Learned Counsel for the 3rd Defendant also made similar arguments: that the 1st Defendant is not mentioned in the provisions of Section 50 (3) of the National Lottery Act and so it is excluded from service of pre action notice;

Learned counsel for the 4th Defendant also made similar arguments that as the 1st defendant is not expressly mentioned in section 50(3) of the Act, it is excluded from service of pre-action notice; that this Suit comes under one of the exceptions to the requirement of service of pre action notice, referring to various judicial authorities.

Section 50 (3) of the National Lottery Act provides:-



(3) No Suit shall be commenced against a member of the Board or the Board of Trustees, the Director General of the Commission, the Secretary of the Trust Fund or any other officer of employer of the commission or Trust Fund before the exportation of a period of one month after written notice of the intention to commence the Suit shall have been served on the commission or Trust Fund by the intending Plaintiff or his agent.

In the case of *Nigeria Employers Consultative Association & Anor vs. A.G. Federation & Ors (2021) LPELR-54042 (CA)* the Court of Appeal considered the provisions of Section 50(3) of the National Lottery Act and held as follows:-

“From the clear wordings of the provisions of Section 50 of the National Lottery Act 2005 especially subsection 3 thereof, the Appellants are unequivocally and statutorily enjoined to mandatorily give the 3rd Respondent pre action notice to commence an action or Suit against the 3rd Respondent”.

In the above case cited, the 3rd Respondent referred to is the National Lottery Trust Fund, and the contention that elicited that holding was the argument of Learned Counsel for the Appellant that the law does not require the service of a pre action notice on the 3rd Respondent because it is not



within the category or contemplation of section 50(3) of the Act.


The officers mentioned in section 50 (3) of the Act are officers of the Commission for whose actions the Commission on Trust Fund may be vicariously liable.

I do not believe that the legislature intended to exclude the Commission. That is why the law requires the service of the pre action notice on the Commission or trust fund and not on the individual officers of the Commission.

The starting words of the subsection are “No Suit”. That is to say that there is no discrimination as to the nature of Suit for which pre action notice must be served: see *Amadi vs. NNPC (20020) 10 NWLR (Pt. 674) 76- at 112.*

On the above, I am of the opinion that the Plaintiff was mandatorily required to serve a pre action notice on the 1st Defendant, and that the failure of the Plaintiffs to serve the notice means that the jurisdiction of the Court to entertain this Suit is suspended.

The preliminary objection of the 1st Defendant on this ground should succeed. It is accordingly upheld.


OMOWUMI A. ADEGOKE
CERTIFIED TRUE COPY
PRINCIPAL EXECUTIVE OFFICER II
FEDERAL HIGH COURT
IKOYI, LAGOS
Date 11/8/22

PRELIMINARY OBJECTION OF 2ND DEFENDANT

The 2nd Defendant by a motion dated 24th March, 2021 prayed the Court for an order striking out this Suit against the 2nd Defendant for failure of the Plaintiff to serve a pre action notice on the 2nd Defendant.

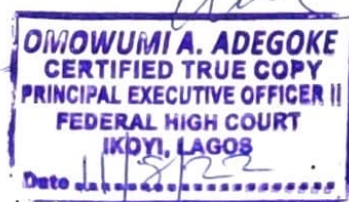
The application was opposed by the Plaintiff, the 3rd and 4th Defendants. The grounds for objection to the motion are substantially the same as that of the preliminary objection of the 1st Defendant.

For the reasons I have given in respect of the preliminary objection of the 1st Defendant in respect of the non-service of pre action notice, I agree with the 2nd Defendant, that its name is to be struck out.

SUBSTANTIVE MATTERS

Learned Counsel for the parties (except the 5th and 6th Defendants) offered arguments on the questions raised in the originating summons. However, Learned Counsel for the 1st Defendant reiterated his contention that this Suit is an abuse of Court process in view of the Suit pending in the Supreme Court.

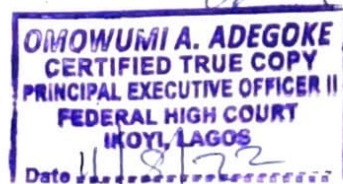
The arguments of Learned Counsel are on two flanks:-



1. Whether the provisions of Section 7 of the National Lottery Act 2005 as amended by Section 14 of the National Lottery (Amendment) Act 2017 is no conflict with part II Section 5 of the schedule to the Taxes and Levies (Approved List for Collection) Act with respect to taxes and levies from sports betting companies.
2. Whether it is within the competence of the National Assembly to Legislate on Laws regulating or relating to lotteries.

1. Whether there is conflict

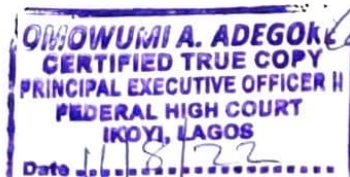
Learned Counsel for the Plaintiff referred the Court to section 7 of the National Lottery Act, Section 57 of the Act and Section 14 of the National Lottery (Amendment) Act. Counsel also referred to Part II, Section 5 of the schedule to the Taxes and Levies (Approved List for Collection) Act. Counsel submitted that a combined reading of these provisions shows that the 1st and 2nd Defendants are empowered to regulate sports betting across the federation, whereas Part II, Section 5 of the schedule to the taxes and levies (Approved List for Collection) Act empowers the State Government to collect taxes and regulatory fees for pools betting, lotteries and casino business.



Counsel contended that these two Federal Acts are in conflict; that there is no provision of the National Lottery Act which expressly repealed the provisions of the taxes and Levies (Approved List for Collection) Act; that there is no order of Court nullifying the Act; that a statute cannot be repealed impliedly by another statute; that the repeal must be specific. Counsel relied on *R.E.A.N Plc. vs. Amumnu (2003) 6 NWLR (Pt. 815) 52.*

Counsel argued that where there is a conflict between two statutes of the National Assembly, recourse will be made to the Constitution for interpretation, relying on *FRN vs. Osahon (2006) 5 NWLR (Pt. 973) 582.* In this wise, Counsel referred to section 4(2)(3)(4) and Schedule 2 of the 1999 Constitution, to know whether it is the Federal Government or State Government that is qualified to make laws to regulate lottery business in Nigeria.

Learned Counsel for the 2nd Defendant C.U. Okafor, Esq. submitted that there is nothing in the National Lottery Act 2005 as amended suggesting that the 1st or 2nd Defendant collects taxes on behalf of the Federal Government. Counsel contended that the statutory payments required by the Act are not taxes. Counsel highlighted the purposes of the funds required of licensees under section 24(1) and 24A as

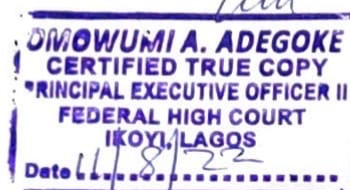


provided in section 42 of the Act. Counsel referred also to *Polaris Bank Plc. vs. Abia State Board of Internal Revenue & 5 Ors.* (Appeal No: TAT/SEZ/001/17; that there is no double or dual taxation as alleged by the Plaintiff.

Learned Counsel for the 3rd Defendant did not react to these submissions.

Learned Counsel for the 4th Defendant contended that section 7 of the National Lottery Act 2005 as amended is in conflict with Part II, Section 5 of the Schedule to the Taxes and Levies (Approval List for Collection) Act. Counsel referred to the provisions of section 1(1) of the Taxes and Levies (Approval List for Collection) Act and submitted that the provisions are clear and unambiguous and should therefore be given their ordinary meaning, referring to *Ahman vs. Ayuba* (2008) LPELR-3659 (CA).

Counsel argued that the Taxes and Levies (Approval List for Collection) Act is a specific Legislation on the taxable items each tier of Government is to legislate, control and collect taxes and levies on, in other to avoid double taxation; that the specific nature of the Act is to the exclusion of any other law, referring *Eto-Osa L G vs. Jegede & Anor* (2007) LPELR-8464 (CA); *Uyo L G vs. Akwa Ibom State Government* (2020) LPELR-49691



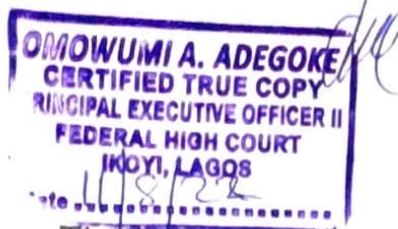
Counsel submitted that although there is an apparent conflict between the two legislations, the provisions of the Taxes and Levies (Approval List for Collection) Act, being specific legislation, supersedes the National Lottery Act, relying on *America Specification Autos Ltd vs. AMCON* (2017) LPELR-44016.

RESOLUTION

First I would like to note that in the case of *Uyo L.G. vs. Akwa Ibom State Government* (*supra*) cited by Learned Counsel to the 4th Defendant, the Court of Appeal declared the Taxes and Levies (Approved List for Collection) Act unconstitutional. The Court held

“The Appellant in this case is not contesting the overriding effect of the phrase “Notwithstanding” but argued that it is only the ouster clause that is a nullity by reason of the provisions of section 1(3) of the Constitution of Federal Republic of Nigeria, 1999 (as amended). The supremacy of the Constitution is never in doubt and section 1(3) above is to the effect that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of its inconsistency be void. I am of the view that having commenced its provisions with a clause that undermines the supremacy of the Constitution, there is nothing that can operate to save





any part of that law. Thus the virus in the introductory clause of the Act has infested the entire Act and thereby rendering it unconstitutional”.

I believe this decision answers the contention of Learned Counsel for the Plaintiff that there is no order of Court nullifying the Taxes and Levies (Approved List for Collection) Act. The Learned Counsel for the 4th Defendant who cited it did not highlight this very important part of the decision of the Court of Appeal. One of the issues presented in that case was whether the entire provisions of the Taxes and Levies Act is ultra vires the Constitution and therefore null and void by reason of the ouster cause at the beginning of the Act.

Having been declared null and void and unconstitutional there is nothing upon which the provisions of section 7 of the National Lottery Act (2005) as amended can be compared with for the purpose of determining whether it is in conflict with the other.

The above notwithstanding, let me go further, on the assumption that the Act is constitutional. Both are Acts of the National Assembly having equal status. Section 7 of the National Lottery Act 2005 as amended stipulates the duties of the National Lottery Regulatory Commission. There is nothing therein about taxes and levies. Section 14 of the



amendment Act 2017 referred to did not amend section 7 but section 57 of the 2005 Act.

It is trite and as rightly argued by Counsel for the 4th Defendant, that where there are two legislations on one subject matter, the specific legislation should supersede the provisions of the general legislation. However, looking at the two legislations, the Taxes and Levies Act is the general legislation on the collection of taxes whiles the National Lotteries Act is specific on lotteries, and is later in time. If anyone should supersede the other, it should be the National Lotteries Act.

I do not see any inconsistency or conflict between section 7 of the National Lottery Act 2005 as amended by section 14 of the National Lottery (Amendment) Act 2017 and Part II, section 5 of the Taxes and Levies (Approved List for Collection) Act.

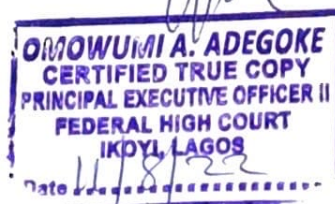
2. Power of the National Assembly on Lotteries

The other questions for determination are anchored on whether the National Assembly has the legislative competence to enact the National Lottery Act. Various arguments have been proffered by learned Counsel and reference has been made to various decisions of our

appellate Courts. These I have considered. The case of *Nigeria Employers' Consultative Association (NECA) & Anor vs. A.G Federation & Ors. (2021) LPELR-54042 (CA)*, is still relevant here. There, one of the issues was whether the National Assembly can legislate on lottery or lottery business having regards to the 2nd Schedule of the 1999 Constitution. The Court of Appeal held as follows -

“The National Assembly has the vires and legislative power to legislate on matters pertaining to lottery or lotteries pursuant to Section 4 of the Constitution of the Federal Republic of Nigeria 1999 as amended and under items 62, 67 and 68 of the 2nd schedule, legislative powers Part I Exclusive legislative list. There is nothing in the constitution and legislative list delimiting the National Assembly of Nigeria from enacting laws regulating or relating to lottery or lotteries or vesting exclusive legislative powers in respect of lottery only in the House of Assembly of a State.

The scope of legislative powers of the National Assembly is wide enough and can under the legislative arrangement provided by the constitution enact the National Lottery Act of 2005”.



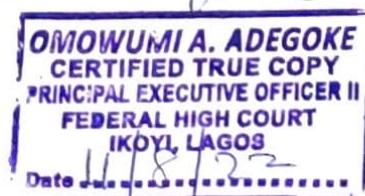
This is a decision of the Court of Appeal on the issue of the competence of the National Assembly to regulate lottery, and answers directly question D of the Plaintiff positively.

One fall out of that decision is that lottery is an item within the Exclusive Legislative List in the Second Schedule to the Constitution.

Learned Counsel have referred the Court to various decisions of the Appellate Courts which have settled the competence of the National Assembly to legislate on items set out in the Exclusive Legislative List to the exclusion of the State Houses of Assembly: see *A.G. Lagos State vs. A. G. Federation* (2013) 16 NWLR (Pt. 1380) 383; *Agbakoba vs. A.G. Federation & Ors.* (2021) LPELR – 55906 (CA).

Flowing from the above, it is my opinion that question number F of the Plaintiff should be answered in the negative and consequently question number G is also answered in the negative.

In the light of the above (and not losing sight of the fact that the 1st and 2nd Defendants have not been properly sued having not been served with the requisite pre action notices) I order as follows -

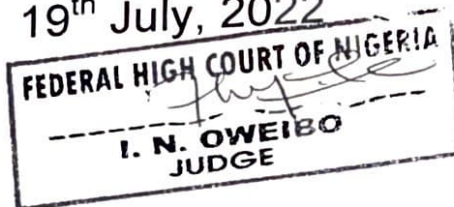


Reliefs 2(a), 2(b), 4(a) 5(b) and 5(c) of the Plaintiff are granted. Reliefs 1, 3(a), 3(b), 4(b), 4(c) and 5(a) are refused.



I.N OWEIBO
JUDGE

19th July, 2022



APPEARANCES

Ola Faro, Esq for the Plaintiff.

Okiki Adeniran Esq., for the 1st Defendant.

Okafor Christy Udy (Mrs.) for the 2nd Defendant.

Olusola Samuel Esq., for the 3rd Defendant.

Laasutu Jacob Esq., for the 4th Defendant.

*Pls copy
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judgment*

11/8/22



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