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An Examination of the Application of Taxing Powers in Nigeria by Judicial Authorities

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Abstract

By virtue of the Constitution of Federal Republic of Nigeria (As Amended) 1999 (here-in-called “the Constitution”), Nigeria is a federation that consists of States and a Federal Capital Territory¹. The local government is as well the creation of the constitution². Nigeria therefore has the federal, state³ and local government⁴ (here-in-after referred to as “Levels of Government”). The Constitution expressly provides that “Nigeria is one indivisible and indissoluble sovereign state to be known by the name; Federal Republic of Nigeria”⁵. The Constitution further states that Nigeria shall be a Federation consisting of States and a Federal Capital Territory⁶. Nigeria consists of 36 states, one Federal Capital territory and 774 local government areas. Taxing powers are divided among these levels of government. Each level of government is given a meaningful tax window wide enough to enable it carry out its assigned functions. Conflicts do arise among levels of government over tax jurisdiction. This conflict more often than not ends up in court, and the judiciary makes pronouncement relating to the conflict. This work therefore ventures into examining the attitude of the judiciary in the application of the provisions of the Constitution and other legal framework for taxing powers in Nigeria to determine the adherence of the judiciary to these legal frameworks in their pronouncements. In doing this, we postulate one research question to guide this work and that is: Whether the Nigerian judiciary is active and upholds strict adherence to the provisions of the legal framework for taxing powers in Nigeria? This paper employs doctrinal or conceptual legal research methodology and the materials used were sourced from primary, secondary and tertiary sources found in hard copies and on the internet. This paper found out that Nigerian judiciary does not countenance flouting of the legal framework for taxing powers in Nigeria and that, to a reasonable degree, is proactive and maintains strict adherence to the dictates of legal framework for taxing powers in Nigeria. This paper recommends stiff punishment for scandalous breach of the legal framework for taxing power by any level of government and the creation of a separate tribunal for trial of breach of the legal framework for direct taxes and indirect taxes to enhance speedy dispensation of justice in the trial of tax cases.

Keywords: taxation, taxing powers, Nigerian judiciary, Nigerian constitution, trial of tax cases, legal framework

1. Introduction

Generally, the structure of taxing powers of any level of government determines the quantum of internally generated revenue of that level of government through tax. Conversely, the taxing powers capacity of each level of government is directly proportional to the level of government internal revenue generation. This is the real intent of the Constitution and other tax laws by allocating taxing powers to levels of government; however, notwithstanding the quantum of taxing powers of any level of government, the effectiveness of its tax administration plays a substantial role in determining the internal revenue generation accruable to that level of government. The efficiency of the judiciary intervention in the revelatory of tax laws through tax cases brought before it, determines the sanity level in the tax administration of a nation and as well the confidence of tax administrators of levels of government when the thought to approach the court for determination of tax conflicts occurs to their mind.

Nigeria, like every other nation, imposes and collects taxes and levies from her citizens. Taxes in Nigeria are imposed and collected upon a legal framework or backing and the powers to impose and collect taxes and levies in Nigeria are shared among the levels of government. Each of the levels of government derived its taxing powers from either the Constitution or any other tax law made pursuant to the Constitution. The Constitution shares taxing powers among federating units particularly between federal and state government⁷. The same constitution equally gives the Local Government its taxing powers⁸. Again Taxes and Levies (Approved List for Collection) Act (TAL Act) graphically tabulates taxing powers among levels of government in Nigeria⁹. There are other tax laws that empowers the state and federal government to impose and collect taxes and levies, like Personal Income Tax Act (PITA)¹⁰, Stamp Duty Act (SDA)¹¹ and Capital Gain Tax Act (CGTA)¹². The Constitution together with these tax laws that empower levels of government in Nigeria to impose and collect taxes are referred to as “legal framework for taxing powers”.

The judiciary¹³ is one of the three arms of government in Nigeria. The legislature makes the law, the executive executes the law, while the judiciary interprets the law. Judiciary is defined as the branch of government responsible for interpreting laws and administering justice in a nation. It is made up of a system of courts and a body of judges.¹⁴ A working judiciary is necessary in Nigeria and indeed in every civilized society particularly in the administration of tax laws (as contained in the legal framework for taxing powers) due to conflicting interest and abuse of taxing powers among levels of government. The judiciary is usually referred to as “the last hope of the common man”.

The judiciary¹⁵ as the third arm of government in Nigeria has as its main duty the interpretation of the Constitution and other laws made by the legislature¹⁶ and to uphold the rule of law. The judiciary in our context include the courts and tribunals established by the Constitution and tax laws, they are: The Supreme Court, Court of Appeal, High courts (federal, state or of the Federal Capital Territory), Magistrate courts, Tax Appeal Tribunal and Value Added Tax Tribunal. The judiciary in the process of interpreting tax related parts of the Constitution and other tax laws in Nigeria also shares with the legislature the role of law making from existing tax law made by the legislature. The laws made by the judiciary through pronouncement in a case before it is referred to as, “Judicial precedent” or “Judge made Laws”. The Supreme Court is the highest court in Nigeria and as such the end of all appeals of all tax cases.

2. The Constitution and other Legal Framework of Taxing Powers in Nigeria

a. The Constitution of the Federal Republic of Nigeria (As Amended) 1999.

The Constitution is the most supreme law in Nigeria. The Constitution in section 1 (1) provides as follows:

This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria¹⁷.

The Constitution further provides as follows:

If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void¹⁸.

The Constitution allots to every level of government its own areas of tax jurisdiction and each level of government is expected to adhere to its own tax jurisdiction and not to interfere with the other level’s taxing power jurisdiction¹⁹. There are two lists of powers under the Constitution called Exclusive Legislative List and Concurrent Legislative List²⁰. The Exclusive Legislative List²¹ contains items meant exclusively for the federal government of Nigeria to legislate on (through the National Assembly) at the exclusion of States and Local Governments. The Concurrent Legislative List²² contains items both the federal and state government can legislate on. Accordingly, the federal and state government can legislate on items under the Concurrent Legislative List. The Constitution went further to state that where the law made by the state government conflicts with the law made by the federal government, the law made by the federal will prevail and render

the state law null and void and of no effect to the extent of its inconsistency with the federal law.²³ Any other item not included in the exclusive and concurrent lists is referred to as “residual list”. Residual list is the preserve of the state government only²⁴. It is noteworthy to state here that the Constitution did not make a list of items under residual list.²⁵ That therefore suggests that any item not in the exclusive and concurrent lists automatically belongs to the residual list.

Tax related items contained in the Exclusive Legislative List are as follows:

1. Custom and Excise Duty.²⁶
2. Export Duty²⁷.
3. Stamp Duty²⁸.
4. Taxation of Incomes, Profit and Capital Gain²⁹.

May we accentuate here that the state government does not have direct competence to legislate on these areas unless a federal law assigns the power to it. In that case, the state government must confine itself to the prescription of the empowering federal law which grants it the power to either impose or collect taxes on any of these areas. Failure of the state to confine itself to the prescription of the enabling statute will render any law made by the state under the empowering statute void to the extent of its inconsistency with the empowering statute³⁰.

The Concurrent Legislative List is meant for the federal and state to legislate. It is found at Part II of the Second Schedule to the Nigerian Constitution. The following are the tax-related items contained in the Concurrent Legislative List:

1. Capital gains, taxation of income and profits except as otherwise prescribed by this constitution³¹.
2. Documents or transactions by way of stamp duties³².

The Constitution further states that in the exercise of its powers to impose any tax or duty on capital gains, incomes or profits or persons other than companies; and documents or transactions by way of stamp duties, the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the government of a state or other authority of a state³³. In order to prevent double taxation, the Constitution provides as follows:

the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State³⁴.

The Constitution allows the state House of Assembly to subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council³⁵. In other to ensure that this provision does not result in double taxation, the Constitution further provides as follows:

Where a Law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such Law by a local government council in accordance with the provisions hereof it shall regulate the liability of persons to the tax, fee or rate in such manner as to ensure that such tax, fee or rate is not levied on the same person in respect of the same liability by more than one local government council³⁶.

The Local Government receives its own share of taxing powers from the Constitution. The Constitution states that the main functions of a Local Government Council are among others “collection of rates, radio and television licenses”³⁷.

The above represent the constitutional provisions on taxing powers of the levels of government in Nigeria.

The Taxes and Levies (Approved List for Collection) Act³⁸ (here-in-called “TAL Act”) is another statutes that empowers the three levels of government in Nigeria to impose and collect taxes and levies. The TAL Act is enacted by the National Assembly and its schedule graphically tabulates taxing powers for each levels of government in Nigeria. Under this law, the taxes and levies collectable by each of the federating units are arranged in three parts as follows:

- Part I contains taxes and levies collectable by the federal government and has eight items.
- Part II contains taxes and levies collectable by the state government and it contains eleven items.
- Part III contains taxes and levies collectable by the local government and it contains twenty items.

The TAL Act was amended in 2015 and the amendment is called Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015. The Schedule to the 2015 (Amendment) Order, amended the Schedule to the principal Act³⁹. The Amendment order adds a new item nine immediately after item eight in Part I. In Part II, item seven is substituted and new items 12 -25 were added. Part III is amended by adding a new item 21 to it. The Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015 created a new Part IV immediately after Part III and called it

“Harmonized Taxes and Levies” which actually harmonizes some items contained in Part II and Part III of the Schedule of the principal Act.

A cautious study of the Taxes and Levies (Approved List for Collection) Act, Amendment Order, 2015, will reveal a general increase in the taxing powers of each of the levels of government, particularly that of the state government. The essence is to increase the revenue generation of the state government in order to enhance their capacity to shoulder their enormous developmental responsibility. This means that the state government will from 2015 embark on the collection of items from 12-25 in addition to the ones which they had been collecting previously.

There are other laws guiding administration of taxes and levies in Nigeria. They include:

Capital Gains Tax Act (CGTA):

Capital Gains Tax Act is made by the National Assemble pursuant to the Constitution⁴⁰ and is administered by the Federal Inland Revenue Service (here-in-called “the Service”) now renamed “Nigerian Revenue Service” which is a body responsible for collection of federal government revenue only⁴¹. They account for the taxes collected to the federal government. Capital Gain Tax is a tax charged on the gains accruing on disposal of assets. The regulating legislation of this tax is the Capital Gains Tax Act⁴². This tax is imposed upon the disposition of chargeable assets, whether by sale or exchange at a rate of 10%⁴³ and the computation of the gain is the difference between the consideration accruing to any person on the disposal of assets and any sum to be excluded from that consideration or any expenditure allowable on the disposal⁴⁴. In clear terms, it is chargeable on the total amount of chargeable gains accruing to any person in a year of assessment after making such deductions as allowed under the CGTA. Such assets include debts, and incorporeal generally; any currency other than Nigerian currency; and any form of property created by a person disposing of it⁴⁵.

Companies Income Tax Act (CITA):

Companies Income Tax Act (CITA) is a tax law made by the National Assemble pursuant to the Constitution⁴⁶. Company Income Tax is paid by all companies incorporated in Nigeria. All companies are subject to this tax, except those involved in petroleum activities (upstream sector), which are covered by the Petroleum Profit Tax Act. CITA established the Federal Board of Inland Revenue (FBIR) together with its operational arm called the Federal Inland Revenue Service (FIRS) in 1961⁴⁷ and gives it the responsibility of collection of company income tax for the federal

government only⁴⁸. Currently, companies with an annual turnover less than 25million are exempted from paying income taxes. Companies with an annual turnover between 25 to 100 million naira are liable to pay taxes of 20%, while companies with turnover of over 100 Million naira are to pay 30% of their profit. The Federal Inland Revenue Service (FIRS) is the government agency in charge of the collection and administration of company income tax in Nigeria.

Personal Income Tax Act:

Personal Income Tax Act is a federal law made by the National Assemble. It regulates the imposition and collection of personal income of individuals in Nigeria. It gives the State Board of Internal Revenue (SBIR) the power to collect personal income tax of persons in Nigeria and Non-Corporate Bodies except those collectable by the federal government as stated here under:

- a. Resident of Federal Capital Territory,
- b. Members of the Nigeria Police Force (the Army, Navy and Air Force)
- c. Members of the Armed Forces of Nigeria
- d. Staff of the Ministry of Foreign Affairs and Non-Residents⁴⁹

Personal Income Tax Act (PITA)⁵⁰ is an income tax imposed on individuals, communities and families, partnership, trustees and on executors and also for the assessment, collection and administration of the tax. It is tax on the gains or profits from any trade or business, profession or vacation. Personal income tax is also levied on salary; dividend and pension⁵¹.

Value Added Tax (VAT)

Value Added Tax Act is a federal law made by the National Assembly and administered by the Federal Inland Revenue Service (FIRS) only⁵² under the Value Added Tax Act⁵³ in each of the 36 states of the Federation; certain percentage of the tax is remitted to State and Local Governments every month. It is a consumption tax paid when goods are purchased and services rendered. The burden or incident of VAT is borne by the final consumer. Value added tax is charged at the rate of 7.5% and is payable by individuals, companies and government agencies. Certain goods and services including medical and pharmaceutical products, medical services basic food items, books and educational materials exports, baby products newspaper and magazine etc. are exempted from VAT⁵⁴.

Education Tax Act (ETA):

Education Tax Act is a federal law made by the National Assembly. It regulates education tax chargeable on companies registered in Nigeria. It is administered by the Federal Inland Revenue Service, now renamed Nigerian Revenue Service. It is a tax that is collectable by the Federal Government only. Education tax is charged at 2%, on the profits but as a contribution to the Education Tax Fund. All registered companies in Nigeria are required to pay a percentage of their assessable profit into an Education Tax Fund. It is governed by the TETFund Act⁵⁵. Funds derived from this tax are used for rehabilitation, restoration and consolidation of tertiary education in Nigeria.⁵⁶

TETFund Act provides as follows:

the board of trustees shall administer tax imposed by this act and disburse the amount in the fund to federal and state in the fund federal and state tertiary educational institutions specifically for the provision or maintenance of:

- (a) Essential physical infrastructure for teaching and learning;
- (b) Instructional material and equipment;
- (c) Research and publication;
- (d) Academic staff training and development; and
- (e) Any other needs which, in the opinion of the board of trustees, is critical and essential for the improvement of quality and maintenance of standards in the higher educational institution.⁵⁷

Petroleum Profit Tax Act (PPTA)⁵⁸

This is a federal law made by the National Assembly and administered by the Federal Inland Revenue Service. It regulates taxes on the income of companies engaged in upstream petroleum operations as opposed to CITA collectable by the federal government only. The Petroleum Profit Tax rates vary as follows: 50% for petroleum operations under Production Sharing Contracts (PSC) with Nigerian National Petroleum Corporation (NNPC). The PPTA provides as follows:

Petroleum profits tax is levied upon the Profits of each accounting period on any company engaged in petroleum operations during that period, based on the provision of section with relation to accounting period, assessment under the Petroleum Profits Tax Act is on a current year⁵⁹.

Stamp Duties Act (SDA)⁶

Stamp Duties Act regulates the imposition and collection of stamp duties charges on instrument, parchment and other legal document. The Act is made by the National Assembly but is jointly administered by the FIRS and SBIR. FIRS collects Stamp duties from companies registered in Nigeria and document of properties, Instrument, Parchment and other legal document in Federal Capital Territory. The SBIR collects stamp duties for Instrument, Parchment, Receipt and other legal document for properties in the state.⁶¹ Stamp duty is payable on any agreement executed in Nigeria or relating, whatsoever, to any property situated in or to any matter or thing done in Nigeria. It is imposed at the rate of 0.75% on the authorized share capital at incorporation of a company or any registration of new shares. All money deposits in banks and financial institutions are required to charge stamp duties of ₦50 on every eligible transaction above ₦10,000. There are two forms of stamp duties:

- a. Fixed duties that do not vary with consideration, e.g. duties on payment receipt, proxy forms, guarantor forms, etc.
- b. The Ad-Valorem-Duties that vary from consideration, e.g. duties on share capital, Deed of Assignment, Debentures, Bills of Exchange, Etc.

The Local Governments in Nigeria are not left out in tax powers sharing among levels of government in Nigeria. In Nigeria today, we have 774 (seven hundred and seventy four) Local Government area. The Local Government just like the State has its own taxing powers allocated to it. The Constitution and TAL Act⁶² are the two major non-delegate or/and direct sources of taxing powers for Local Governments in Nigeria. Apart from these two legal frameworks, any other taxing power legal framework of Local Government must have come from delegation from the State or National Assembly. Section 7 (1) of the Constitution creates a democratically elected Local Government system. Section 1 (a-k) of the Fourth Schedule, gives the Local Government numerous powers including power to assess privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State.⁶³

The Nigerian Tax Act (NTA), 2025

This Act came into being in 2025 but took effect on 1st January 2026. It made a comprehensive fiscal overhaul and consolidated multiple fragmented tax laws to simplify administration, broaden the tax bases and introduce progressive reform across corporate and personal taxation. It made key changes for businesses and individuals including Highlight Corporate Tax:

Small businesses revenue is exempted from capital income tax and capital gain tax. A new 4% Developmental Levy replaces various funds, while large company minimum tax is set at a 15%. Effective Tax Rate: A new tax-free bracket for annual income: While the standard 7.5% VAT rate is maintained, full input is now permitted. The tax scope is officially extended to digital and virtual assets including crypto currencies. Incentive: NTA replaces Pioneer Status with an Economic Development Tax Incentive (EDTI) offering 5% annual credit on qualifying capital expenditure.

Appraising the efforts of the Judiciary in interpreting Taxing Powers in Nigeria

It is pathetic to say that the Nigerian tax administrative regime is unnecessarily shrouded in intricacy and chaos: especially as it concerns exercising taxing powers among levels of government. This is notwithstanding that the Constitution and other enabling tax laws clearly partitioned and assigned taxing powers to different units of the federation in clear terms; yet, there are still controversies on majorly tax jurisdiction among levels of government in Nigeria.⁶⁴ The existence of the Constitution, TAL Act and other tax laws seem to be a beautification of libraries of various legislative houses and other private and public libraries and not for actual use. These beautiful taxing legal frameworks are neglected and sometimes applied in a wrong manner or with a wrong or destructive mindset, thereby destroying the substance of those laws.

Let us first sort out the distinction between power to impose tax and power to collect tax. Power to impose tax is the legal power of levels of government through their law-making organ to create a kind of tax and impose its payment on certain class of citizens or on certain properties or services as may be permitted by law. Examples are PITA, TAL Act, etc. On the other hand, power of tax collection is the legal power to collect certain types of tax and levies from certain taxpayers, goods and services. This drives to the unavoidable conclusion that power to impose tax maybe different from power to collect tax and may vest in different authorizes in a level of government.

The National Assembly may make tax statute imposing a particular type of tax but empowers the state or local government to collect same or a tax statute may empower another level of government to collect a particular kind of tax; a good example is where the National Assembly enacts PITA⁶⁵ by virtue of item 59 of the Exclusive Legislative List to guide the collection of personal income tax by the state governments from certain set of persons. Then section 2 (2) of the same PITA empowers the state government to collect personal income tax. It then will be correct to assert that a level of

government can enact tax statute creating a particular kind of tax and empower another level to do the collection.

It is necessary to state here without equivocation that the PITA provides for personal income taxes collectable by the federal and state government. It as well creates the SBIR and LGRC and cloths them with power of tax collection for those units. The institution responsible for tax collection is referred to as “Tax Authority” and such institutions are as follows:

1. Federal Inland Revenue Service (FIRS)⁶⁶ now renamed Nigeria Revenue Commission⁶⁷ for collection of federal taxes.
2. State Board of Internal Revenue (SBIR)⁶⁸ for collection of state taxes.
3. Local Government Revenue Committee (LGRC)⁶⁹ for collection of Local Government taxes.

In discharging its responsibility for interpreting taxing power laws and administering tax justice in Nigeria, the Nigerian judiciary has shown a meaningful obligation in upholding the Constitutional provisions and that of any of the taxing power legal framework. The court is always quick and unequivocal in pronouncing on any of the provisions of tax law in issue before it. The provision of PITA⁷⁰ on creation and powers of SBIR as the body responsible for the collection of taxes and levies for the state received judicial endorsement in the landmark case of *IBL v Milad, Ondo State*.⁷¹ In this case, the Nigerian Court of Appeal Lagos division was unambiguous in approving the functions of the SBIR as clearly stated in section 88 of PITA and held that neither the governor of the state, the local government chairman nor the Commissioner has the power to collect tax for the state or local government or delegate same to anyone because one cannot give what one does not have (*Nemo dat quid non habet*). These functions according to the court include also ensuring the effectiveness and optimum collection of all taxes and penalties due to the state government under relevant laws.

The implication of court decision in *IBL*'s case therefore is that only these bodies as specifically mentioned in the tax statute⁷² can collect taxes and levies for the levels of government in Nigeria. No other body or person or persons has the power to collect taxes or levies accruable to any level of government in Nigeria. The bodies responsible for tax imposition for each level of government in Nigeria are as follows:

- a. The Federal legislative bodies called the National Assembly:
 - i. House of Senate – Upper chamber,
 - ii. House of Representatives – the lower chamber.⁷³
- b. State Houses of Assembly – for each of the states has its own House of Assembly⁷⁴.

c. Local Government Legislative Council – for the local government.⁷⁵

Aside these bodies, no other person(s) or (body) can impose tax in Nigeria on the strength of the Constitution and judicially fortified by the case of *IBM*. The power of delegation of assessment and collection of tax is equally discountenanced in the Nigerian tax administration jurisprudence. The Taxes and Levies (Approved List for Collection) Act⁷⁶ in section 2 (1) prohibits any form of delegation of the function of tax assessment and collection by the relevant tax authority. Section 2 (1) Taxes and Levies Act provides as follows:

Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979⁷⁷ 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 to this Act and members of the Nigeria Police Force shall be used in accordance with the provisions of the tax laws.

This provision ordinarily cannot stand because it contradicts the constitution by the use of the phrase “notwithstanding anything contained in the Constitution...”⁷⁸ Contrary to this provision, the PITA had earlier made provision for delegation of power of tax assessment and collection. The question that may concern a tax conscious mind at this point is: What is the legal position with respect to tax assessment and collection delegation under the Nigerian tax jurisprudence? An attempt to answer this question brings to mind the case of *Government of Akwa Ibom State v Udofia*⁷⁹. In this case it was held by the Court of Appeal that a private person has the right and locus standi to challenge the use of Tax Consultants to collect Pay-As-You-Earn (PAYE) taxes contrary to the provisions of TAL Act, 2004 but in line with the PITA.

It is a trite law that a delegate cannot himself delegate (*delegatus non potest delegare*). This conversely means that any unit of the federation that is exercising powers of tax collection delegated upon it, cannot itself delegate same. The legal position therefore is that generally delegation of tax assessment and collection is illegal, null and void, ultra-vires and of no effect except where provided by the Nigerian Constitution⁸⁰.

The Court of Appeal demonstrated a meaningful sense of deference to the legal framework for taxing powers in the celebrated case of *Eti-Osa Local Government v Mr. Rufus Jegede and Another*⁸¹. In this case, there is an attempt by Eti-Osa local government to impose a tax outside its jurisdiction. The Court of Appeal, Lagos division held that, Eti-Osa Local Government cannot impose taxes outside the provision of the Constitution or ambit of

Part III of Taxes and Levies (Approved List for Collection), Decree No 21 of 1998 (TAL Act).

The court in upholding its responsibility of adjudication and application of taxing powers legal framework always discountenanced the illegal, radical and crude activities of the local government. In the case of *Eti-Osa Local Government v Mr. Rufus Jegede and Another*⁸² the court expressed in unequivocal terms that:

In recent time, it has become a social menace to see the local Government personal or officer parading themselves on the highway or making a road block and harassing or embarrassing and intimidating bona fide passersby and members of the public on account of their right or power to impose, collect or extort various taxes and levies some of which are apparently usurpatory and illegitimate. Even in the market or other public places, the Local Government staffs are a common sight extorting from the public one form of tax or levy or the other and blocking the public right of way on that account or ground. While legitimate imposition of taxes and levies is the source of funding of every tier of government, the matter should not be allowed to degenerate into a desperate usurpation and illegitimate exploitation of the public by the said government (of whatever tier or cadre). It should come to a stop.⁸³

The court never relents to strike down any illegality of any level of government and is ever ready to uphold the phraseologies of our tax laws to the letter. In the case of *Fast Forward Sports Marketing Ltd v The Port-Harcourt City Local Government Area Council*,⁸⁴ the issue before the court was the legality of Port-Harcourt City Local Government Area Council to collect Agricultural Development Taxes (ADT) outside the provision of Part III of Taxes and Levies (Approved List for Collection) Act and which is part of taxes to be collected by the state government under Part II of the TAL Act. The Court of Appeal held that Port-Harcourt City Local Government Council lacks jurisdiction to collect agricultural development taxes. To this effect, the court held that the “Demand Notices” served by the Port-Harcourt City Local Council to the Fast Forward Sports Marketing Ltd in respect of agricultural development taxes are all illegal. The court, however, declared all other demand notices served on Fast Forward Sports Marketing Ltd on other taxes that form part of Part III of the Schedule to TAL Act legal. The decision in this case together with some other cases indicates that collection of illegal taxes by levels of government thrives in Nigeria because of the nonchalant and tolerance attitude of Nigerian taxpayers who are always reluctant to drag defaulting levels of government to court over illegal tax imposition and collection.

Nigerian courts have shown thoughtful disinclination towards the disrespectful attitude of the Nigerian tax laws and practice of illegality and shrewdness in tax administration in any form of it by levels of government. Decisions of court in various cases and particularly in *Stabilini Visinoni Ltd v FIRS*⁸⁵ is an additional testament to this assertion. In this case, the Appellant successfully challenged the jurisdiction of Value Added Tax Tribunal to preside over Value Added Tax matters. Consequently, the Court of Appeal held that the provision of section 20 of the Value Added Tax Act which established the tribunal was inconsistent with the provision of section 251(1) of the Constitution which vests jurisdiction on the Federal High Court to adjudicate over tax matters. The Court of Appeal audaciously set aside section 20 of Value Added Tax Act.

Also in *Attorney-General of Lagos State v Eko Hotel Ltd and Another*,⁸⁶ Value Added Tax/Sale taxes was also successfully challenged. The reason for the success of this challenge was that sale tax was not within the sphere of the state government to collect but federal government. The scenario of *Eko Hotel Ltd* and another is the same in the case of *Attorney-General of Ogun State v. Aberuagba*⁸⁷ where the Supreme Court gave judicial blessing to the constitutional provision that gives the National Assembly the responsibility to legislate on matters of international or inter-state trade and commerce and not on intra-state trade and commerce which is regulated by the state tax law.

In *Aberuagba's case*, the Apex Court was faced with appeal from Court of Appeal to decide on legality or otherwise of the Sales Tax Law of Ogun State. The Sales Tax Law of Ogun State provides in its section 3 (1) thus:

A tax to be known as sale tax shall be charged in accordance with the provisions of this law on all taxable product brought into the state and on the supply of goods and services in any Inn not exempted from the required of registration under this law at the rate specified opposite each class of goods or services in the First Schedule to this law⁸⁸.

This provision is far-reaching because, a product that can be brought into Ogun State is either a product from another state or a product from outside Nigeria. That means that this law actually targets to regulate inter-state and international trade and commerce. The Apex court was sensitive to the illegality of the Sales Tax Law and lack of jurisdiction by the Ogun State House of Assemble to enact same, consequently, it did not hesitate to hold that the said Sale Tax Law of Ogun State is illegal and unconstitutional.

Legislation on inter-state and international trade and commerce are within the confine of the National Assembly. The Apex Court in *Aberuagba's case* lay down a classical decision to the effect that since the said Sale Tax is imposed on goods imported into the state from outside the state or outside

Nigeria, it follows that the tax is a discriminatory tax directed against inter-State or international trade and commerce which is within the confine of the federal government via the National Assembly to make.⁸⁹ This decision suggests that sale tax cannot be imposed on the taxable products brought into the state reason being that it offends section 4 (3) of the 1999 Constitution on inter-state or international trade and commerce. The State have the power to legislate on trade and commerce bordering on intra-state which resides within the residuary issue reserves for the States. We submit that if this sale tax law was imposed on all products in the state, the decision of the Supreme Court would have been different on the reason that the said Sale Tax Law would have been non-discriminative.

The decision in *Aberuagba's* case set a bench mark in respect to the state usurpation of power of the Federal Government to make tax law and to collect tax not within their jurisdiction. In *Abaruagba's* case, the court maintains that the Exclusive Legislative List contains the list of items of which only the Federal Government can legislate, the Federal and State Government can legislate on the item in the Concurrent Legislative List. Items in the residual list are reserves for the State Government to legislate on. The decision in *Aberuagba's* case has been followed in multitude of cases including the case of *Nigerian Soft Drink Company Limited v Attorney General of Lagos State*⁹⁰ which came up in Court of Appeal two years after the decision in *Aberuagba's* case. The crux of the matter in *Nigerian Soft Drink Company Ltd.'s case* is the provision of section 1 and 2 of the Sales Tax Law of Lagos state.

Section 1 of the Sale Tax Law of Lagos State provides as follows:

...a tax to be called here-in-after in this Law as "Sale Tax" shall be charged in the state subject to and in accordance with the provision of this law on all chargeable commodities listed in the first column of the Schedule to this law at the rate specified in the second column of the Schedule".

Section 2 of Sale Tax Law of Lagos State provides as follows:

Every purchase or consumer of any of the chargeable commodities listed in the schedule shall be liable to pay Sale Tax at the time of the purchase or at the time of consumption.

The Court of Appeal follows the Supreme Court decision in *Attorney-General of Ogun State v. Aberuagba*⁹¹ but at the same time distinguishes the fact of the two cases and consequently held that the said Sale Tax Law of Lagos State is constitutional.

A succinct analysis of the facts of the two cases may be of help in appreciation of the distinguishing spot which is the basis for the courts

arriving at different decision on the two laws that seem to regulate the same commercial activities enacted by matching enacting formulas. In *Aberuagba's case*, the Tax Law of Ogun State seek to tax all Chargeable goods brought in into Ogun state from outside the state whether from another state or from outside Nigeria. The tax law therefore borders on inter-state and international trade and commerce which is under the Federal Government jurisdiction to legislate. In *Nigerian Soft Drink Company Limited case*, the taxes and levies imposed by the Sale Tax Law of Lagos State are on all chargeable goods in the state. It is therefore non-selective and adjudges intra-state regulation of trade and commerce which is residual and within the legislative jurisdiction of the state government. In *Aberuagba case*, the sale tax charged is on all taxable products brought into the state. This is selective and it was nullified. We submit, however, that the decision in *Aberuagba's case* would have been different if the Sale Tax Law of Ogun State were to charge taxes and levies on all chargeable goods in Ogun state.

The cases of *Attorney-General of Ogun State v. Aberuagba* and *Nigerian Soft Drink Company Limited v Attorney General of Lagos State* may no longer be tenable at present by virtue of the existence of Value Added Tax Act (VATA).⁹² VATA was enacted by the National Assembly under the Constitution⁹³. This means that the value added tax which is collectable by the Federal Government has overtaken Sale Taxes Law of various states. The case of *Mama Cass Restaurant Ltd & 2 ors. Vs. Federal Board of Internal Revenue (FBIR) & Attorney General of Lagos State*⁹⁴ becomes relevant here. In this case, the plaintiff invited the Federal High Court to determine which level of government (federal or state) they will remit to the sale taxes collects from taxpayers patronizing them. The Federal Government and the Lagos State government through their various tax administration agencies demanded that the plaintiffs remit sale tax collected from their customers to them. The court declared Sale Tax of Lagos State illegal and invalid based on the constitutional law “doctrine of covering the field”. The doctrine of covering the field is a constitutional doctrine that connotes that where both state government and federal government are empowered to legislate on a particular matter, the state law becomes invalid if there is an enactment that covers the same area enacted by the National Assembly before or after the state law came into being.⁹⁵

CONCLUSION

The above present the depiction of judicial effort over upholding the tenets as portrayed by the provisions of the Constitution and other legal framework governing tax in Nigeria. We conclude by responding to our proposed theoretical issue raised in the onset of this paper as the issue we seek to

ascertain – Whether the Nigerian judiciary is active and upholds strict adherence to the provisions of the legal framework for taxing powers in Nigeria. The Constitution and other tax laws provide for the legal framework for taxation in Nigeria for the levels of government. These legal frameworks are more often than not flouted by levels of government resulting in court intervention by aggrieved level of government and or individual. The judiciary has, through its decisions, glaringly demonstrated a dynamic posture, indicating that it is ever ready to uphold the provisions of the Constitution and other tax laws. The judiciary has shown that it is a judiciary betrothed to the business of upholding the rule of law and tax justice. This work therefore ripostes that the Nigerian judiciary is active and upholds strict adherence to the provisions of the legal framework for taxing powers in Nigeria.

RECOMMENDATION

1. We recommend the creation of separate tax court for the trial of tax matters at all level of government in Nigeria.
2. We also recommend periodic interaction or symposium that will be attended by various tax statute enacting bodies, tax administration institutions and tax policy makers. This will provide a fertile ground for confab of these laws, cross-fertilization of ideas on tax issues or matters, in order to build more vibrant tax system in Nigeria.

Endnotes

1. The Constitutions 2 (2).
2. *ibid*, s 7 (1).
3. *ibid*, s 3 (1); There are thirty-six states in Nigeria
4. There 768 local government and 6 Area Council of the Federal Capital Territory in Niger as provides in First Schedule, Part II, Definition and Area Councils of Federal Capital Territory, Abuja.
5. The Constitution, s 2 (1).
6. *ibid*, s 2 (2), s 7 (1).
7. See the 2nd Schedule Part 1 which istitled Exclusive legislative List and Part 11 titled Concurrent Legislative List. The Exclusive List is the area

where the federal government has exclusive right to legislate while concurrent is the list where both the state and federal can legislate.

8. Fourth Schedule, Functions of a Local Council, s 1 (b).

9. TAL Act, Schedule, Part 1 contains list of items where federal government can collect tax from, Part II contains list of items where State government can collect tax from, while Part III contain list of items where Local Government can collect tax from,

10. Cap T2 LFN, 2004.

11. Cap S8 LFN, 2004.

12. Cap C1 LFN, 2010.

13. The Constitution, Chapter 111, Part I – IV. s. 6 (1) states that the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation. Again s. 6 (2) states that the judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

14. Black Law Dictionary, Nelson Publishers London, 5th edition.

15. Created under the Constitution, Chapter VII, The Judicature. They include: the Supreme Court, Court of Appeal, High courts (federal, state or of the Federal Capital Territory) Magistrate courts.

16. Federal, State or Local Government legislature,

17. The Constitution, s 1 (1).

18. *ibid*, s 1 (3).

19. Except where the powers confers on the level of government is concurrent; See also s. 2 the TAL Act.

20. The Constitution, 2nd Schedule, Part 1 and 11.

21. *ibid*, 2nd Schedule, Part 1, Exclusive Legislative List.

22. *ibid*, 2nd Schedule, Part 11, Concurrent Legislative List.

23. The Constitution, s. 4 (5). This is made possible by virtue of *doctrine of covering the field*, meaning that the federal law has covered the field.

24. *ibid* s. 4 (7); See also the case of *Attorney General of Ogun State Aberuagba* (1985) 1 NWLR (Pt. 3) 395.

25. Odinkonigbo opines that residual list is erroneously called. According to him “there is nowhere in the constitution or outside it where the phrase “residual list” is used. Indeed, residual matters, which are matters that are outside the exclusive and concurrent legislative list, could not have been associated with the word ‘list’ because there is nowhere you will find that word in the Constitution. Of course the word “list” suggests numbered items that are limited and easily countable. Residual matters, it is arguable, may be difficult to tabulate as listed items.... the idea behind the reservation of matters to the state government id based on the principle of federalism. JJ Odinkonigbo ‘Tax Statues as Instrument for Compliance and Enforcement: An Examination of the Complications Orchestrated by the Scramble for More Taxing Powers by the Different Levels of Government in Nigeria’ *Contemporary Issues in Taxation Law in Nigeria*, (Ekwenze Ed.) (Snaap Press Nigeria Ltd, Enugu2014), 109 and 110.

26. The Constitution, 2nd Schedule, Part 1, Exclusive Legislative List, item 16.

27. The Constitution, 2nd Schedule, Part 1, Exclusive Legislative List, item 25.

28. The Constitution, 2nd Schedule, Part 1, Exclusive Legislative List, item 58.

29. The Constitution, 2nd Schedule, Part 1, Exclusive Legislative List, item 59.

30. The Constitution, s. 4 (5).

31. The Constitution, 2nd Schedule, Part 11, Conclusive Legislative List,Extent of Federal and State Legislative powers, item 7 (a).

32. The Constitution, 2nd Schedule, Part 11, Conclusive Legislative List,Extent of Federal and State Legislative powers, item 7 (b).

33. *ibid*.

34. *ibid*, item 8.

35. *ibid*, item 9.

36. *ibid*,

37. The Constitution, Fourth Schedule, Functions of a Local Government Council, item 1 (b).

38. T2 LFN 2004.

39. TAL Act.
40. The Constitution, 2nd Schedule, Part 1, Exclusive Legislative List, item 59.
41. This was done by the new Tax Reform Bill signed into law by the President of Nigeria, Bola Ahmed Tinubu in June 2025.
42. Cap C1 LFN, 2010.
43. *ibid*, s 2(1).
44. *ibid*, s 11.
45. *ibid*, s 3.
46. The Constitution, 2nd Schedule, Part 1, Exclusive Legislative List, item 59.
47. CITA, section 1 (1).
48. It is the FIRS, established by s 1 of the FIRS Act 2007 that has the responsibility of collection federal taxes. The new Tax Reform Bill changed the name to Nigerian Revenue Service.
49. PITA, P8 LFN, 2010, s 88.
50. *ibid*.
51. PITA, s 3(1); See the preamble of PITA.
52. VATA, Cap V1 LFN, 2004, s 7
53. *ibid*.
54. VATA, Cap V LFN, s 4.
55. TETFUND Act, Cap T 24 LFN, 2011
56. *ibid*. s. 7.
57. Tetfund Act s 7.
58. Cap P13 LFN 2004.
59. PPTA, s 8.
60. Cap S 8, LFN, 2004.
61. The Constitution, Second Schedule, Part 11, and Concurrent Legislative List item 3.

62. Cap T2 LFN, 2004.

63. The Constitution, Fourth Schedule, item 1 (j).

64. JJ Odinkonigbo 'Tax Statues as Instrument for Compliance and Enforcement: An Examination of the Complications Orchestrated by the Scramble for More Taxing Powers by the Different Levels of Government in Nigeria' *Contemporary Issues in Taxation Law in Nigeria*, (Ekwenze Ed.) (Snaap Press Nigeria Ltd, Enugu, 2014) 111 and 116.

65. P8 LFN, 2004.

66. FIRS Act, 2007 s 1.

67. Nigerian Revenue Act, s 1.

68. PITA, LFN, 2004 s 88.

69. *ibid* s 91.

70. (n PITA 68) s 88.

71. (2000) 1 NWLR, 86 at 107-108.

72. FIRS Act s 1; Personal Income Tax Act, LFN, 2004, ss. 88 and 90. S1 created FIRS now renamed NRS, s 88 created SBIR while s 90 created LGRC.

73. The Constitution, s 4 (2). See also Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution of Federal Republic of Nigeria 1999 (As Amended) Second Schedule, Part 11 First Column, and Concurrent Legislative List to the extent prescribed in the second column opposite thereto.

74. The Constitution, s 4 (7) (a) (b) (c).

75. See also the case of *IBM v MILAD, Ondo State* (2000)1 NWLR P 86 at pp107-108. In this case it was held that the taxing powers of the state is vested () on the State Board of Internal Revenue and not the Governor or Commissioner while taxing powers of the Local Government are vested on the Local Government Revenue Committee and not the Chairman of the Council and so neither the Governor or the Commissioner nor the Chairman of the Local Government can delegate the power because it is not vested on them.

76. *ibid*.

77. The first is that the Constitution in operation at the time of this law was Constitution of the Federal Republic of Nigeria 1999 (As Amended).

Secondly, the provision seeks to project itself above the provisions of the Constitution contrary to section 1 (1)-(3) of the 1999 Constitution.

78. The Constitution s 1;

79. (2012) All FWLR (pt. 627) 784 at 805-806.

80. The Constitution, 2nd Schedule, Part 11, Conclusive Legislative List, Extent of Federal and State Legislative powers, item 7 (b), 8, 9 and 10.

81. (2007) 10 NWLR537 at 538-559.

82. *ibid* 27.

83. *ibid*.

84. (2011) 4 TLN 45.

85. (2007) 1 TLRN 1.

86. (2008) All FWLR (pt. 398) 235

87. (1985) 1 NWLR (Pt. 3)395.

88. Sale Tax Law of Ogun State, s 3 (1).

89. Constitution of Federal Republic of Nigeria 1999 (As Amended) Second Schedule, Exclusive List Part 1, item 61(a).

90. (1987) 2 NWLR (pt. 57) 444.

91. (1985) 1 NWLR (Pt. 3)395.

92. Now VAT encases the provision of 2nd Schedule, Part 1, Exclusive List, s. 315, items 62 (a) and (68).

93. The Constitution, 2nd Schedule Part 1, Exclusive Legislative List, s 315, item 59.

94. (2010) 2 TLRN 99.

95. The Constitution, s 4 (5).

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