

Constitutionality of Payment of Federal Allocation Directly to Local Government Councils

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 11th Day of July, 2024

Before Their Lordships
Mohammed Lawal Garba
Emmanuel Akomaye Agim
Chioma Egondur Nwosu-Iheme
Haruna Simon Tsammani
Moore Aseimo Abraham Adumein
Habib Adewale Olumuyiwa Abiru
Jamilu Yammama Tukur
Justices, Supreme Court

SC/CV/343/2024

Between

Attorney-General of the Federation

Plaintiff

And

Attorney-General of Abia State & 35 Ors.

Defendants

(Lead judgement delivered by Honourable Emmanuel Akomaye Agim, JSC)

Facts

The Plaintiff invoked the original jurisdiction of the Supreme Court *vide* its Originating Summons dated 24/05/2024. Fifteen questions relating to the constitutional status of Local Government Councils, legality of State Governors

dissolving democratically elected Local Government Councils using state powers, as well as receiving and spending funds meant for the Local Government Councils, and propriety of the Federal Government paying directly to the Local Government Councils the amount standing to their credit in the Federation Account.

Upon determination of the questions raised, the Plaintiff sought the following reliefs:

1. **A DECLARATION** that, by the combined reading of Sections 1(1), (2) and (3), 4(7), 5(2) (a) and (b) and 3(c), 7(1) and (3)14(1), (2)(a),(c) and (4)of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with Section 318(1), thereof, which defines “government” to include the Government of Local Government Council, the 36 States of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, are/is under obligation to ensure democratically governance at the third tier of government in Nigeria, namely, at the Local Government level.
2. A DECLARATION that, bythe combined reading of Sections 1(1),(2) and(3), 4(7), 5(2)(a) and (b) and 3(c), 7(1)and (3)and 14(1),(2)(a),(c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the 36 States of Nigeria, acting through their/its respective States Governors and or State Houses of Assembly, cannot, using State power derivable from Laws enacted by the State Houses of Assembly(any how so called) or Executive Orders/other actions (any how so called) lawful dissolve democratically-elected Local Government Councils within the said States/State.
3. A DECLARATION that, by the combined reading of Sections 1(1),(2)and (3),4(7),5(2)(a)and(b) and 3(c),7(1)and (3)and 14(1),(2)(a),(c)and(4)of the Constitution of the Federal Republic of Nigeria, 1999 (as amended),read together with Section 318(1), thereof, which defines “government”to include the Government of a Local Government Council,the 36 States of Nigeria,acting through their respective State

Governors and or State Houses of Assembly, none of the 1st -36th Defendants can, using state powers derivable from Laws enacted by the State Houses of Assembly (any how so called) or executive Orders/other actions(any how so called),lawful dissolve any of the democratically-elected Local Government Councils within the said States/State and replace them/it with Caretaker Committees (anyhow so called).

4. A DECLARATION that by the combined reading of Sections 1(10),(2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4)of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the dissolution of democratically-elected Local Government Councils by the 36 States of Nigeria, or anyone of them, using state powers derivable from laws enacted by the State Houses of Assembly (any how so called) or Executive Orders/other actions (any how so called), unlawful, unconstitutional, null and void.
5. A DECLARATION that, in the face of violation of the provision of the 1999 Constitution of the Federal Republic of Nigeria by reason of failure to put in place a democratically elected local government council guaranteed by Section 7 of the 1999 Constitution of the Federal Republic of Nigeria,the Federal Government/Federation is not obligated under Section 162(5) and (6) of the 1999 Constitution to pay/allocate to a State funds standing to the credit of the local government,when no democratically elected local government councils guaranteed under the constitution vide Section 7 of the 1999 Constitution are/is in place.
6. A DECLARATION that, having regard to the effect of Section 7 of the 1999 Constitution and Section 162(5)and (6) of the 1999 Constitution ,a State which is in breach of Section 1(1), (2) and 7 of the 1999 Constitution by failing to comply with the mandatory provision of the 1999 Constitution is not entitled to receive and

spend funds means for the Local Government Councils by virtue of Section 162(5) and (6) of the 1999 Constitution while still in breach of the Constitution by not putting in place a democratically elected local governments system/councils.

7. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3) 4 (7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with Section 318(1), thereof, which defines "government" to include the Government of a Local Government Council, any of the elected or other officials of the 36 States of Nigeria, who, through the instrumentality of either a State law or an administrative directive/order, dissolves or causes the dissolution of any of the democratically-elected Local Government Councils of their/its Constitution of the Federal Republic of Nigeria, 1999 (as amended); hence by that token has committed a gross misconduct.
8. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and (3)(c), 7(1) and 14(1), (2)(a), (c) and (4) and 162(3), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the 36 States of Nigeria, acting through any of their elected or other officials that dissolves democratically elected Local Government Councils within its domain is not entitled to the revenue allocation and operation of a Joint Account as stipulated in section 162(3), (5) (6) (7) and (8) of the said Constitution until such a state reverse to *status quo ante bellum*.
9. A DECLARATION that any money, including statutory allocations, grants, financial interventions or palliatives that accrues to any of the States for/to the benefit of its Local Governments or Local Government Councils shall, on being received by any such States or its organs or officials, be remitted immediately into the

coffers of the Local Government Councils of the State without undue delay or excuses.

10. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 4(7), 5(2)(a) and (b) and 3(c), 7(1) and (3) and 14(1), (2)(a), (c) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), read together with Section 318(1), thereof, which defines "government" to include other official of the 36 States of Nigeria, who, through the instrumentality of either a State Law or an administrative directive/order, dissolves or causes the dissolution of democratically-elected Local Government Councils of their States is liable to be arraigned during or at the end of his tenure (as the case may be) for criminal offences bordering on breach of the Constitution/contempt of court and or breach of applicable criminal and penal laws.
11. A DECLARATION that, by the combined reading of Sections 1(1) and (2) and (3), 2, 7(1) and 7(3), 14(1), (2)(a), (c) and (4) and 162(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), by the combined readings of Section 1(1), (2) and (3), 2, 7(1) and 7(3), 14(1), (2)(a), (c) and (4) and 162(2), (3), (4), (5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria (as amended), the States do not have unbridled and unrestricted discretion to operate the "State Joint Local Government Account" whimsically and to the disadvantage of the democratically elected Local Government Councils within those States, rather than for the greater benefit of those Councils, which are the third tier of Government in Nigeria.
12. A DECLARATION that, by virtue of S.162 (3) and (5) of the Constitution of the Federal Republic of Nigeria, 1999, the amount standing to the credit of Local Government Council in the Federation account should be distributed to them and be paid directly to them.

13. A DECLARATION that, by virtue of S.162(5) of the Constitution of the Federal Republic of Nigeria, 1999, a Government is merely an agent of the Local Governments in the State to collect the amount standing to the credit of the Local Governments in the Federation Account and pay directly to the Local Governments and as such agent has no power or right to spend or use any part of it for any purpose.
14. A DECLARATION that, by virtue of S. 162 (3), (5) and (6) of the Constitution of the Federal Republic of Nigeria, 1999, the amount standing to the credit of a Local Government Council in the Federation Account is liable to be paid directly to each Local Government without further delay.
15. A DECLARATION that a Local Government Council is entitled to a direct payment from the Federation account of the amount standing to its credit in the said Federation Account of, where the State Government has persistently refused or failed to pay to it the said amount received by the State Government on its behalf.
16. AN ORDER of injunction restraining the Defendants, by themselves, their privies, agents, officials or howsoever called from receiving, spending or tampering with funds released from the Federation Account for the benefit of Local Government Councils when no democratically elected local government system is put in place in the State.
17. AN ORDER that the Federation through its relevant officials shall pay to Local Government in a State directly from the Federation Account the amount standing to their credit therein, when the said State has refused or failed to pay to each of the or anyone of them the amount it received or has been receiving in their/its behalf.
18. AN ORDER OF IMMEDIATE COMPLIANCE by the States, through their elected or appointed officials and public officers, with the terms of the judgment and Orders made in this Suit; and successive compliance by successive State Government officials and public officers, save when the

applicable provisions of the Constitution of Nigeria, 1999 as amended here interpreted are otherwise subsequently amended.

19. Any other or other Orders as this Honourable Court may deem fit to make in all the circumstances of this case.

Upon being served with the Originating Summons, the Defendants filed their Counter Affidavits and raised different Preliminary Objections to the competence of the suit. All the Preliminary Objections bordering on failure of the Registrar of the Supreme Court to sign the Summons; lack of locus standi; failure to disclose existence of dispute between the Federal Government and the States to activate the original jurisdiction of the Supreme Court; issue-estoppel/res-judicatum; academic/speculative issue; non-joinder of the Houses of Assembly and Local Government Councils; were dismissed by the apex court.

Arguments

The Plaintiff submitted that the action was brought for the interpretation and enforcement of the Constitution of the Federation Republic of Nigeria, 1999 (as amended), which the President and Governors of the 36 States, swore to uphold. He posits that the Constitution recognises three tiers of government at the Federal, State and Local Government levels, which tiers draw funds from the Federation Account for their operations. The Constitution, also guarantees and recognises only democratically elected local government system of governance, which the Defendants have failed to put in place, though there is no state of emergence declared in any of the States. The Plaintiff submitted further that funds due to the Local Government Councils from the Federation Account and paid into the State Joint Local Government Account are received by the States in trust for the benefit of democratically elected Local Government Councils in the States. Counsel argued that it is not the place of the States to dissolve democratically elected local government councils and make deductions from funds remitted to the Local Government Areas. Counsel urged the court to grant all the stringent reliefs sought to ensure compliance by the Defendants.

The Defendants argued otherwise. They contended that the Federation cannot validly pay the money standing to the credit of the Local Government Councils

from the Federation Account directly to them as to do so would be in violation of Section 162(5) and (6) of the 1999 Constitution which stipulate that the funds be paid to the States for the benefit of their Local Government Councils. They excuse their failure to organise the conduct of elections in the States on subsisting restraining orders of courts.

Court's Judgement and Rationale

Deciding the question of the Federation paying directly to the Local Government Councils, the Supreme Court held that by the provisions of Section 162 (6), (7) and (8) of the Constitution, no law of the House of Assembly can validly interfere with money distributed to the Local Government Council from the Federation Account under Section 162(3). Further, by Section 7(1) of the 1999 Constitution, local government shall be by democratically elected Local Government Councils. The States, not being a democratically elected Local Government Council cannot exercise the power of such council. Thus, the retention and use of money standing to the credit of the Local Governments from the Federation Account paid to the States for the benefit of the Local Government Councils is unconstitutional and illegal.

The Supreme Court held that *Section 162(5) and (6) of the 1999 Constitution merely provide a method or procedure of getting the amount distributed to the Local Government Councils under Section 162(3). To interpret any procedural provision of the Constitution in a manner that would not only stultify, emasculate and frustrate, but eventually render other provisions which create and confer substantive rights, barren and merely decorative, is with respect, arcane and rancid.* The States are merely agents of the Federation to collect local government allocations from the Federation Account and pay to them. No right or interest in the money enures to the States under the Constitution but the States have abused their duties and roles by retaining the funds allocated to the Local Government Councils. The court held further that interpretation of the Constitution must accord with the principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and documents. Given its *sui generis* nature, a suitable interpretation must be benevolent, broad, liberal

and purposive – **NWOSU v APP (2020) 16 NWLR (PT. 1749) 28 AT 80 SC.** A literal and narrow construction of the word “shall” in sub-section (5) of Section 162 as imposing a mandatory duty on the Federation will work against the intention and purpose of the Constitution and create an unconstitutional *status quo* and oppressive situation. The court, therefore, employed its interpretative jurisdiction to treat the word as meaning “May”, thereby institutionalising another mode of payment of funds due to Local Government Councils. In view of the above, the apex court held that payment can either be made directly by the Federation or through the States; however, since the latter has not been effective, the justice of the case demands that the Local Government Council allocations be paid directly to them, henceforth.

Regarding the issue of Local Government Areas, the court held that by Sections 1(2) and 7(1) of the 1999 Constitution, Local Government Councils must be democratically elected. Thus, an interim, caretaker committee, administrator, or howsoever described, is unconstitutional. A State Government has no power to constitute, appoint or determine a Local Government in contravention of Section 7(1) of the Constitution.

In conclusion the Supreme Court held that the claims of the Plaintiff succeed and by its majority decision of five, granted all the reliefs sought.

His Lordship, GARBA, JSC opined that relief 10, which seeks to prosecute erring officials of the States who dissolve democratically elected Local Government Councils for breach of applicable criminal and penal laws, cannot be granted by the court as there is no provision which criminalises non-compliance with the provisions of the Constitution. His Lordship was also of the opinion that reliefs 15, 16 & 17 had been overtaken by the grant of other reliefs.

His Lordship, ABIRU, JSC differed on the determination of the question of the Federation paying directly to Local Government Councils. His Lordship opined that the Plaintiff failed to establish the alleged non-remittance of the funds by the States and being declarative reliefs, the Plaintiff must succeed on the strength of his case. It is the opinion of His Lordship that it is neither the business of the Plaintiff nor the court to decide on how the funds allocated to the Local

Government Councils should be spent. The Local Government Councils may choose to cede part of the funds to the States to spend on their behalf. The Constitution does not provide for an oversight function of the Federal Government in this regard.

His Lordship opined further that a liberal or broad interpretation cannot be employed to fill perceived gaps in the constitution as it is the duty of the legislature to do that. The prayer of the Plaintiff is an invitation for the court to engage in judicial legislation and to interpret the Constitution in a manner which will undermine the very foundation of the nature of federalism.

His Lordship therefore, answered Questions 12 and 15 in favour of the Defendants and dismissed reliefs 9, 10, 12, 14, 15 and 17.

Summons succeeds. All the reliefs granted by majority decision.

Representation

Lateef Fagbemi, SAN (AGF & Minister of Justice) with other counsel for the Plaintiff.

Attorneys-General of the States with other counsel for the 36 States.

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