

AFDIN VENTURES LTD & ORS V. CHAIRMAN, ABUJA MUNICIPAL AREA
COUNCIL

(2014) LPELR-23509(CA)

AFDIN VENTURES LTD & ORS v. CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL

(2014) LPELR-23509(CA)

In The Court Of Appeal

(ABUJA JUDICIAL DIVISION)

On Monday, the 12th day of May, 2014

Suit No: CA/A/657/2012

Before Their Lordship

JOSEPH TINE TUR Justice of the Court Of Appeal

MOORE ASEIMO ABRAHAM ADUMEIN Justice of the Court Of Appeal

TINUADE AKOMOLAFE-WILSON Justice of the Court Of Appeal

Between

1. AFDIN VENTURES LIMITED 2. PROPT CONSULT NIG. LIMITED APPELLANT(S)
3. MR. BAYO ISMAIL

And

CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL RESPONDENT(S)

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SUMMARY OF JUDGMENT

INTRODUCTION:

FACTS:

INTRODUCTION This is a civil appeal. This is an appeal against the



decision of the High Court of Justice of the Federal Capital Territory, Abuja. FACTS The 1st, 2nd and 3rd appellants are the owners of plot 401, Nouakchott Street, Zone 1, Wuse, Abuja where they carry on their business under the title "DBM Plaza". The Abuja Municipal Council assessed and served the appellants tenement rate demand notices, firstly on 18th November, 2010 for the sum of N1,251,520.00 (One Million, two hundred and fifty one thousand, five hundred and twenty Naira for the year 2010 and secondly on 8th March, 2011 in the sum of N2,628,192.00 (Two Million, six hundred and twenty-eight thousand, one hundred and ninety two Naira). Being aggrieved with these assessments, the appellants proceeded to the High Court of Justice of the Federal Capital Territory, Abuja where they instituted an action by way of originating summons supported by affidavit coupled with documentary exhibits against the (1) Chairman, Abuja Municipal Area Council and (2) The Honourable Minister of the Federal Capital Territory, Abuja on 10th November, 2011. The trial Court found that the whole reliefs sought by the plaintiffs has failed and the case was dismissed. Aggrieved by the decision of the trial Court, the appellant has appealed to the Court of Appeal. ISSUES FOR DETERMINATION The following issues were formulated by the learned Counsel to the appellants for hearing and determination of this appeal: "1. Whether paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended, is self-executing. (Distilled from Ground one). 2. Whether the word "may" as used in paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended is not mandatory in the circumstance and as interpreted by the Supreme Court in Knight Frank & Rutley v. Attorney-General, Kano State (1998) 7 NWLR (Pt.556) 1 at page 18 (Distilled from Ground two). 3. Whether the Bye law made or purportedly made by the Respondent is a compliance with the specific requirement of paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended (Distilled from Ground 3). 4. Whether there is any equity about tenement rate as a tax or better still whether there can be a tax without an enabling legislation (Distilled from Ground 4 and 9). 5. Whether the statute relied upon by the lower Court in validating the tenement rate charged the Appellants, met the specific constitutional requirement in paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended (Distilled from Ground 7)." Two issues were formulated by the learned Counsel to the respondent for determination: "1. Whether the 1st Defendant has the right to demand and collect tenement rate from the Appellants by Exhibit "A" as held by the trial Court. 2. Whether the 1st Defendant as an Area Council has the right to issue a Bye law to perform its constitutionally assigned functions under the Fourth Schedule particularly paragraph 1(b) and (j) of the Fourth Schedule to the 1999 Constitution, as amended and whether the trial Judge was right in holding so." The two issues formulated by the



respondent were adopted by the Court in determining this appeal. HELD
In the final analysis, the Court of Appeal resolved all the issues
formulated for determination against the appellants. The appeal was
found to lack merit and was dismissed with N50,000.00 costs against the
appellants.

ISSUES:

DECISION/HELD:

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RATIO DECIDENDI

**APPEAL - ISSUE(S) FOR DETERMINATION - Nature of issue(s) for
determination**

"Issues formulated for determination should be those that if resolved will
result into the appeal being determined in favour of the appellants. Issues
should not be formulated in the abstract."

Per JOSEPH TINE TUR ,J.C.A (P. 16, paras. A-B)

READ IN CONTEXTVIEW ANALYTICS

**INTERPRETATION OF STATUTE - SECTION 7(1) AND (5) OF THE 1999
CONSTITUTION (AS AMENDED) - Interpretation of Section 7(1) and (5) of
the 1999 Constitution as to whether the functions of Local Government
Council set in the section apply to Area Councils in the Federal Capital
Territory**

"Section 7(1) and (5) of the Constitution of the Federal Republic of
Nigeria, 1999 reads as follows: "7(1) The system of local government by
democratically elected local government councils is under this
Constitution guaranteed; and accordingly, the Government of every State
shall subject to Section 8 of this Constitution, ensure their existence
under a Law which provides for the establishment, structure, composition,
finance and functions of such councils. xxxxxxxxxxxxxxxx (5) The
functions to be conferred by Law upon local government councils shall
include those set out in the Fourth Schedule to this Constitution." The
Fourth Schedule of the Constitution particularly paragraph 1(b), (j) and 2
reads as follows: "FUNCTIONS OF A LOCAL GOVERNMENT COUNCIL: 1.

The main functions of a local government council are as follows:
xxxxxxxxxxxxxxxxxxx (b) collection of rates, radio and television licences;
xxxxxxxxxxxxxxxxxxx (j) assessment of privately owned houses or tenements



for the purpose of levying such rates as may be prescribed by the House of Assembly of a State. 2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters:- xxxxxxxxxxxxxxxx (d) such other functions as may be conferred on a local government council by the House of Assembly of the State." Section 318(1) of the Constitution (supra) defines a "local government area" or "local government council" to include "an area council". The expression "government" includes "the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its behalf." Therefore the provisions of Section 7(1) and (5) and paragraph 1(b) and (j) of the Fourth Schedule of the Constitution which sets out the functions of local government councils applies also to Area Councils in the Federal Capital Territory, Abuja within the intendment of the Constitution of the Federal Republic of Nigeria, 1999 as altered."

Per JOSEPH TINE TUR ,J.C.A (Pp. 16-18, paras. B-E)

READ IN CONTEXTVIEW ANALYTICS

INTERPRETATION OF STATUTE - SECTION 315(1)-(4)(A)-(C) OF THE 1999 CONSTITUTION - Interpretation of Section 315(1)-(4)(a)-(c) of the 1999 Constitution (as amended) as to the purpose of modifying an existing Act or Law and the method of the modification of the law

"Section 315(1)-(4)(a)-(c) of the Constitution reads as follows: "(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be:- (a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and (b) a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws. (2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution. xxxxxxxx (4) In this section, the following expressions have the meanings assigned to them, respectively: (a) "appropriate authority" means: (i) the president, in relation to the provisions of any law of the Federation, (ii) the Governor of a State, in relation to the provisions of any existing law deemed to be a Law made by the House of Assembly of that State, or (iii) any person appointed by any law to revise or rewrite the laws of the Federation or of a State; (b)



"existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date; and (c) "modification" includes addition, alteration, omission or repeal." The purpose of modifying an existing Act or Law is to bring or make it have necessary effect, or, to conform with the provisions of the Constitution. Upon the coming into effect of the Constitution of the Federal Republic of Nigeria 1999 on 29th day of May, 1999 an existing law "shall be deemed" to the extent that it is an Act or Law with respect to any matter on which the National Assembly or State House of Assembly is empowered by this Constitution to make laws, to have undergone modification, namely, addition, alteration, omission or repeal as the case may be, so as to conform with the provisions of the Constitution. As to how modification could be achieved, Section 315(2) of the Constitution is very specific, namely: "(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution." Modification to existing laws is to be by an "order" of the appropriate authority made at any time as contemplated by the Constitution. The word "order" has not been defined in Section 318(1) of the Constitution. But Section 318(4) of the same Constitution provides that the Interpretation Act shall apply for the purposes of construing the provisions of this Constitution."

Per JOSEPH TINE TUR ,J.C.A (Pp. 18-21, paras. F-D)

READ IN CONTEXTVIEW ANALYTICS

INTERPRETATION OF STATUTE - SECTION 299 OF THE 1999 CONSTITUTION - Interpretation of Section 299 of the 1999 Constitution (as amended) in relation to the intention of the National Assembly regarding the Federal Capital Territory, Abuja

"297 (1) There shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in Part II of the First Schedule to this Constitution. (2) The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria." Having vested all lands comprised in the Federal Capital Territory, Abuja in the Federal Republic of Nigeria, the Constitution then provides as follows: "299 The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly:- (a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a



State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja; (b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and (c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section. xxxxxxxxxxxxxxxx 301 Without prejudice to the generality of the provisions of Section 299 of this Constitution, in its application to the Federal Capital Territory, Abuja, this Constitution shall be construed as if- (a) references to the Governor, Deputy Governor and the executive council of a State (howsoever called) were references to the President, Vice-President and the executive council of the Federation (howsoever called) respectively; xxxxxxxxxxxxxxxx (c) references to persons, offices and authorities of a State were references to the persons, offices and authorities of the Federation with like status, designations and powers, respectively; and in particular, as if references to the Attorney-General, Commissioners and the Auditor-General for a State were references to the Attorney-General, Ministers and the Auditor-General of the Federation with like status, designations and powers. 302 The President may, in exercise of the powers conferred upon him by section 147 of this Constitution, appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President, from time to time. 303 The Federal Capital Territory, Abuja shall comprise six area councils and the administrative and political structure thereof shall be as provided by an Act of the National Assembly." The provisions of the Constitution shall therefore apply to the Federal Capital Territory, Abuja "as if it were one of the States of the Federation..." See Section 298 of the Constitution. Section 299(c) further provides that the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section. The President may delegate his powers to a Minister whom he appoints to be in charge of the Federal Capital Territory, Abuja. The preamble to the Federal Capital Territory Act Cap.128, Laws of the Federation of Nigeria, 1990 states that it is: "An Act to establish for Nigeria, a Federal Capital Territory and to provide for the constitution of a Federal Capital Development Authority for exercising the various powers set out in this Act, to execute other projects connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of

the executive powers vested in the President and those vested in him and the Governor of a State under the applicable laws."
Per JOSEPH TINE TUR ,J.C.A (Pp. 26-30, paras. E-B)

READ IN CONTEXTVIEW ANALYTICS

INTERPRETATION OF STATUTE - RULES OF INTERPRETATION OF STATUTE - Principle governing use of preamble in the interpretation of statute

"In Attorney-General v. H.R.H. Prince Ernest Augustus of Hanover (1957) A.C. 436, Lord Normand held at pages 467 and 468 that: "When there is a preamble it is generally in the recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. The Courts are concerned with the practical business of deciding a lis, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the Court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred."See also Chairman, L.E.D.B. v. Said (1968) NMLR 183 at 187 and Okeke v. Attorney-General of Anambra State (1992) 1 NWLR (Pt.215) 60 at 83 paragraphs "B"- "C"."
Per JOSEPH TINE TUR ,J.C.A (Pp. 30-32, paras. C-A)

READ IN CONTEXTVIEW ANALYTICS



WORDS AND PHRASES - "BYE-LAW" - Definition of "bye-law" "by-law"

"The question is: What is a bye-law? A "bye-law" or "by-law" is "1. Parliamentary law: (usu. pl.) A rule or administrative provision adopted by an organization for its internal governance and its external dealings.

Although the by-laws may be an organization's most authoritative governing document, they are subordinate to a charter or articles of incorporation or association or to a constitution. The "Constitution and by-laws" are sometimes a single document." See Blacks Law Dictionary, 9th edition, page 228."

Per JOSEPH TINE TUR ,J.C.A (P. 46, paras. A-C)

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JOSEPH TINE TUR, J.C.A. (Delivering the Leading Judgment):

The 1st, 2nd and 3rd appellants are the owners of plot 401, Nouakchott Street, Zone 1, Wuse, Abuja where they carry on their business under the title "**DBM Plaza**". The Abuja Municipal Council assessed and served the appellants tenement rate demand notices, firstly on 18th November, 2010 for the sum of N1,251,520.00 (One Million, two hundred and fifty one thousand, five hundred and twenty Naira for the year 2010 and secondly on 8th March, 2011 in the sum of N2,628,192.00 (Two Million, six hundred and twenty-eight thousand, one hundred and ninety two Naira). Being aggrieved with these assessments, the appellants proceeded to the High Court of Justice of the Federal Capital Territory, Abuja where they instituted an action by way of originating summons supported by affidavit coupled with documentary exhibits against the (1) Chairman, Abuja Municipal Area Council and (2) The Honourable Minister of the Federal Capital Territory, Abuja on 10th November, 2011 seeking that the following two questions should be interpreted to wit:

"1. Whether there exist any law or

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*statute passed or deemed passed by the National Assembly (being the
Legislative body for the Federal Capital Territory, Abuja) enabling the
Abuja Municipal Area Council (the 1st defendant), to assess/charge
tenement rate from the plaintiffs or the tenants/occupants of the plaintiffs
in Plot 401 Nouakchott Street, Zone 1, Wuse, Abuja as mandatorily
required **Paragraph 1(j) of the 4th Schedule of the Constitution of
the Federal Republic of Nigeria, 1999 as amended**.*

*2. Whether the demand of N1,251,520.00 (One Million, Two Hundred and
Fifty One Thousand, Five Hundred and Twenty Naira) for 2010 or
N2,628,192.00 (Two Million, Six Hundred and Twenty-Eight Thousand,
One Hundred and Ninety Two Naira) for 2011 or any other sum, from the
plaintiffs as tenement rate over their property by the 1st defendant, is not
unlawful, illegal and unconstitutional in the circumstances."*

In case the questions were interpreted favourably, the appellants wanted
the lower Court to grant them the following declaratory and executory

reliefs:

"1. A declaration that the Assessments and Tenement Rate Demand

Notices dated 18th day of November, 2010 and 8th day

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*of March, 2011 respectively or any other Tenement Rate Demand Notice,
issued by the 1st defendant to the plaintiffs is unlawful, illegal and
unconstitutional.*

*2. An Order of the Honourable Court setting aside the Tenement Rate
Demand Notices dated 18th day of November, 2010; 8th day of March,
2011 respectively, and/or any other rate/notice issued to the plaintiffs by
the defendants pending when the National Assembly pass an enabling
law/Act in that behalf.*

*3. An Order of perpetual injunction restraining the defendants, their
servants, agents, privies or howsoever called from disturbing, harassing
and/or interfering with the business premises/property of the plaintiffs or
their tenants, pending when the National Assembly pass an enabling
law/Act on charging of tenement rate in the Federal Capital Territory,
Abuja and same gazetted."*

The Originating Summons was founded on the following grounds:

"1. The 1st, 2nd and 3rd plaintiffs are the owners and agents respectively, of Plot 401, Nouakchott Street, Zone 1, Wuse, Abuja (otherwise known as DBM Plaza).

2. About the 23rd of November, 2010, the plaintiffs through the

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2nd plaintiff received a tenement rate demand notice dated 18th November, 2010 from the 1st defendant and another demand notice on the 8th of March, 2011.

*3. In Kano State for the example, there is a specific enabling law, deemed passed by the House of Assembly i.e **Kano State Local Government Edict No.5 of 1977**, which provide in its **Section 86** thus: "Every Local Government shall for the purposes of this part be the rating authority for the area."*

4. There is no such law passed or deemed passed by the National Assembly (the Legislative body for Federal Capital Territory, Abuja)

enabling the 1st defendant in that behalf, to charge tenement rate of landed properties.

5. The demand of the sum of N1,251,520.00 (One Million, Two Hundred and Fifty One Thousand, Five Hundred and Twenty Naira) or any other sum, by the 1st defendant as Tenement rate is unlawful and illegal."

The originating summons was opposed by the respondent in filing counter-affidavit and documentary exhibits. The summons was argued on written addresses submitted by learned Counsel representing the parties.

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His Lordship of the lower Court dismissed the originating summons on 18th day of October, 2012 holding that:

"In conclusion, from the foregoing, it is my humble view having agreed, that, the 1st defendant has the right to collect the Tenement Rates, and also that, the 2nd defendant was wrongly sued in this matter, therefore, the whole reliefs sought by the plaintiffs has failed and the case stand dismissed. I award no cost

to either party. Both parties shall bear its costs accordingly."

See page 127 lines 11-17 of the printed record.

The learned trial Judge dismissed the case against the Hon. Minister of the Federal Capital Territory, Abuja. There is no appeal against the dismissal. The appellants filed a Notice of Appeal against the decision on 13th December, 2012 supported by ten grounds, seeking the following reliefs:

- "1. An Order setting aside the decision/judgment of the High Court of the Federal Capital Territory, Abuja in Suit No.FCT/HC/CV/545/2011 as delivered on 18th October, 2012.*
- 2. An Order granting the reliefs as contained in the Originating Summons of the Appellants/Plaintiffs*

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filed on 10th November, 2011.

- 3. An Order invoking **Section 15 of the Court of Appeal Act, Laws of the Federation, 2011** and pronounce on the constitutionality or*



*otherwise of the Local Government Act, Laws of the Federal Capital Territory, 2004 made pursuant to **Section 13(1) of the Federal Capital Territory (Cap.503) Laws of the Federal Capital Territory, 2004**, in the light of **Section 2(2) and Section 303 of the 1999 Constitution as amended**."*

The appellants' Joint Brief of Argument was filed on 15th January, 2013.

The respondent filed Brief on 14th March, 2013 followed by a deeming order made by this Court on 10th February, 2014. When the appeal came up for hearing on 10th February, 2014 learned Counsel adopted their respective Briefs of Argument. The following issues were formulated by the learned Counsel to the appellants for hearing and determination of this appeal:

*"1. Whether **paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended**, is self-executing. (Distilled from Ground one).*

*2. Whether the word "may" as used in **paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as***

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amended is not mandatory in the circumstance and as interpreted by the Supreme Court in Knight Frank & Rutley v. Attorney-General, Kano State (1998) 7 NWLR (Pt.556) 1 at page 18 (Distilled from Ground two).

3. Whether the Bye law made or purportedly made by the Respondent is a compliance with the specific requirement of paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended (Distilled from Ground 3).

4. Whether there is any equity about tenement rate as a tax or better still whether there can be a tax without an enabling legislation (Distilled from Ground 4 an 9).

5. Whether the statute relied upon by the lower Court in validating the tenement rate charged the Appellants, met the specific constitutional requirement in paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended (Distilled from Ground 7)."

Two issues were formulated by the learned Counsel to the respondent for determination:

"1. Whether the 1st Defendant has the right to demand and collect tenement rate from the Appellants by Exhibit "A" as held by the trial Court.



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2. *Whether the 1st Defendant as an Area Council has the right to issue a Bye law to perform its constitutionally assigned functions under the Fourth Schedule particularly paragraph 1(b) and (j) of the Fourth Schedule to the 1999 Constitution, as amended and whether the trial Judge was right in holding so."*

ARGUMENT ON APPELLANTS' ISSUES 1-5:

The crux of the argument by the learned Counsel to the appellants is that the government of each State is enjoined under Section 7(1) of the Constitution of the Federal Republic of Nigeria 1999 as altered to guarantee the existence of democratically elected Local Government Councils under a Law which shall provide for their establishment, structure, composition, finance and functions. The main functions of the Councils are to be conferred on them by Law including those provided in the 4th Schedule to the Constitution. The Law must be made by a State House of Assembly or the National Assembly. Paragraph 1(j) of the Fourth Schedule to the 1999 Constitution as amended provides that the main function of the Local Government Council is the assessment and payment of tenement rates of

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privately owned houses as may be prescribed by the House of Assembly of a State. Counsel contended that no Act of the National or State House of Assembly has empowered the respondent to assess and levy tenement rates as envisaged by the Constitution. What is in the National Assembly

is a proposed bill titled **"AN ACT TO MAKE PROVISION FOR ASSESSMENT, LEVYING AND COLLECTING OF TAX ON REAL PROPERTY WITHIN THE FEDERAL CAPITAL TERRITORY AND OTHER MATTERS CONNECTED THEREWITH"** yet to be passed into law. In the absence of an existing Act or Law, Counsel submitted that the respondent cannot promulgate a bye-law which is a subsidiary legislation in the absence of a principal legislation to assess and levy tenement rates in the Federal Capital Territory, Abuja.

Learned Counsel further contended that it was unconstitutional for the respondent to claim to derive such powers of promulgating a bye-law from the Niger State Local Government Law of 1976 made applicable in the Federal Capital Territory, Abuja by virtue



of Section 13(1) of the Federal Capital Territory Act Cap.503, Laws of the Federation, 2004, nor to invoke

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Section 5 of the Law (supra) to enact the Abuja Municipal Area Council Bye-law No.12 of 2001, Vol.90 of 7th April, 2003 under which assessment of tenement rates and demand for payment is evidenced in **Exhibits "A" and "E"** attached to the appellants' Originating Summons.

Learned Counsel submitted that where the legislature has provided for the manner of doing anything no other method or procedure is to be adopted, citing Abubakar v. Nasamu (No.2) (2012) 17 NWLR (Pt.1330) 407 at 581; NDIC v. Okem Enterprises Ltd. (2004) 10 NWLR (Pt.880) 107 and Ahmadu v. Governor of Kogi State (2012) 3 NWLR (Pt.755) 502.

On the interpretation to be placed on the word "**may**" employed by the draftsman in paragraph 1(j) of the 4th Schedule to the 1999 Federal Constitution as altered, learned Counsel referred to Amasike v. Reg. Gen. C.A.C. (2010) 13 NWLR (Pt.1211) 337 Knight Frank a Rutley v. Attorney-General, Kano State (1998) 7 NWLR (Pt.556) 1 at 18; Adesola v. Abidoeye (1999) 13 NWLR (Pt.637) 28 and Rimi v. INEC (2005)

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6 NWLR (Pt.920) 56 at 78-80 to contend that "**may**" should be interpreted as conferring or imposing a duty on a State House of Assembly or the National Assembly to prescribe the payable or chargeable tenement rates on privately owned houses (not publicly or government owned houses) in the Federal Capital Territory, Abuja. The two functions can only be determined if there is an Act of the National Assembly or a Law of a State House of Assembly authorizing the doing of the acts now the subject matter in dispute, citing *Knight, Frank & Rutley v. A.G. of Kano State* **(1990) 4 NWLR (Pt.143) 210 C.A.**

Learned Counsel examined the judgment of the lower Court and the case of *F.B.I.R. v. I.D.S. Ltd.* **(2009) 8 NWLR (Pt.1144) 615 at 639** paragraphs "**C**"-"**F**" to argue that there is no equity about taxation, hence, there must be in existence a valid law before the respondents can exercise their functions under the *4th Schedule paragraph 1(j) of the Constitution*. Learned Counsel drew attention to the *Kano State Local Government Edict of 1977* as interpreted by the Supreme Court

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in *Knight Frank Rutley v. Attorney-General of Kano State (1998) 7 NWLR (Pt.556) 1* where "may" was interpreted as obligatory and not permissive. It was argued that the distinction between paragraph 1(b) and 1(j) of the 4th Schedule to the Constitution of the Federal Republic of Nigeria 1999 as altered were not self-executing.

On the whole, Counsel urged this Court to allow this appeal and to grant the reliefs set out in the Notice of Appeal.

RESPONDENT'S ARGUMENT: ISSUES ONE AND TWO:

The respondent referred to the power of the National Assembly to legislate for the Federal Capital Territory, Abuja which controversy had been laid to rest in *Fawehinmi v. Babangida (2003) 3 NWLR (Pt.808) 470 at 652 paragraph "C"* and the Federal Capital Territory Act, Cap. F6, Laws of the Federation of Nigeria, 2004 whereby or amongst the many laws applicable to the Federal Capital Territory Abuja is the Niger State Local Government Edict, of 1976, Learned Counsel referred to various sections read together with Sections 315 and 318 of the 1999 Federal Constitution as altered as

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having made adequate provision for Local Governments Councils to perform their functions as conferred on them under the Niger State Local Government Law, 1976. Counsel submitted that **Exhibit "A"** was issued in accordance with the provisions of a bye-law validly made by the respondent pursuant to the provisions of Section 45, 55(r) and 56(s) of the Niger State Local Government Law of 1976, applicable to the Federal Capital Territory Abuja. It was in the performance of the functions



assigned to it by this law that the Abuja Municipal Area Council Bye-Law No.12 Vol.90, 2001 of 7th April, 2003 was promulgated by the respondent to give effect to paragraph 1(b) and (j) of the 4th Schedule to the 1999 Federal Constitution as altered .

The argument is that the appellants, being a commercial enterprise, were subject to the provisions of Section 52(3) , 56(v) and 56(s) of the Niger State Local Government Law of 1976 . The respondent is therefore constitutionally and legally empowered to demand and collect tenement rates from the appellants and any other persons resident and having property subject to valuation within the territorial

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jurisdiction of the respondent.

Learned Counsel also referred to Section 7(1) , 299 , 315 and 318 of the Constitution of the Federal Republic of Nigeria 1999 as amended , read together with Section 55 and 56 of the Niger State Local Government Law, 1976 to contend that the Bye-Law in question was validly made by the respondent. Thereafter the learned Counsel took this Court through the various provisions of the Bye-law.

On the construction of paragraph 1(j) of the 4th Schedule to the Constitution , learned Counsel submitted that "**shall**" is not used by the draftsman but "**may**" in the said paragraph. There was nothing therein to



interpret "may" as a command, citing *Blacks Law Dictionary, 5th edition, page 883*. Relying on the Supreme Court decision in *Knight Frank & Rutley v. Attorney General of Kano State* (supra) it was contended that the Military Governor of Kano State had no business in the assessment and collection of rates in respect of the premises stated in the schedule. That was the exclusive function of Local Government Councils.
It would

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amount to usurpation of the powers of Local Government Councils for State Governments to carry out such an exercise or to do so on their behalf. Thus only Local Government Councils had the power to assess, levy and collect tenement rates, argued learned Counsel to the respondent.

Learned Counsel referred to *Section 55(r) of the Niger State Local Government Law of 1976* which conferred authority on the Military Governor of the State to empower Local Government Councils to make Bye-laws for all or any of the matters set out in *Section 56(s) of the Law* relating to operation of commercial undertakings. Counsel cited the decision in *Lasun v. Awoyemi (2009) 6 NWLR (Pt.1168) 513 at 562 paragraphs "A"- "B"* to demonstrate that what the learned Counsel to

the appellant had embarked upon was an academic exercise in trying to show the difference between a principal and subsidiary legislation.

On the whole learned Counsel to the respondent urged that the appeal should be dismissed.

The two issues formulated by the respondent are more germane to the determination of this appeal having read the records of

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appeal and considered the crucial matters in controversy. I shall be guided by them in determining this appeal. Issues formulated for determination should be those that if resolved will result into the appeal being determined in favour of the appellants. Issues should not be formulated in the abstract.

Section 7(1) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 reads as follows:

"7(1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to Section 8 of this Constitution , ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

(5) The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this



Constitution."

The Fourth Schedule of the Constitution particularly paragraph 1(b), (j) and 2 reads as follows:

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"FUNCTIONS OF A LOCAL GOVERNMENT COUNCIL:

1. The main functions of a local government council are as follows:

XXXXXXXXXXXXXXXXXXXXXX

(b) collection of rates, radio and television licences;

XXXXXXXXXXXXXXXXXXXXXX

(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State.

2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters:-

XXXXXXXXXXXXXXXXXXXXXX

(d) such other functions as may be conferred on a local



government council by the House of Assembly of the State."

Section 318(1) of the Constitution (supra) defines a "local government area" or "local government council" to include "an area council". The expression "government" includes "the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its

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behalf." Therefore the provisions of ***Section 7(1)*** and ***(5)*** and ***paragraph 1(b)*** and ***(j) of the Fourth Schedule of the Constitution*** which sets out the functions of local government councils applies also to Area Councils in the Federal Capital Territory, Abuja within the intendment of the Constitution of the Federal Republic of Nigeria, 1999 as altered. The phrase "**any person who exercises power or authority on its behalf**" for instance in the Federal Capital Territory, Abuja relates either to the President or the Minister in charge of the Federal Capital Territory. But in the democratically elected Area Councils in the Federal Capital Territory, Abuja, example, the Abuja Municipal Area Council, the Chairman is the "**person who exercises power or authority on behalf of the Area Council**" just like a Local Government Council in any State of the Federation under ***Section 7(1), (5) of the Constitution*** read together with the ***Fourth Schedule paragraph 1(j) of the Constitution***(supra).

Section 315(1)-(4)(a)-(c) of the Constitution reads as follows:

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"(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be:-

(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and

(b) a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.

xxxxxxx

(4) In this section, the following expressions have the meanings

assigned to them, respectively:

(a) "appropriate authority" means:

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***(i) the president, in relation to the provisions of any law of the
Federation,***

***(ii) the Governor of a State, in relation to the provisions of any
existing law deemed to be a Law made by the House of Assembly
of that State, or***

***(iii) any person appointed by any law to revise or rewrite the laws
of the Federation or of a State;***

***(b) "existing law" means any law and includes any rule of law or
any enactment or instrument whatsoever which is in force
immediately before the date when this section comes into force or
which having been passed or made before that date comes into
force after that date; and***

***(c) "modification" includes addition, alteration, omission or
repeal."***

The purpose of modifying an existing Act or Law is to bring or make it have necessary effect, or, to conform with the provisions of the Constitution. Upon the coming into effect of the Constitution of the Federal Republic of Nigeria 1999 on 29th day of May, 1999 an existing law "**shall be deemed**" to the extent that it is an Act or Law with

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respect to any matter on which the National Assembly or State House of Assembly is empowered by this Constitution to make laws, to have undergone modification, namely, addition, alteration, omission or repeal as the case may be, so as to conform with the provisions of the Constitution. As to how modification could be achieved, **Section 315(2)**

of the Constitution is very specific, namely:

"(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution."

Modification to existing laws is to be by an **"order"** of the appropriate authority made at any time as contemplated by the Constitution. The word **"order"** has not been defined in [Section 318\(1\) of the Constitution](#) . But [Section 318\(4\) of the same Constitution](#) provides that the Interpretation Act shall apply for the purposes of construing the provisions of this Constitution. [Section 18 of the Interpretation Act, Cap.123](#) clearly states that **"regulations"**

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in an enactment passed or made before the passing of this Act, includes rules and bye-laws". [Section 37\(1\) of the same Act](#) also

provides that:

"(1) Without prejudice to the provisions of [Section 18 of this Act](#), in this Act the following expressions have the meanings hereby

assigned to them respectively, that is to say:-

"enactment" means any provision of an Act or subsidiary instrument;

"Subsidiary instrument" means any order, rules, regulations, rules of Court or bye-laws made either before or after the commencement of this Act in exercise of powers conferred by an Act."

20th January, 1964 is the commencement date of the Interpretation Act
Cap 123.

If the definition of "**regulations**" includes **rules** and **bye-laws**, while "**subsidiary instruments**" includes "**any order, rules, regulations or bye-laws**", it seems to me that one has to examine the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as altered, to see
who can

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exercise powers by regulations, subsidiary instruments, bye-laws, orders,
etc.



The relevant provisions of the Federal Republic of Nigeria Constitution which came into effect on 29th May, 1999 as altered are as follows:

"2(1) Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria.

(2) Nigeria shall be a Federation consisting of States and a Federal Capital Territory.

(4) The Federal Capital Territory, Abuja, shall be as defined in Part II of the First Schedule to this Constitution.

(5) The provisions of this Constitution in Part I of Chapter VIII hereof shall in relation to the Federal Capital Territory, Abuja, have effect in the manner set out thereunder.

(6) There shall be seven hundred and sixty-eight (768) Local Government Areas in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule."

Part II of the 1st Schedule, Sections 1 and 2 of the Constitution reads as follows:

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"1. DEFINITION OF FEDERAL CAPITAL TERRITORY, ABUJA:

Starting from the village called Izom on 7 E Longitude and 9 15' Latitude, project a straight line westward to a point just north of Lehu on the Kemi River; then project a line along 6o 471/2' E southward passing close to the villages called Semasu, Zui and Bassa down to a place a little west of Abaji town; thence project a line along parallel 8 27Y2' N Latitude to Ahinza village 7 6' E (on the Kanama River); thence project a straight line to Buga village on 3 30' N Latitude and 7 20' E Longitude; thence draw a line northwards joining the villages of Odu, Karshi and Karu, From Karu the line shall proceed along the boundary between the Niger and Plateau State as far as Kawu; thence the line shall proceed along the boundary between Kaduna and Niger States up to a point just north of Bwari village; thence the line goes straight to Zuba village and thence straight to Izom.

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2. FEDERAL CAPITAL TERRITORY, ABUJA AREA COUNCILS:

AREA COUNCIL HEADQUARTERS

Abaji Abaji

Abuja Municipal Garki

Bwari Bwari

Gwagwalada Gwagwalada

Kuje Kuje

Kwali Kwali."

The Federal Capital Territory shares boundaries with Niger, Plateau and Kaduna States. Therefore since the express mention of one thing in a Constitution or Statute excludes the other, the Federal Capital Territory, Abuja is not a State within the Federal Republic of Nigeria that has a House of Assembly. In ***Udoh v. Orthopaedic Hospitals Management Board*** (1993)

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7 SCNJ (Pt.2) 436, Karibi-Whyte, JSC held at page 443 that:

"It is a well-settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included.

*Expressio unius est exclusio alterius. See **A-G. of Bendel State vs.***

***Aideyan**(1989) 4 NWLR 646. This is that the express mention of one*

thing in a statutory provision automatically excludes any other which

otherwise would have applied by implication, with regard to the same

*issue - see **Ogbuinyinya v. Okudo** (1979) 6-9 SC 32; **Military***

***Governor Ondo State v. Adewunmi** (1988) 3 NWLR (Pt.82) 280..."*

However, the intention of the National Assembly regarding the Federal

Capital Territory, Abuja is demonstrated in some sections of the

Constitution as follows:

297 (1) *There shall be a Federal Capital Territory, Abuja the boundaries*

*of which are as defined in **Part II of the First Schedule to this***

***Constitution** .*

(2) The ownership of all lands comprised in the Federal Capital

Territory, Abuja shall vest in the Government of the Federal



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Republic of Nigeria."

Having vested all lands comprised in the Federal Capital Territory, Abuja
in the Federal Republic of Nigeria, the Constitution then provides as
follows:

" ***299*** ***The provisions of this Constitution shall apply to the Federal
Capital Territory, Abuja as if it were one of the States of the
Federation; and accordingly:-***

***(a) all the legislative powers, the executive powers and the
judicial powers vested in the House of Assembly, the Governor of
a State and in the Courts of a State shall, respectively, vest in the
National Assembly, the President of the Federation and in the
courts which by virtue of the foregoing provisions are Courts
established for the Federal Capital Territory, Abuja;***

***(b) all the powers referred to in paragraph (a) of this section shall
be exercised in accordance with the provisions of this
Constitution; and***

***(c) the provisions of this Constitution pertaining to the matters aforesaid
shall be read with such modifications and adaptations as may be***

reasonably necessary to bring them into conformity with the provisions of

this

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section.

**301 Without prejudice to the generality of the provisions
of Section 299 of this Constitution, in its application to the
Federal Capital Territory, Abuja, this Constitution shall be
construed as if-**

**(a) references to the Governor, Deputy Governor and the
executive council of a State (howsoever called) were references
to the President, Vice-President and the executive council of the
Federation (howsoever called) respectively;**

**(c) references to persons, offices and authorities of a State were
references to the persons, offices and authorities of the
Federation with like status, designations and powers,
respectively; and in particular, as if references to the Attorney-
General, Commissioners and the Auditor-General for a State were**



references to the Attorney-General, Ministers and the Auditor-General of the Federation with like status, designations and powers.

302 The President may, in exercise of the powers conferred upon him by **Section 147 of this Constitution**, **appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions**

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as may be delegated to him by the President, from time to time.

303 *The Federal Capital Territory, Abuja shall comprise six area councils and the administrative and political structure thereof shall be as provided by an Act of the National Assembly."*

The provisions of the Constitution shall therefore apply to the Federal Capital Territory, Abuja " as if it were one of the States of the Federation ..." See **Section 298** of the Constitution. **Section 299(c)** further provides that the provisions of this Constitution pertaining to the matters aforesaid shall be read with such



modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section. The

President may delegate his powers to a Minister whom he

appoints to be in charge of the Federal Capital Territory, Abuja.

The preamble to the Federal Capital Territory Act Cap.128, Laws of

the Federation of Nigeria, 1990 states that it is: "*An Act to*

establish for Nigeria, a Federal Capital Territory and to provide for

the constitution of a Federal Capital Development Authority for

exercising the various powers set out in this Act, to execute other

projects

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connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Governor of a State under the applicable laws."

The commencement date of the Act is 4th day of February, 1976. In *Attorney-General v. H.R.H. Prince Ernest Augustus of Hanover* (1957) A.C. 436, Lord Normand held at pages 467 and 468

that:

"When there is a preamble it is generally in the recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that

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may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which

embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. The Courts are concerned with the practical business of deciding a lis, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the Court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred."

See also Chairman, [L.E.D.B. v. Said \(1968\) NMLR 183](#)

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at 187 and *Okeke v. Attorney-General of Anambra State (1992) 1 NWLR (Pt.215) 60 at 83 paragraphs "B"-"C"*.

Section 4(2)(h) of the Federal Capital Territory Act states that "***Subject to the other provisions of this Act, the Authority shall have power to do anything which in its opinion is calculated to facilitate the carrying on of its activities including, without prejudice to the generality of the foregoing, power to exercise such other powers as are necessary or expedient for giving full effect to the provisions of this Act.***" Of paramount importance is *Sections 13, 14 and 15 of the Act* (supra) which sets out how the President may exercise his executive powers:

"(1) In addition to any law having effect, or made applicable throughout the Federation, the laws set out in the *Second Schedule to this Act* shall as from 9th May, 1984 apply in the Federal Capital Territory.

(2) Where any of the laws set out in the Schedule had effect in the former Federal Territory of Lagos and any such law, whether by reason of the

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creation of States in Nigeria or otherwise howsoever, had become obsolete such law shall by virtue of this Act be revived and shall apply in the Federal Capital Territory as provided in subsection (1) above.

(3) The laws set out in the Second Schedule to this Act and applying in the Federal Capital Territory by virtue of subsection

(1) of this section shall have effect with such modifications as may be necessary to bring them into conformity with the Constitution of the Federal Republic of Nigeria as affected by the Constitution (Suspension and Modification) Act and, in particular:-

(a) References in any such laws to Region, State or Federal Territory of Lagos shall, unless the context otherwise requires be construed as references to the Federal Capital Territory;

(b) Functions conferred by any such law on the Governor, Premier, Military Governor or Administrator, Minister or any Commissioner in the Government of a State shall, without prejudice to the exercise of those functions by the President and until other provision in respect of any such function is made by the

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authority having power to do so, vest in the Minister charged with responsibility for the Federal Capital Territory."

That is to say, until the National Assembly passes the bill titled "**An Act to make provision for assessment, levying and collecting of tax on real property within the Federal Capital Territory and other related matters connected on the President or the National Assembly as the case may be shall be vested in the Minister charged with the responsibility for the Federal Capital Territory, Abuja.**"

The Federal Capital Territory Act has clearly set out in **Section 13(4), 14** and **15** how the President is to administer the Federal Capital Territory, Abuja by providing as follows:

"(4) The President may by order published in the Federal Gazette make such changes in the text of the laws set out in the **Second Schedule to this Act as would bring those laws into conformity with the provisions of this Act.**

14. The President may make regulations generally for carrying into effect the provisions of this Act.

15. The Interpretation Act shall apply for the



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interpretation of the laws set out in the Schedule to this Act."

A combined reading of the above provisions of the Act will show that the President is to exercise powers in the Federal Capital Territory, Abuja by Federal Gazettes or through regulations, and may make such changes in the text of the Laws set out in the 2nd Schedule to the Act as to bring them into conformity with the provisions of the Act. Therefore the submission of the learned Counsel to the appellants that the Minister, acting under delegated powers or authority cannot make or enact a bye-law for the assessment of privately owned houses or tenements for the purpose of levying such rates as prescribed by the bye-law has no support under the provisions of **Section 13(1), (2), (3)(a), (b), (4), 14 and 15 of the Federal Capital Territory Act Cap 128, Laws of the Federation of Nigeria, 1990**.

The Minister of the Federal Capital Territory, Abuja also has the statutory powers to adapt and modify the laws applicable in any State of the Federation, example, Niger, Plateau, Kaduna States, including those of the Former Capital Territory, Lagos to bring them into

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conformity with the Constitution of the Federal Republic of Nigeria. In particular, references in any such laws to the region, state or Federal Capital Territory of Lagos shall, unless the context otherwise requires, be

construed as references to the Federal Capital Territory, Abuja.

See [Section 13\(a\) of the Act](#) (supra).

[Section 13\(1\) of the Act](#) (supra) applies "**In addition to any law having effect, or made applicable throughout the Federation**" as well as "**the laws set out in the schedule to this Act**" provided they were in existence as from 9th May, 1984. Learned Counsel to the appellants appreciated this when he argued at page 11 paragraph 8.9 of the brief that:

"...[The Niger State Government Edict of 1976](#) was made applicable to the Federal Capital Territory, Abuja since 9th May, 1984 but the purported bye-law was made in 2001, a period of 17 years interval. Regrettably, a bye-law is a subsidiary legislation and cannot exist on its own or generate an independent statutory provision. It must follow the fate of its principal statute (if any).

See [Osadebey v. Attorney-General Bendel State](#) (supra)."

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In view of the definition of the word "**regulation**" or "**subsidiary instrument**" under **Section 18(1)** and **37(1) of the Interpretation Act** read together with **Section 13(1)-(4)**, **14** and **15 of the Federal Capital Territory Act** (supra) which includes a bye-law or an enactment such as the Federal Capital Territory Act, I am of the candid opinion that the above submission is without substance. No time limit is imposed on the President or the Minister charged with responsibility for the Federal Capital Territory, Abuja to enact regulations or bye-laws for carrying into effect the provisions of the Act.

In **Knight, Frank & Rutley v. Attorney-General, Kano State (1990) 4 NWLR (Pt.143) 210**, Mohammed, JCA (as he then was) commenced the judgment in the Court of Appeal, Kaduna Division at page 215 as follows:
"The single issue for determination of this appeal is whether the contract which the Kano State Government signed with the appellants to prepare a valuation list of rateable hereditaments within Kano Municipality is void. The purpose of the valuation is to enable the State Government to

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charge and collect tenement rates..."

Having heard arguments from learned Counsel representing the appellants and the respondent his Lordship held at page 220 paragraphs "D"-**"G"** and at page 221 paragraphs **"B"**-**"E"** as follows:

"Could the powers of the State and the local government councils to order for valuation of rateable hereditaments co-exist and be complementary? I believe that once the State passes a legislation assigning the function of valuation of tenement rates to the local government as the Constitution has directed only the Local Government Council will have the power to deal with that subject matter. The State has no power to deal with the matter and the local government council cannot, even if it wants to, divest itself of those powers. In an English case of [Brikdale District Electric Supply Co. v. Southport Corporation \(1926\) A.C. 355 at 364](#) it was held that if a person or public body is entrusted by the legislature with certain powers and duties expressly or impliedly for public purposes, those persons or bodies cannot divest or take any action



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***incompatible with the due exercise of their powers or the
discharge of their duties.***

***The first point to consider in this case is the power of the
Government of Kano State to deal and sign a contract with the
appellants for valuation of rateable hereditaments, the subject
matter in this appeal. Mr. Oyeleke argued that the State has the
power to enter into such a contract because under [Section 4\(7\) of
the Constitution](#) the House of Assembly of a State shall have power
to make laws for the peace, order and good government of the
State or any part thereof with respect to any matter not included
in the Exclusive Legislative List. Counsel further argued that the
State cannot be made to give a power which it does not have.
Mallam Mahmoud on the other hand replied on this submission
that the Kano State Legislature has given effect to the sanction of
the Constitution in [Edict No.5 of 1977](#) and the government cannot
act contrary to that law. He referred to the case of [The Governor of
Kaduna State v. The House of Assembly of Kaduna State \(1982\) 2 NCLR](#)***

***635 where it was held that the executive powers of the Governor
are subject to the Constitution***

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and any law made by the State House of Assembly."

"...The Constitution has given the State Legislatures the legislative power to enact laws and confer functions including assessment of privately owned houses or tenements for the purpose of levying rates. It is my strong view that even in a military administration the States have only the legislative power over assessment of tenement rates. They act just like a conduit pipe or the Postmaster General. He receives the letters and delivers them to the addressees. The State cannot fail to assign the functions to the local government councils since the directive of the Constitution is mandatory. The executive power over it, is without any doubt, the responsibility of the Local Government Councils. I do not have to emphasize that only the executive have



the power to enter into agreement for the execution of any development or duty. Since the Kano State Government has no power over assessment of tenement rates, it goes without saying that it has no jurisdiction to enter into an agreement with any body or person for the valuation of rateable hereditaments."

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In affirming this judgment on appeal the Supreme Court held in *[Knight Frank & Rutley \(Nig.\) & 1 Ors. v. Attorney-General \(1998\) 7 NWLR \(Pt.556\) 1 per Uwais](#)*, CJN at pages 19 paragraphs "B"- "H" and page 20 paragraphs "A"- "C" as follows:

The powers exercisable by the Federal, State and Local Governments have been clearly identified under the 1979 Constitution. With the exception of the items under the Concurrent Legislative List each of the three tiers of Government exercises exclusive power over the subject under its control. By the provisions of [Section 274 subsections \(4\) of the 1979](#)



Constitution *the provisions of the Interpretation Act, 1964, No.1 of 1964 shall be employed in interpreting the provisions of the 1979 Constitution. It is clear from the provisions of paragraph 1(b) and (j) of the Fourth Schedule read together with the provisions of Section 7 subsection (5) of the Constitution that the intendment of the Constitution is that only Local Government Councils have the power to assess and impose rates on privately owned property. In interpreting that power Section 10*

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subsection 2 of the Interpretation Act, 1964 provides:-

"(2) An enactment which confers a power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it."

It follows from these provisions that the power to award the contract entered into between the parties in this case is exercisable by the Local Government Councils concerned and not

Kano State Government.

Again Section 32 of the Interpretation Law, Cap 51 of the Laws of Northern Nigeria, 1963 applicable to Kano State at the time material to this case provides:-

"32. Where in any Law power is given to any person to do or enforce the doing of any act or thing all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing."

There is no legislation which empowers Kano State Government to dabble in or interfere with the compilation of valuation list for the purpose of assessing or collecting rates on private properties in Kano State. Therefore,

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the Government acted ultra vires in entering into contract with the appellants to do what only the Local Government Councils concerned were entitled to do under the 1979 Constitution and the Local Government Edict, 1977. Consequently, I hold that both the trial Court and the Court of Appeal were right in coming to the conclusion that the Government had no power to award the contract and it acted ultra vires in doing so.



It is elementary that where a party acted contrary to, infringes or violates any of the provisions of the Constitution, such action is null and void and of no effect whatsoever. It follows that the action by the respondent in entering into contract with appellants, when the former had no power to do so, is null and void and of no effect whatsoever. Consequently, the contract is vitiated. It, therefore, becomes null and void.

*In the book **Judicial Review of Administrative Action, Third Edition, by S.A. de Smith**, the following passage appears on p. 88 thereof:-
"A public body with limited powers cannot bind itself to act ultra vires; and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by*

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creating an estoppel - fairtitle v. Gilbert, (1787) 2 T.R. 169 and Rhyl U.D.C v. Rhyl Amusements Ltd . (1959) 1 W.L.R. 465."

It remains to mention that the Assessment Law, Cap 8 of the Laws of Northern Nigeria, 1963 provides for the ascertainment of the value of tenement for rating purposes. The Law empowers the State Commissioner, charged with the responsibility, to appoint appraisers for the purpose of compiling a valuation list which will be employed in determining the rate to be charged on tenements.

*Although the Assessment Law was an existing Law under the provisions of Section 274 subsections (1) and (4) of the 1979 Constitution, its application is subject to **provisions of the Constitution. Section 7 subsection (5) of the 1979 Constitution read together with the provisions of paragraph 1(j) of the Fourth Schedule to the Constitution and Section 76 of Kano State Local Government Edict, No.5 of 1977 have effectively removed the power to appoint appraisers to compile valuation list from the State Commissioner in charge and transferred the function to Local Government Councils. This is a further proof that the respondent had no power at***

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the time of entering into the contract to appoint the appellants as appraisers to compile a valuation list for the purpose of charging tenement rates by the Local Government Councils."

There is nothing to show that the Minister in-charge of the Federal Capital Territory, Abuja has in any way usurped the functions of the Abuja Municipal Area Council in the implementation of paragraph 1(j) of the 4th Schedule to the Constitution hence the lower Court dismissed him from the proceedings in the Court below and there is no appeal against the dismissal. Therefore, in the case of the Federal Capital Territory, Abuja the Minister has the constitutional and legal power and authority to adapt and modify regulations, bye-laws, orders or subsidiary instruments, etc, in order to establish the necessary machinery for the assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Minister as the appropriate authority for the Federal Capital Territory, Abuja. The same applies with the six Area Councils within the Federal Capital Territory, Abuja.

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The question is: What is a bye-law? A

"bye-law" or "bylaw" is "1. Parliamentary law: (usu. pl.) A rule or administrative provision adopted by an organization for its internal governance and its external dealings. Although the bylaws may be an organization's most authoritative governing document, they are subordinate to a charter or articles of incorporation or association or to a constitution. The "Constitution and bylaws' are sometimes a single document." See Blacks Law Dictionary, 9th edition, page 228 .

It is fallacious to submit that without the passing of the bill before the National Assembly, the respondent lacks the vires to enforce paragraph 1(j) of the 4th Schedule to the Constitution by invoking the Abuja Municipal Area Council Bye-Law No.12, Vol.90 of 7th April, 2003. If a bye-law is a rule or administrative provision adopted for the internal governance of Abuja Municipal Council and its external dealings with the public, and is an authoritative document subordinate to the Constitution, my humble view is that the respondent has the powers to publish or enact

bye-laws for the implementation of paragraph 1(j) of the 4th

Schedule to

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the Constitution (supra). The Abuja Municipal Council Bye-Law, 2001
provides in the preamble as follows:

***"In the exercise of powers conferred on the Abuja Municipal Area
Council, by virtue of Section 13 and 2nd Schedule of the Federal
Capital Territory Act Cap.503, Laws of the Federation, 1990 and Sections
55 and 56 of the Niger State Local Government Laws, 1976 the Abuja
Area Council makes the following Bye-Law..."***

Chapter 5 Sections 1-5 of the Bye-Law reads as follows:

***"PART I - ESTABLISHMENT OF THE ABUJA MUNICIPAL AREA
COUNCIL VALUATION OFFICE:***

1(1) *There is hereby established the Abuja Municipal Area Council
Valuation office (hereinafter referred to as the Valuation office) which
shall carry out Assessment of all ratable properties in the Council.*

(2) The Valuation office shall have zonal offices in each development area

in the Council as may be considered appropriate by the Chairman.

(3) The valuation office shall be the only body in the council empowered to levy and collect rates under this bye-law.

(4) The valuation office shall consist of the Head of valuation and such

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numbers of other staff as may be require to assists the Head in the execution of his duties under this bye-law.

(5) The members of staff of the valuation office shall be members of the council public services.

2(1) *The Chairman shall appoint the head of valuation who shall be both the Professional and Administrative Head.*

(2) The head of valuation appointed under this bye-law shall be responsible to the Chairman.

(3) The valuation office shall be responsible for:-

(a) The identification, survey and valuation of ratable properties in the Council for the compilation of the valuation list.

(b) Nomination or appointment and supervision of professional advisers

for valuation of ratable properties in the council.

3(1) *The Head of Valuation in consultation with the Chairman may appoint persons who shall be qualified estate surveyors and valuers registered by the Estate Surveyors and Valuers Registration Board of Nigeria for the purpose of this Bye-law.*

(2) The person appointed under subsection of this section shall be subject to and under the control and supervision of the head of valuation.

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4. *An appraiser may:*

(a) Require any person to give all such information orally or in writing as he may require which may affect the assessed value of a tenement so as to ascertain and assess the property.

(b) Call upon any person liable to pay rate upon a tenement to exhibit to him any document required in connection with evaluation of a tenement.

(c) On any day (except a non-working day) between the hours of eight o'clock in the morning and six o'clock in the evening enter into or upon any tenement for he purpose of making valuation thereof and take such

measurements and other particulars, as he may deem necessary for the purpose.

(d) Call upon the occupier of any tenement for him or her to furnish his or her name and where the occupier is not the owner, the name and address of the owner therewith.

(e) Require the owner occupier of agent for any tenement to inform him as to the boundaries of the tenement.

5. *The rating authority may:-*

(a) Demand and collect tenement rates from owners or occupiers of tenements and buildings after the notice of demand have been sent to them;

(b) Call upon any person liable to any rate,

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upon tenements to exhibit to it any account, receipts for rents and rate in connection with the valuation of a tenement.

(c) Call on the occupier if he or she is not the owner to furnish the name and address of the owner(s).

PART II - ASSESSMENT AND COLLECTION OF TENEMENT RATES:

6(a) *As soon as practicable after the appointment of the Head of Valuation, the Head shall cause the value of every, tenement subject to rate in the council to be ascertained and assessed by an appraiser, and such assessment shall be known as the first General Assessment.*

(b) Not less than one in every five years after completion of General Assessment, the Head of valuation shall cause a new general assessment to be made in the manner provided under sub-section (a) of this section, of every tenement subject to rate in the council.

7. *As soon as the first or any subsequent general assessment shall have been completed, the appraiser shall make a list of the several tenements assessed and their respective valuation to be made and shall submit same to the Head of valuation for signature subject to any alteration which may be made on the order of*

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the Assessment Appeal Tribunal or a Magistrate's Court.

8. *The valuation office, after the preparation of the valuation list or an amendment to a valuation list, shall:*

(a) Give notice in any of the widely read daily newspapers of the fact that a valuation list has been prepared and as to the place at which it may be inspected; and shall make available the list, for inspection at the place mentioned during ordinary office hours for twenty-one days from the date of publication of such notice; and

(b) Serve upon the owner of each tenement contained in the valuation list a notice showing the assessed value thereof.

9. *Subject to any alteration which may be made on the order of the Assessment Appeal Tribunal, Magistrate Court or Area Court:*

(a) A valuation list prepared on a General shall, for the purpose of any rate to be levied in respect of the tenement assessed, be the valuation list for the year in which the same is published and for the next following year.

(b) In any other year the valuation list as amended and in force at the commencement of the year, shall for the purpose of any rate to be

levied in respect of the tenement assessed, be the valuation list.

10(1) *In every year in which there is no general assessment the Head of Valuation shall in the month of January, or as soon as may be convenient thereafter, cause a copy of the existing valuation list to be prepared with such addition or alterations only as are necessary to give effect to any new assessment or re-assessment of tenements, in such situations as*

follows:-

(a) Where whether by construction of building, destruction of building or other alteration in structural condition, their assessed value has been increased or reduced; or

(b) Where being ratable or about to become ratable has not been assessed; or

(c) In respect of which any person claiming to be the owner thereof shall have delivered to the rating authority a written request for re-assessment on or before the first day of January to be ascertained and assessed.

(2) Such valuation list when prepared shall be signed by the Head of Valuation and subject to any alteration which may be made on the order of the Assessment Appeal Tribunal or a Magistrate Court shall be the valuation list for

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the year which the then existing list has been made.

11. *Notice of the preparation of the valuation list mentioned in Section 8 of the Bye-law and of the place at which the same may be inspected shall be given in the manner prescribed in Section 8 and the said list shall be open for inspection for the same period as a list of the first or subsequent general assessment."*

Sections 55 and 56 of the Niger State Local Government Law of

1976 *also read as follows:*

"55. Subject to the provisions of this Act or any other enactment a local government shall have responsibility for and power to make bye-laws for, all of the following matters, that is:

(r) collection of community tax, property and other rates and other designated revenue.

56. Subject to this Act or any other enactment, the military governor may confer power on a local government to be responsible for and to make bye-laws for all or any of the following matter, that is

(s) Operation of commercial undertakings."

I hereby resolve all the issues formulated for determination against the appellants. The appeal lacks merit and is dismissed with N50,000.00 costs

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against the appellants.

MOORE A.A. ADUMEIN, J.C.A. :

I had a preview of the judgment just delivered by my learned brother, **Joseph Tine Tur**, JCA. His Lordship has comprehensively dealt with all the issues in this appeal. I agree with my learned brother that this appeal is devoid of merit and it should be dismissed, and it is hereby dismissed.

I abide by the order for costs.

TINUADE AKOMOLAFE-WILSON, J.C.A. :

I have had the opportunity of reading in draft the lead judgment just

delivered by my Lord, **Tur, JCA.**

The reasoning leading to the conclusion dismissing the appeal is
exhaustive, I have nothing useful to add.

Based on the sound reasoning and conclusion, I also dismiss the appeal
with N50,000.00 costs to the Respondent.

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Appearances:

N.A. Obinna, Esq. with Charles Ugwu, Esq. and Priscilla Taiwo
Williams (Miss), Esq. For Appellant(s)

Alexander Moro, Esq. with Stanley-Idun, Esq. For Respondent(s)

AFDIN VENTURES LTD & ORS V. CHAIRMAN, ABUJA MUNICIPAL AREA
COUNCIL

(2014) LPELR-23509(CA)

AFDIN VENTURES LTD & ORS v. CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL

(2014) LPELR-23509(CA)

In The Court Of Appeal

(ABUJA JUDICIAL DIVISION)

On Monday, the 12th day of May, 2014

Suit No: CA/A/657/2012

Before Their Lordship

JOSEPH TINE TUR	Justice of the Court Of Appeal
MOORE ASEIMO ABRAHAM ADUMEIN	Justice of the Court Of Appeal
TINUADE AKOMOLAFE-WILSON	Justice of the Court Of Appeal

Between

1. AFDIN VENTURES LIMITED 2. PROPT CONSULT NIG. LIMITED APPELLANT(S)
3. MR. BAYO ISMAIL

And

CHAIRMAN, ABUJA MUNICIPAL AREA COUNCIL RESPONDENT(S)

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SUMMARY OF JUDGMENT

INTRODUCTION:

FACTS:

INTRODUCTION This is a civil appeal. This is an appeal against the decision of the High Court of Justice of the Federal Capital Territory, Abuja. **FACTS** The 1st, 2nd and 3rd appellants are the owners of plot 401, Nouakchott Street, Zone 1, Wuse, Abuja where they carry on their business under the title "DBM Plaza". The Abuja Municipal Council assessed and served the appellants tenement rate demand notices, firstly on 18th November, 2010 for the sum of N1,251,520.00 (One Million, two hundred and fifty one thousand, five hundred and twenty Naira for the



year 2010 and secondly on 8th March, 2011 in the sum of N2,628,192.00 (Two Million, six hundred and twenty-eight thousand, one hundred and ninety two Naira). Being aggrieved with these assessments, the appellants proceeded to the High Court of Justice of the Federal Capital Territory, Abuja where they instituted an action by way of originating summons supported by affidavit coupled with documentary exhibits against the (1) Chairman, Abuja Municipal Area Council and (2) The Honourable Minister of the Federal Capital Territory, Abuja on 10th November, 2011. The trial Court found that the whole reliefs sought by the plaintiffs has failed and the case was dismissed. Aggrieved by the decision of the trial Court, the appellant has appealed to the Court of Appeal. ISSUES FOR DETERMINATION The following issues were formulated by the learned Counsel to the appellants for hearing and determination of this appeal: "1. Whether paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended, is self-executing. (Distilled from Ground one). 2. Whether the word "may" as used in paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended is not mandatory in the circumstance and as interpreted by the Supreme Court in Knight Frank & Rutley v. Attorney-General, Kano State (1998) 7 NWLR (Pt.556) 1 at page 18 (Distilled from Ground two). 3. Whether the Bye law made or purportedly made by the Respondent is a compliance with the specific requirement of paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended (Distilled from Ground 3). 4. Whether there is any equity about tenement rate as a tax or better still whether there can be a tax without an enabling legislation (Distilled from Ground 4 and 9). 5. Whether the statute relied upon by the lower Court in validating the tenement rate charged the Appellants, met the specific constitutional requirement in paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended (Distilled from Ground 7)." Two issues were formulated by the learned Counsel to the respondent for determination: "1. Whether the 1st Defendant has the right to demand and collect tenement rate from the Appellants by Exhibit "A" as held by the trial Court. 2. Whether the 1st Defendant as an Area Council has the right to issue a Bye law to perform its constitutionally assigned functions under the Fourth Schedule particularly paragraph 1(b) and (j) of the Fourth Schedule to the 1999 Constitution, as amended and whether the trial Judge was right in holding so." The two issues formulated by the respondent were adopted by the Court in determining this appeal. HELD In the final analysis, the Court of Appeal resolved all the issues formulated for determination against the appellants. The appeal was found to lack merit and was dismissed with N50,000.00 costs against the appellants.

ISSUES:

DECISION/HELD:

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RATIO DECIDENDI

APPEAL - ISSUE(S) FOR DETERMINATION - Nature of issue(s) for determination

"Issues formulated for determination should be those that if resolved will result into the appeal being determined in favour of the appellants. Issues should not be formulated in the abstract."

Per JOSEPH TINE TUR ,J.C.A (P. 16, paras. A-B)

READ IN CONTEXTVIEW ANALYTICS

INTERPRETATION OF STATUTE - SECTION 7(1) AND (5) OF THE 1999 CONSTITUTION (AS AMENDED) - Interpretation of Section 7(1) and (5) of the 1999 Constitution as to whether the functions of Local Government Council set in the section apply to Area Councils in the Federal Capital Territory

"Section 7(1) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 reads as follows: "7(1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils. xxxxxxxxxxxxxxxx (5) The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution." The Fourth Schedule of the Constitution particularly paragraph 1(b), (j) and 2 reads as follows: "FUNCTIONS OF A LOCAL GOVERNMENT COUNCIL: 1.

The main functions of a local government council are as follows: xxxxxxxxxxxxxxxx (b) collection of rates, radio and television licences; xxxxxxxxxxxxxxxx (j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State. 2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters:- xxxxxxxxxxxxxxxx (d) such other functions as may be conferred on a local government council by the House of Assembly of the State." Section 318(1) of the Constitution



(supra) defines a "local government area" or "local government council" to include "an area council". The expression "government" includes "the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its behalf." Therefore the provisions of Section 7(1) and (5) and paragraph 1(b) and (j) of the Fourth Schedule of the Constitution which sets out the functions of local government councils applies also to Area Councils in the Federal Capital Territory, Abuja within the intendment of the Constitution of the Federal Republic of Nigeria, 1999 as altered."

Per JOSEPH TINE TUR ,J.C.A (Pp. 16-18, paras. B-E)

READ IN CONTEXTVIEW ANALYTICS

INTERPRETATION OF STATUTE - SECTION 315(1)-(4)(A)-(C) OF THE 1999 CONSTITUTION - Interpretation of Section 315(1)-(4)(a)-(c) of the 1999 Constitution (as amended) as to the purpose of modifying an existing Act or Law and the method of the modification of the law

"Section 315(1)-(4)(a)-(c) of the Constitution reads as follows: "(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be:- (a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and (b) a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws. (2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution. xxxxxxx (4) In this section, the following expressions have the meanings assigned to them, respectively: (a) "appropriate authority" means: (i) the president, in relation to the provisions of any law of the Federation, (ii) the Governor of a State, in relation to the provisions of any existing law deemed to be a Law made by the House of Assembly of that State, or (iii) any person appointed by any law to revise or rewrite the laws of the Federation or of a State; (b) "existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or which having been passed or made before that date comes into force after that date; and (c) "modification" includes addition, alteration, omission or repeal." The purpose of modifying an existing Act or Law is to bring or make it have



necessary effect, or, to conform with the provisions of the Constitution. Upon the coming into effect of the Constitution of the Federal Republic of Nigeria 1999 on 29th day of May, 1999 an existing law "shall be deemed" to the extent that it is an Act or Law with respect to any matter on which the National Assembly or State House of Assembly is empowered by this Constitution to make laws, to have undergone modification, namely, addition, alteration, omission or repeal as the case may be, so as to conform with the provisions of the Constitution. As to how modification could be achieved, Section 315(2) of the Constitution is very specific, namely: "(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution." Modification to existing laws is to be by an "order" of the appropriate authority made at any time as contemplated by the Constitution. The word "order" has not been defined in Section 318(1) of the Constitution. But Section 318(4) of the same Constitution provides that the Interpretation Act shall apply for the purposes of construing the provisions of this Constitution."
Per JOSEPH TINE TUR ,J.C.A (Pp. 18-21, paras. F-D)

READ IN CONTEXTVIEW ANALYTICS

INTERPRETATION OF STATUTE - SECTION 299 OF THE 1999 CONSTITUTION - Interpretation of Section 299 of the 1999 Constitution (as amended) in relation to the intention of the National Assembly regarding the Federal Capital Territory, Abuja

"297 (1) There shall be a Federal Capital Territory, Abuja the boundaries of which are as defined in Part II of the First Schedule to this Constitution. (2) The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria." Having vested all lands comprised in the Federal Capital Territory, Abuja in the Federal Republic of Nigeria, the Constitution then provides as follows: "299 The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly:- (a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja; (b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and (c) the provisions of this Constitution pertaining to the



matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section. xxxxxxxxxxxxxxxx 301 Without prejudice to the generality of the provisions of Section 299 of this Constitution, in its application to the Federal Capital Territory, Abuja, this Constitution shall be construed as if- (a) references to the Governor, Deputy Governor and the executive council of a State (howsoever called) were references to the President, Vice-President and the executive council of the Federation (howsoever called) respectively; xxxxxxxxxxxxxxxx (c) references to persons, offices and authorities of a State were references to the persons, offices and authorities of the Federation with like status, designations and powers, respectively; and in particular, as if references to the Attorney-General, Commissioners and the Auditor-General for a State were references to the Attorney-General, Ministers and the Auditor-General of the Federation with like status, designations and powers. 302 The President may, in exercise of the powers conferred upon him by section 147 of this Constitution, appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President, from time to time. 303 The Federal Capital Territory, Abuja shall comprise six area councils and the administrative and political structure thereof shall be as provided by an Act of the National Assembly." The provisions of the Constitution shall therefore apply to the Federal Capital Territory, Abuja "as if it were one of the States of the Federation..." See Section 298 of the Constitution. Section 299(c) further provides that the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section. The President may delegate his powers to a Minister whom he appoints to be in charge of the Federal Capital Territory, Abuja. The preamble to the Federal Capital Territory Act Cap.128, Laws of the Federation of Nigeria, 1990 states that it is: "An Act to establish for Nigeria, a Federal Capital Territory and to provide for the constitution of a Federal Capital Development Authority for exercising the various powers set out in this Act, to execute other projects connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Governor of a State under the applicable laws."
Per JOSEPH TINE TUR ,J.C.A (Pp. 26-30, paras. E-B)

READ IN CONTEXTVIEW ANALYTICS



INTERPRETATION OF STATUTE - RULES OF INTERPRETATION OF STATUTE - Principle governing use of preamble in the interpretation of statute

"In Attorney-General v. H.R.H. Prince Ernest Augustus of Hanover (1957) A.C. 436, Lord Normand held at pages 467 and 468 that: "When there is a preamble it is generally in the recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. The Courts are concerned with the practical business of deciding a lis, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the Court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred." See also Chairman, L.E.D.B. v. Said (1968) NMLR 183 at 187 and Okeke v. Attorney-General of Anambra State (1992) 1 NWLR (Pt.215) 60 at 83 paragraphs "B"- "C"."
Per JOSEPH TINE TUR ,J.C.A (Pp. 30-32, paras. C-A)

READ IN CONTEXTVIEW ANALYTICS

WORDS AND PHRASES - "BYE-LAW" - Definition of "bye-law" "by-law"

"The question is: What is a bye-law? A "bye-law" or "by-law" is "1. Parliamentary law: (usu. pl.) A rule or administrative provision adopted by an organization for its internal governance and its external dealings. Although the by-laws may be an organization's most authoritative governing document, they are subordinate to a charter or articles of

incorporation or association or to a constitution. The "Constitution and by-laws' are sometimes a single document." See Blacks Law Dictionary, 9th edition, page 228."

Per JOSEPH TINE TUR ,J.C.A (P. 46, paras. A-C)

READ IN CONTEXTVIEW ANALYTICS

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JOSEPH TINE TUR, J.C.A. (Delivering the Leading Judgment):

The 1st, 2nd and 3rd appellants are the owners of plot 401, Nouakchott Street, Zone 1, Wuse, Abuja where they carry on their business under the title "**DBM Plaza**". The Abuja Municipal Council assessed and served the appellants tenement rate demand notices, firstly on 18th November, 2010 for the sum of N1,251,520.00 (One Million, two hundred and fifty one thousand, five hundred and twenty Naira for the year 2010 and secondly on 8th March, 2011 in the sum of N2,628,192.00 (Two Million, six hundred and twenty-eight thousand, one hundred and ninety two Naira). Being aggrieved with these assessments, the appellants proceeded to the High Court of Justice of the Federal Capital Territory, Abuja where they instituted an action by way of originating summons supported by affidavit coupled with documentary exhibits against the (1) Chairman, Abuja Municipal Area Council and (2) The Honourable Minister of the Federal Capital Territory, Abuja on 10th November, 2011 seeking that the following two questions should be interpreted to wit:

"1. Whether there exist any law or

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*statute passed or deemed passed by the National Assembly (being the Legislative body for the Federal Capital Territory, Abuja) enabling the Abuja Municipal Area Council (the 1st defendant), to assess/charge tenement rate from the plaintiffs or the tenants/occupants of the plaintiffs in Plot 401 Nouakchott Street, Zone 1, Wuse, Abuja as mandatorily required **Paragraph 1(j) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 as amended** .*

2. Whether the demand of N1,251,520.00 (One Million, Two Hundred and Fifty One Thousand, Five Hundred and Twenty Naira) for 2010 or N2,628,192.00 (Two Million, Six Hundred and Twenty-Eight Thousand, One Hundred and Ninety Two Naira) for 2011 or any other sum, from the plaintiffs as tenement rate over their property by the 1st defendant, is not unlawful, illegal and unconstitutional in the circumstances."

In case the questions were interpreted favourably, the appellants wanted the lower Court to grant them the following declaratory and executory

reliefs:

"1. A declaration that the Assessments and Tenement Rate Demand Notices dated 18th day of November, 2010 and 8th day

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*of March, 2011 respectively or any other Tenement Rate Demand Notice,
issued by the 1st defendant to the plaintiffs is unlawful, illegal and
unconstitutional.*

*2. An Order of the Honourable Court setting aside the Tenement Rate
Demand Notices dated 18th day of November, 2010; 8th day of March,
2011 respectively, and/or any other rate/notice issued to the plaintiffs by
the defendants pending when the National Assembly pass an enabling
law/Act in that behalf.*

*3. An Order of perpetual injunction restraining the defendants, their
servants, agents, privies or howsoever called from disturbing, harassing
and/or interfering with the business premises/property of the plaintiffs or
their tenants, pending when the National Assembly pass an enabling
law/Act on charging of tenement rate in the Federal Capital Territory,
Abuja and same gazetted."*

The Originating Summons was founded on the following grounds:

"1. The 1st, 2nd and 3rd plaintiffs are the owners and agents

*respectively, of Plot 401, Nouakchott Street, Zone 1, Wuse, Abuja
(otherwise known as DBM Plaza).*

2. About the 23rd of November, 2010, the plaintiffs through the

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*2nd plaintiff received a tenement rate demand notice dated 18th
November, 2010 from the 1st defendant and another demand notice on
the 8th of March, 2011.*

*3. In Kano State for the example, there is a specific enabling law, deemed
passed by the House of Assembly i.e **Kano State Local Government
Edict No.5 of 1977**, which provide in its **Section 86** thus: "Every Local
Government shall for the purposes of this part be the rating authority for
the area."*

*4. There is no such law passed or deemed passed by the National
Assembly (the Legislative body for Federal Capital Territory, Abuja)
enabling the 1st defendant in that behalf, to charge tenement rate of
landed properties.*

5. The demand of the sum of N1,251,520.00 (One Million, Two Hundred

and Fifty One Thousand, Five Hundred and Twenty Naira) or any other sum, by the 1st defendant as Tenement rate is unlawful and illegal."

The originating summons was opposed by the respondent in filing counter-affidavit and documentary exhibits. The summons was argued on written addresses submitted by learned Counsel representing the parties.

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His Lordship of the lower Court dismissed the originating summons on 18th day of October, 2012 holding that:

"In conclusion, from the foregoing, it is my humble view having agreed, that, the 1st defendant has the right to collect the Tenement Rates, and also that, the 2nd defendant was wrongly sued in this matter, therefore, the whole reliefs sought by the plaintiffs has failed and the case stand dismissed. I award no cost to either party. Both parties shall bear its costs accordingly."

See page 127 lines 11-17 of the printed record.

The learned trial Judge dismissed the case against the Hon. Minister of the Federal Capital Territory, Abuja. There is no appeal against the dismissal. The appellants filed a Notice of Appeal against the decision on 13th December, 2012 supported by ten grounds, seeking the following reliefs:

- "1. An Order setting aside the decision/judgment of the High Court of the Federal Capital Territory, Abuja in Suit No.FCT/HC/CV/545/2011 as delivered on 18th October, 2012.*
- 2. An Order granting the reliefs as contained in the Originating Summons of the Appellants/Plaintiffs*

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filed on 10th November, 2011.

- 3. An Order invoking **Section 15 of the Court of Appeal Act, Laws of the Federation, 2011** and pronounce on the constitutionality or otherwise of the Local Government Act, Laws of the Federal Capital Territory, 2004 made pursuant to **Section 13(1) of the Federal Capital Territory (Cap.503) Laws of the Federal Capital Territory, 2004**, in*

the light of Section 2(2) and Section 303 of the 1999 Constitution as amended."

The appellants' Joint Brief of Argument was filed on 15th January, 2013.

The respondent filed Brief on 14th March, 2013 followed by a deeming order made by this Court on 10th February, 2014. When the appeal came up for hearing on 10th February, 2014 learned Counsel adopted their respective Briefs of Argument. The following issues were formulated by the learned Counsel to the appellants for hearing and determination of this appeal:

"1. Whether paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended, is self-executing. (Distilled from Ground one).

2. Whether the word "may" as used in paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as

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amended is not mandatory in the circumstance and as interpreted by the Supreme Court in Knight Frank & Rutley v. Attorney-General, Kano State (1998) 7 NWLR (Pt.556) 1 at page 18 (Distilled from Ground two).



3. *Whether the Bye law made or purportedly made by the Respondent is a compliance with the specific requirement of **paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended** (Distilled from Ground 3).*

4. *Whether there is any equity about tenement rate as a tax or better still whether there can be a tax without an enabling legislation (Distilled from Ground 4 an 9).*

5. *Whether the statute relied upon by the lower Court in validating the tenement rate charged the Appellants, met the specific constitutional requirement in **paragraph 1(j) of the Fourth Schedule of the 1999 Constitution as amended** (Distilled from Ground 7)."*

Two issues were formulated by the learned Counsel to the respondent for determination:

"1. Whether the 1st Defendant has the right to demand and collect tenement rate from the Appellants by Exhibit "A" as held by the trial Court.

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2. *Whether the 1st Defendant as an Area Council has the right to issue a Bye law to perform its constitutionally assigned functions under the Fourth Schedule particularly paragraph 1(b) and (j) of the Fourth Schedule to the 1999 Constitution, as amended and whether the trial Judge was right in holding so."*

ARGUMENT ON APPELLANTS' ISSUES 1-5:

The crux of the argument by the learned Counsel to the appellants is that the government of each State is enjoined under Section 7(1) of the Constitution of the Federal Republic of Nigeria 1999 as altered to guarantee the existence of democratically elected Local Government Councils under a Law which shall provide for their establishment, structure, composition, finance and functions. The main functions of the Councils are to be conferred on them by Law including those provided in the 4th Schedule to the Constitution. The Law must be made by a State House of Assembly or the National Assembly. Paragraph 1(j) of the Fourth Schedule to the 1999 Constitution as amended provides that the main function of the Local Government Council is the assessment and payment of tenement rates of

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privately owned houses as may be prescribed by the House of Assembly of a State. Counsel contended that no Act of the National or State House of Assembly has empowered the respondent to assess and levy tenement rates as envisaged by the Constitution. What is in the National Assembly is a proposed bill titled **"AN ACT TO MAKE PROVISION FOR ASSESSMENT, LEVYING AND COLLECTING OF TAX ON REAL PROPERTY WITHIN THE FEDERAL CAPITAL TERRITORY AND OTHER MATTERS CONNECTED THEREWITH"** yet to be passed into law. In the absence of an existing Act or Law, Counsel submitted that the respondent cannot promulgate a bye-law which is a subsidiary legislation in the absence of a principal legislation to assess and levy tenement rates in the Federal Capital Territory, Abuja.

Learned Counsel further contended that it was unconstitutional for the respondent to claim to derive such powers of promulgating a bye-law from the Niger State Local Government Law of 1976 made applicable in the Federal Capital Territory, Abuja by virtue of **Section 13(1) of the Federal Capital Territory Act Cap.503, Laws of the Federation, 2004**, nor to invoke



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Section 5 of the Law (supra) to enact the Abuja Municipal Area Council Bye-law No.12 of 2001, Vol.90 of 7th April, 2003 under which assessment of tenement rates and demand for payment is evidenced in **Exhibits "A" and "E"** attached to the appellants' Originating Summons.

Learned Counsel submitted that where the legislature has provided for the manner of doing anything no other method or procedure is to be adopted, citing **Abubakar v. Nasamu (No.2) (2012) 17 NWLR (Pt.1330) 407 at 581; NDIC v. Okem Enterprises Ltd. (2004) 10 NWLR (Pt.880) 107 and Ahmadu v. Governor of Kogi State (2012) 3 NWLR (Pt.755) 502.**

On the interpretation to be placed on the word "may" employed by the draftsman in **paragraph 1(j) of the 4th Schedule to the 1999 Federal Constitution as altered**, learned Counsel referred to **Amasike v. Reg. Gen. C.A.C. (2010) 13 NWLR (Pt.1211) 337 Knight Frank a Rutley v. Attorney-General, Kano State (1998) 7 NWLR (Pt.556) 1 at 18; Adesola v. Abidoeye (1999) 13 NWLR (Pt.637) 28 and Rimi v. INEC (2005)**

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6 NWLR (Pt.920) 56 at 78-80 to contend that "may" should be interpreted as conferring or imposing a duty on a State House of Assembly or the National Assembly to prescribe the payable or chargeable



tenement rates on privately owned houses (not publicly or government owned houses) in the Federal Capital Territory, Abuja. The two functions can only be determined if there is an Act of the National Assembly or a Law of a State House of Assembly authorizing the doing of the acts now the subject matter in dispute, citing *Knight, Frank & Rutley v. A.G. of Kano State* (1990) 4 NWLR (Pt.143) 210 C.A.

Learned Counsel examined the judgment of the lower Court and the case of *F.B.I.R. v. I.D.S. Ltd.* (2009) 8 NWLR (Pt.1144) 615 at 639 paragraphs "C"- "F" to argue that there is no equity about taxation, hence, there must be in existence a valid law before the respondents can exercise their functions under the *4th Schedule paragraph 1(j) of the Constitution*. Learned Counsel drew attention to the *Kano State Local Government Edict of 1977* as interpreted by the Supreme Court

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in *Knight Frank Rutley v. Attorney-General of Kano State* (1998) 7 NWLR (Pt.556) 1 where "may" was interpreted as obligatory and not permissive. It was argued that the distinction between *paragraph 1(b)* and *1(j) of the 4th Schedule to the Constitution of the Federal Republic of Nigeria 1999 as altered* were not self-executing.



On the whole, Counsel urged this Court to allow this appeal and to grant the reliefs set out in the Notice of Appeal.

RESPONDENT'S ARGUMENT: ISSUES ONE AND TWO:

The respondent referred to the power of the National Assembly to legislate for the Federal Capital Territory, Abuja which controversy had been laid to rest in *Fawehinmi v. Babangida (2003) 3 NWLR (Pt.808) 470 at 652 paragraph "C"* and the Federal Capital Territory Act, Cap. F6, Laws of the Federation of Nigeria, 2004 whereby or amongst the many laws applicable to the Federal Capital Territory Abuja is the Niger State Local Government Edict, of 1976, Learned Counsel referred to various sections read together with Sections 315 and 318 of the 1999 Federal Constitution as altered as

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having made adequate provision for Local Governments Councils to perform their functions as conferred on them under the Niger State Local Government Law, 1976. Counsel submitted that **Exhibit "A"** was issued in accordance with the provisions of a bye-law validly made by the respondent pursuant to the provisions of Section 45, 55(r) and 56(s) of the Niger State Local Government Law of 1976, applicable to the Federal Capital Territory Abuja. It was in the performance of the functions assigned to it by this law that the Abuja Municipal Area Council Bye-Law No.12 Vol.90, 2001 of 7th April, 2003 was promulgated by the respondent to give effect to paragraph 1(b) and (j) of the 4th Schedule to the



1999 Federal Constitution as altered.

The argument is that the appellants, being a commercial enterprise, were subject to the provisions of **Section 52(3)**, **56(v)** and **56(s) of the Niger State Local Government Law of 1976**. The respondent is therefore constitutionally and legally empowered to demand and collect tenement rates from the appellants and any other persons resident and having property subject to valuation within the territorial

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jurisdiction of the respondent.

Learned Counsel also referred to **Section 7(1)**, **299**, **315** and **318 of the Constitution of the Federal Republic of Nigeria 1999 as amended**, read together with **Section 55** and **56 of the Niger State Local Government Law, 1976** to contend that the Bye-Law in question was validly made by the respondent. Thereafter the learned Counsel took this Court through the various provisions of the Bye-law.

On the construction of **paragraph 1(j) of the 4th Schedule to the Constitution**, learned Counsel submitted that "**shall**" is not used by the draftsman but "**may**" in the said paragraph. There was nothing therein to interpret "**may**" as a command, citing **Blacks Law Dictionary, 5th edition, page 883**. Relying on the Supreme Court decision in **Knight Frank & Rutley v. Attorney General of Kano State** (supra) it was contended that the Military Governor of Kano State had no business in the assessment and collection of rates in respect of the premises stated in the

schedule. That was the exclusive function of Local Government Councils.
It would

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amount to usurpation of the powers of Local Government Councils for
State Governments to carry out such an exercise or to do so on their
behalf. Thus only Local Government Councils had the power to assess,
levy and collect tenement rates, argued learned Counsel to the
respondent.

Learned Counsel referred to [Section 55\(r\) of the Niger State Local
Government Law of 1976](#) which conferred authority on the Military
Governor of the State to empower Local Government Councils to make
Bye-laws for all or any of the matters set out in [Section 56\(s\) of the
Law](#) relating to operation of commercial undertakings. Counsel cited the
decision in [Lasun v. Awoyemi \(2009\) 6 NWLR \(Pt.1168\) 513 at 562
paragraphs "A"- "B"](#) to demonstrate that what the learned Counsel to
the appellant had embarked upon was an academic exercise in trying to
show the difference between a principal and subsidiary legislation.

On the whole learned Counsel to the respondent urged that the appeal should be dismissed.

The two issues formulated by the respondent are more germane to the determination of this appeal having read the records of

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appeal and considered the crucial matters in controversy. I shall be guided by them in determining this appeal. Issues formulated for determination should be those that if resolved will result into the appeal being determined in favour of the appellants. Issues should not be formulated in the abstract.

Section 7(1) and (5) of the Constitution of the Federal Republic of Nigeria, 1999 reads as follows:

"7(1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to Section 8 of this Constitution , ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

(5) The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution."

The Fourth Schedule of the Constitution particularly **paragraph 1(b), (j) and 2** reads as follows:



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"FUNCTIONS OF A LOCAL GOVERNMENT COUNCIL:

1. The main functions of a local government council are as follows:

XXXXXXXXXXXXXXXXXXXXXXX

(b) collection of rates, radio and television licences;

XXXXXXXXXXXXXXXXXXXXXXX

(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State.

2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters:-

XXXXXXXXXXXXXXXXXXXXXXX

(d) such other functions as may be conferred on a local government council by the House of Assembly of the State."

Section 318(1) of the Constitution (supra) defines a "local



government area" or "local government council" to include "an area council". The expression "government" includes "the Government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its

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behalf." Therefore the provisions of Section 7(1) and (5) and paragraph 1(b) and (j) of the Fourth Schedule of the Constitution which sets out the functions of local government councils applies also to Area Councils in the Federal Capital Territory, Abuja within the intendment of the Constitution of the Federal Republic of Nigeria, 1999 as altered. The phrase **"any person who exercises power or authority on its behalf"** for instance in the Federal Capital Territory, Abuja relates either to the President or the Minister in charge of the Federal Capital Territory. But in the democratically elected Area Councils in the Federal Capital Territory, Abuja, example, the Abuja Municipal Area Council, the Chairman is the **"person who exercises power or authority on behalf of the Area Council"** just like a Local Government Council in any State of the Federation under Section 7(1), (5) of the Constitution read together with the Fourth Schedule paragraph 1(j) of the Constitution(supra).

Section 315(1)-(4)(a)-(c) of the Constitution reads as follows:

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"(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution

and shall be deemed to be:-

(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and

(b) a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.

xxxxxxx

(4) In this section, the following expressions have the meanings assigned to them, respectively:

(a) "appropriate authority" means:

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***(i) the president, in relation to the provisions of any law of the
Federation,***

***(ii) the Governor of a State, in relation to the provisions of any
existing law deemed to be a Law made by the House of Assembly
of that State, or***

***(iii) any person appointed by any law to revise or rewrite the laws
of the Federation or of a State;***

***(b) "existing law" means any law and includes any rule of law or
any enactment or instrument whatsoever which is in force
immediately before the date when this section comes into force or
which having been passed or made before that date comes into
force after that date; and***

***(c) "modification" includes addition, alteration, omission or
repeal."***

The purpose of modifying an existing Act or Law is to bring or make it

have necessary effect, or, to conform with the provisions of the Constitution. Upon the coming into effect of the Constitution of the Federal Republic of Nigeria 1999 on 29th day of May, 1999 an existing law "**shall be deemed**" to the extent that it is an Act or Law with

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respect to any matter on which the National Assembly or State House of Assembly is empowered by this Constitution to make laws, to have undergone modification, namely, addition, alteration, omission or repeal as the case may be, so as to conform with the provisions of the Constitution. As to how modification could be achieved, **Section 315(2) of the Constitution** is very specific, namely:

"(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution."



Modification to existing laws is to be by an **"order"** of the appropriate authority made at any time as contemplated by the Constitution. The word **"order"** has not been defined in [Section 318\(1\) of the Constitution](#) . But [Section 318\(4\) of the same Constitution](#) provides that the Interpretation Act shall apply for the purposes of construing the provisions of this Constitution. [Section 18 of the Interpretation Act, Cap.123](#) clearly states that **"regulations"**

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in an enactment passed or made before the passing of this Act, includes rules and bye-laws". [Section 37\(1\) of the same Act](#) also

provides that:

"(1) Without prejudice to the provisions of [Section 18 of this Act](#), in this Act the following expressions have the meanings hereby assigned to them respectively, that is to say:-

"enactment" means any provision of an Act or subsidiary instrument;

"Subsidiary instrument" means any order, rules, regulations, rules

of Court or bye-laws made either before or after the commencement of this Act in exercise of powers conferred by an Act."

20th January, 1964 is the commencement date of the Interpretation Act
Cap 123.

If the definition of "**regulations**" includes **rules** and **bye-laws**, while "**subsidiary instruments**" includes "**any order, rules, regulations or bye-laws**", it seems to me that one has to examine the provisions of the Constitution of the Federal Republic of Nigeria, 1999 as altered, to see
who can

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exercise powers by regulations, subsidiary instruments, bye-laws, orders,
etc.

The relevant provisions of the Federal Republic of Nigeria Constitution

which came into effect on 29th May, 1999 as altered are as follows:

"2(1) Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria.

(2) Nigeria shall be a Federation consisting of States and a Federal Capital Territory.

(4) The Federal Capital Territory, Abuja, shall be as defined in Part II of the First Schedule to this Constitution .

(5) The provisions of this Constitution in Part I of Chapter VIII hereof shall in relation to the Federal Capital Territory, Abuja, have effect in the manner set out thereunder.

(6) There shall be seven hundred and sixty-eight (768) Local Government Areas in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule ."

Part II of the 1st Schedule , Sections 1 and 2 of the

Constitution reads as follows:

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"1. DEFINITION OF FEDERAL CAPITAL TERRITORY, ABUJA:

Starting from the village called Izom on 7 E Longitude and 9 15' Latitude, project a straight line westward to a point just north of Lehu on the Kemi River; then project a line along 6o 471/2' E southward passing close to the villages called Semasu, Zui and Bassa down to a place a little west of Abaji town; thence project a line along parallel 8 27Y2' N Latitude to Ahinza village 7 6' E (on the Kanama River); thence project a straight line to Buga village on 3 30' N Latitude and 7 20' E Longitude; thence draw a line northwards joining the villages of Odu, Karshi and Karu, From Karu the line shall proceed along the boundary between the Niger and Plateau State as far as Kawu; thence the line shall proceed along the boundary between Kaduna and Niger States up to a point just north of Bwari village; thence the line goes straight to Zuba village and thence straight to Izom.

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2. FEDERAL CAPITAL TERRITORY, ABUJA AREA COUNCILS:

AREA COUNCIL HEADQUARTERS

Abaji Abaji

Abuja Municipal Garki

Bwari Bwari

Gwagwalada Gwagwalada

Kuje Kuje

Kwali Kwali."

The Federal Capital Territory shares boundaries with Niger, Plateau and Kaduna States. Therefore since the express mention of one thing in a Constitution or Statute excludes the other, the Federal Capital Territory, Abuja is not a State within the Federal Republic of Nigeria that has a House of Assembly. In ***Udoh v. Orthopaedic Hospitals Management***

Board (1993)

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7 SCNJ (Pt.2) 436, Karibi-Whyte, JSC held at page 443 that:

"It is a well-settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included.

Expressio unius est exclusio alterius. See A-G. of Bendel State vs.

Aideyan(1989) 4 NWLR 646. This is that the express mention of one thing in a statutory provision automatically excludes any other which

otherwise would have applied by implication, with regard to the same

issue - see Ogbuinyinya v. Okudo (1979) 6-9 SC 32; Military

Governor Ondo State v. Adewunmi (1988) 3 NWLR (Pt.82) 280..."

However, the intention of the National Assembly regarding the Federal

Capital Territory, Abuja is demonstrated in some sections of the

Constitution as follows:

297 (1) *There shall be a Federal Capital Territory, Abuja the boundaries*

of which are as defined in Part II of the First Schedule to this

Constitution .

(2) The ownership of all lands comprised in the Federal Capital

Territory, Abuja shall vest in the Government of the Federal



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Republic of Nigeria."

Having vested all lands comprised in the Federal Capital Territory, Abuja
in the Federal Republic of Nigeria, the Constitution then provides as
follows:

" ***299*** ***The provisions of this Constitution shall apply to the Federal
Capital Territory, Abuja as if it were one of the States of the
Federation; and accordingly:-***

***(a) all the legislative powers, the executive powers and the
judicial powers vested in the House of Assembly, the Governor of
a State and in the Courts of a State shall, respectively, vest in the
National Assembly, the President of the Federation and in the
courts which by virtue of the foregoing provisions are Courts
established for the Federal Capital Territory, Abuja;***

***(b) all the powers referred to in paragraph (a) of this section shall
be exercised in accordance with the provisions of this
Constitution; and***

***(c) the provisions of this Constitution pertaining to the matters aforesaid
shall be read with such modifications and adaptations as may be***

reasonably necessary to bring them into conformity with the provisions of

this

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section.

**301 Without prejudice to the generality of the provisions
of Section 299 of this Constitution, in its application to the
Federal Capital Territory, Abuja, this Constitution shall be
construed as if-**

**(a) references to the Governor, Deputy Governor and the
executive council of a State (howsoever called) were references
to the President, Vice-President and the executive council of the
Federation (howsoever called) respectively;**

**(c) references to persons, offices and authorities of a State were
references to the persons, offices and authorities of the
Federation with like status, designations and powers,
respectively; and in particular, as if references to the Attorney-
General, Commissioners and the Auditor-General for a State were**



references to the Attorney-General, Ministers and the Auditor-General of the Federation with like status, designations and powers.

302 The President may, in exercise of the powers conferred upon him by **Section 147 of this Constitution**, **appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions**

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as may be delegated to him by the President, from time to time.

303 *The Federal Capital Territory, Abuja shall comprise six area councils and the administrative and political structure thereof shall be as provided by an Act of the National Assembly."*

The provisions of the Constitution shall therefore apply to the Federal Capital Territory, Abuja " as if it were one of the States of the Federation ..." See **Section 298** of the Constitution. **Section 299(c)** further provides that the provisions of this Constitution pertaining to the matters aforesaid shall be read with such

modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section. The

President may delegate his powers to a Minister whom he appoints to be in charge of the Federal Capital Territory, Abuja.

The preamble to the Federal Capital Territory Act Cap.128, Laws of

the Federation of Nigeria, 1990 states that it is: "*An Act to establish for Nigeria, a Federal Capital Territory and to provide for the constitution of a Federal Capital Development Authority for exercising the various powers set out in this Act, to execute other projects*"

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connected therewith, to provide for the laws applicable to that Territory and for appeals from the Upper Area Court and the law applicable thereto; and to provide for the delegation to the Minister of Federal Capital Territory of the executive powers vested in the President and those vested in him and the Governor of a State under the applicable laws."

The commencement date of the Act is 4th day of February, 1976. In *Attorney-General v. H.R.H. Prince Ernest Augustus of Hanover* (1957) A.C. 436, Lord Normand held at pages 467 and 468

that:

"When there is a preamble it is generally in the recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that

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may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which

embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. The Courts are concerned with the practical business of deciding a lis, and when the plaintiff puts forward one construction of an enactment and the defendant another, it is the Court's business in any case of some difficulty, after informing itself of what I have called the legal and factual context including the preamble, to consider in the light of this knowledge whether the enacting words admit of both the rival constructions put forward. If they admit of only one construction, that construction will receive effect even if it is inconsistent with the preamble, but if the enacting words are capable of either of the constructions offered by the parties, the construction which fits the preamble may be preferred."

See also Chairman, [L.E.D.B. v. Said \(1968\) NMLR 183](#)

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at 187 and *Okeke v. Attorney-General of Anambra State* (1992) 1 NWLR (Pt.215) 60 at 83 paragraphs "B"- "C".

Section 4(2)(h) of the Federal Capital Territory Act states that "***Subject to the other provisions of this Act, the Authority shall have power to do anything which in its opinion is calculated to facilitate the carrying on of its activities including, without prejudice to the generality of the foregoing, power to exercise such other powers as are necessary or expedient for giving full effect to the provisions of this Act.***" Of paramount importance is *Sections 13, 14 and 15 of the Act* (supra) which sets out how the President may exercise his executive powers:

"(1) In addition to any law having effect, or made applicable throughout the Federation, the laws set out in the *Second Schedule to this Act* shall as from 9th May, 1984 apply in the Federal Capital Territory.

(2) Where any of the laws set out in the Schedule had effect in the former Federal Territory of Lagos and any such law, whether by reason of the

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creation of States in Nigeria or otherwise howsoever, had become obsolete such law shall by virtue of this Act be revived and shall apply in the Federal Capital Territory as provided in subsection (1) above.

(3) The laws set out in the Second Schedule to this Act and applying in the Federal Capital Territory by virtue of subsection

(1) of this section shall have effect with such modifications as may be necessary to bring them into conformity with the Constitution of the Federal Republic of Nigeria as affected by the Constitution (Suspension and Modification) Act and, in particular:-

(a) References in any such laws to Region, State or Federal Territory of Lagos shall, unless the context otherwise requires be construed as references to the Federal Capital Territory;

(b) Functions conferred by any such law on the Governor, Premier, Military Governor or Administrator, Minister or any Commissioner in the Government of a State shall, without prejudice to the exercise of those functions by the President and until other provision in respect of any such function is made by the

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authority having power to do so, vest in the Minister charged with responsibility for the Federal Capital Territory."

That is to say, until the National Assembly passes the bill titled "**An Act to make provision for assessment, levying and collecting of tax on real property within the Federal Capital Territory and other related matters connected on the President or the National Assembly as the case may be shall be vested in the Minister charged with the responsibility for the Federal Capital Territory, Abuja.**"

The Federal Capital Territory Act has clearly set out in **Section 13(4), 14** and **15** how the President is to administer the Federal Capital Territory, Abuja by providing as follows:

"(4) The President may by order published in the Federal Gazette make such changes in the text of the laws set out in the **Second Schedule to this Act as would bring those laws into conformity with the provisions of this Act.**

14. The President may make regulations generally for carrying into effect the provisions of this Act.

15. The Interpretation Act shall apply for the



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interpretation of the laws set out in the Schedule to this Act."

A combined reading of the above provisions of the Act will show that the President is to exercise powers in the Federal Capital Territory, Abuja by Federal Gazettes or through regulations, and may make such changes in the text of the Laws set out in the 2nd Schedule to the Act as to bring them into conformity with the provisions of the Act. Therefore the submission of the learned Counsel to the appellants that the Minister, acting under delegated powers or authority cannot make or enact a bye-law for the assessment of privately owned houses or tenements for the purpose of levying such rates as prescribed by the bye-law has no support under the provisions of **Section 13(1), (2), (3)(a), (b), (4), 14 and 15 of the Federal Capital Territory Act Cap 128, Laws of the Federation of Nigeria, 1990**.

The Minister of the Federal Capital Territory, Abuja also has the statutory powers to adapt and modify the laws applicable in any State of the Federation, example, Niger, Plateau, Kaduna States, including those of the Former Capital Territory, Lagos to bring them into

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conformity with the Constitution of the Federal Republic of Nigeria. In particular, references in any such laws to the region, state or Federal Capital Territory of Lagos shall, unless the context otherwise requires, be

construed as references to the Federal Capital Territory, Abuja.

See [Section 13\(a\) of the Act](#) (supra).

[Section 13\(1\) of the Act](#) (supra) applies **"In addition to any law having effect, or made applicable throughout the Federation"** as well as **"the laws set out in the schedule to this Act"** provided they were in existence as from 9th May, 1984. Learned Counsel to the appellants appreciated this when he argued at page 11 paragraph 8.9 of the brief that:

"...The [Niger State Government Edict of 1976](#) was made applicable to the Federal Capital Territory, Abuja since 9th May, 1984 but the purported bye-law was made in 2001, a period of 17 years interval. Regrettably, a bye-law is a subsidiary legislation and cannot exist on its own or generate an independent statutory provision. It must follow the fate of its principal statute (if any).

See [Osadebey v. Attorney-General Bendel State](#) (supra)."

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In view of the definition of the word "**regulation**" or "**subsidiary instrument**" under **Section 18(1)** and **37(1) of the Interpretation Act** read together with **Section 13(1)-(4)**, **14** and **15 of the Federal Capital Territory Act** (supra) which includes a bye-law or an enactment such as the Federal Capital Territory Act, I am of the candid opinion that the above submission is without substance. No time limit is imposed on the President or the Minister charged with responsibility for the Federal Capital Territory, Abuja to enact regulations or bye-laws for carrying into effect the provisions of the Act.

In **Knight, Frank & Rutley v. Attorney-General, Kano State (1990) 4 NWLR (Pt.143) 210**, Mohammed, JCA (as he then was) commenced the judgment in the Court of Appeal, Kaduna Division at page 215 as follows:
"The single issue for determination of this appeal is whether the contract which the Kano State Government signed with the appellants to prepare a valuation list of rateable hereditaments within Kano Municipality is void. The purpose of the valuation is to enable the State Government to

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charge and collect tenement rates..."

Having heard arguments from learned Counsel representing the appellants and the respondent his Lordship held at page 220 paragraphs "D"-**"G"** and at page 221 paragraphs **"B"**-**"E"** as follows:

"Could the powers of the State and the local government councils to order for valuation of rateable hereditaments co-exist and be complementary? I believe that once the State passes a legislation assigning the function of valuation of tenement rates to the local government as the Constitution has directed only the Local Government Council will have the power to deal with that subject matter. The State has no power to deal with the matter and the local government council cannot, even if it wants to, divest itself of those powers. In an English case of [Brikdale District Electric Supply Co. v. Southport Corporation \(1926\) A.C. 355 at 364](#) it was held that if a person or public body is entrusted by the legislature with certain powers and duties expressly or impliedly for public purposes, those persons or bodies cannot divest or take any action



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incompatible with the due exercise of their powers or the discharge of their duties.

The first point to consider in this case is the power of the Government of Kano State to deal and sign a contract with the appellants for valuation of rateable hereditaments, the subject matter in this appeal. Mr. Oyeleke argued that the State has the power to enter into such a contract because under [Section 4\(7\) of the Constitution](#) the House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to any matter not included in the Exclusive Legislative List. Counsel further argued that the State cannot be made to give a power which it does not have. Mallam Mahmoud on the other hand replied on this submission that the Kano State Legislature has given effect to the sanction of the Constitution in [Edict No.5 of 1977](#) and the government cannot act contrary to that law. He referred to the case of [The Governor of Kaduna State v. The House of Assembly of Kaduna State \(1982\) 2 NCLR](#)

***635 where it was held that the executive powers of the Governor
are subject to the Constitution***

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and any law made by the State House of Assembly."

"...The Constitution has given the State Legislatures the legislative power to enact laws and confer functions including assessment of privately owned houses or tenements for the purpose of levying rates. It is my strong view that even in a military administration the States have only the legislative power over assessment of tenement rates. They act just like a conduit pipe or the Postmaster General. He receives the letters and delivers them to the addressees. The State cannot fail to assign the functions to the local government councils since the directive of the Constitution is mandatory. The executive power over it, is without any doubt, the responsibility of the Local Government Councils. I do not have to emphasize that only the executive have



the power to enter into agreement for the execution of any development or duty. Since the Kano State Government has no power over assessment of tenement rates, it goes without saying that it has no jurisdiction to enter into an agreement with any body or person for the valuation of rateable hereditaments."

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In affirming this judgment on appeal the Supreme Court held in *Knight Frank & Rutley (Nig.) & 1 Ors. v. Attorney-General (1998) 7 NWLR (Pt.556) 1 per Uwais*, CJN at pages 19 paragraphs "B"- "H" and page 20 paragraphs "A"- "C" as follows:

The powers exercisable by the Federal, State and Local Governments have been clearly identified under the 1979 Constitution. With the exception of the items under the Concurrent Legislative List each of the three tiers of Government exercises exclusive power over the subject under its control. By the provisions of Section 274 subsections (4) of the 1979



Constitution *the provisions of the Interpretation Act, 1964, No.1 of 1964 shall be employed in interpreting the provisions of the 1979 Constitution. It is clear from the provisions of paragraph 1(b) and (j) of the Fourth Schedule read together with the provisions of Section 7 subsection (5) of the Constitution that the intendment of the Constitution is that only Local Government Councils have the power to assess and impose rates on privately owned property. In interpreting that power Section 10*

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subsection 2 of the Interpretation Act, 1964 provides:-

"(2) An enactment which confers a power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it."

It follows from these provisions that the power to award the contract entered into between the parties in this case is exercisable by the Local Government Councils concerned and not

Kano State Government.

Again Section 32 of the Interpretation Law, Cap 51 of the Laws of Northern Nigeria, 1963 applicable to Kano State at the time material to this case provides:-

"32. Where in any Law power is given to any person to do or enforce the doing of any act or thing all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing."

There is no legislation which empowers Kano State Government to dabble in or interfere with the compilation of valuation list for the purpose of assessing or collecting rates on private properties in Kano State. Therefore,

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the Government acted ultra vires in entering into contract with the appellants to do what only the Local Government Councils concerned were entitled to do under the 1979 Constitution and the Local Government Edict, 1977. Consequently, I hold that both the trial Court and the Court of Appeal were right in coming to the conclusion that the Government had no power to award the contract and it acted ultra vires in doing so.



It is elementary that where a party acted contrary to, infringes or violates any of the provisions of the Constitution, such action is null and void and of no effect whatsoever. It follows that the action by the respondent in entering into contract with appellants, when the former had no power to do so, is null and void and of no effect whatsoever. Consequently, the contract is vitiated. It, therefore, becomes null and void.

*In the book **Judicial Review of Administrative Action, Third Edition, by S.A. de Smith**, the following passage appears on p. 88 thereof:-
"A public body with limited powers cannot bind itself to act ultra vires; and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by*

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creating an estoppel - fairtitle v. Gilbert, (1787) 2 T.R. 169 and Rhyl U.D.C v. Rhyl Amusements Ltd . (1959) 1 W.L.R. 465."

It remains to mention that the Assessment Law, Cap 8 of the Laws of Northern Nigeria, 1963 provides for the ascertainment of the value of tenement for rating purposes. The Law empowers the State Commissioner, charged with the responsibility, to appoint appraisers for the purpose of compiling a valuation list which will be employed in determining the rate to be charged on tenements.

*Although the Assessment Law was an existing Law under the provisions of Section 274 subsections (1) and (4) of the 1979 Constitution, its application is subject to **provisions of the Constitution. Section 7 subsection (5) of the 1979 Constitution read together with the provisions of paragraph 1(j) of the Fourth Schedule to the Constitution and Section 76 of Kano State Local Government Edict, No.5 of 1977 have effectively removed the power to appoint appraisers to compile valuation list from the State Commissioner in charge and transferred the function to Local Government Councils. This is a further proof that the respondent had no power at***

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the time of entering into the contract to appoint the appellants as appraisers to compile a valuation list for the purpose of charging tenement rates by the Local Government Councils."

There is nothing to show that the Minister in-charge of the Federal Capital Territory, Abuja has in any way usurped the functions of the Abuja Municipal Area Council in the implementation of paragraph 1(j) of the 4th Schedule to the Constitution hence the lower Court dismissed him from the proceedings in the Court below and there is no appeal against the dismissal. Therefore, in the case of the Federal Capital Territory, Abuja the Minister has the constitutional and legal power and authority to adapt and modify regulations, bye-laws, orders or subsidiary instruments, etc, in order to establish the necessary machinery for the assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Minister as the appropriate authority for the Federal Capital Territory, Abuja. The same applies with the six Area Councils within the Federal Capital Territory, Abuja.

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The question is: What is a bye-law? A

"bye-law" or "bylaw" is "1. *Parliamentary law: (usu. pl.) A rule or administrative provision adopted by an organization for its internal governance and its external dealings. Although the bylaws may be an organization's most authoritative governing document, they are subordinate to a charter or articles of incorporation or association or to a constitution. The "Constitution and bylaws' are sometimes a single document."* See Blacks Law Dictionary, 9th edition, page 228 .

It is fallacious to submit that without the passing of the bill before the National Assembly, the respondent lacks the vires to enforce paragraph 1(j) of the 4th Schedule to the Constitution by invoking the Abuja Municipal Area Council Bye-Law No.12, Vol.90 of 7th April, 2003. If a bye-law is a rule or administrative provision adopted for the internal governance of Abuja Municipal Council and its external dealings with the public, and is an authoritative document subordinate to the Constitution, my humble view is that the respondent has the powers to publish or enact



bye-laws for the implementation of paragraph 1(j) of the 4th

Schedule to

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the Constitution (supra). The Abuja Municipal Council Bye-Law, 2001

provides in the preamble as follows:

"In the exercise of powers conferred on the Abuja Municipal Area

Council, by virtue of Section 13 and 2nd Schedule of the Federal

Capital Territory Act Cap.503, Laws of the Federation, 1990 and Sections

55 and 56 of the Niger State Local Government Laws, 1976 the Abuja

Area Council makes the following Bye-Law..."

Chapter 5 Sections 1-5 of the Bye-Law reads as follows:

"PART I - ESTABLISHMENT OF THE ABUJA MUNICIPAL AREA

COUNCIL VALUATION OFFICE:

1(1) *There is hereby established the Abuja Municipal Area Council*

Valuation office (hereinafter referred to as the Valuation office) which

shall carry out Assessment of all ratable properties in the Council.

(2) The Valuation office shall have zonal offices in each development area

in the Council as may be considered appropriate by the Chairman.

(3) The valuation office shall be the only body in the council empowered to levy and collect rates under this bye-law.

(4) The valuation office shall consist of the Head of valuation and such

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numbers of other staff as may be require to assists the Head in the execution of his duties under this bye-law.

(5) The members of staff of the valuation office shall be members of the council public services.

2(1) *The Chairman shall appoint the head of valuation who shall be both the Professional and Administrative Head.*

(2) The head of valuation appointed under this bye-law shall be responsible to the Chairman.

(3) The valuation office shall be responsible for:-

(a) The identification, survey and valuation of ratable properties in the Council for the compilation of the valuation list.

(b) Nomination or appointment and supervision of professional advisers

for valuation of ratable properties in the council.

3(1) *The Head of Valuation in consultation with the Chairman may appoint persons who shall be qualified estate surveyors and valuers registered by the Estate Surveyors and Valuers Registration Board of Nigeria for the purpose of this Bye-law.*

(2) The person appointed under subsection of this section shall be subject to and under the control and supervision of the head of valuation.

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4. *An appraiser may:*

(a) Require any person to give all such information orally or in writing as he may require which may affect the assessed value of a tenement so as to ascertain and assess the property.

(b) Call upon any person liable to pay rate upon a tenement to exhibit to him any document required in connection with evaluation of a tenement.

(c) On any day (except a non-working day) between the hours of eight o'clock in the morning and six o'clock in the evening enter into or upon any tenement for he purpose of making valuation thereof and take such

measurements and other particulars, as he may deem necessary for the purpose.

(d) Call upon the occupier of any tenement for him or her to furnish his or her name and where the occupier is not the owner, the name and address of the owner therewith.

(e) Require the owner occupier of agent for any tenement to inform him as to the boundaries of the tenement.

5. *The rating authority may:-*

(a) Demand and collect tenement rates from owners or occupiers of tenements and buildings after the notice of demand have been sent to them;

(b) Call upon any person liable to any rate,

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upon tenements to exhibit to it any account, receipts for rents and rate in connection with the valuation of a tenement.

(c) Call on the occupier if he or she is not the owner to furnish the name and address of the owner(s).

PART II - ASSESSMENT AND COLLECTION OF TENEMENT RATES:

6(a) *As soon as practicable after the appointment of the Head of Valuation, the Head shall cause the value of every, tenement subject to rate in the council to be ascertained and assessed by an appraiser, and such assessment shall be known as the first General Assessment.*

(b) Not less than one in every five years after completion of General Assessment, the Head of valuation shall cause a new general assessment to be made in the manner provided under sub-section (a) of this section, of every tenement subject to rate in the council.

7. *As soon as the first or any subsequent general assessment shall have been completed, the appraiser shall make a list of the several tenements assessed and their respective valuation to be made and shall submit same to the Head of valuation for signature subject to any alteration which may be made on the order of*

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the Assessment Appeal Tribunal or a Magistrate's Court.

8. *The valuation office, after the preparation of the valuation list or an amendment to a valuation list, shall:*

(a) Give notice in any of the widely read daily newspapers of the fact that a valuation list has been prepared and as to the place at which it may be inspected; and shall make available the list, for inspection at the place mentioned during ordinary office hours for twenty-one days from the date of publication of such notice; and

(b) Serve upon the owner of each tenement contained in the valuation list a notice showing the assessed value thereof.

9. *Subject to any alteration which may be made on the order of the Assessment Appeal Tribunal, Magistrate Court or Area Court:*

(a) A valuation list prepared on a General shall, for the purpose of any rate to be levied in respect of the tenement assessed, be the valuation list for the year in which the same is published and for the next following year.

(b) In any other year the valuation list as amended and in force at the commencement of the year, shall for the purpose of any rate to be

levied in respect of the tenement assessed, be the valuation list.

10(1) *In every year in which there is no general assessment the Head of Valuation shall in the month of January, or as soon as may be convenient thereafter, cause a copy of the existing valuation list to be prepared with such addition or alterations only as are necessary to give effect to any new assessment or re-assessment of tenements, in such situations as*

follows:-

(a) Where whether by construction of building, destruction of building or other alteration in structural condition, their assessed value has been increased or reduced; or

(b) Where being ratable or about to become ratable has not been assessed; or

(c) In respect of which any person claiming to be the owner thereof shall have delivered to the rating authority a written request for re-assessment on or before the first day of January to be ascertained and assessed.

(2) Such valuation list when prepared shall be signed by the Head of Valuation and subject to any alteration which may be made on the order of the Assessment Appeal Tribunal or a Magistrate Court shall be the valuation list for

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the year which the then existing list has been made.

11. *Notice of the preparation of the valuation list mentioned in Section 8 of the Bye-law and of the place at which the same may be inspected shall be given in the manner prescribed in Section 8 and the said list shall be open for inspection for the same period as a list of the first or subsequent general assessment."*

Sections 55 and 56 of the Niger State Local Government Law of

1976 *also read as follows:*

"55. Subject to the provisions of this Act or any other enactment a local government shall have responsibility for and power to make bye-laws for, all of the following matters, that is:

(r) collection of community tax, property and other rates and other designated revenue.

56. Subject to this Act or any other enactment, the military governor may confer power on a local government to be responsible for and to make bye-laws for all or any of the following matter, that is

(s) Operation of commercial undertakings."

I hereby resolve all the issues formulated for determination against the appellants. The appeal lacks merit and is dismissed with N50,000.00 costs

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against the appellants.

MOORE A.A. ADUMEIN, J.C.A. :

I had a preview of the judgment just delivered by my learned brother, **Joseph Tine Tur**, JCA. His Lordship has comprehensively dealt with all the issues in this appeal. I agree with my learned brother that this appeal is devoid of merit and it should be dismissed, and it is hereby dismissed.

I abide by the order for costs.

TINUADE AKOMOLAFE-WILSON, J.C.A. :

I have had the opportunity of reading in draft the lead judgment just

delivered by my Lord, **Tur, JCA.**

The reasoning leading to the conclusion dismissing the appeal is
exhaustive, I have nothing useful to add.

Based on the sound reasoning and conclusion, I also dismiss the appeal
with N50,000.00 costs to the Respondent.

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Appearances:

N.A. Obinna, Esq. with Charles Ugwu, Esq. and Priscilla Taiwo
Williams (Miss), Esq. For Appellant(s)

Alexander Moro, Esq. with Stanley-Idun, Esq. For Respondent(s)

Source: Law Pavilion.