

# IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY, 31ST MARCH 2023

BEFORE THEIR LORDSHIPS

MUSA DATTIJO MUHAMMAD — JUSTICE SUPREME COURT  
CHIMA CENTUS NWEZE — JUSTICE SUPREME COURT  
UWANI MUSA ABBA AJI — JUSTICE SUPREME COURT  
MOHAMMED LAWAL GARBA — JUSTICE SUPREME COURT  
HELEN MORONKEJI OGUNWUMIJU — JUSTICE SUPREME COURT

SC.27/2009

BETWEEN

ATTORNEY-GENERAL OF LAGOS STATE ----- APPELLANT

AND

1. NATIONAL SPORTS LOTTERY LTD } RESPONDENTS/  
2. NSL LOTTERY MANAGEMENT CO. LTD } APPLICANTS

JUDGEMENT

(Delivered by MOHAMMED LAWAL GARBA, JSC)

By way of an originating summons dated and filed on 2nd February, 2005, before the High Court of Lagos State, (trial court) against the Respondents, the Applicant submitted the following question for determination by that court:

**“Whether the respondents can validly and rightly carry on conduct and or operate any form of Lottery business within the territory of Lagos State by whatever means or mode without first obtaining a duly issued license from the Executive Governor of Lagos State in accordance with the Provisions of Lagos State Lotteries Law 2004.”**

From the expected answer to the question, the Appellant sought declarations/reliefs as follows:

**“(1) A declaration that the 1st and 2nd Respondents have no legal right to carry on, operate or conduct any Lottery business by whether name or means or mode to the members of the Public in Lagos State without first obtaining a License duly issued by the Executive Governor of Lags State Lotteries Law 2004.**

**(2) An order of Perpetual injunction restraining THE 1st and 2nd Respondents jointly and severally, by themselves and or other agents, servants privies and howsoever called fro, carrying on operation or conducting any lottery business by whether name and through any means or mode within the territory of Lagos State without an appropriate and valid license issues by the Executive Governor of Lagos State under the provision of Lagos State Law 2004.**

**(3) Furthermore are other orders as this Honorable Court may deem fit to make in the circumstances”.**

An 18 paragraphs Affidavit is deposed to by Adebayo Haroun, a Senior State Counsel in the Lagos State Ministry of Justice was filed in support of the summons.

On being served with the summons, the Respondents filed a Notice of Preliminary Objection challenging the jurisdiction of the trial court to entertain the suit on the 16th February, 2005, premised on the following grounds:

**“1. The issue raised by the plaintiff’s case relates to establishment and operation of National and/ or On-line lottery which is a business or trade within the exclusive legislative list of the national assembly.**

**2. The court has no jurisdiction to entertain the plaintiff’s suit which directly or indirectly questions the validity of a license granted by the Federal government of Nigeria to the defendant for the establishment of National and/or On-line Lottery throughout Nigeria.**

**3. The court has no jurisdiction to entertain plaintiff’s claims which is for the determination of issues within the exclusive legislative list of the National Assembly.**

**4. The action is incompetent in that proper parties are not before the court, TAKE FURTHER NOTICE that the defendants in addition to the affidavit in support of the preliminary objection will rely on the papers filed by the plaintiff.**

A ten (10) paragraphs Affidavits in support of the objection, deposed to by Seni Adio: the Company Secretary of the 2nd Respondent, accompanied the objection.

After hearing the Learned Senior Counsel for the parties on the objection, the trial court overruled and dismissed the objection in a Ruling delivered on the 18th of April, 2005.

The Respondent’s appeal to the Court of Appeal, Lagos Division (court below) was allowed in the judgment delivered on the 16th of July, 2008 on the ground that the action sought to challenge the executive or administrative action of the Federal Government or its agency which the trial court lacks the jurisdiction to entertain, but was triable in the Federal High Court pursuant to the provision of Section 251(1)(p) and (r) of the Constitution.

Aggrieved by that decision, the Appellant brought this appeal vide the Notice and Grounds of Appeal filed on the 24th September, 2008 containing two(2) grounds from which two(2) Issues are raised for decision by the court in the Appellant’s brief filed on the 9th of February, 2009.

They are:

**“2.1 Whether the action against the respondents or the reliefs sought by the appellant in the Originating Summons amount to a challenge of the validity of an executive or administrative action of Federal Government and the High Court of the State is therefore deprived of jurisdiction to entertain the action.**

**2.2 Whether the court below was right to have declined to consider and determine issues 2 and 3 raised in the appeal.”**

In the Respondents’ Amended Brief filed on the 6th November, 2017, deemed on the 17th January, 2023, the two(2) issues said To raise for determination in the appeal are as follows:

**“1. Whether the Court below was right when it held that the High Court of Lagos does not have jurisdiction because the Claim of the Appellant affects the validity of an administrative or executive act of the Federal Government. (Grounds 1)**

**2. Whether the Court below was right when it refused to determine Issues 2 and 3 submitted for determination by the Respondents (Ground 2).”**

As can easily be noticed, the issues are substantially and materially the same notwithstanding the slightly different form Issue 1 of the Respondents was concluded.

Issue 1 of the Appellant is the crucial one that requires decision by the court in the appeal.

**Appellant’s Submissions:**

After setting out paragraphs 10 - 13 and 15 of the Appellants’ affidavit in support of its Originating Summons which the court below said constituted the cause of the action, it is submitted that the Appellant did not challenge the validity of the license issued by the Federal Government but only questioned whether the Respondents could operate or carry out their lottery business in Lagos State without compliance with the Lagos State Lotteries Law, 2004 (2004 Law). That the court below could only consider and deal with issues raised before its parties and Not make out a case different from the one presented before it Chugo Chemist v. Chubbo (1998) 5 NWLR (pt. 447) 246.

Ekpengyong v. Nyong (1975) 2 SC, 71 and Yusuf v. Oyetunde (1998) NWLR (pt. 579) 483 at 498 – 499 were cited on the law that a court cannot grant a relief not sight and it is further Argued that the court below erred to have said that the action constituted a challenge to the validity of an executive or administrative action by the Federal Government on the ground That the Respondents could not be subjected to another round of licence by the Appellant after the issuance of licence by the Federal Government.

The case of Madukolu v. Nkemdilim (1962) 2 SCNLR. 341 was referred on when a court is said to have jurisdiction over a matter and relying on Anyah v. Iyayi (1993) 9 SCNJ 53at 66, and A. G. Federation v. Guardian Newspaper Ltd. (1999) 9 NWLR (pt. 618) 187 at 233, it is submitted that it is the claim of the plaintiff or claimant that determines the issue of whether a court has the jurisdiction to entertain the matter. According to the Learned SAN. Solicitor- General, who settled the Appellant’s Brief, the subject matter of the Appellant’s suit against the Respondents was their violation of the 2004 Law by conducting or operating lottery (Lotto Nigeria) within Lagos State without a licence from the State Government and clearly within the jurisdiction of Lagos State High court. He also contends that the licence issued by the Federal Government cannot used to challenge the jurisdiction of the court, but be put up as a defence, if indeed it exempts the Respondents from a licence by a state law and so the suit is, once again, not a challenge of an executive or administrative action or decision of the Federal Government to bring it within the ambit of Section 251 (1) of the Constitution.

It is submitted that contrary to the conclusion by the court below, there is nothing improper or unlawful for a private company that was granted licence by the Federal Government to engage in a venture in Nigeria, to be required to obtain the consent or permit of a State or Local Government authority to be able to operate in the State or Locality. Section 135 of the Nigerian Communication Act, Cap. N97, Laws of the Federation of Nigeria, 2004 and Section 104 of the Mineral & Mining Act, are cited in support of the submission. Section 33 (1) (a), (b), (d) and (e) of the National Lottery Act, 2005 is also referred to and it is maintained that the trial court has the competence to determine the matter. The court is prayed to resolve the issue in Appellants’ favour.

### Respondents' Submissions:

The arguments are to the effect that the trial court lacks jurisdiction over the matter because the reliefs sought by the Appellant affect the validity of an administrative or executive action of the Federal Government as it seeks to challenge the validity of the licence issued to the Respondents by the Federal Government to operate lottery in Nigeria. Reference was made to paragraphs 8, 10, 11 and 12 of the Appellant's Affidavit in support of the summons in support of the argument that the matter comes under the provision of Section 251 (1) (r) of the Constitution, on the authority of NEPA v. Edegbero (2002) 18 NWLR (pt. 798) 79, Adetayo v. Ademola (2010) 15 NWLR (pt.

125) 169 at 191 and Osakue v. F.C.E. Asaba (2010) v. (pt. 1201) 1. Citing Trade Bank Plc. v. Udegbonam (2003) 13 NWLR (pt. 848) 27 at 43 – 44 and NBN v. Shoyoye (1977) 5 SC, 181 at 184 - 185, Learned Counsel submitted that the court below was right even if it considered the Respondents' Affidavit in the determination of jurisdiction.

Also, that the provisions of the Nigerian Communications Act and Mineral & Mining Act, do not apply to the Appellant's case since they deal with different subject matters and that section 33 of the National Lottery Act does not say that licenses like the Respondents should get a second license from a Governor. The court is called upon to resolve the issue against the Appellant.

### Resolution:

By way of a general restatement of the law, the courts of law being creatures of the statutes; including the Constitution, derive their jurisdiction to entertain and adjudicate over matters/cases/actions brought before them, from the same statutes that creates or establish them.

The courts can therefore only exercise the jurisdiction conferred or vested in them by the statutes under which they were established or created, over matters or cases brought before them. Where jurisdiction is not conferred or vested in a court under the statute which created or established it, then it cannot purport to assume and exercise jurisdiction it does not statutorily have.

In Egharevba v. Eribo (2010) 9 NWLR (pt. 1199) 411, this court per Adekeye, JSC stated the position thus:

***“ Under the Nigerian Legal System, courts are set up under the Constitution, Decrees, Act, Laws and Edicts -They cloak the court with the power and jurisdiction of adjudication, if the Constitution, Decrees, Acts Laws or Edicts do not grant jurisdiction to a court or tribunal, the court and parties cannot be agreement endow it with jurisdiction. Moreover, since courts are creatures of the statutes their jurisdiction is therefore confined, limited and circumscribed by the statutes creating them. A court must not give itself jurisdiction by misconstruing the statutes creating it,”***

see also Oloriode v. Oyebi (1984) 1 SCNJ, 390, Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508 (SC), Akulafe v. Awosanya (2000) 2 SC, 107, Omora v. KPRC (2005) 6 NWLR (pt. 921) 393, Obiweubi v. CBN (2011) LPELR - 2185 (SC) Ifeaguna v. Ifeajuna (2000) 9 NWLR (pt. 671) 248 at 277,

The trial court, in this appeal, was established by and under the provisions of Section 270 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) for the purpose of this appeal, which in subsection (1) provides that:

***“270 – (1) There shall be a High Court for each State of the Federation.”***

Section 272 of the Constitution, provides for the jurisdiction of the High Court established under Section 270 (1) in the following terms:

***“ 272 – (1) subject to the provisions of section 251 and other Provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right; power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.”***

What is easily noticeable in these provision is that the Jurisdiction vested or conferred on the High Court of a State in Nigeria to hear and determine the existence or

extent of a legal, liability, obligation, interest or claim, etc, in civil proceedings, is very wide and extensive, made subject only to the provision of Section 251 and other provisions of the Constitution. This simply means that the High Court of State possesses jurisdiction to adjudicate over cases/matters/action which do not involve or affects the jurisdiction vested by or under Section 251 or other provisions of the Constitution in other courts specifically named in the provisions. The nature and extent of the jurisdiction of a State High Court has been recognised and repeatedly stated in many decisions by this court, which include:

Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNL 296, (1985) 6 NCLR, I, (1983) 6 SC, 158, Bob-Mannel v. Briggs (2003) 1 SC (pt. I) 95, (2003) 5 NWLR (pt. 813) 323, Usman v. Umaru (1992) 7 SCNJ, 388, (1992) 7 NWLR (pt. 254) 277 Salami v. Chairman, L.E.D.B. (1989) 12 SC, 177, (1989) 5 NWLR (pt. 123) 539, Benin Rubber Producers Co-Operative and Market Union Ltd. v. Ojo (1997) 9 NWLR (pt. 521) 158, Savannah Bank of Nig. Ltd. v. Pan Atlantic Shipping & Transp. Agencies Ltd. (1987) 1 NWLR (pt. 49) 212.

As seen, the jurisdiction conferred or vested in the High Court of a State under Section 272 of the Constitution, above, is made subject to, in particular, section 251 of the Constitution. For the purpose of the appeal, the provisions in Section 251 (1) (p), (q) (r) and (s) are relevant and provide that:

***“ 251 – (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.***

***(p) the administration or the management and control of the Federal Government or any of its agencies:***

***(q) subject to the provisions of the Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any its agencies:***

***(r) any action or proceedings for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies: and***

***(s) such other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly.”***

The phrase “subject to” employed or used by the legislative in the enactment of provisions of the Constitution or other statutes, has received judicial interpretation by this court in several decisions.

For instance, in the case of Ezenwosu v. Ngonnadi (1992) 3 SCNJ, 59, (1992) LPELR -- 1208 (SC) Nnaemeko, JSC, speaking on the effects of the use of the phrase in the provisions of a statute, stated that:

***“The phrase “subject to” is a usual provision used to subject or subsume the provision of a subject statute, be it substantive or adjectival, to the provisions of a master enactment.”***

Ejiwunmi, JSC, in Ebhola v. Plateau Inv. & Prop. Dev Co. Ltd. (2005) 7 SC (pt. 11) 8, (2005) 15 NWLR (pt. 948) 266, defined the phrase as follows:-

***“The expression is often used in statutes to introduce a condition, a proviso, a restriction and involved a limitation to the application of provisions made subject to.”***

In the words, of Uwaifo, JSC, in N.D.I.C v. Okem Enterprises Ltd. (2004) 18 NSCQR, 42, (2004) 10 NWLR (pt. 880) 107.

***““Subject to” introduces a condition, a restriction, a limitation, a proviso: Oke v. Oke (1974) 1 ALL N.L.R. (pt. 1) 443 at 450. It subordinates the provisions of the sub-section to the section empowered by reference thereto and which is intended not to be diminished by the subject section:***

Finally, Adekeye, JSC explained the legal effect of the use of the phrase in the provisions of a statute in Oloruntoba-Oju v. Abdul-Raheem (2009) 13 NWLR (pt. 1157) 83, (2009) 4 PELR, 2596 (SC), in the following precise way:

***“Whenever the phrase “subject to” is used in a statute, the intention, purpose and legal effect in a make the provisions of the section inferior, dependent on, or limited and restricted***

***in application to the section to which they are made subject to.***

***In other words, the provision of the latter section shall govern, control and prevail over the provision of the section made subject to it. It renders the provision of the subject section subservient, liable to subordinate and inferior to the provision of the other enactment***

See also Tukur v. Govt. Gongola State (1989) 4 NWLR (pt. 117) 517 (SC), Labiyi v. Anretiola (1992) 8 NWLR (pt. 258) 139 FRN v. Osahon (2006) 5 NWLR (pt. 973) 261, Agua Ltd. V. Ondo State Sports Council (1988) § NWLT (pt. 91) 622 at 655.

In line with this definition and legal effect of the use of the phrase “subject to” in the provision of a statute, the jurisdiction of a state High Court provided for in the provisions of section 272 of the Constitution, is limited, circumscribed, restricted Subordinated and inferior to the provisions in section 251 of the same constitution to which it is made “subject to” in application. In plain and simple terms, the jurisdiction vested or conferred on a High Court of a state under the provisions of Section 272 does not include and apply to the jurisdiction vested or conferred to and under the provision of Section 251, on the Federal High Court, to which it was made subject to.

The High Court of a State would therefore lack and does not have jurisdiction to entertain and adjudicate over matters/cases/causes for which the Federal High Court is specifically vested or conferred with jurisdiction under the provisions of Section 251. See Oladipo v. Nig. Customs Serv. Board (2009) 12 NWLR (pt. 1156) 583, Adeleke v. Eeu-Line (2006) 5 SC (pt. 11) 32, (2006) 12 NWLR (pt. 993) 33, Zakari v. I.G.P. (2000) 8 NWLR 9 (pt. 670) 666, Akegbejo v. Ataga (1998) 1 NWLR (pt. 534) 459, Amao v. Sun publishing Ltd. (2013) 3 NWLR (pt. 134) 399.

In the judgment of the court below, after a consideration of the relevant and material processes in the determination of whether the trial court had the requisite jurisdiction to entertain the case presented or claims made by the Appellant against the Respondents, it found and stated that the case of the Appellant sought to challenge the validity of the license issued to the Respondents which is an executive or administrative action of the Federal Government over which the trial court lacks jurisdiction to adjudicate. The reasoning of the court below, at page 418 of the Record of Appeal, is worth being invited on the issue and here it is.

***“Paragraphs 10(ii), 11, 12, 13, and 15 clearly constitute the cause of action. The respondent had instituted the suit at the Lagos State High Court on the basis that if the appellants are not stopped, they would, on the basis of the license purportedly issued to them by the Federal Government, proceed to commence lottery business in Lagos State without obtaining a license from Lagos State Government pursuant to the provisions of the Lagos State Lotteries Law 2004. Can the Lagos State High Court determine the suit without first determining the validity of the license issued the Federal Government to the appellants to carry on lottery business in Lagos State viz-a-viz the provisions of the Lagos State Lotteries Law 2004? I do not think so. It is not in doubt that the issuance of a license to carry out lottery business issued to the appellants by the Federal Government is an administrative act by the Federal Government S./251 (1) (P & R) of the Constitution of the Federal Republic of Nigeria relate not only to the parties but also the subject matter of the dispute. The main issue in the instant case is whether or not the appellants having obtained a Federal Government License to operate throughout Nigeria including Lagos State can also be subjected to another round of lensing by the Lagos State Government. That clearly is the basis of the declaratory and injunctive being sought by the respondent. The result shall clearly affect the validity of an executive or administrative action by the Federal Government. The Lagos State High Court does not have the competence to adjudicate in such matters.”***

Section 251 (1) (P & R) (sic) of the Constitution appears to be the basis of the above reasoning. I have earlier set out the provisions of Section 251 (1) (p), (q), (r), and (s) in this judgment, but since Section 251 (1) (p), and (r) are at the centre and focal point of the finding by the court below, it is expedient to set them out again. The provisions are:

***“ 251 – (1) Notwithstanding anything to the contrary contained in this Constitution and***

*in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.*

*(p) The administration or management and control of the Federal Government or any of its agencies;*

*(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies."*

These provisions are very plain, clear, simple and straight forward in words to be entitled to, by established principles on interpretation of Constitutional provisions; see *A. G. Bendel State v. A. G., Federation* (1981) 10SC, 1, (1981) 1 FNLRM 179, *Ishola v. Ajiboye* (1994) 7 – 8 SCNJ, (pt. 1) 1 at 34, *Awolowo v. Shagari* (1979) All NLR, 120, be ascribed their natural and ordinary meanings since they are in themselves; precise and unambiguous. The provision in paragraphs or item (p) of Section 251 (1) seems to be out of the way since the reasoning focused on "an executive or administrative action of the Federal Government", provided for in paragraph or item (r). Paragraph or Item (r) deals with civil action or proceedings challenging or questioning and affecting the validity of an executive action or decision by the Federal Government or any of its agencies over which the Federal High Court possesses the exclusive jurisdiction to adjudicate and so the High Court of a State lacks the requisite jurisdiction to entertain.

Accordingly, any civil action by which the validity of an executive or administrative action or decision by the Federal Government or any of its agencies is challenged and the reliefs for declarations and injunctions are sought, it is the Federal High Court that exclusively possesses the requisite judicial power and authority or jurisdiction to entertain and adjudicate by virtue of the provision in paragraph or item (r) of Section 251 (1). The jurisdiction of a High Court of a State is expressly excluded over such actions or matters and so does not, in law, exist.

With that position settled, the pertinent question which agitates itself at this point is whether the court below is right that the case or claim by the Appellant presented before the trial court is/was one in which the validity of an executive or administrative action or decision of the Federal Government or any of its agencies is/was challenged or questioned so as to bring it within the purview and ambit of the provision in paragraph or item (r) above. It may be recalled, that the opinion of the court below is that the action or case presented by the Appellant at the trial court sought to challenge the validity of the license issued to the Respondents, which it considers to be an executive or administrative action of the Federal Government. Is it correct? The answer lies in the nature, contents and context of the claims and the facts upon which the case is predicted, as disclosed in the originating summons as well as the Affidavit filed in support thereof. Having set out the sole question posed and submitted for answer by the trial court along with the reliefs sought by the Appellant in the originating summons, earlier, it is necessary, for completeness and a full appreciation of the case presented by the Appellant, to set out the paragraphs of the Affidavit in support of the summons which were set out and relied on by the court below in its judgment.

The paragraphs are 10 (ii), 11, 12, 13 and 15 set out at page 89 of the judgment (pages 416, 417 of the Record of Appeal) and as follows;

**"10. I am further informed by the claimant and I verily believe the same to be true that"**

**(ii) The Lagos State Government has not granted any license to either of the respondents to operate form of Lottery business in Lagos State.**

**11. To the surprise of the claimant and Lagos State Government, the respondents started making claims, with very serious campaigns to the public via media and newsprint publications, that the respondents have obtained an exclusive License from the Federal Government of Nigeria for a term of 30 years to operate lottery business tagged "Lotto Nigeria" all over Nigeria, including Lagos State.**

**12. The respondents have, by their various press interviews, publications, advertisement, and articles released on internet, indicated their preparedness to**

**launch out and operate lottery provisions of the Lagos State Lotteries Law 2004, and to the detriment of the Lagos State Government and its people.**

**13. By a publication contained in THISDAY Newspaper of the 31st January, 2995, at pages 7 and 76 respectively, the respondents clearly announced to the public that they will launch their Lottery business and commence the sale of the lottery ticket in Lagos State beginning from Thursday 3rd February, 2005.**

**Attached herewith and marked as Exhibit AG 1 and AG 2 are copies of the THISDAY Newspaper publication.**

**14. By these overt acts, advertisements, publications and press releases sponsored and or issued by the Respondents. I verily believe that the respondents are fully prepared to launch and operate Lottery business within the territory of Lagos State to the prejudice of the Lagos State Government.**

To start with, the question posed in the summons, simply Questions and the challenges the rights and validity of Respondents' operation and conduct of lottery business by Whatever means or mode in Lagos State without a license duly issued in accordance with the 2004 Law of Lagos State.

Clearly, it does not and cannot reasonably be said to seek or even purport to question or challenge any executive or administrative action by or of the Federal Government, which is not a party against whom the reliefs are sought and none of the Respondents who are unquestionably, private companies, is said to be an agency of the Federal Government. In addition, the question is not one that challenges the validity of the license issued to the Respondents to operate, conduct or carry out lottery business in Nigeria, either in its tenor or purport. All that the question seeks to know from the trial court is whether the Respondents can lawfully and validity operate, conduct or carry out the business of lottery in Lagos State without compliance with the requirements of the 2004 Law of Lagos State.

The question does not raise the issue of the competence of or authority of any agency of the Federal Government to issue a license to the Respondent to operate, conduct or carry out lottery business in Nigeria and it is extraneous, as was erroneously done by the court below, to import into the Appellant's case, the question of the validity of the license issued to the Respondents as the only basis on which it concluded that the case sought to challenge an executive or administrative action of the Federal Government over which the trial court lacks jurisdiction to adjudicate. Because the case did not challenge the validity of the license issued to the Respondents, the issue whether the subject of the license: i.e. lottery, is within the Executive Legislative List, or Concurrent Legislative List set out in Second Schedule to the Constitution Or even what is known as the "Residual List" under which both the Federal and the State Legislatures possess the legislative power and competence to legislate, as provided in Section 43, (4)(a) and (7)(a), (b) and (c) of the Constitution, does not arise.

The case presented in the Originating Summons filed by the Appellant before the trial court is one which can be completely, effectually and finally determined without a determination of the validity of the license issued to the Respondents since it was not raised in the question as well as the reliefs sought therein by the Appellant. The suit is simply one that is entirely based on the interpretation and application of the 2004 Law of Lagos State in relation to the Respondents' operation, conduct and carrying on the lottery business in Lagos State. In this regard, I endorse, totally, the finding by the trial court at page 135 of the Record of Appeal that:

**"(c) The suit is not on the face of it "an action or Proceedings for a declaration or injunction affecting the validity of any executive or any administrative action or decision by the Federal Government. It seeks on interpretation of 2004 Lagos State Lotteries Law."**

And the conclusion that:

**"(3) This suit is not for the determination of matters within the exclusive legislative list of the National Assembly of Nigeria such as to deprive a State High Court of jurisdiction over it,"**

The issue is accordingly resolved in favour of the Appellant.

On the 2nd issue of failure, or indeed refusal by the court below to consider, determine and make pronouncements, on the other issues; 2 and 3, validity and properly raised and placed before it by the parties in the appeal, after the finding that the trial court lacks jurisdiction to entertain the Appellant's suit, all that needs be said is that the failure/refusal constituted not only dereliction, but abdication of its primary judicial duty/obligation to consider and make requisite pronouncements on all such issues in its judgment.

As a penultimate appellant court in the judicial hierarchy in Nigeria, the established and repeated position of the law is that the court below has the primary duty to consider, determine and make necessary pronouncements on all material issues properly placed before it by parties to an appeal, inspite or despite its views on one (1) or only some of those issues since its decision on the issues determined is subject to a further appeal at which it may be faulted in law, reversed or set aside.

This position was restated by this court in *Adah v. NYSC* (2004) 7 SC (pt. 11) 139 at 143 – 144, per Uwaifo, JSC in the Lead judgment; a case decided years before the judgment appealed against, wherein His Lordship said:

**The court below, not being the final court had a duty to decide the merit of the case upon the issues canvassed before it, notwithstanding that it resolved the issue jurisdiction to the effect that the Benue State High Court lacked jurisdiction. This is because if an appeal to this court was reversed on that issue, it would prevent remitting the appeal to it to resolve the other issues arising from the appeal as originally made to it. See *Ezeoke v. Nwagbo* (1998) 1NWLR (pt. 72) 616; *Bayol v. Ahemba* (1999) SC (pt. 92); (1999) 7 SCNJ 223. The court below was in error to have failed to restore all the issues canvassed before it rather than confine itself only to the issue of jurisdiction.**

Tobi, JSC, in his concurring judgment, restated that:

**"All courts below the Supreme Court are bound to take all issues canvassed by the parties, even when such issues appear superfluous or spent. This is to enable the court exercising appellate jurisdiction to determine the issues, even if in the alternative. I think this court has the exclusive jurisdiction or should I say prerogative, to do what the Court of Appeal did because it is the final bus stop of any litigation."**

See Also *Katto v. CBN* (1991) 9 NWLR (pt. 214) 126 (SC), *Titiloye v. Olupo* (1991) 7 NWLR (pt. 205) 519 (SC), *Cookey v. Fombo* (2005) 5 SC (pt. 11) 102, *Tanko v. UBA Plc* (2010) 17 NWLR (pt. 1221) 80 (SC), *Nwankwo v. Yar'adua* (2010) 12 NWLR (pt. 1209) 518 (SC), *Toyrex Nig. Ltd. v. Pfizer* (2020) 1 NWLR (pt. 1704) 125 at 167.

In the result, the court below is clearly wrong in law to have failed/refused to consider and make pronouncements on the other issues canvassed before it by the parties in the judgment appealed against and thereby unwittingly, infringing on the parties' right to fair hearing in the determination of the appeal.

See *Dasuki v. FRN* (2018) 10 NWLR (pt. 1607) 300 at 343 (SC). *PDP v. JNEC* (2018) 12 NWLR (pt. 1634) 533 at 556 (SC). *Usararen v. FRN* (2018) 10 NWLR (pt. 1607) 221 at 234 (SC). *Ikpeazu v. Otti* (2016) 8 NWLR (pt. 1513) 38 (SC).

In the final result, I find merit in the appeal and allow it. As a consequence, the decision by the court below that the trial court lacks the requisite jurisdiction to entertain and adjudicate over the Appellant's suit against the Respondents, delivered on the 16th July, 2008, is hereby set aside. The suit is restored on the Cause List of the trial court for determination and ordered to be remitted to the Chief Judge of 5 Lagos State for the purpose.

The parties shall bear their respective costs of processing the appeal.

  
**MUHAMMED LAWAL GARBA**  
JUSTICE, SUPREME COURT

**APPEARANCES:**

Moyosore Onigbanjo, SAN, AG Lagos State  
with Adebayo Haroun  
Deputy Director, Adetoun Adeyemi-Deputy Director Lagos State. E.R,  
Agu – Assistant Director, and E. Pious-Amyador – Chief State  
Counsel for the Appellant.  
Peter Olomola for the Respondents.

15/05/2022  
