

A REVIEW OF THE FEDERAL HIGH COURT DECISION IN FHC/L/CS/1082/19 - THE REGISTERED TRUSTEES OF HOTEL OWNERS AND MANAGERS ASSOCIATION OF LAGOS V. A.G. FEDERATION & MINISTER OF FINANCE

1.1. The Federal High Court (FHC) decision in Registered Trustees of Hotel Owners and Managers Association of Lagos v. A.G. Federation & Anor, (the HOMAL's case) per Hon. Justice Faji on the 8th of May 2020 was another remarkable contribution to the development of legal jurisprudence in Nigeria.

1.2. The FHC nullified the Taxes and Levies (Approved List for Collection) Act, (Amendment) Order 2015 ("Amended Schedule") on the premise that the amendment of the Schedule by the Minister of Finance on May 26, 2015, was unconstitutional, null and void in the light of Section 1(3) of the Constitution of the Federal Republic of Nigeria (as amended) 1999.

1.3. In the wake of this Judgement, some stakeholders have expressed their understanding of this noble decision. They are of the perception that the Court's decision has consequentially invalidated the Hotel Occupancy and Restaurant Consumption Law, Laws of Lagos 2015 ("HORCL") and the Hotel Occupancy and Restaurant Consumption (Fiscalization) Regulation, 2017 (the Regulation) of Lagos as a result of the umbilical connection of these two laws (i.e. HORCL and the Regulation) to the Amended Schedule.

1.4. We believe that the said interpretation is misconceived and fails to acknowledge the distinctiveness of Federal Laws from State Laws. We intend to analyze the co-independence of both Federal and State statutes within the context of the Homal's case.

2. Summary of Facts

2.1. This case was instituted by Registered Trustees of Hotel Owners and Managers Association of Lagos (the Plaintiff), who sought to determine whether the Minister of Finance as a member of the executive arm of the government has the constitutional power to amend an Act of the National Assembly or any part thereof.

2.2. The Plaintiff contends the legality of section 1(2) of the Taxes and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria 2004 ("the Act") which explicitly vests the power to amend the Schedule to the Act on the Minister of Finance, which utterly is inconsistent with section 1(3) of the Constitution of the Federal Republic of Nigeria

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2.3. The Plaintiff argued that the Legislative powers of the Federal Republic of Nigeria are vested in the National Assembly and such legislative power cannot be delegated.

2.4. On the contrary, the Defendants argued that the Minister of Finance had the statutory power to amend the schedule pursuant to section 315(4)(a)(iii) of the Constitution. The said section reads; ' . . . any person appointed by any law to revise or rewrite the laws of the Federation or of a State'.

2.5. But the Plaintiff counter-argued and averred that the import of the section is to validate statutes (e.g. Decrees) that existed prior to the commencement of the 1999 Constitution. Hence, section 315 is inapplicable to the current case.

2.6. The underlying contention of the Plaintiff is not the validity of the Act but essentially the legislative competence of a Minister of Finance to undertake the role of a legislature by amending the Act.

The Judgement

2.7. The court decided that section 315 of the Constitution confers the power to amend existing laws to bring it to conformity with the Constitution on only the President and/or Governor and, not the Minister of Finance.

2.8. The Court nullified section 1(2) of the Act to the extent of its inconsistency with the Constitution. The Court declared as unconstitutional the actions of the Minister of Finance to expropriate the constitutional power of the legislature.

2.9. The Court found merit in the Plaintiff's claim and granted all the reliefs sought. In effect, the court held that the Amended Schedule is null and void.

Our Analysis

2.10. The Amended Schedule was an attempt to harmonize the numerous taxes and levies across the 36 Federation States and the Federal Capital Territory (FCT) in reaction to the ugly incidence of multiple taxations that bedeviled the manufacturing, agricultural, construction, and overall national development from time immemorial.

2.11. The Amended Schedule resulted in an increment of the number of taxes/levies applicable in Nigeria, i.e.

- a. Part I of the Schedule (Federal Government) from eight (8) to nine (9)
- b. Part II of the Schedule (State Governments) from eleven (11) to twenty-five (25),
- c. Part III of the Schedule (Local Governments) from twenty (20) to twenty-one (21).

2.12. It is worthy to note that Hotel, Restaurant, and Event Centre Consumption Tax is listed under item No 13 Part II of the Amended Schedule and exclusive for State Governments within the Federation.

2.13. The concern is, whether the annulment of a supposed Federal law (the Amended Schedule) consequentially nullifies a State law (the Hotel Occupancy and Restaurant Consumption Law of Lagos State) whose enactment was encouraged by the creation of a Federal Law.



2.14. The constitutionality of Hotel Occupancy and Restaurant Consumption Law by the Lagos State House of Assembly is hinged on section 4(6), 4(7) and 100 of the Constitution. These sections permit State Houses of Assembly to make laws in respect of;

- a. Items in the Concurrent list set out in the first column of Part II of the Second Schedule to the Constitution, and
- b. Residual Matters i.e. Items that are neither on the Concurrent List nor the Exclusive List.

2.15. By inference, consumption tax on goods and services falls under Residual Matters, which only the State Legislative Houses have the exclusive power to legislate on.

2.16. This position was reiterated by Hon. Justice Aikawa in THE REGISTERED TRUSTEES OF HOTEL OWNERS AND MANAGERS ASSOCIATION OF LAGOS V. A. G. LAGOS & F. I. R. S wherein the Court held that items (such as the consumption tax on individual or goods or services consumed in hotels, restaurants etc.), not stated in either the exclusive or concurrent legislative list are considered as a residual matter and therefore within the exclusive legislative competence of a State Government.

2.17. This decision reinforces the decision of the Supreme Court in the case of A. G. Federation v. A.G. Lagos (2013) LPELR-20974(SC) to the effect that the State Houses of Assembly had unfettered powers to legislate on matters in the residual list and for the benefit of the State.

2.18. It is, therefore, trite to state that the enactment of the Hotel Occupancy and Restaurant Consumption Tax Law and its Regulations by the Lagos State House of Assembly is constitutional and not hinged on the validity of a Federal Statute.

2.19. In effect, the Taxes and Levies (Approved List for Collection) Act (a Federal Law) and Hotel Occupancy and Restaurant Consumption Tax Law of Lagos State (a State Law) exist independently of each statute.

2.20. Thus, a nullification of the Amended Schedule in Homal's case does not affect the validity of the Hotel Occupancy and Restaurant Consumption Tax Law of Lagos State.

2.21. From the above, it is safe to conclude that until the Hotel Occupancy and Restaurant Consumption Tax Law of Lagos State is expressly repealed or nullified, it is still the valid law for taxation on goods and services consumed in hotels, restaurants and event centers in Lagos State.

