

SUIT NO. FHC/L/CS/1082/2019:

BETWEEN THE REGISTERED TRUSTEES OF HOTEL OWNERS AND MANAGERS ASSOCIATION OF LAGOS (SUING FOR ITSELF AND ON BEHALF OF ALL ITS MEMBERS) V THE ATTORNEY GENERAL OF THE FEDERATION & ANOR

G.O. SODIPO AND CO.

NEWSLETTER

June, 2020 Edition

A Federal High Court sitting in Lagos did in May 2020 give Judgment in the suit, holding that the Ministerial Order 2015 is unconstitutional null and void.

On the 26th day of May, 2015, the Coordinating Minister for the Economy and Minister of Finance (Dr. Okonjo Iweala) made an Executive Order to amend the Schedule to the TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) Act Cap T2 Laws of the Federation.2004.

This amendment to the Schedule by the Minister expanded the tax base by which the Federal Government may impose more areas of Tax liability on citizens and was the subject of the above captioned suit which for all intents and purposes was deemed by the Federal High Court sitting in Lagos to be unconstitutional, null and void.

Upon a review of S.4(2,&3) of the Constitution of the Federal Republic of Nigeria Cap C23¹

(2) “the National Assembly shall have the power to make laws for the peace order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive legislative list set out in Part 1 of the Second Schedule to this Constitution”.

(3) the power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of the states.”

In the instant case, there were already laws in existence as couched in Cap. T2 LFN 2004 as well as the Schedule to the Act form part of the enabling law and the Minister by her act in purporting to amend the Schedule to the Taxes and Levies (Approved List for Collection) Act Order, 2015, could be referred to as Ministerial Legislation.

¹ LFN 2004

A Minister cannot make laws for the country. The Minister with whatever portfolio he or she is given can make and discharge their Executive responsibilities for the proper running of the government.

A Minister is a member of the Executive arm of the Government and an appointee of the Executive/President which is subject to the approval by the Senate and this is set out S. 147 & 148²: and as such cannot usurp the powers of the Legislative arm of the government.

147. (1) there shall be such offices of Ministers of the Government of the Federation as may be established by the President. (2) Any appointment to the office of Minister of the Government of the Federation shall, if the nomination of any person to such office is confirmed by the Senate, be made by the President. (3) Any appointment under subsection (2) of this section by the President shall be in conformity with the provisions of section 14(3) of this Constitution:— provided that in giving effect to the provisions aforesaid the President shall appoint at least one Minister from each State, who shall be an indigene of such State. (4) Where a member of the National Assembly or of a House of Assembly is appointed as Minister of the Government of the Federation, he shall be deemed to have resigned his membership of the National Assembly or of the House of Assembly on his taking the oath of office as Minister. (5) No person shall be appointed as a Minister of the Government of the Federation unless he is qualified for election as a member of the House of Representatives. (6) An appointment to any of the offices aforesaid shall be deemed to have been made where no return has been received from the Senate within twenty-one working days of the receipt of nomination by the Senate.

148. (1) The President may, in his discretion, assign to the Vice-President or any Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any department of government.

(2) The President shall hold regular meetings with the Vice-President and all the Ministers of the Government of the Federation for the purposes of - (a) determining the general direction of domestic and foreign policies of the Government of the Federation; (b) coordinating the activities of the President, the Vice-President and the Ministers of the Government of the Federation in the discharge of their Executive responsibilities; and (c) advising the President generally in discharge of his Executive functions other than those functions with respect to which he is required by this Constitution to seek the advice or act on the recommendation of any other person or body.

Furthermore, a Minister may only exercise Executive powers a perusal of S. 5(a & b)³ sets out as follows:

²Constitution of the Federal Republic of Nigeria Cap C 23 LFN 2004

“Executive Powers

- (1) Subject to the provisions of this constitution, the executive powers of the federation –
 - a. Shall be vested in the President and may, subject as aforesaid and to the provisions of any law made be exercised by him either directly or through the Vice-President and Ministers of government of the Federation or officers in the public service of the Federation.
 - b. Shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.”

As a result of the foregoing, I am of the view that the Ministerial Order 2015 is unconstitutional as only the Legislative arm of the government has the power to make laws for the governance of the nation and the amendment of the Tax Law by the Minister is null and void and the Minister lacks the power to amend the Schedule to the Law duly made by the National Assembly.

It is to be noted that I was unable to get a copy of the full judgment in order to do this review and as such any errors/ mistakes are purely mine as author.

NKIRUKA OKONKWO
SENIOR ASSOCIATE
nkyki@yahoo.com
nkiru.o@gosodipo.com

G.O SODIPO AND CO.

27/29 King George V Road, Onikan, Lagos
Info@gosodipo.com
b.sodipo@gosodipo.com
+234 813 881 6290