Constitutionality of Guidelines of Federal Government Agencies Which Restrict or Criminalise Spendings by States and Local Governments

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 15th Day of November, 2024

Before Their Lordships
Uwani Musa Abba Aji
Adamu Jauro
Chioma Egondu Nwosu-Iheme
Moore Aseimo A. Adumein
Obande Festus Ogbuinya
Habeeb Adewale O. Abiru
Abubakar Sadiq Umar
Justices, Supreme Court

SC/CV/178/2023

BETWEEN

1. **THE ATTORNEY-GENERAL OF KOGI STATE**
2. **THE ATTORNEY-GENERAL OF KEBBI STATE**
3. **THE ATTORNEY-GENERAL OF KATSINA STATE**
4. **THE ATTORNEY-GENERAL OF SOKOTO STATE**
5. **THE ATTORNEY-GENERAL OF JIGAWA STATE**
6. **THE ATTORNEY-GENERAL OF ENUGU STATE**
7. **THE ATTORNEY-GENERAL OF OYO STATE**
8. **THE ATTORNEY-GENERAL OF BENUE STATE**
9. **THE ATTORNEY-GENERAL OF PLATEAU STATE**
10. **THE ATTORNEY-GENERAL OF CROSS RIVER STATE**
11. **THE ATTORNEY-GENERAL OF ONDO STATE**
12. **THE ATTORNEY-GENERAL OF NIGER STATE**
13. **THE ATTORNEY-GENERAL OF EDO STATE**
14. **THE ATTORNEY-GENERAL OF BAUCHI STATE**
15. **THE ATTORNEY-GENERAL OF TARABA STATE**

PLAINTIFFS

16. THE ATTORNEY-GENERAL OF IMO STATE

AND

THE ATTORNEY-GENERAL OF THE FEDERATION ... DEFENDANT

(Lead judgement delivered by Honourable Uwani Musa Abba Aji, JSC)

Facts

The case of the 16 Plaintiffs is that the Nigerian Financial Intelligence Unit (NFIU), pursuant to the Nigerian Financial Intelligence Unit Act, on 3/1/2023 issued guidelines and advisories to Mr. President and 12 other key institutions and agencies of government. Among these are the Honourable Attorney-General of the Federation and Minister of Justice (AGF), the Independent Corrupt Practices and Other Related Offences Commission (ICPC), and the Director of the Special Control Unit against Money Laundering, for enforcement and implementation. The guidelines and advisories restrained states and local government authorities, including the Federal Capital Territory, from withdrawing funds beyond ₦5m and ₦10m from their accounts, unless a waiver was granted by the Presidency on a case-by-case basis, or risk jail terms. The guidelines were scheduled for implementation across all states and local government areas of the federation from 1/3/2023.

The Plaintiffs, being aggrieved by the guidelines, invoked the original jurisdiction of the Supreme Court *vide* Originating Summons, seeking orders declaring the guidelines unconstitutional, on the basis that they interfere with the constitutional functions and powers of the Plaintiffs' State Governments. In opposition, the Defendant filed a counter affidavit and a Preliminary Objection on the grounds that (i) aspects of the Plaintiffs' suit, as contained in questions C, D, E, and F in the Amended Originating Summons, were barred by the principles of *res judicata*, issue estoppel, and constitute an abuse of court process; (ii) the subject matter of the suit fell within the exclusive jurisdiction of the Federal High Court, thereby ousting the original jurisdiction of the Supreme Court; (iii) the reliefs sought by the Plaintiffs and the facts contained in the affidavit supporting the Originating Summons did not establish a dispute between the Federation and Plaintiffs as components states in the federation, which is required to invoke the original jurisdiction of the Supreme Court.

Issues for Determination

On the merits, the Supreme Court considered the following issues:

i. **WHETHER**, in view of the provisions of Sections 1, 4(6)(7)(a)(b)(c), 7(1)(6)(b), 90, 100, 120(3)(4), 121, 122, 123, 128, and Parts I and II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal Government of Nigeria, through the Nigerian Financial Intelligence Unit (NFIU) or any agency of the Federal Government, can issue any directive, guideline, advisory, or any instrument - howsoever called - regulating the administration and utilization of funds belonging to the Plaintiffs or any Local Government Area of the Plaintiffs.

ii. **WHETHER**, in view of the provisions of Sections 1, 4(6)(7)(a)(b)(c), 7(1)(5)(a), 90, 100, 120(3)(4), 121, 122, 123, 128, and Parts I and II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), statutes such as: (i) The Money Laundering (Prevention and Prohibition) Act, 2022; (ii)The Proceeds of Crime (Recovery and Management) Act, 2022; (iii) The Economic and Financial Crimes Commission (Establishment) Act, 2004; and (iv) The Independent Corrupt Practices and Other Related Offences Act (ICPC Act), enacted by the National Assembly, can contain provisions touching on or pertaining to the regulation and administration of funds belonging to the Plaintiffs or any Local Government Area of the Plaintiffs.

iii. **WHETHER**, in view of the provisions of Sections 1, 4(6)(7)(a)(b)(c), 7(1)(6)(b), 90, 100, 120(3)(4), 121, 122, 123, 128, and Parts I and II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), statutes such as: (i) The Money Laundering (Prevention and Prohibition) Act, 2022; (ii) The Proceeds of Crime (Recovery and Management) Act, 2022; (iii) The Economic and Financial

Crimes Commission (Establishment) Act, 2004; and (iv) The Independent Corrupt Practices and Other Related Offences Act (ICPC Act), enacted by the National Assembly, can contain any provision criminalizing the use of funds belonging to the Plaintiffs or any Local Government Area of the Plaintiffs.

iv. **WHETHER**, in view of the provisions of Sections 1, 4(6)(7)(a)(b)(c), 7(1)(6)(b), 90, 100, 120(3)(4), 121, 122, 123, 128, and Parts I and II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Economic and Financial Crimes Commission (EFCC), Nigerian Financial Intelligence Unit (NFIU), or any agency of the Federal Government of Nigeria can investigate, requisition documents, invite, and/or arrest anyone with respect to offences arising from or touching on the administration and management of funds belonging to the Plaintiffs or any Local Government Area of the Plaintiffs.

v. **WHETHER**, in view of the provisions of Sections 1, 4(6)(7)(a)(b)(c), 7(1)(6)(b), 90, 100, 120(3)(4), 121, 122, 123, 128, 174(1)(a), 195, and Parts I and II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Attorney-General of the Federation, through any agency of the Federal Government of Nigeria—howsoever called—can prosecute any person with respect to offences arising from or touching on the administration and management of funds belonging to the Plaintiffs or any Local Government Area of the Plaintiffs.

vi. **WHETHER**, in view of the pronouncement of this Honourable Court in the case of *NWOBIKE v FRN* (2022) 6 NWLR (Pt. 1826) P. 293, 1, the Economic and Financial Crimes Commission (Establishment, Etc.) Act, 2004, Volume 5, Cap E1, Laws of the Federation of Nigeria—made in furtherance of Article 15 of the United Nations Convention Against Corruption—is unconstitutional, illegal, null, and void, having not been ratified in line with the provisions of Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Arguments

Arguing the Preliminary Objection, the Defendant submitted that the Plaintiffs' suit, particularly questions C, D, E, and F, of the Originating Summons relate to issues already settled by the Court in cases such as *A-G, ONDO STATE v A-G FED. (2002) 9 NWLR (Pt. 772) 222, 2* and *SHEMA v. F.R.N (2018) 9 NWLR (Pt. 1024) 377 3.* Further, that the power of the NFIU to issue regulations and guidelines had already been settled *in Suit No. FHC/ABJ/563/2019 – ATTORNEY GENERAL OF ABIA STATE & 36 ORS v ATTORNEY GENERAL OF THE FEDERATION & ANOR*, delivered on 23rd May 2022, and upheld by the Court of Appeal in Appeal No. CA/ABJ/822/22. These judgements, by virtue of Section 287 of the 1999 Constitution, remained binding on the Plaintiffs. On the issue of jurisdiction, the Defendant contended that the reliefs sought by the Plaintiffs, particularly reliefs 1, 4, 6, 7, and 8, challenge directives issued by the NFIU, an agency of the Federal Government. As such, the subject matter falls under Section 251(1)(r) of the Constitution, which confers exclusive jurisdiction on the Federal High Court. That the Plaintiffs' grievance is against an agency of the Federal Government and not the Federation itself. Accordingly, the Court was urged to strike out the Plaintiffs' suit for lack of jurisdiction.

In response, the Plaintiffs contended on the issues of *res judicata*, issue estoppel, and abuse of court process, that the legality of the enabling Acts—the EFCC Act, NFIU Act, and ICPC Act—was not resolved in any of the cited cases by the Defendant. On the exclusive jurisdiction of the Federal High Court to entertain the Plaintiffs' suit, it was argued that the Plaintiffs' suit is squarely within the original jurisdiction of the Supreme Court by virtue of Section 232 of the 1999 Constitution (as amended). On whether the Supreme Court has the original jurisdiction to entertain the Plaintiffs' suit, it was submitted that the application and enforcement of the enabling Acts had implications for the whole of the Federation of Nigeria. Therefore, an attempt by the Defendant to draw a distinction between the Federation of Nigeria and the Federal Government of Nigeria with respect to the subject matter in dispute goes to no issue. They prayed the Court to discountenance the Defendant's Preliminary Objection.

Arguing the questions posed in the substantive suit, the Plaintiffs submitted that for any offence to be a federal offence, it must deal with, or touch on items contained in Part I of the Second Schedule to the 1999 Constitution (as amended), in so far as it is circumscribed by the legislative authority of the National Assembly. Hence, any offence which has nothing to do with items contained in the aforesaid Schedule cannot be regarded as a federal offence, and such offences are outside the purview and jurisdiction of the Federal Government and its agencies. Therefore, legislations such as the EFCC Act, ICPC Act, and NFIU Act, enacted by the National Assembly, cannot contain any provision touching on or criminalizing the purported misappropriation of funds under the power and control of a State House of Assembly. Based on the foregoing, all provisions that purport to regulate the administration of funds belonging to the State and Local Governments were argued to be illegal, null, void, and ultra vires the Constitution, since the Constitution is supreme. In response, the Defendant contended that the essence of the constitutional provisions cited in the Originating Summons was to ensure that public fund of a State could only be withdrawn if it has been appropriated by the State House of Assembly for a particular purpose and to prevent Governors from unilaterally withdrawing from the Consolidated Revenue Fund of the State or any public fund of the State except with the approval and in the manner prescribed by the House of Assembly. The Defendant submitted that the National Assembly has unlimited and unrestricted powers to enact the anti-corruption statutes and that they do not tamper with, or interfere with the powers of the Plaintiffs in governing their States or with the money in the public accounts of the Plaintiffs' States but only prohibit cash withdrawals from public accounts.

The Defendant submitted that, by virtue of the express provisions of Sections 4(1), (2), and (5), and Section 15(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), as well as Items 60(a), 67, and 68 of Part I of the Second Schedule to the Constitution, the National Assembly has the power to enact laws on issues bordering on corruption and any other economic crime, irrespective of whether the property in which the crime is perpetrated belongs to the Federal Government, State Government, Local Government, corporate entities, or private individuals.

Court's Judgement and Rationale

Deciding the Preliminary Objection, the Supreme Court aligned itself with the Plaintiffs' submission that the legality of the EFCC Act, NFIU Act, and ICPC Act was not in contention and was not resolved by the Court in the cases cited by the Defendant, so as to constitute *res judicata* or issue estoppel in this case. Also, the decisions of the Federal High Court and Court of Appeal, relied upon by the Defendant are not binding on the Supreme Court. On the second ground of the objection, Their Lordships held that the Plaintiffs' claims did not constitute an abuse of court process, as the claims were not identical to the previous cases. The court also confirmed that since the AGF has assumed the position of the chief law officer of the Federal Republic of Nigeria, he is the proper party with *locus standi* to represent all the agencies of the Federal Government of Nigeria when the need arises. The Preliminary Objection was thereby, dismissed.

On the merits, the Supreme Court held that the 2023 NFIU Guidelines and Advisory, which limit cash withdrawals by State and Local Governments, were made pursuant to the NFIU Act and are therefore binding and lawful. Specifically, their Lordships held that ***"… where a law or Guideline is made pursuant to a legislation that is competently enacted, its constitutionality or legality cannot be questioned or challenged. The 2023 NFIU Guidelines and Advisory, made pursuant to the NFIU Act, being an Act of the National Assembly, is binding on the Plaintiffs, their Local Governments, private companies, and individuals within or resident in the Federal Republic of Nigeria",*** and that what the Guidelines have done was to *"place a benchmark and limit on cash withdrawals of funds in the custody, control, and administration of the Plaintiffs and not to control their expenditures but to combat money laundering, economic and financial crimes, and terrorism financing."* Issues 1, 2, 3, 4 and 5 were therefore resolved against the Plaintiffs.

On issue six, their Lordships held that the EFCC Act was a distinct and independent enactment by the National Assembly meant to address corruption and economic crimes. It was further held that the Plaintiffs' reliance on Section 12 of the Constitution was misplaced as Section 12 applies only when a law seeks to domesticate or implement a treaty, which is not the case with the EFCC Act. Thus, *where the National Assembly legislates within its constitutional competence—*

even if the law originates from a convention – Section 12 cannot be invoked to challenge its validity.

On the second limb of issue six, the apex court noted that the Plaintiffs incorrectly asserted that the legality of the EFCC Act was in question in *NWOBIKE v FRN (2022)* and that the statement relied upon was merely an *obiter dictum* and not the *ratio decidendi.* Hence, this issue and all other issues for determination failed and were resolved against the Plaintiffs.

Case Dismissed. Accordingly, sister suits- SC/CV/457/2023, SC/CV/938/2024 and SC/CV/912/2024 were also dismissed.

Representation

Abdulwahab Muhammed, SAN, and Chief A.A. Adeniyi, SAN, with other counsel for the various Plaintiffs.

Lateef Fagbemi, SAN (AGF) and T.A. Gazali, SAN; Sylvanus Tahir, SAN, Rotimi Oyedepo, SAN for the Defendant.

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