



THE TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT CAP. T2 LFN, 2004 IS UNCONSTITUTIONAL

UYO LOCAL GOVERNMENT V. AKWA IBOM STATE GOVERNMENT & ANOR (2020) LPELR – 49691 (CA)

Background

The provisions of the Taxes and Levies (Approved List for Collection) Act Cap, T2 2004 (the Act) have evoked much debate in recent times particularly as to their legality *vis a vis* their supremacy to provisions of the Constitution of the Federal Republic of Nigeria 1999 (As Amended). The argument is premised on the notion that the Act is not a primary tax legislation but merely an Act which assigns collecting rights of taxes amongst the federal, state and local governments and nothing more. For the benefit of analysis the provisions of Section 1 and 2 of the Act read as follows:

“1(1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the Federal Government, State Government and local government shall be responsible for collecting the taxes and levies in Part I, Part II ad Part III of the Schedule to this Act respectively”

“2(1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the Schedule to this Act, and members of the Nigeria Police Force shall only be used in accordance with the provisions of the tax laws.”

The courts were recently afforded the opportunity for the interpretation of these provisions and in the case under review, the Court of Appeal held that Sections 1 and 2 of the Taxes and Levies (Approved List for Collection) Act, 2004 are inconsistent with the provisions of the Constitution and as such void to the extent of their inconsistency.

Brief Facts

The summary of the facts of the case were that the Appellant by way of an originating summons filed at the Akwa Ibom State High Court, Uyo Judicial Division sought the determination of the following questions, to wit:

- 1. Whether by the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Taxes and Levies (Approved List for Collection) Act, 2004, the Road Traffic Law Cap 115 Laws of Akwa Ibom State, Local Government (Administration) Law 2007 (as amended), the defendants herein or any of their agents has the legal right to regulate, charge and collect motor park fees/levies from commercial vehicles in Akwa Ibom State and for their sole benefit; and***
- 2. Whether by the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Taxes and Levies (Approved List for Collection) Act, 2014 the Road Traffic Law Cap 115 Laws of Akwa Ibom State and the Akwa Ibom State Local Government (Administration) Law, 2007 (as amended), the defendants herein and or any of their agents has the legal right to control and or charge daily park fees/levies from commercial tricycles and other commercial vehicles other than as regulated in the Road Traffic Law Cap 115 Vol. 5 of Akwa Ibom State.***

The Appellant also prayed for certain declaratory and injunctive reliefs. In the judgment of the trial court it was held that the Appellant had no legal right to license mechanically propelled vehicle which includes tricycles. The Court went further to hold that except the House of Assembly by legislation confers, assign and/or delegates the said functions to the Local Government Councils, the Appellant would be acting ultra vires in collecting such levies and fees from tricycles (which are mechanically operated vehicles).

Dissatisfied with the decision of the trial court, the Appellant appealed the judgment at the Calabar Division of the Court of Appeal. The two major issues before the Court of Appeal was to determine whether the Appellant has established that by the relevant laws, it is the Appellant that has the exclusive legal right to control, charge daily park fees/levies in Akwa Ibom State and/or to register commercial vehicles other than as regulated in the Road Traffic Laws Chapter 115 Laws of Akwa Ibom; and whether the entire provision of Taxes and Levies (Approved List for Collection) Act 2004 is ultra vires the Constitution and therefore null and void by reason of the ouster clause contained in the said Act.

The Court of Appeal held that the term “Notwithstanding” used in Section 1(1) of the Act is meant to exclude an impinging or impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself. The Court relied on the Supreme Court’s decision in **NDIC V. Okem Enterprises Ltd reported in (2004) 4 SC (Pt. 11) 77 at 111** which interpreted Section 251 (1) of the 1999 Constitution and held that the use of the word ‘Notwithstanding’ means that no provision of that Constitution shall be capable of undermining the said Section. It also cited **Fescum & Co Ltd V. F.A.A.N (2015) 14 NWLR (Pt. 1480) 491 at 506-507** where the apex Court also held that the opening phrase Notwithstanding anything in any other enactment in Section 20 of the FAAN Act is a phrase of exclusion which accords the said statutory provision pre-eminence and having precedence over and above other provisions of any other enactments. The Court of Appeal therefore held that the supremacy of the Constitution is never in doubt and Section 1(3) of the Constitution is to the effect that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that any other law shall to the extent of its inconsistency be void and that the Taxes and Levies Act having commenced its provisions with a clause that undermines the supremacy of the Constitution, nothing that can operate to save any part of the Act. The Court noted that the virus in the introductory clause of the Act has infested the entire Act and thereby rendering it unconstitutional.

Commentary

This case has clarified the point on the legality of the Taxes and Levies (Approved List for Collection) Act 2004. The effect of this decision is that any act done or purported to be done under the Act will be a nullity given that the whole Act has been rendered unconstitutional.

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