

IN THE SUPREME COURT OF NIGERIA
HOLDEN IN ABUJA
ON FRIDAY THE 22ND DAY OF NOVEMBER, 2024
BEFORE THEIR LORDSHIPS:

UWANI MUSA ABBA AJI
MOHAMMED LAWAL GARBA
EMANNUEL AKOMAYE AGIM
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH
JAMILU YAMMAMA TUKUR
MOHAMMED BABA IDRIS

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC/1/2008

BETWEEN:

1. THE ATTORNEY GENERAL OF LAGOS STATE
2. THE ATTORNEY GENERAL OF EKITI STATE
(2nd Plaintiff Joined as Co-Plaintiff by order Of this Court made on 6th of October, 2020)
3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
5. THE ATTORNEY GENERAL OF ANAMBRA STATE
6. THE ATTORNEY GENERAL OF

28/12/2024
CERTIFIED TRUE COPY
(Justice Abraham)
REGISTRAR
Supreme Court of Nigeria
Official

PLAINTIFFS

BAYELSA STATE

- 7. THE ATTORNEY GENERAL OF BENUE STATE**
- 8. THE ATTORNEY GENERAL OF CROSS RIVER STATE**
- 9. THE ATTORNEY GENERAL OF DELTA STATE**
- 10. THE ATTORNEY GENERAL OF EBONYI STATE**
- 11. THE ATTORNEY GENERAL OF EDO STATE**
- 12. THE ATTORNEY GENERAL OF ENUGU STATE**
- 13. THE ATTORNEY GENERAL OF IMO STATE**
- 14. THE ATTORNEY GENERAL OF KOGI STATE**
- 15. THE ATTORNEY GENERAL OF NASARAWA STATE**
- 16. THE ATTORNEY GENERAL OF OGUN STATE**
- 17. THE ATTORNEY GENERAL OF ONDO STATE**
- 18. THE ATTORNEY GENERAL OF OSUN STATE**
- 19. THE ATTORNEY GENERAL OF OYO STATE**
- 20. THE ATTORNEY GENERAL OF**

PLATEAU STATE

- 21. THE ATTORNEY GENERAL OF RIVERS STATE**
- 22. THE ATTORNEY GENERAL OF TARABA STATE**

AND

- 1. THE ATTORNEY GENERAL OF THE FEDERATION**
- 2. THE NATIONAL ASSEMBLY**
- 3. THE ATTORNEY GENERAL OF ADAMAWA STATE**
- 4. THE ATTORNEY GENERAL OF BAUCHI STATE**
- 5. THE ATTORNEY GENERAL OF BORNO STATE**
- 6. THE ATTORNEY GENERAL OF GOMBE STATE**
- 7. THE ATTORNEY GENERAL OF JIGAWA STATE**
- 8. THE ATTORNEY GENERAL OF KADUNA STATE**
- 9. THE ATTORNEY GENERAL OF KANO STATE**
- 10. THE ATTORNEY GENERAL OF KATSINA STATE**
- 11. THE ATTORNEY GENERAL OF KEBBI STATE**

DEFENDANTS

12. THE ATTORNEY GENERAL OF
KWARA STATE
13. THE ATTORNEY GENERAL OF
NIGER STATE
14. THE ATTORNEY GENERAL OF
SOKOTO STATE
15. THE ATTORNEY GENERAL OF
YOBE STATE
16. THE ATTORNEY GENERAL OF
ZAMFARA STATE

JUDGMENT

(DELIVERED BY MOHAMMED BABA IDRIS, JSC)

This is a suit in the original jurisdiction of this Court brought pursuant to Section 232 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the Constitution). By an Order of this Court made on the 25th day of March, 2024 the Plaintiffs filed their Further Amended Originating Summons on the 23rd day of May, 2024 wherein the Plaintiffs sought answers to the following questions:

1. *Having regard to the clear provisions of Section 4(2) and (3) of the Constitution of the Federal Republic of*

Nigeria, 1999 (as amended) ("the 1999 Constitution") which gives the National Assembly the exclusive power to make laws on the Sixty-eight (68) items exhaustively set out in part I of the second schedule of the 1999 Constitution, whether the National Assembly has the vires to make any law to regulate and control the operation of the lottery in Nigeria, particularly, by the National Lottery Act, Cap N145, Laws of the Federation of Nigeria.

- 2. Having regard to the clear provisions of section 4 (4)(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), whether lottery falls within items which the National Assembly and States Houses of the Assembly are concurrently empowered to make laws with regards thereto.*
- 3. Having regard to the clear provisions of section 4 (7) (a) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution") which grants the State Houses of Assembly the Residual*

power to make laws on matters not included in the Exclusive and Concurrent Legislative lists specifically set out in Part I of the second schedule and Part II of the second schedule respectively to the 1999 Constitution, whether the States Houses of Assembly do not have the exclusive power to make Laws to regulate and control the operation of the lottery within their States.

4. *Having regards to the clear provisions of Section 4 (7)(a) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution") which grants the States Houses of Assembly the Residual power to make laws on matters not included in the Exclusive and Concurrent Legislative Lists specifically set out in part I of the second schedule and Part II of the second schedule to the 1999 Constitution respectively, whether the Lagos State and all other States of the Plaintiffs do not have the power, to the exclusion of the Federation of Nigeria and the National Assembly, to make Laws to regulate and control the operation of lottery within the states of the Federation.*

5. *Having regard to the clear provisions of section 4 (4) (b), (7) (a) and 299 (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) ("the 1999 Constitution"), whether the power of the National Assembly to make laws of matters not included in either the Exclusive or Concurrent legislative lists is not Limited to the Federal Capital Territory and to the exclusion of the States of the Federation.*
6. *Having regard to the clear provisions of Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), whether the provisions of the Sections 17, 18, 19, 20 and 21 of the National Lottery Act, Cap N145, laws of the Federation of Nigeria, made by the National Assembly which gives the President of Nigeria exclusive rights to grant, renew and revoke licenses for the operation of lottery and not illegal, null, void and inconsistent with provisions of the 1999 Constitution.*
7. *Having regard to the provisions of section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as*

amended) ("the 1999 Constitution"), whether the National Lottery Act, Cap N145, Laws of the Federation of Nigeria, is not illegal, null, void and inconsistent with the provisions of the 1999 Constitution.

They urged the court, on answering the questions, to grant them the declaratory and injunctive reliefs as follows:

- i. A DECLARATION that lottery or game of chance is not one of the 68 items in the Exclusive Legislative List in Part I to the Second Schedule to the Constitution of the federal republic of Nigeria 1999 (as amended) ("the 1999 Constitution) in respect of which the National Assembly has the vires to make laws for the whole of Nigeria and not incidental or supplementary to any matter mentioned in the list.*
- ii. A DECLARATION that having regard to the clear provisions of Section 4(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution") the National Assembly lacks the vires to legally and Constitutionally make any law to regulate and control the operation of lottery in Nigeria.*

- iii. A DECLARATION that having regard to the clear provisions of Section 4(4) (a), (b) and Part II of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), matters relating to lottery do not fall within items which the National Assembly and the state house of assembly are concurrently empowered to make laws with regard thereto.
- iv. A DECLARATION that having regard to the clear provisions of Section 4(7)(a) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), the Lagos State Government (represented by the 1st Plaintiff) and the 2nd – 22nd Plaintiffs' State, have the power, to the exclusion of the 1st and 2nd Defendants, to make laws to regulate and control the operation of lottery within their States.
- v. A DECLARATION that having regard to the clear provisions of Section 4(4)(b), (7)(a) and Section 299(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), the power

of the National Assembly to make laws to regulate and control the operations of lottery is limited by the 1999 Constitution to only the federal capital territory.

- vi. A DECLARATION that Sections 17, 18, 19, 20 and 21 of the National Lottery Act N145, Laws of the Federation of Nigeria, made by the National Assembly are inconsistent with the provisions of the 1999 Constitution.*
- vii. A DECLARATION that the National Lottery Act, N145, Laws of the Federation of Nigeria is inconsistent with the provisions of the 1999 Constitution.*
- viii. AN ORDER nullifying Sections 17, 18, 19, 20 and 21 of the National Lottery Act, Cap N145, Laws of the Federation of Nigeria.*
- ix. AN ORDER nullifying the entirety of the National Lottery Act CAP N145, Laws of the federation of Nigeria.*
- x. AN ORDER of perpetual injunction restraining the 1st defendant either by himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from*

implementing the provisions of Sections 17, 18, 19, 20 and 21 of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the States of the Plaintiffs.

- xi. AN ORDER of perpetual injunction restraining the 1st Defendant either by Himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from taking any step or actions aimed at enforcing or continuing to enforce any/or all of the provisions of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the states of the plaintiff.*

The Further Amended Originating Summons is supported by a seventeen-paragraph affidavit and an accompanying written address. In response, the Defendants filed a six-paragraph Joint Counter Affidavit opposing the Plaintiffs' Further Amended Originating Summons together with a written address. Subsequently, the Plaintiffs filed a six-paragraph Further Affidavit in support of the Further Amended Originating

Summons and in response to the Defendants' Joint Affidavit, along with a Reply Address to the Defendants' Joint Written Address.

The facts underlying this suit as brought forward in the Further Amended Originating Summons and supporting documents, centre on a dispute between the Federation and the States regarding the Constitutionality of the National Lottery Act, CAP N145, Laws of the Federation of Nigeria (National Lottery Act) and the validity of its continued applicability and enforcement. The Plaintiffs, through their affidavit supporting the Further Amended Originating Summons sworn to by Adetoun Juliana Adeyemi, a Deputy Director with the Lagos State Government, averred that on March 30, 2005, the 2nd Defendant enacted the National Lottery Act, CAP N145, LFN. The deponent averred that lottery, as a game of chance, does not fall within the items listed on either the Exclusive or Concurrent Legislative Lists, and neither is it incidental or supplementary to any matter on the Exclusive Legislative List, as contained in Parts I and II of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as

amended). The Plaintiffs further averred that the provisions of the National Lottery Act effectively grant the President exclusive authority over the issuance, application, duration and revocation of licenses for lottery operations in Nigeria. Prior to the enactment of the National Lottery Act, the 1st, 4th, 5th, 8th, 9th, 13th, 16th, 17th, 19th and 21st Plaintiffs had enacted respective State laws regulating lotteries. With the promulgation of the National Lottery Act, the 1st and 2nd Defendants insisted on enforcing the Act in the Plaintiffs' States despite the Constitution's allocation of lotteries as a residual matter within the exclusive legislative competence of State governments.

In their Joint Written Address in Support of the Further Amended Originating Summons, learned counsel to the Plaintiffs submitted with respect to questions 1 – 5 of the Originating Summons, that the regulation and operation of lotteries within individual States are vested exclusively in the respective State governments. This is because, by the principle of federalism, the powers exercisable by the legislature of each federating unit are clearly marked out in a manner devoid of

any form of ambiguity. Therefore, State legislatures through their Houses of Assembly, possess the authority to enact relevant laws and designate officials to enforce such legislation as opposed to the Federal statute and Federal personnel. Learned Counsel argued that any legislative action by the National Assembly beyond Constitutional stipulations constitutes an unconstitutional overreach particularly when such legislation infringes upon constitutionally guaranteed powers of the States. Counsel asserts that the Constitution, whether interpreted literally or purposively, does not confer upon the National Assembly the power to legislate on matters not expressly allotted to it.

The learned counsel for the Plaintiffs further argued that any notion of the National Assembly legislating on subjects outside the Exclusive and Concurrent Legislative Lists undermines Section 4(2), (4) and (7) of the Constitution. Counsel contended that the enactment and enforcement of the National Lottery Act, a law concerning a subject absent from the Exclusive or Concurrent Legislative Lists, reflects a

legislative overreach by the National Assembly thus arrogating unconstitutional powers.

The learned counsel for the Plaintiffs contended further that the Constitution should not be interpreted in a manner that contravenes the federalism principle central to Nigeria's Constitutional foundation. It was argued that once the Constitution establishes powers, rights and limitations, no entity including the National Assembly, has the authority to disregard such limitations. It was argued that items not explicitly included in either the Exclusive or Concurrent Legislative Lists fall beyond the National Assembly's jurisdiction and that lotteries, gambling and related activities are absent from these lists thus placing them within the residual legislative authority of the States and challenging the National Assembly's encroachment on State legislative jurisdiction as an infringement on federalism principles.

The learned counsel for the Plaintiffs further argued that where the Constitution provides a clear guidance on a subject or establishes specific conditions for certain actions, no federal or other legislation can alter those conditions absent a formal

Constitutional amendment. Reference was made to the United States Supreme Court's decision in **MURPHY VS. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION NO. 16 – 476, 584 U. S.**, delivered on May 14, 2018, where a Federal statute was declared unconstitutional as it infringed on States' residual powers. Counsel then draw parallels between Nigeria's Section 4(7) of the Constitution and the Tenth Amendment of the U. S. Constitution, while arguing for a similar interpretation to preserve State authority. Reliance was placed on the 1950 Constitution of the Republic of India which assigns gambling and betting legislation exclusively to State legislatures under Item 34 of List II in the Seventh Schedule. This Court was urged to consider these federalism principles in interpreting the Nigerian Constitution.

In addressing questions 6 and 7 of the Originating Summons, learned counsel for the Plaintiffs pointed to the assumption underlying the National Lottery Act that lotteries fall within the Exclusive Legislative List thereby warranting Federal control. It was submitted that Sections 17 – 21 of the Act, which vest licensing and regulatory powers solely in the

President, infringe upon State authority by restricting States from exercising their Constitutional powers over lotteries. It was contended that the National Lottery Act improperly transfers this authority from the States to the Federal government, which violates the legislative autonomy conferred on States by the Constitution. This Court was then urged to uphold the supremacy of the Constitution and declare the National Lottery Act unconstitutional, striking it down as inconsistent with constitutional provisions.

In response the Defendants filed a six-paragraph Joint Counter Affidavit in opposition to the Plaintiffs' Further Amended Originating Summons on the 22nd day of July, 2024 deposed to by Adebayo Ogundele, Assistant Chief State Counsel under the 1st Defendant and the designated desk officer for this case. The deponent, based on information derived from the Defendants' lead counsel (except the 12th Defendant), deposed that the 2nd Defendant enacted the National Lottery Act in 2005 pursuant to its legislative powers under Sections 4(2) – (5), 16(1)(a) – (d) and 16(2)(a) of the Constitution, as well as Items 60(a) and 62(a) of the Exclusive

Legislative List and Item 7(a) of the Concurrent Legislative Lists in the Constitution. The deponent stated that the Act was designed to regulate the lucrative lottery industry across Nigeria and to channel revenue toward national economic development through the National Lottery Regulatory Commission and National Lottery Trust Fund and that given the electronic nature of modern lotteries, lottery operations span across States and even countries, requiring Federal oversight to prevent conflicting State laws and irregularities in lottery regulation. The cited a report titled *Nigeria's Sport Betting Sector Report 2019/2020* by a Berkshire Hathaway company, which highlights a significant increase in sports betting among Nigerians, underscoring the need for Federal regulation to harness economic opportunities and address declining oil revenues and that the National Lottery Act does not deprive States of their legal rights or revenue but rather ensures a cohesive legal framework for lottery operations across Nigeria.

The Defendants stated that the National Lottery Act applies uniformly to all 36 States including the Federal Capital Territory, and that it is even pertinent to Nigerians who

participate in international lottery games. The Defendants aver that the Act's Federal oversight is necessary for effective management and benefit-sharing across the Federation, opposing the Plaintiffs' claims that the Act violates States jurisdiction. The Defendants submit that this Court as guardian of constitutional supremacy, should uphold the National Lottery Act and reject the Plaintiffs' request for invalidation.

The Defendants also filed their Joint Written Address in opposition to the Plaintiffs' further amended Originating Summons on the 22nd day of July, 2024 and distilled two issues for the determination of this suit as follows:

- 1. Whether the National Assembly is competent to enact the National Lottery Act 2005 having regards to its legislative competence and powers as donated by Sections 4(2), (3), (4), (7) Section 16(1)(a)(b)(c) and 2(a), (a) and (b), Items 60(a) and 62(a) of the Exclusive Legislative List as contained under Part 1 of the Second Schedule and Item 7(a) of the Concurrent Legislative List under Part 2 of the Second Schedule to the***

Constitution of the Federal Republic of Nigeria 1999 (as amended)? (Arising from Questions 1, 2, 3, 4 and 5 of the Further Amended Originating Summons)

2. Having regard to combined and proper construction of Section 4(2), (3), (4)(a) and (b) (5), Items 60(a) and 62(d) of the Exclusive Legislative List under Part 1 of the Second Schedule and Item 7(a) of the Concurrent Legislative List under Part 2 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended), WHETHER the provisions of Sections 17, 18, 19, 20 and 21 of the National Lottery Act, Cap N145, Laws of the Federation and indeed the entire Act is Constitutional, having being validly enacted by the National Assembly of the Federal Republic of Nigeria? (Arising from Questions 6 and 7 of further Amended Originating Summons)

On issue one the learned counsel for the Defendants argued that the National Lottery Act was enacted lawfully by

the National Assembly, which exercised its legislative powers as provided under the Nigerian Constitution. Counsel urged the Court to address the constitutional questions by examining the specific provisions of the Nigerian Constitution rather than relying on general interpretations of federalism. It was contended that the Constitution, as the foundation of Nigeria's legal system, must be interpreted progressively and harmoniously.

It was submitted that the National Assembly's legislative power to regulate lottery as a facet of commerce, is derived from Item 62 on the Exclusive Legislative List. It was submitted that lottery, as an aspect of commerce, involves the exchange of tickets and distribution of prizes across States, especially through electronic means, which falls within the National Assembly's purview.

The learned counsel for the Defendants argued further that the Plaintiffs have not presented any evidence of interference by the National Lottery Regulatory Commission in State-regulated lottery activities and that there is no indication that any license granted by the National Lottery Act prevents

lottery operations within any State. It was argued that State-issued lottery licenses are inherently limited to their respective jurisdictions whereas the National Lottery Act governs activities on a national level covering all 36 States of the Federation and the Federal Capital Territory. Counsel maintained that the Act does not strip States of their rights or revenue, but rather prevents a multiplicity of conflicting State regulations that could lead to irregularities. Relying on the decision in the case of **NIGERIAN EMPLOYERS CONSULTATIVE ASSOCIATION & ANOR VS. AG FEDERATION (2021) LPELR – 54042 (CA)**, wherein the court below relied on the decision of this Court per Mohammed Bello, JSC and Kayode Eso, JSC in the case of **AG OGUN STATE VS. ABERUAGBA & ORS (1985) LPELR – 3164 (SC)**, learned counsel for the Defendants urged this Court to sanction the decision of the court below which, in their view, properly resolved the question of the constitutionality of the National Lottery Act.

The learned counsel for the Defendants further argued that lottery activities as a form of interstate commerce, align with the framers' intent in drafting Item 62(a) of the Exclusive

Legislative List, which was likely influenced by the U. S. Supreme Court's interpretation in **GIBBONS VS. OGDEN S, 22 U. S. (9 WHEAT) 1 (1824)**. In that case, the U. S. court ruled that Congress had exclusive power over interstate commerce.

On the interpretation of the Constitution, the learned counsel for the Defendants submitted that it is a dynamic document that should be construed liberally to adapt to technological and economic developments. The Court was urged to adopt a holistic approach in interpreting Item 62, considering the impact of modern technology, particularly in the commercial exchange of goods and services.

Learned counsel for the Defendants submitted that Items 60(a) and 62(a) of the Exclusive Legislative List, read in conjunction with Section 16 of the Constitution, clearly empower the National Assembly to establish agencies such as the National Lottery Regulatory Commission, to promote economic objectives. Counsel asserts that the U. S. Supreme Court's decision in **MURPHY VS. NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (SUPRA)** is not applicable here,

as the U. S. court did not consider provisions analogous to Items 60(a), 67 and 68 of the Exclusive Legislative List in Nigeria's Constitution.

In relation to the Indian Constitution, it was argued that the Plaintiffs' reliance on foreign Constitutions for interpreting Nigeria's Constitution is unfounded as it has not been established that the foreign constitutional provisions align fully with Nigeria's constitutional provisions, particularly concerning the Exclusive Legislative List.

On issue two, the learned counsel for the Defendants argued that the President's exclusive power to issue lottery licenses across Nigeria is constitutional and it aligns with the National Assembly's mandate to promote and enforce economic objectives under Section 16 of the Constitution. It was submitted that with the establishment of the National Lottery Regulatory Commission and the National Lottery Trust Fund, the National Assembly has the incidental power to empower these bodies to regulate lottery operations in furtherance of the national economic objective stated in Section 16.

It was argued further that the doctrine of “covering the field,” enshrined in Section 4(5) of the Constitution renders any conflicting State lottery law subordinate to the National Lottery Act. Learned counsel relied on the decision in **ATTORNEY-GENERAL OF ONDO STATE VS. ATTORNEY-GENERAL OF THE FEDERATION (SUPRA)**, to argue that the Federal and State Governments hold concurrent legislative authority to promote economic objectives. It was submitted that State laws must yield to Federal legislation on matters of overlapping jurisdiction as the National Lottery Act’s reach and regulation extend beyond individual States and apply uniformly nationwide. The Court was urged to resolve this issue in the favour of the Defendants and dismiss the Plaintiffs’ claims.

In response, the Plaintiffs filed a further affidavit on the 25th day of September, 2024 countering the Defendants’ claim that the National Assembly holds power to legislate on lottery under the National Lottery Act. In the said counter affidavit deposed to by Adetoun Juliana Adeyemi, Deputy Director with the Lagos State Government, it was deposed that the 8th Defendant has enacted a law for the regulation of lottery

activities within Kaduna State to the exclusion of the 1st and 2nd Defendants and that the provisions of Section 4, Section 16, Items 60(a) and 62(a) of the Exclusive Legislative List and Item 7(a) of the Concurrent Legislative List of the Constitution do not extend legislative authority to the National Assembly on the subject of lottery. The Plaintiffs averred that "lottery" does not fall under the definition of trade or commerce as contemplated by the Exclusive Legislative List and that lottery is neither a commercial nor an economic activity *per se*. The witness further stated that the National Assembly's legislative power is restricted to the Federal Capital Territory for matters like lottery as the State governments possess both the competence and legal infrastructure to regulate lottery activities within their own jurisdictions.

In the Plaintiffs' Reply Address filed on the 25th day of September, 2024, learned counsel for the Plaintiffs raised preliminary points arguing that the Defendants failed to refer to any law or fact which effectively countered the Plaintiffs' position that the legislative powers of the 2nd Defendant (National Assembly) are strictly confined to items expressly

listed in the Exclusive and Concurrent Legislative Lists within the Second Schedule of the Nigerian Constitution (as amended) and that instead, the Defendants attempted to extend the scope of "Trade and Commerce" to encompass lottery and gambling — an interpretation the Plaintiffs argued is unwarranted and constitutionally unsound.

Addressing the first issue raised by the Defendants, learned counsel for the Plaintiffs argued that it is incorrect, both linguistically and legally, to categorize lottery — a game of chance, luck and uncertainty, as part of "Trade and Commerce." It was submitted that Item 62 in the Exclusive Legislative List pertains solely to activities involving buying and selling while lottery, by contrast, involves no guaranteed exchange or reward. Citing the case of **ATTORNEY-GENERAL OF OGUN STATE VS. ABERUAGBA (1985) 1 NWLR (PT. 3) 395**, counsel argued that Item 62 of the 1999 Constitution, which is similar to Item 61 of the 1979 Constitution, narrowly defines trade and commerce to mean specific transactions outlined in paragraphs (a) – (f), which do not include lottery.

Learned counsel to the Plaintiffs points out that the Defendants, in their counter-affidavit and written address, conceded that the Plaintiffs have the constitutional authority to regulate lottery activities within their respective States. It was argued that the decision cited by the Defendants in the case of **NIGERIAN EMPLOYERS CONSULTATIVE ASSOCIATION & ANOR VS. ATTORNEY-GENERAL OF THE FEDERATION (SUPRA)** does not bind this Court as it contradicts the true legal position as the court below failed to consider the decision in **AG OF OGUN STATE VS. ABERUAGBA (SUPRA)**.

In response to the contention of the Defendants that lottery is now mostly carried out online and that the Constitution should be interpreted to confer legislative powers on the 2nd Defendant, learned counsel for the Plaintiffs further rejected the Defendants' assertion that the online nature of modern lottery operations necessitates Federal regulation. It was argued that the State laws governing lottery activities adequately addressed and incorporated provisions for online lottery, rendering Federal intervention unnecessary and unwarranted.

On the argument of the Defendants that the power derived by the 2nd Defendant to legislate on lottery is derived from the combined provisions of Section 16 and Item 60(a) of the Exclusive Legislative List of the Constitution as the establishment of the National Lottery Regulatory Commission is for the purpose of enforcing and observing the economic objective of the Constitution, learned counsel for the Plaintiffs refuted the Defendants' argument and submitted that this position is based on a fundamental misunderstanding, as lottery — being a game of chance, lacks the essential characteristics of “social justice” or “equal status and opportunity” attributed to economic objectives in Section 16 of the Constitution. It was submitted that unlike transactions in trade and commerce, lottery does not entail an assured exchange of value rather it is inherently speculative and risk-based.

With respect to Section 16(1)(a) and (2)(b) of the Constitution, learned counsel for the Plaintiffs argued that these provisions, which emphasize the harnessing and distribution of Nigeria’s material resources, do not apply to lottery and that lottery, unlike mineral resources such as crude oil, does not

constitute a "material resource" of Nigeria rather, it is a voluntary activity conducted by private operators with the government deriving revenue solely through taxation which existing tax laws already govern. It was submitted that lottery is not a resource over which the government can assert ownership or regulatory control for distribution under Section 16 of the Constitution. It was submitted further that the duty to observe the fundamental objectives and directive principles of state policy as mandated by Section 13 of the Constitution, is incumbent upon all organs of government, not solely the Federal authorities. It was argued that the Defendants' interpretation that Chapter 2 of the Constitution can extend the National Assembly's power beyond the Exclusive and Concurrent Legislative Lists which would contravene the Federal structure envisioned by the Constitution, especially Section 4(7).

On issue two distilled by the Defendants in response to the Plaintiffs' argument on the doctrine of "covering the field," learned counsel for the Plaintiffs submitted that this doctrine is inapplicable in the present context. It was argued that the

subject matter "lottery", is absent from both the Exclusive and Concurrent Legislative Lists. Citing the case of **ATTORNEY-GENERAL OF LAGOS VS. EKO HOTELS LTD (2018) 7 NWLR (PT. 1619) 518 AT 559**, learned counsel argued that where a matter is not expressly listed in either the exclusive or concurrent legislative list in the 2nd Schedule to the Constitution, such a matter falls under the Residual Legislative List, thus falling exclusively within State jurisdiction.

Learned counsel for the Plaintiffs emphasized that both parties agreed that lottery is not included in the Exclusive or Concurrent Legislative Lists and as such, it remains a residual matter, exclusively under the legislative competence of the States pursuant to Section 4(7) of the Constitution. It was submitted that the Defendants' suggestion to interpret Item 62 to include lottery activities is constitutionally impermissible and the Court was urged to reject this interpretation and resolve the issues in favour of the Plaintiffs.

RESOLUTION OF THE ISSUES

I have carefully reviewed and summarized the averments and arguments presented by the learned counsel

for the parties. I shall now proceed to resolve the issues in dispute in the instant appeal and in order to carry out this exercise, I will adopt the issues formulated for determination by the Defendants because in my view a resolution of these issues will comprehensively address and settle the questions sought to be determined by the Plaintiffs in this suit.

ISSUE ONE

Whether the National Assembly is competent to enact the National Lottery Act 2005 having regard to its legislative competence and powers as donated by Sections 4(2) (3) (4) (7) Section 16(1)(a)(b)(c) and 2(a), (a) and (b), Items 60(a) and 62(a) of the Exclusive legislative list as contained under Part 1 of the Second Schedule and Item 7 (a) of the Concurrent legislative list under Part 2 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended)? (Arising from Questions 1, 2, 3, 4 and 5 of the Further Amended Originating Summons)

The 1999 Constitution of the Federal Republic of Nigeria (as amended) (the Nigerian Constitution), is the supreme law and fundamental legal authority of Nigeria. Its provisions are binding on all persons, institutions, and authorities throughout the country, including every arm and level of government. As the highest law of the land, the Constitution supersedes all other laws, and any Act, law or regulation inconsistent with its provisions is rendered null and void to the extent of the inconsistency. See **NPF & ORS VS. POLICE SERVICE COMMISSION & ANOR (2023) LPELR – 60782 (SC); FIRST BANK VS. T. S. A. INDUSTRIES LTD (2010) LPELR – 1283 (SC); INEC VS. MUSA (2003) LPELR – 24927 (SC)** and **NWOKEDI VS. ANAMBRA STATE GOVT & ANOR (2022) LPELR – 57033 (SC)**.

A combined reading of the provisions of Section 1(1) and (3) of the Nigerian Constitution provides that:

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

In accordance with Sections 2 and 3 of the Nigerian Constitution, Nigeria practices federalism, a system of governance in which power is constitutionally divided between a central (Federal) government, the various State governments and their various local government authorities. This structure allows each level of government to exercise authority over specific matters within its jurisdiction as outlined in the Constitution. This distribution aims to promote local governance, accommodate Nigeria's diverse ethnic and cultural groups, and ensure a balanced regional development. The essence of federalism as a system of governance adopted in Nigeria was expounded upon by this Court, taking into consideration the scholarly contributions of constitutional lawyer and expert Professor Ben Nwabueze. This Court acknowledged his work in elucidating the principles and framework of federalism, particularly as it applies within the

Nigerian context in the case of **AG FEDERATION VS. AG LAGOS STATE (2013) LPELR – 20974 (SC)** where this Court held:

"The purport of Federalism is succinctly put by the former Constitutional lawyer and scholar Professor Ben Nwabueze in his book 'Federalism in Nigeria under the Presidential Constitution' thus:-

"Federalism is an arrangement whereby powers of Government within a country are shared between a national, country-wide Government and a number of regionalized (i.e. territorially localized) Governments in such a way that each exists as a Government separately and independently from others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs. Federalism is thus essentially an

arrangement between Governments, a constitutional device by which powers within a country are shared among two tiers of Government."

The above extract of the book gives an insight of what Federalism is, and clearly expresses the independence of Governments under a Federation, the powers of such Governments under a Federation, and the powers of such Governments to make laws that benefit their developments and wellbeing are unfettered, and these powers cannot be taken away from them, as long as they do not breach any Constitutional requirement."

In accordance with the principle of federalism, the Nigerian Constitution provides a clear framework for the distribution of governmental powers, establishing a system of checks and balances. It divides powers between three distinct arms of government namely the Executive, the Legislature, and the Judiciary, each with its own roles and responsibilities. Also, the

Constitution divides governmental authority across three tiers of government i.e. the Federal Government, State Governments, and Local Governments. Each tier has its own areas of jurisdiction and authority, existing separately and independently as prescribed by the Constitution, ensuring that governmental powers are not concentrated at one level.

The legislative authority of the Federation, as enshrined in Section 4 of the Nigerian Constitution, is vested in the National Assembly, while the legislative powers of each State are vested in the State Houses of Assembly. This arm of government is charged with the essential function of law making, among other responsibilities. The Nigerian Constitution further delineates the scope and jurisdiction of these legislative powers, specifying the areas within which the National Assembly and State Houses of Assembly may exercise their respective authorities.

In other words, the National Assembly, alongside all other legislative bodies in Nigeria, derives its legislative authority from the provisions of the Nigerian Constitution. This foundational legal document confers upon these bodies the jurisdiction and powers necessary to enact laws regulating various aspects of

governance at the national, State and local levels. Accordingly, any legislative actions undertaken by these bodies must conform to the powers expressly or implicitly granted by the Constitution, ensuring that all legislation adheres to the supreme legal framework governing the nation.

For ease of reference, I shall reproduce the provisions of Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as follows:

- (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.***
- (2) The National Assembly shall have 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 I 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 States.

(4) In addition, and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say –

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency be void.

(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say –

(a) any matter not included in the Exclusive Legislative List set out

in Part I of the Second Schedule to this Constitution.

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law

that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

(9) Notwithstanding the foregoing provisions of this section, the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have power to make any law which shall have retrospective effect.

The basic dispute as pointed out by the Plaintiffs in this suit is the determination of the constitutionality of the National Lottery Act, and the legality of its continued applicability and operations.

The learned counsel for the Plaintiffs has submitted that the operation of lottery within the States is exclusively vested in the respective State Governments which they can exercise by laws enacted by their Houses of Assembly. This is because the subject of lottery is not contained in either the Exclusive Legislative List or the Concurrent Legislative List and thus falls within the Residual Legislative List for the State House of

Assembly to legislate on by virtue of Section 4(7) of the Nigerian Constitution. However, the Defendants have argued that the National Lottery Act 2005 is valid and lawful.

So, what then is lottery? In the Oxford Advanced Learner's Dictionary, 7th Edition, lottery is defined as:

- 1. A way of raising money for a government, charity, etc., in which many tickets are sold and some of the tickets are chosen by chance to win prizes.*
- 2. A situation in which what happens depends entirely on chance.*

Lottery is also defined in Black's Law Dictionary 10th Edition as:

- 1. A system of deciding who will get something; choosing of people's name by chance.*
- 2. A method of raising revenues, esp. State Government revenues, by selling tickets and giving prizes (usu. cash prize) to those who*

holds tickets with winning numbers that are drawn at random. Also termed lotto.

From the foregoing definition, lottery is a scheme or a game in which participants must give something of value and a winner is selected by chance or luck or random drawing not by skill and the winner receives a benefit as a result of the chance-based selection.

The Defendants have argued that the power exercised by the 2nd Defendant in enacting the National Lottery Act is derived from Section 4(2)(3)(4)((a)(b) and (5), Items 60(a) and 62(d) of the Exclusive Legislative List and Items 7(a) of the Concurrent Legislative List, Second Schedule to the Nigerian Constitution. I have read through the provisions of the Nigerian Constitution and there is no express mention or inference of the word, "lottery" found therein. On this point, parties are at *ad idem*.

The provisions of Section 4 of the 1999 Constitution of the Federal Republic of Nigeria have been set out earlier in this judgment, however, for the sake of clarity, I will reproduce Sections 4(2)(3)(4)((a) and (b) and (5) referred to by the

Defendants that empowers the 2nd Defendant to enact the National Lottery Act hereunder thus:

- (2) The National Assembly shall have 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 I 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 States.***
- (4) In addition, and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall***

have power to make laws with respect to the following matters, that is to say –

- (a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and***
- (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.***

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency be void.

The operation of the legislative powers by the National Assembly and the House of Assembly of a State is itemized in two lists namely – the Exclusive Legislative List and the Concurrent Legislative List. While the items on the Exclusive Legislative List are the exclusive preserve of the National Assembly to legislate on, the items on the Concurrent Legislative List are legislated on by both the National Assembly and the House of Assembly of a State. See the cases of **AG FEDERATION VS. AG LAGOS STATE (2013) LPELR – 20974 (SC)** and **OSADEBAY VS. AG BENDEL STATE (1991) LPELR – 2781 (SC)**.

The import of the above provision is that in as much as the laws made by the National Assembly rank next in hierarchy to the Constitution, the provision of Section 4(3) of the Nigerian Constitution limits the exclusive powers of the National Assembly to make laws to those items set out in part I of the Second Schedule to the Constitution. Therefore, the power of the National Assembly to make laws is not limitless but limited by the provisions of Sections 4(2), (4)(a) and (b) to the matters it is empowered to make laws on by the

Constitution, and any act outside this, the National Assembly would be seen as acting *ultra vires* its powers. See **OLAFISOYE VS. FRN (2004) LPELR – 2553 (SC)**.

As earlier pointed out, I have painstakingly searched through the Second Schedule to the Nigerian Constitution and found no express mention of Lottery. This position has been agreed to by learned counsel to parties in this suit in their various written addresses. However, it is the submission of learned counsel to the Defendants that lottery, gaming, betting, etc., are all within the context of interstate commerce as envisaged by Items 62(a) of the Exclusive Legislative List by the framers of the Constitution which empowers the National Assembly to legislate on trade and commerce.

It is pertinent at this juncture to reproduce the provisions of Items 62(a) of the Exclusive Legislative List Part I of the Second Schedule to the Nigerian Constitution as follows:

**62. Trade and commerce, and in particular -
(a) trade and commerce between**

Nigeria and other countries including import of commodities into and export of commodities from Nigeria, and trade and commerce between the States.

Trade and commerce can be described as the activities involved in buying, selling and exchange of goods and services. According to Black's Law Dictionary, 10th Edition, the terms "trade" and "commerce" are defined similarly with slight variations in wording.

Trade: The exchange of goods, services, or both, for money or other goods and services. It also refers to the business or occupation in which one engages.

Commerce: The buying and selling of goods or services, especially on a large scale, and the activities involved in the production, distribution, and consumption of those goods and services. It encompasses all activities

related to the movement and exchange of goods and services across markets.

In the case of **AG OGUN STATE VS. ABERUAGBA & ORS (1985) LPELR – 3164 (SC)**, this Court held per Eso, JSC that:

I form the view that the words "trade and commerce" in Item 61 of the Exclusive Legislative List are to be taken together and they both must mean commercial intercourse. In other words, I am of the firm view that the Federal Government has exclusive jurisdiction to legislate on commercial intercourse (trade and commerce) as distinct from trade specifically used in common parlance of a trades-man or carpenter, a road mechanic or a garri manufacturer. It means therefore that the commercial intercourse, involves movement of commerce, as defined whether to or from foreign countries whether they move inter slate

or intrastate. But it must be commercial intercourse. And they must move."

From the foregoing definition by the learned jurist, "movement of commerce" generally denotes the flow of goods, services, or commercial activities across boundaries such as State or national borders, typically encompassing cross-border or interstate transactions. Accordingly, a key question that arises is: does the operation of a lottery constitute "commercial intercourse"?

There is a need to see how lottery is viewed in the Republic of India which share similarities with Nigeria in our common British colonial heritage, governance structure and political framework.

In the Republic of India, lottery is generally considered as a form of gambling and Entry 34 of List II (State List) of the Seventh Schedule of the Constitution of India gives the State government the exclusive power to legislate on matters relating to "betting and gambling" which includes lotteries.

In the case of **STATE OF HARYANA VS. SUMAN ENTERPRISES & ORS (1994) 4 SCC 217**, the Supreme Court of India observed the following regarding lotteries:

"A lottery is not a trade or commerce in the conventional sense. It involves an element of chance and, therefore, cannot be classified as a commercial transaction or a business activity. The sale of lottery tickets, unlike trade and commerce, does not involve an exchange of goods or services, but is merely a game of chance, which is a form of gambling."

Also, in **BR ENTERPRISES VS. STATE OF UTTAR PRADESH (1999) 9 SCC 700**, the Supreme Court of India addressed the question of whether lotteries fall within the scope of "trade" and "commerce" as guaranteed under Article 301 of the Constitution which ensures the freedom of trade, commerce and intercourse throughout India. The Court held that lotteries do not constitute trade, commerce or intercourse within the meaning of Article 301. The Court reasoned that

lotteries are fundamentally a form of gambling and thus, do not qualify as trade or commerce. The distinction made by the Court was that "trade" and "commerce" refer to economic activities that involve the exchange of goods or services for value, whereas lotteries are based on chance and do not involve the provision of goods or services. Instead, the consideration paid for a lottery ticket (money) is linked to the chance of winning a prize, not to the acquisition of goods or services, which is the essence of trade or commerce. The Court emphasized that a lottery is a game of chance rather than a commercial activity, and the sale of lottery tickets does not amount to a genuine commercial transaction because it does not involve an exchange of goods or services. Therefore, the Court concluded that lotteries, being forms of gambling, are not encompassed by the constitutional protections of trade and commerce under Article 301.

In essence, the Court held that lotteries, as gambling activities, fall outside the ambit of "trade and commerce" as envisioned under the Indian Constitution, and their regulation is within the domain of State law concerning gambling.

In line with our jurisprudential stance, I acknowledge that the decisions of foreign courts are not binding on our courts. However, the decisions of foreign courts hold persuasive authority particularly where our laws and decisions are silent on the point of law. See the cases of **OBI VS. INEC & ORS (2007) LPELR – 2166 (SC)**; **YAHAYA VS. STATE (2002) LPELR-3508(SC)** and **INAKOJU & ORS VS. ADELEKE & ORS (2007) LPELR – 1510 (SC)**.

Given that the decisions referenced above reflect a sound exposition of the law, I find them persuasive and shall accordingly adopt their reasoning.

In the light of the foregoing, I hold that lottery does not constitute "trade and commerce" as envisaged under Item 62(a) of the Exclusive Legislative List as lottery is fundamentally a game of chance lacking the certainty, mutual exchange and reciprocity typically associated with trade and commerce. Unlike traditional commercial transactions involving a defined exchange of goods or services between parties, a lottery merely offers participants the prospect of winning without any assured return or specific value in exchange. Therefore, a lottery cannot

be classified as "trade and commerce" under the relevant item in the Exclusive Legislative List, as it fails to meet the criteria of an economic transaction involving the definite transfer of goods or services. Consequently, as lottery activities do not fall within the scope of "commercial intercourse" as defined in **AG OGUN STATE VS. ABERUAGBA & ORS (1985) LPELR – 3164 (SC)** and analysed above, does the National Assembly have the requisite vires to legislate on the subject matter of lottery?

The Defendants had argued that the constitutionality of the National Lottery Act is further validated with the wide powers conferred on the National Assembly under item 60(a) of the Exclusive Legislative List, Second Schedule to the Nigerian Constitution read together with Section 16(1)(a)(b) and (c) and (2)(a) of the Nigerian Constitution. I will reproduce the relevant provisions of the Nigerian Constitution relied upon by the Defendants. Item 60 of the Exclusive Legislative List provides for:

60. The establishment and regulation of authorities for the Federation or any part thereof –

(a) to promote and enforce the observance of the Fundamental Objectives and Directive Principles contained in this Constitution;

the provisions of Sections 16(1)(a)(b)(c), (2)(a)(b) and (4)(b)(c) of the Nigerian Constitution is reproduced hereunder as follows:

16 (1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution-

(a) harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;

(b) control the national economy in such manner as to secure the maximum welfare, freedom and

happiness of every citizen on the basis of social justice and equality of status and opportunity;

(c) without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;

(2) The State shall direct its policy towards ensuring –

(a) the promotion of a planned and balanced economic development;

(b) that the material resources of the nation are harnessed and distributed as best as possible to serve the common good;

(4) For the purposes of subsection (1) of this section –

(b) "economic activities" includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and

(c) "participate" includes the rendering of services and supplying of goods.

The learned counsel for the Defendants had submitted that lottery is an economic activity which has proven to be a viable contributor to Nigeria's GDP and the National Assembly has invoked the wide powers under Item 60(a) of the Exclusive Legislative List to establish the National Lottery Regulatory Commission for the purpose of regulating and harnessing the economic resource and gains within a particular sector of the economy as the phrase, "economic activities" in Section 16(4)(b) of the Constitution is wide enough to accommodate lottery, gaming and like activities.

However, this position taken by the learned counsel for the Defendants is fundamentally flawed and reflects a misinterpretation of the applicable legal provisions. The economic activities referred to in Section 16(4)(b) of the Constitution are intended to cover activities that are directly concerned with the production, distribution and exchange of wealth or of tangible goods and services. Economic activities in this context imply undertakings that contribute to fundamental economic growth by enhancing productive capacity, facilitating trade or providing essential services to the public. They are primarily directed towards sectors and activities that stimulate the overall economic structure and output such as agriculture, manufacturing and commerce, which are pivotal to the generation of wealth and sustainable economic development.

In contrast, lottery and gaming activities, while generating revenue, do not fulfil this core economic role. Lottery and gaming activities primarily serve as forms of entertainment or games of chance and do not involve the production, distribution or exchange of goods or services in

the conventional economic sense. They may generate income but do not contribute to fundamental economic growth in the same manner as sectors involved in the actual production of goods or essential services. Consequently, the learned counsel's interpretation that lotteries fall within the purview of "economic activities" as contemplated in the Constitution is legally unsound and conceptually unfounded. This is because the legislative intent behind Section 16(4)(b) of the Constitution is to empower the government to oversee and promote activities that are essential to economic stability and growth, focusing on sectors that provide tangible contributions to the nation's productive capacity. Thus, while the lottery sector may yield some economic benefits, it does not fall within the core category of economic activities envisaged by the Constitution under Section 16(4)(b) and cannot be regulated by the provisions of an Act of the National Assembly.

It is trite that it is the duty of the courts to interpret the provisions of the Constitution and laws of the land. Courts must ensure that in carrying out their interpretative function,

they refrain from reading into the statute what the framers of the Constitution did not expressly provide. To do otherwise would risk encroaching on the legislative powers reserved for the legislative arm of government. When there is a gap or omission within the provisions of the Constitution or any other laws, it is not the role of the courts to fill such gaps. The law has established appropriate mechanisms through which such omissions can be addressed by the body vested with the power to legislate. Therefore, the judiciary must exercise restraint, adhering strictly to the text of the law as enacted, and allowing the legislative body to fulfil its role in remedying any deficiencies or gaps within the law. See the cases of **BUHARI VS. INEC & ORS (2008) LPELR – 814 (SC)** and **AG FEDERATION & ORS VS. ABUBAKAR & ORS (2007) LPELR – 3 (SC)**.

In the case of **BUHARI VS. INEC & ORS (2008) LPELR-814(SC)**, this Court held that:

"Courts of law, in interpreting the Constitution or a statute have no jurisdiction to read into the Constitution or statute what

the legislators did not provide for, and a 'fortiori read out of the Constitution or statute what is provided for by the legislators. In either way, the courts are abandoning their constitutional functions and straying into those of the Legislature by interfering or interloping with them. As that will make nonsense of the separation of powers provided for in Sections 4 and 6 of the Constitution, courts of law will not do such a thing, whatever is the pressure by counsel."

I therefore reject the invitation by the learned counsel for the Defendants to read into the Constitution what the framers of the Constitution did not intend and I hold that the argument advanced by the Defendants in this regard is without merit. See the cases of **AG LAGOS STATE VS. AG FEDERATION & ORS (2003) LPELR – 620 (SC)** and **ATTORNEY-GENERAL OF OGUN STATE VS. ABERUAGBA (SUPRA)**.

I have found in the course of this judgment that lotteries neither constitute "trade and commerce" as contemplated under Items 62(a) and (d) of the Exclusive Legislative List, nor do they qualify as an "economic activity" within the meaning of Section 16(4)(b) of the Nigerian Constitution taking cognizance of the fact that neither did the term "lottery" nor any closely related term appear explicitly in the Legislative List. It therefore follows that lotteries fall outside the legislative competence of the National Assembly. The National Assembly's power to legislate is restricted to those powers expressly granted by the Nigerian Constitution particularly Section 4(2), (4)(a) and (b) of the Nigerian Constitution, a principle already discussed in detail in this judgment and not requiring further elaboration. I therefore hold that the National Lottery Act enacted by the National Assembly, exceeds its constitutional authority and is therefore ultra vires and unconstitutional.

Section 4(7)(a) of the Nigerian Constitution expressly empowers the House of Assembly of each State to make laws for the peace, order and good governance of the State or any

part thereof concerning any matter not included in the Exclusive Legislative List. This provision confers on State legislatures the residual power to enact laws on any subject not specifically assigned to the National Assembly in the Exclusive Legislative List. As a result, State Houses of Assembly retain the authority to legislate on matters outside the purview of the Federal legislative framework covering a broad array of subjects that may affect the well-being and governance of the State. See **AG LAGOS STATE VS. AG FEDERATION & ORS (2003) LPELR-620(SC)**, where this Court held *inter alia* that:

"Nigeria is no doubt a Federal Republic with a Federal Constitution in which the Legislative powers of the Federal Government through the National Assembly and the legislative powers of the State Governments through the State Assemblies were clearly defined. These consist of the Exclusive Legislative list on which only the National Assembly can legislate; the

Concurrent Legislative List which is shared between the National Assembly and the State Assemblies and the remaining which is called the residual list not included in the Exclusive or Concurrent List which only the State Assemblies can legislate on. It is therefore the function of the court when any dispute arises on the competence of either of them to legislate on any matter, to ensure that each legislative arm operates within its limit as provided by the Constitution. And in order to determine the competence to legislate as in this case, the interpretation of the relevant provisions of the Constitution must be invoked."

As lotteries are not expressly mentioned in the Exclusive Legislative List, the Constitution implicitly assigns lotteries to the domain of State legislative competence. I agree with the submission of the learned counsel for the Plaintiffs that the regulation of lotteries falls within the exclusive legislative

jurisdiction of the States. Consequently, the legislative authority of each State House of Assembly encompasses, among other matters, the power to regulate activities such as lotteries and other forms of gaming. I therefore hold that the National Assembly lacks the competence to enact the National Lottery Act 2005, as "lottery" is not included in either the Exclusive or Concurrent Legislative Lists in the Second Schedule of the Nigerian Constitution and as such, the subject matter lies entirely outside the legislative competence of the National Assembly. In the circumstances, the National Lottery Act, 2005 is therefore hereby declared unconstitutional, having been enacted *ultra vires* the legislative authority of the National Assembly.

ISSUE TWO

Having regard to combined and proper construction of Section 4 (2) (3) (4) (a) and (b) (5), Items 60 (a) and 62(d) of the Exclusive Legislative List under Part 1 of the Second Schedule and Item 7 (a) of the Concurrent legislative list under Part 2 of the Second Schedule to the Constitution of the Federal

Republic of Nigeria 1999 (as amended), WHETHER the provisions of sections 17, 18, 19, 20 and 21 of the National Lottery Act, Cap N145, Laws of the Federation and indeed the entire Act is Constitutional, having being validly enacted by the National Assembly of the Federal Republic of Nigeria? (Arising from Questions 6 and 7 of further Amended Originating Summons)

Upon the determination of issue one, declaring the National Lottery Act 2005 unconstitutional, issue two is rendered moot. Accordingly, any reliance on the provisions of the National Lottery Act 2005 is hereby prohibited.

In the light of the foregoing, I hold that the Plaintiffs' claim and reliefs has merit they are hereby granted and it is therefore hereby ordered as follows:

1. A DECLARATION is made that lottery or game of chance is not one of the 68 items in the Exclusive Legislative List in Part I to the Second Schedule to the Constitution of the federal republic of Nigeria 1999 (as amended) ("the 1999 Constitution) in respect of

which the National Assembly has the vires to make laws for the whole of Nigeria and not incidental or supplementary to any matter mentioned in the list.

2. A DECLARATION is made that having regard to the clear provisions of Section 4(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution") the National Assembly lacks the vires to legally and Constitutionally make any law to regulate and control the operation of lottery in Nigeria.
3. A DECLARATION is made that having regard to the clear provisions of Section 4(4)(a), (b) and Part II of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), matters relating to lottery do not fall within items which the National Assembly and the state house of assembly are concurrently empowered to make laws with regard thereto.
4. A DECLARATION is made that having regard to the clear provisions of Section 4(7)(a) and (c) of the

Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), the Lagos State Government (represented by the 1st Plaintiff) and the 2nd – 22nd Plaintiffs' State, have the power, to the exclusion of the 1st and 2nd Defendants, to make laws to regulate and control the operation of lottery within their States.

5. A DECLARATION is made that having regard to the clear provisions of Section 4(4)(b), (7)(a) and Section 299(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), the power of the National Assembly to make laws to regulate and control the operations of lottery is limited by the 1999 Constitution to only the Federal Capital Territory.
6. A DECLARATION is made that Sections 17, 18, 19, 20 and 21 of the National Lottery Act N145, Laws of the Federation of Nigeria, made by the National Assembly are inconsistent with the provisions of the 1999 Constitution.

7. A DECLARATION is made that the National Lottery Act, N145, Laws of the Federation of Nigeria is inconsistent with the provisions of the 1999 Constitution.
8. AN ORDER is made nullifying the entirety of the National Lottery Act CAP N145, Laws of the federation of Nigeria.
9. AN ORDER of perpetual injunction is made restraining the 1st Defendant either by himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from implementing the provisions of Sections 17, 18, 19, 20 and 21 of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the States of the Plaintiffs.
10. AN ORDER of perpetual injunction is made restraining the 1st Defendant either by Himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from taking any step or actions aimed at enforcing or continuing to enforce any/or all of the

provisions of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the states of the plaintiffs.

11. No order is made as to cost.

CERTIFIED TRUE COPY, 23/12/24

Yusuf Abraham
REGISTRAR
Supreme Court of Nigeria

Official

Mohammed Baba Idris

**MOHAMMED BABA IDRIS
JUSTICE, SUPREME COURT**

APPEARANCES:

B. Olanipekun, SAN with A. Adeyemi, Esq, O. Ajayi, Esq, A. Makinde, Esq, A. Kawu, Esq, O. Murtala, Esq and R. Nmarkwe, Esq for the Plaintiffs

I. Daagba, Esq with V. Adodo, Esq and H. M. Gbor, Esq for the Defendants

3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
5. THE ATTORNEY GENERAL OF ANAMBRA STATE
6. THE ATTORNEY GENERAL OF BAYELSA STATE
7. THE ATTORNEY GENERAL OF BENUE STATE
8. THE ATTORNEY GENERAL OF CROSS RIVER STATE
9. THE ATTORNEY GENERAL OF DELTA STATE
10. THE ATTORNEY GENERAL OF EBONYI STATE
11. THE ATTORNEY GENERAL OF EDO STATE
12. THE ATTORNEY GENERAL OF ENUGU STATE
13. THE ATTORNEY GENERAL OF IMO STATE
14. THE ATTORNEY GENERAL OF KOGI STATE
15. THE ATTORNEY GENERAL OF NASARAWA STATE
16. THE ATTORNEY GENERAL OF OGUN STATE
17. THE ATTORNEY GENERAL OF ONDO STATE
18. THE ATTORNEY GENERAL OF OSUN STATE
19. THE ATTORNEY GENERAL OF OYO STATE
20. THE ATTORNEY GENERAL OF PLATEAU STATE
21. THE ATTORNEY GENERAL OF RIVERS STATE
22. THE ATTORNEY GENERAL OF TARABA STATE.....PLAINTIFFS

AND

1. THE ATTORNEY GENERAL OF THE FEDERATION
2. THE NATIONAL ASSEMBLY

Hon. Justice U. M. Abba Jji, JSC

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23/12/2024
CERTIFIED TRUE COPY
(Justice U. M. Abba Jji)
REGISTRAR
Supreme Court of Nigeria

SC. 1/2008

Official

3. THE ATTORNEY GENERAL OF ADAMAWA STATE
4. THE ATTORNEY GENERAL OF BAUCHI STATE
5. THE ATTORNEY GENERAL OF BORNO STATE
6. THE ATTORNEY GENERAL OF GOMBE STATE
7. THE ATTORNEY GENERAL OF JIGAWA STATE
8. THE ATTORNEY GENERAL OF KADUNA STATE
9. THE ATTORNEY GENERAL OF KANO STATE
10. THE ATTORNEY GENERAL OF KATSINA STATE
11. THE ATTORNEY GENERAL OF KEBBI STATE
12. THE ATTORNEY GENERAL OF KWARA STATE
13. THE ATTORNEY GENERAL OF NIGER STATE
14. THE ATTORNEY GENERAL OF SOKOTO STATE
15. THE ATTORNEY GENERAL OF YOBE STATE
16. THE ATTORNEY GENERAL OF ZAMFARA STATE....DEFENDANTS

JUDGMENT

(DELIVERED BY UWANI MUSA ABBA AJI, JSC)

The case of the Plaintiffs is that on March 30, 2005, the 2nd Defendant (the National Assembly) enacted the National Lottery Act, CAP N145, LFN, which deals on lottery, as a game of chance, does not fall within the items listed on either the Exclusive or Concurrent Legislative Lists, and neither is

it incidental or supplementary to any matter on the Exclusive Legislative List; as contained in Parts I and II of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended). That prior to the enactment of the National Lottery Act, the 1st, 4th, 5th, 8th, 9th, 13th, 16th, 17th, 19th and 21st Plaintiffs had enacted respective State laws regulating lotteries. With the promulgation of the National Lottery Act, the 1st and 2nd Defendants insisted on enforcing the Act in the Plaintiffs' States despite the Constitution's allocation of lotteries as a residual matter within the exclusive legislative competence of State governments. Their case is that the regulation and operation of lotteries within individual States are vested exclusively in the respective State governments. This is because, by the principle of federalism, the powers exercisable by the legislature of each federating unit are clearly marked out in a manner devoid of any form of

ambiguity. Therefore, the State legislatures through their Houses of Assembly, possess the authority to enact relevant laws and designate officials to enforce such legislation as opposed to the Federal statute and Federal personnel. Thus, the suit by the Plaintiffs questions the constitutionality of the National Lottery Act, CAP N145, Laws of the Federation of Nigeria, and the validity of its continued applicability and enforcement in the States.

I had the privilege to read in advance the reasoned and sound judgment of my brother, who wrote and read the lead judgment just delivered and I am in complete concurrence with the conclusion that the Plaintiffs' suit is meritorious and ought to be granted.

The power of the National Assembly to legislate is restricted to the powers expressly and constitutionally donated to it, especially in section 4(2), 4(a) and (b) of the

1999 Constitution (as amended), while that of the State Houses of Assembly is constitutionally conferred by section 4(7)(a) of the 1999 Constitution (as amended). It is apparently clear and express that lotteries as game of chance or betting have not been mentioned or listed in the preserve of the Exclusive Legislative List of the Constitution, to make it a matter within the legislative competence of the National Assembly. Hence, for the National Assembly to legislate and enact the National Lottery Act, 2005, amounts to constitutional aberration, incursion and intrusion, which is equally protected and forbidden by the same Constitution.

It is equally imperative to restate the elementary principle of the supremacy of the Constitution. The Constitution of the Federal Republic of Nigeria is the grundnorm, the basic law of the land. It stands head and shoulders above any other law or instrument enacted by the National Assembly, State House of Assembly or any other

person or authority empowered in that regard. It is from the Constitution that every other enactment or instrument derive their validity and binding force. The doctrine of the Supremacy of the Nigerian Constitution is traceable to Section 1(1) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered), which provides thus:

"1. Supremacy of the Constitution (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. (3) 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 void. See Per JAURO, JSC, in **NPF & ORS V. POLICE SERVICE COMMISSION & ANOR (2023) LPELR-60782(SC) (PP. 154 PARAS. A).**

Since the regulation of lotteries is found nowhere in the Exclusive Legislative List of the Constitution, it is express

that the National Assembly cannot enact law touching or concerning it. As lotteries are not expressly mentioned in the Exclusive Legislative List, the Constitution implicitly assigns lotteries to the domain of State legislative competence. The affidavit of Adetoun Juliana Adeyemi, a Deputy Director with the Lagos State Government, supporting the Further Amended Originating Summons, that “lottery, as a game of chance, does not fall within the items listed on either the Exclusive or Concurrent Legislative Lists, and neither is it incidental or supplementary to any matter on the Exclusive Legislative List, as contained in Parts I and II of the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended)” is apposite and on point in this suit.

Invariably and by implication, it is therefore the legislative competence of the State Houses of Assembly to legislate on it. Where a statute provides for the manner of doing a particular act only the manner specified by the

statute will suffice. See **NNONYE V. ANYICHIE (2005) 2 FWLR (PART 268) 1213 AND NTIERO V. NPA (2008) 10 NWLR (PART 1094) 129**, cited by PER MUHAMMAD, JSC in **FRN V. WABARA & ORS (2013) LPELR-20083(SC) (PP. 17-18 PARAS. F)**.

On the competent exercise of the residual powers of the State Houses of Assembly, this court Per UWAIFO, JSC, in **AG LAGOS STATE V. AG FEDERATION & ORS (2003) LPELR-620(SC) (PP. 201 PARAS. B)**, settled:

No argument can defeat or reduce from the general planning legislative power of the House of Assembly of a State, which is a residual constitutional power. It gives the States the exclusive function for the planning, layout and development of their respective areas. Any Act, be it the Federal Highways Act, the Civil Aviation Act, the Nigerian Railway Corporation Act, which tends, or is implemented in a way to tend, to undermine or take away this function of any State, or allows the Federal Government to exercise or assume such function is unconstitutional and in appropriate circumstances will be declared so."

The unconstitutionality and illegality of the National Lottery Act, 2005, enacted by the national Assembly is hereby declared. I unreservedly concur with the sound reasoning and decision of my learned brother, Mohammed Baba Idris, JSC, in granting the reliefs sought by the Plaintiffs. The Plaintiffs' suit has merit to be granted and is hereby granted by me.

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Justice Abbaaji 23/12/2024
REGISTRAR
Supreme Court of Nigeria

Official

Uwani Musa Abbaaji
UWANI MUSA ABBA AJI
JUSTICE, SUPREME COURT

APPEARANCES:

B. Olanipekun, SAN with A. Adeyemi, Esq, O. Ajayi, Esq,
A. Makinde, Esq, A. kawu, Esq, O. Murtala, Esq and R.
Nmarkwe, Esq, **FOR THE PLAINTIFFS.**

I. Daagba, Esq with V. Adodo, Esq and H. M. Gbor, Esq,

FOR THE DEFENDANTS.

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY, THE 22ND NOVEMBER, 2024

BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI
MOHAMMED LAWAL GARBA
EMMANUEL AKOMAYE AGIM
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH
JAMILU YAMMAMA TUKUR
MOHAMMED BABA IDRIS

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC/1/2008

28/12/24

BETWEEN:

1. THE ATTORNEY GENERAL OF LAGOS STATE
2. THE ATTORNEY GENERAL OF EKITI STATE
(2nd Plaintiff Joined as Co-Plaintiff by Order
Of this Court made on 6th of October, 2020
3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
5. THE ATTORNEY GENERAL OF ANAMBRA STATE
6. THE ATTORNEY GENERAL OF BAYELSA STATE
7. THE ATTORNEY GENERAL OF BENUE STATE
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18. THE ATTORNEY GENERAL OF OSUN STATE
19. THE ATTORNEY GENERAL OF OYO STATE
20. THE ATTORNEY GENERAL OF PLATEAU STATE
21. THE ATTORNEY GENERAL OF RIVERS STATE

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(Justice Ibrahim)
REGISTRAR
Supreme Court of Nigeria

Official

PLAINTIFFS

HON. JUSTICE MOHAMMED LAWAL GARBA, JSC

22. THE ATTORNEY GENERAL OF TARABA STATE PLAINTIFFS

AND

1. THE ATTORNEY GENERAL OF THE FEDERATION
2. THE NATIONAL ASSEMBLY
3. THE ATTORNEY GENERAL OF ADAMAWA STATE
4. THE ATTORNEY GENERAL OF BAUCHI STATE
5. THE ATTORNEY GENERAL OF BORNO STATE
6. THE ATTORNEY GENERAL OF GOMBE STATE
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13. THE ATTORNEY GENERAL OF NIGER STATE
14. THE ATTORNEY GENERAL OF SOKOTO STATE
15. THE ATTORNEY GENERAL OF YOBE STATE
16. THE ATTORNEY GENERAL OF ZAMFARA STATE

DEFENDANTS

JUDGMENT

(Delivered by MOHAMMED LAWAL GARBA, JSC)

I have read a draft of the Lead Judgment written by my Learned Brother, Mohammed Baba Idris, JSC in this appeal and find all the views expressed on the constitutionality of the National Lottery Act, Cap N145, Laws of the Federation of Nigeria, 2004 are the same with mine.

It is beyond reasonable argument that there is no specific mention of “lottery” in items listed and specified either in the Exclusive Legislative

List or the Concurrent Legislative List, as prescribed under the provisions of Section 4 (1), (2), (3) and (4) of the Constitution; the “fons ego” and donor of the Legislative powers of the Federal Republic of Nigeria, to the National Assembly.

In addition, “lottery” cannot, plausibly, be imputed into or inferred from any of the items set out in any of Part 1 and/or Part II of the Second Schedule to the Constitution for the National Assembly to be vested with the requisite legislative competence, power and/or authority to legislate thereon; either exclusively or concurrently with the States. That being the undisputed position, “lottery” is therefore left to the residual items on which exclusive legislative power and authority or competence resides and is vested in the State Houses of Assembly to legislate.

In the case of Attorney-General, Abia State v. Attorney-General of the Federation (2006) All FWLR (pt. 338) 604 at 674-675, Tobi, JSC stated what has now become known as “residual” list in respect of the legislative powers provided for in the 1999 Constitution of the Federal Republic of Nigeria. The erudite Lord Justice said:-

“The Constitution of the Federal Republic of Nigeria, 1999, like most Constitutions, does not provide for a residual list. And that is what makes the list residual. The expression emanates largely from the judiciary, that is, it is largely a coinage of the judiciary to enable it exercise its interpretative jurisdiction, as it relates to the Constitution. Etymologically, residual merely means that which remains. In legislative or parliamentary language, residual matters are those that are neither in the Exclusive or Concurrent Legislative Lists; that is what remains or is not covered by the Exclusive and Concurrent Legislative Lists.

This court has made pronouncements on residual matters. I can take two cases. In Attorney-General, Ogun State v. Aberuage (2002) Vol. 2 WRN 52, Bello JSC (as he then was) said at page 77:

“A careful perusal and proper construction of section 4 would reveal that the residual legislative powers of government were vested in the States. Be residual legislative powers within the context of section 4 is meant what was left after the matters in the exclusive and concurrent legislative lists and those matters which the Constitution expressly empowers the Federal and States to legislate upon have been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation has no powers to make laws on the residual matters.”

In Attorney-General, Abia State v. Attorney-General, Federation, Ogundare JSC said:

“By this silence, the matter becomes residual as it is not on the Exclusive Legislative List. By

virtue of section 4 (7) (a) residual matters are for the State, not legislate upon.”

In the circumstances, I totally agree with the Lead Judgement that it is completely ultra vires the legislative competence, power and authority of the National Assembly to make laws or legislate on lottery by way of an Act to be applicable and be applied in all the states of the Federation of Nigeria other than the Federal Capital Territory over which it is conferred and vested with legislative competence, power or authority, by dint of the provisions in Section 299 of the Constitution.

For being on an item outside the legislative competence, power and authority of the National Assembly, the National Lottery Act is unconstitutional in relation to the states of the Federation, except the Federal Capital Territory. See Ministry of Justice and A. G., Federation v. A. G., Lagos (2013) All FWLR (pt. 704) 1, N.C.P. v. National Assembly, Federal Republic of Nigeria (2016) 1 NWLR (pt. 1492) 1, President, FRN v. Isa (2017) 3 NWLR (pt. 1553) 347, A. G. Lagos State v. Eko Hotels Ltd. (2018) 7 NWLR (pt. 1619) 518, A. G., Kebbi State v. Jokolo (2020) 4 NWLR (pt. 1715) 566.

SC/1/2008

In the above premises and for the reasons set out in the Lead Judgment, which I adopt, I join in declaring the National Lottery Act inconsistent with the Constitution, unconstitutional and therefore void to the extent of its inconsistency pursuant to the provisions of Section 1 (3) of the Constitution.

I also order that parties bear their costs of prosecuting the suit in this Court.


MOHAMMED LAWAL GARBA
JUSTICE, SUPREME COURT

23/12/2024
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Justice Abraham
REGISTRAR
Supreme Court of Nigeria

Official

APPERENCES:

B. Olanipekun., SAN with A. Adeyemi, Esq., O. Ajayi, Esq. A. Makinde, Esq., A. Kawu, Esq., O. Murtala, Esq. and R. Nmarkwe, Esq. for the Plaintiffs.

I. Daagba, Esq. with V. Adodo, Esq. and H. M. Gbor, Esq. for the Defendants.

IN THE SUPREME COURT OF NIGERIA
HOLDEN IN ABUJA
ON FRIDAY THE 22ND DAY OF NOVEMBER, 2024
BEFORE THEIR LORDSHIPS:

UWANI MUSA ABBA AJI
MOHAMMED LAWAL GARBA
EMANNUEL AKOMAYE AGIM
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH
JAMILU YAMMAMA TUKUR
MOHAMMED BABA IDRIS

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
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JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC/1/2008

BETWEEN:

1. THE ATTORNEY GENERAL OF LAGOS STATE
2. THE ATTORNEY GENERAL OF EKITI STATE
(2nd Plaintiff Joined as Co-Plaintiff by order Of this Court made on 6th of October, 2020)
3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
5. THE ATTORNEY GENERAL OF ANAMBRA STATE
6. THE ATTORNEY GENERAL OF

23/12/24
CERTIFIED TRUE COPY
(Justice Abraham)
REGISTRAR
Supreme Court of Nigeria

PLAINTIFFS

- BAYELSA STATE**
- 7. THE ATTORNEY GENERAL OF BENUE STATE**
 - 8. THE ATTORNEY GENERAL OF CROSS RIVER STATE**
 - 9. THE ATTORNEY GENERAL OF DELTA STATE**
 - 10. THE ATTORNEY GENERAL OF EBONYI STATE**
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 - 12. THE ATTORNEY GENERAL OF ENUGU STATE**
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 - 15. THE ATTORNEY GENERAL OF NASARAWA STATE**
 - 16. THE ATTORNEY GENERAL OF OGUN STATE**
 - 17. THE ATTORNEY GENERAL OF ONDO STATE**
 - 18. THE ATTORNEY GENERAL OF OSUN STATE**
 - 19. THE ATTORNEY GENERAL OF OYO STATE**
 - 20. THE ATTORNEY GENERAL OF**

PLATEAU STATE

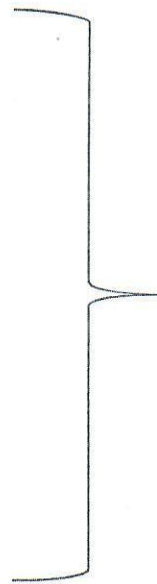
21. THE ATTORNEY GENERAL OF RIVERS STATE
22. THE ATTORNEY GENERAL OF TARABA STATE

AND

1. THE ATTORNEY GENERAL OF THE FEDERATION
2. THE NATIONAL ASSEMBLY
3. THE ATTORNEY GENERAL OF ADAMAWA STATE
4. THE ATTORNEY GENERAL OF BAUCHI STATE
5. THE ATTORNEY GENERAL OF BORNO STATE
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11. THE ATTORNEY GENERAL OF KEBBI STATE

DEFENDANTS

12. THE ATTORNEY GENERAL OF
KWARA STATE
13. THE ATTORNEY GENERAL OF
NIGER STATE
14. THE ATTORNEY GENERAL OF
SOKOTO STATE
15. THE ATTORNEY GENERAL OF
YOBE STATE
16. THE ATTORNEY GENERAL OF
ZAMFARA STATE



JUDGMENT

(DELIVERED BY EMMANUEL AKOMAYE AGIM, JSC)

I had a preview of the Judgment delivered by my learned brother, Lord Justice, **MOHAMMED BABA IDRIS JSC**. I am in complete agreement with the reasoning, conclusions and decisions therein.

The dispute in this case is about the power to legislate on the regulation and control of the operation of lottery and other related activities such as betting and gaining within each State of

the Federation. The Plaintiffs contend that it is the House of Assembly of a State that has the exclusive legislative power over the operation of lottery and like matters within the State and not the National Assembly and that therefore the National Lottery Act Cap N.145 enacted by the National Assembly to regulate and control the operation of lottery throughout the country is ultra vires the power of the National Assembly and is pro tanto void.

The defendants contend that the National Assembly has the legislative power over the regulation and control of operation of lottery and related matters throughout the Federation of Nigeria and that the National Lottery Act enacted by the National Assembly that gives to the President of the Federal Republic of Nigeria the exclusive power to grant, renew and revoke licenses for the operation of lottery throughout the country is in accordance with the Constitution and is valid.

S.4 (2) and (3) of the 1999 Constitution vests exclusive legislative power on the National Assembly over matters in the exclusive legislative list set out in part 1 of the second schedule to the Constitution. Subsection (4) of the 1999 Constitution gives the National Assembly concurrent legislative power over matters in the concurrent legislative list set out in the first column of Part ii of the second schedule to the Constitution to the extend

prescribed in the second column thereto. S.4 (7) of the 1999 Constitution gives the House of Assembly of a State legislative power on any matter not included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution and any matter in the Concurrent Legislative List set out in the first column of Part ii of the Second Schedule to this Constitution to the extent prescribed in the column opposite thereto. The House of Assembly of a State has exclusive legislative power over a matter not included in the said Exclusive and Concurrent Legislative list and if it is not a matter to which the National Assembly is empowered to make laws by any provision of the 1999 Constitution.

I have calmly and carefully read and considered the Exclusive and Concurrent Legislative Lists in the Second Schedule to the Constitution. None of the matters listed in them includes lottery, its is glaring that lottery or the like is not a matter listed in any of the said lists and there is no provision in the Constitution empowering the National Assembly to make law on it or like matter. Therefore the House of Assembly of a State has the exclusive legislative power over the matter of lottery or like matters. The National Assembly has no legislative power over the matter of lottery and like matters. The enactment of the Lottery

Act Cap N.145 is ultra vires its legislative powers of the National Assembly. Therefore the said Lottery Act is unconstitutional, illegal and void. The President of Nigeria or any organ, agency or official of the Federal Government of NIGERIA has no power to regulate or control the operation of lottery or like matters by any means.

For the above reasons and the more detailed ones brilliantly exposed in the lead judgment, I hold that this suit has merit, that the questions in the originating summons are resolved in favour of the plaintiffs and all the reliefs claimed for are granted.

23/2/2024
CERTIFIED TRUE COPY
Justice Abraham
REGISTRAR
Supreme Court of Nigeria
Official

Emmanuel Akomaye Agim
**EMMANUEL AKOMAYE AGIM
JUSTICE, SUPREME COURT**

APPEARANCES:

B. Olanipekun, SAN with A. Adeyemi, Esq, O. Ajayi, Esq, A. Makinde, Esq, A. Kawu, Esq, O. Murtala, Esq and R.

Nmarkwe, Esq for the Plaintiffs

I. Daagba, Esq with **V. Adodo, Esq** and **H. M. Gbor, Esq** for the Defendants

IN THE SUPREME COURT OF NIGERIA
HOLDIEN AT ABUJA
ON FRIDAY THE 22ND DAY OF NOVEMBER, 2024
BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI
MOHAMMED LAWAL GARBA
EMMANUEL AKOMAYE AGIM
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH
JAMILU YAMMAMA TUKUR
MOHAMMED BABA IDRIS

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
SC/1/2008

BETWEEN

1. THE ATTORNEY GENERAL OF LAGOS STATE
2. THE ATTORNEY GENERAL OF EKITE STATE
(2nd Plaintiff Joined as Co-Plaintiff by order of this Court made on 6th of October, 2020)
3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
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16. THE ATTORNEY GENERAL OF OGUN STATE

23/12/2024
CERTIFIED TRUE COPY
(Justice Abacha)
REGISTRAR
Supreme Court of Nigeria
Official

PLAINTIFFS

17. THE ATTORNEY GENERAL OF ONDO STATE
18. THE ATTORNEY GENERAL OF OSUN STATE
19. THE ATTORNEY GENERAL OF OYO STATE
20. THE ATTORNEY GENERAL OF PLATEAU STATE
21. THE ATTORNEY GENERAL OF RIVERS STATE
22. THE ATTORNEY GENERAL OF TARABA STATE

PLAINTIFFS

AND

1. THE ATTORNEY GENERAL OF THE FEDERATION
2. THE NATIONAL ASSEMBLY
3. THE ATTORNEY GENERAL OF ADAMAWA STATE
4. THE ATTORNEY GENERAL OF BAUCHI STATE
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15. THE ATTORNEY GENERAL OF YOBE STATE
16. THE ATTORNEY GENERAL OF ZAMFARA STATE

DEFENDANTS

JUDGMENT

DELIVERED BY HARUNA SIMON TSAMMANI, JSC)

My learned brother, Mohammed Baba Idris, JSC gave the benefit of reading in advance the draft of the judgement just delivered.

The fulcrum of this suit borders on whether “**LOTTERY**” falls within the legislative competence of the National Assembly. This is in view of the fact that, Nigeria is a Federating entity consisting of the Federation, 36 States and a Federal Capital Territory. Thus, in order to satisfy the desire of the Federating units to co-exist peacefully on the principle of Freedom, Equality and Justice, the Constitution of the Federal Republic of Nigeria, 1999 (as altered) has donated separate executive, legislative and judicial powers to the three organs of government. These powers are enshrined in section 4, 5 and 6 of the Constitution (supra). This suit is centred on the Legislative powers of the Federal Republic.

In order to avoid confusion in the system, the Constitution has classified the Legislative powers into Exclusive, Concurrent and the remnant which is known as the residual. Those Legislative powers are specifically enshrined in section (4) of the 1999 Constitution (supra) when it stipulates that:

4. (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.
- (2) The National Assembly shall have 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 States.
- (4) In addition, and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say-
 - (a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
 - (b) any other matter with a respect to which it is empowered to make laws in accordance with the provisions of this Constitution
- (5) if any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall

prevail, and that other Law shall to the extent of the inconsistency be void.

- (6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.
- (7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say-
 - (a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;
 - (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.
 - (c) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

It is therefore settled law, that the Exclusive Legislative List is within the exclusive preserve of the National Assembly while matters on the Concurrent List may be Legislated upon by the National or State Assembly. However, when the subject has been legislated upon by the National Assembly in the exercise of its right to legislate under the Concurrent list, any law made on the subject by a State Assembly may be invalid were it conflicts with the Law made by the National Assembly. Where the subject is not mentioned specifically or impliedly by either the Exclusive or Concurrent List, it becomes a residual item to be legislated upon by the State Assembly. See **A.G. Lagos State v A.G. Federation & Ors (2003) 12 NWLR (Pt. 833) 1**, **A G. Ogun State v Aberuagba & Ors (1985) LPELR-3164 (SC)** or **(1985) L.N.S.C.C. 487** and **A.G. Federation v A.G. Lagos State (2013) 16 NWLR (Pt. 1380) 249**.

In the instant suit, on the 30th day of March, 2005, the National Assembly (2nd Defendant) enacted the National Lottery Act, Cap. N145, Laws of the Federation of Nigeria. The Lagos State Government (1st Plaintiffs) then challenged the validity of the said Act and its application and enforcement in the State. The claim of the 1st Plaintiff, who was later joined by the 2nd -22nd Plaintiffs is based on the ground that “**Lottery**” as a game of chance, does not fall within either the Exclusive nor the Concurrent Legislative Lists as contained in Parts I and II of the second schedule to the 1999 Constitution of the Federal Republic of Nigeria (as altered).

I have searched through the provisions of the Constitution relating to Legislative powers, both Exclusive and Concurrent but I am unable to see where “Lottery” is listed in either of the Legislative powers. Learned Counsel for the Defendant has argued that Lottery can be read into item 62(a) by virtue of items 67 and 68 of the Exclusive Legislative List. It is stipulated in those items as follows.

“62. Trade and commerce, and in particular-

- (a) Trade and commerce between Nigeria and other Countries including import of commodities into and export of commodities from Nigeria, and trade and commerce between states;**
- 67. Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution.**
- 68. Any matter incidental or supplementary to any matter mentioned elsewhere in this list.**

It should be remembered that a fundamental principle of construction of the constitution is that, an interpretation that will give a true meaning to the words used so as to carry out the purpose and purpose of the constitution must be pursued. In doing that, all related provisions must be read together such that where the words used are clear and unambiguous, they must be given their ordinary meaning except where to do so will lead to absurdity.

Therefore, the Court construing the provisions of the Constitution must limit itself to the words used such that extraneous matters must not be imported into the provisions. See **Inakoju & Ors v Adeleke & Ors (2007) 4 NWLR (Pt. 1025) 423; Ogba v The State (1992)2 NWLR (Pt. 222) 164** and **A. G. of Lagos State v Eko Hotels Ltd & Anor (2006) 18 NWLR (Pt. 1011) 378**. Thus, in **Olafisoye v Federal Republic of Nigeria (2004) 4 NWLR (Pt. 864) 580**, this Court per Tobi, JSC (of blessed memory) said:

“Where a constitutional provision is clear and unambiguous, the Courts cannot read into the provision an implied term because by the clear and unambiguous provision, an implied term is impliedly forbidden to be part of the Constitution. After all, a constitution is not a transient agreement like contract where implied terms could be read into the wordings in the interest of the commercial transaction of the parties. Where a Constitutional provision is clear and unambiguous and the Courts will be going outside their interpretative jurisdiction and will be branded as making the law in a bad way.”

True, in exercise of interpretative jurisdiction, Courts are enjoined to read together related provisions of the Constitution to get a clear and unambiguous meaning, where the meaning to be derived is not clear, words

outside those provisions cannot be imputed or imported in order to give a meaning that is convenient for the parties. In my view, items 62 (a), 67 and 68 under the Exclusive Legislative List do not indicate that “Lottery” is an item incidental or supplementary to trade and commerce as stipulated in item 62 (a) – (f) of the Exclusive Legislative List.


Learned Counsel for the Defendants have argued that the enactment of the National Lottery Act is intended to regulate the lucrative lottery industry across Nigeria for the purpose of national economic development through the establishment of National Lottery Regulatory Commission and National Lottery Trust Fund. In answer to a similar argument in the case of **A. G. Ogun State v Aberuagba & Ors (supra)**, the Supreme Court, per Uwais, JSC (as he then was) referred to item H18 of part II of the Second Schedule to the 1979 Constitution to hold as follows:

“ The control of the economy is not within the exclusive power of the Federation. Each Government (Federal, State and Local) has a share in the control. While the Constitution requires the Federation to control the national economy, it also empowers a State to participate in the development of the economy within its area of jurisdiction. It is therefore wrong for the Court of Appeal to conclude that because section 16 obliges the Federal Government to control national economy and since trade and commerce is an integral part of national economy, the words “*in particular*” are words of emphasis and, accordingly as it held, a state has no power to regulate any aspect of trade and commerce.”

Since States as Federating units have been empowered by the Constitution to participate in the development of the economy, each State House of Assembly may make Laws that will enable the state to play that role within the polity. That is why the Constitution has provided under section 4(7) of the Constitution that, the House of Assembly of each state has the power to make laws for peace, order and good governance of the state or any part thereof. Therefore, where the Constitution has donated a particular item to the states, the National Assembly cannot usurp that power. It is accordingly my view that, the National Assembly have no power to legislate on an item not expressly specified in the Exclusive or Concurrent Legislative Lists. In the instant case, Lottery is not an item specified in items 62(a)-(f) of the Exclusive List or the Concurrent Legislative List, the National Lottery Act (supra) is therefore ultra vires the Legislative powers of the National Assembly.

It is for the above reasons and the detailed reasons admirably adumbrated in the lead judgment that I greed that this suit has merit. It therefore succeeds. I adopt all the reliefs granted in the lead judgment and abide by the order as to costs.

28/12/2024
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Justice Abraham
REGISTRAR
Supreme Court of Nigeria
Official


HARUNA SIMON TSAMMANI
JUSTICE, SUPREME COURT

APPEARANCES

B. Olanipekun, SAN with A. Adeyemi, Esq, O. Ajayi, Esq; A. Makinde, Esq, A. Kawu, Esq; O. Muritala, Esq and R. Nmarkwe, Esq; for the **Plaintiffs.**

I. Daagba, Esq with V. Adodo, Esq and H. M. Gbor, Esq for the **Defendants**

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

ON FRIDAY, THE 22ND DAY OF NOVEMBER, 2024.

BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI
MOHAMMED LAWAL GARBA
EMMANUEL AKOMAYE AGIM
HARUNA SIMON TSAMMANI
STEPHEN JONAH ADAH
JAMILU YAMMAMA TUKUR
MOHAMMED BABA IDRIS

JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT
JUSTICE, SUPREME COURT

SC/1/2008

BETWEEN:

1. THE ATTORNEY GENERAL OF LAGOS STATE
2. THE ATTORNEY GENERAL OF EKITI STATE
[2nd Plaintiff Joined as Co-Plaintiff by Order Of this Court made on 6th of October, 2020]
3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
5. THE ATTORNEY GENERAL OF ANAMBRA STATE
6. THE ATTORNEY GENERAL OF BAYELSA STATE
7. THE ATTORNEY GENERAL OF BENUE STATE
8. THE ATTORNEY GENERAL OF CROSS RIVER STATE

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Yusuf Abraham
REGISTRAR
Supreme Court of Nigeria

Official

::: PLAINTIFFS

9. THE ATTORNEY GENERAL OF DELTA STATE
10. THE ATTORNEY GENERAL OF EBONYI STATE
11. THE ATTORNEY GENERAL OF EDO STATE
12. THE ATTORNEY GENERAL OF ENUGU STATE
13. THE ATTORNEY GENERAL OF IMO STATE
14. THE ATTORNEY GENERAL OF KOGI STATE
15. THE ATTORNEY GENERAL OF NASARAWA STATE
16. THE ATTORNEY GENERAL OF OGUN STATE
17. THE ATTORNEY GENERAL OF ONDO STATE
18. THE ATTORNEY GENERAL OF OSUN STATE
19. THE ATTORNEY GENERAL OF OYO STATE
20. THE ATTORNEY GENERAL OF PLATEAU STATE
21. THE ATTORNEY GENERAL OF RIVERS STATE
22. THE ATTORNEY GENERAL OF TARABA STATE

AND

1. THE ATTORNEY GENERAL OF FEDERATION
2. THE NATIONAL ASSEMBLY
3. THE ATTORNEY GENERAL OF

:::: DEFENDANTS

- ADAMAWA STATE**
4. **THE ATTORNEY GENERAL OF BAUCHI STATE**
 5. **THE ATTORNEY GENERAL OF BORNO STATE**
 6. **THE ATTORNEY GENERAL OF GOMBE STATE**
 7. **THE ATTORNEY GENERAL OF JIGAWA STATE**
 8. **THE ATTORNEY GENERAL OF KADUNA STATE**
 9. **THE ATTORNEY GENERAL OF KANO STATE**
 10. **THE ATTORNEY GENERAL OF KATSINA STATE**
 11. **THE ATTORNEY GENERAL OF KEBBI STATE**
 12. **THE ATTORNEY GENERAL OF KWARA STATE**
 13. **THE ATTORNEY GENERAL OF NIGER STATE**
 14. **THE ATTORNEY GENERAL OF SOKOTO STATE**
 15. **THE ATTORNEY GENERAL OF YOBE STATE**
 16. **THE ATTORNEY GENERAL OF ZAMFARA STATE**

JUDGMENT:

[DELIVERED BY STEPHEN JONAH ADAH, JSC]

I was privileged to read in draft the judgment just delivered by my learned brother, **Mohammed Baba Idris, JSC.** My

learned brother has elaborately dealt with all the issues generated in this case by the parties.

I totally agree with his reasoning and conclusion that this case has merit and that the reliefs be duly granted. I also do grant the reliefs as expressly recapped in the lead judgment.

Ours is a Federation that consists of States, a Capital Territory and Local Governments and governed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This Constitution by virtue of Section 1 thereof, is supreme and its provisions shall have binding force on all authorities and persons throughout the Federation. The supremacy of the Constitution signifies that the Constitution is the ground norm – the highest law of the land and that all other laws, policies and governmental actions must conform to its provisions. The doctrine of supremacy encapsulates the fact that no law is above the Constitution and that no authority or persons can enact laws or take actions that are contrary to its provisions. See **Gov. Ekiti State v. Olubunmo (2017) 3 NWLR (Pt. 1551) 1 SC**; and **N.U.E.E. v. B.P.E (2010) 7 NWLR (Pt. 1194) 538**. See also Section 1(3) thereof, which provides that:

If any other law is inconsistent with the provisions of the Constitution, this Constitution shall prevail, and that other

law shall to the extent of the inconsistency be void.


In the instant case, the legislation being challenged is the National Lottery Act Cap N145 LFN to be referred to as National Lottery Act. This Act was enacted in 2005 under the 1999 Constitution of the Federal Republic of Nigeria. In our Constitution, laws are to be made for the peace, order and good government of the Federation or any part thereof. The machineries created for law making in Nigeria are the National Assembly, comprising of the Senate and the House of Representatives. Then, the Houses of Assembly of the States. To avoid conflicts and confusion in the law making, the 1999 Constitution of Nigeria (as amended) by Section 4 made adequate provision for the exercise of legislative powers which provision has been well positioned and discussed in the lead judgment of my brother. The National Assembly under the Constitution, is expected to keep to its apportionment to avoid frustrating the due operation of the Constitution as relates to its legislative duties.

The National Assembly has no power to arbitrarily make laws on any subject or matter it stumbles upon or over matter that appeals to it. It must be guided and governed by the provision of Section 4 of the Constitution, under which the National

Assembly is consigned or empowered to legislate exclusively on any matter contained in the Exclusive Legislative List as provided for in the second Schedule to the Constitution. It can also legislate on any matter in the Concurrent Legislative List. What therefore, is exclusive to the National Assembly cannot be contested or poached upon by the State Houses of Assembly because the List is expressly set down. The National Assembly cannot legislate over residuary matters. Residuary matters are matters that are not included in either the Exclusive Legislative List or Concurrent Legislative List. Residuary matters are left for the State Houses of Assembly.

A look at the lists will reveal that Lottery is not mentioned. The Defendants had argued that Lottery is within the context of item 62(a) of the Exclusive Legislative List. Item 62(a) is trade and commerce between Nigeria and other countries including import of commodities into and export of commodities from Nigeria and trade and commerce between states. With due respect, there is no semblance or shadow of lottery in trade and commerce. Lottery is a game of chance or a form of gambling, not commerce. Lottery is a residuary matter which is within the Legislative competence of the State Houses of Assembly and not the National Assembly.

It is for this and the elaborate reasons advanced in the lead judgment that I also hold that this claim of the Plaintiffs has been well proved. The enactment of the National Lottery Act by the National Assembly is unconstitutional, null and void. In consequence therefore, judgment is entered for the Plaintiffs. All the reliefs are hereby granted in favour of the Plaintiffs. I abide by the orders laid out in the lead judgment.


STEPHEN JONAH ADAH
JUSTICE, SUPREME COURT

23/12/2024
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REGISTRAR
Supreme Court of Nigeria
Official

APPEARANCES:

B. Olanipekun, SAN, with A. Adeyemi, Esq., O. Ajayi, Esq., A. Makinde, Esq., A. Kawu, Esq., O. Murtala, Esq., and R. Nmakwe, Esq., for the Plaintiffs.

I. Daagba, Esq., with V. Adodo, Esq., and H.M. Gbor, Esq., for the Defendants.

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY THE 22ND DAY OF NOVEMBER 2024

BEFORE THEIR LORDSHIPS

UWANI MUSA ABBA AJI

JUSTICE, SUPREME COURT

MOHAMMED LAWAL GARBA

JUSTICE, SUPREME COURT

EMMANUEL AKOMAYE AGIM

JUSTICE, SUPREME COURT

HARUNA SIMON TSAMMANI

JUSTICE, SUPREME COURT

STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT

JAMILU YAMMAMA TUKUR

JUSTICE, SUPREME COURT

MOHAMMED BABA IDRIS

JUSTICE, SUPREME COURT

SC. 1/2008

BETWEEN

1. THE ATTORNEY GENERAL OF LAGOS STATE
2. THE ATTORNEY GENERAL OF EKITI STATE
(2ND Plaintiff Joined as Co-Plaintiff
By order of this Court made 6th of October, 2020
3. THE ATTORNEY GENERAL OF ABIA STATE
4. THE ATTORNEY GENERAL OF AKWA IBOM STATE
5. THE ATTORNEY GENERAL OF ANAMBRA STATE
6. THE ATTORNEY GENERAL OF BAYELSA STATE
7. THE ATTORNEY GENERAL OF

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Yusuf Abraham
REGISTRAR
Supreme Court of Nigeria

Official

PLAINTIFFS

BENUE STATE

- 8. THE ATTORNEY GENERAL OF CROSS RIVER STATE**
- 9. THE ATTORNEY GENERAL OF DELTA STATE**
- 10. THE ATTORNEY GENERAL OF EBONYI STATE**
- 11. THE ATTORNEY GENERAL OF EDO STATE**
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- 21. THE ATTORNEY GENERAL OF RIVERS STATE**
- 22. THE ATTORNEY GENERAL OF TARABA STATE**

PLAINTIFFS

AND

- 1. THE ATTORNEY GENERAL OF THE FEDERATION**
- 2. THE NATIONAL ASSEMBLY**

DEFENDANTS

3. THE ATTORNEY GENERAL OF ADAMAWA STATE
4. THE ATTORNEY GENERAL OF BAUCHI STATE
5. THE ATTORNEY GENERAL OF BORNO STATE
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15. THE ATTORNEY GENERAL OF YOBE STATE
16. THE ATTORNEY GENERAL OF ZAMFARA STATE

DEFENDANTS

JUDGMENT

(DELIVERED BY JAMILU YAMMAMA TUKUR, JSC)

My noble lord **MOHAMMED BABA IDRIS JSC** afforded me the opportunity of reading before today the draft of the judgment just delivered. My learned brother has exhaustively dealt with all the issues in contention. I agree with his reasoning and the conclusion arrived at by him that the Plaintiffs case is meritorious and the reliefs sought should be granted.

The Legislative powers of the National Assembly is circumscribe within the purview of the Provisions of Section 4 of the 1999 Constitution (As Altered). While 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 is to the exclusion of the Houses of Assembly of States it has concurrent powers with the States Houses of Assembly in making Laws with respect to matters that falls within the concurrent Legislative List.

Beyond that all other matters not listed therein falls within the Exclusive Preserve of Houses of Assembly of States being residual matters. The only exception where the National Assembly can validly Legislative on residual matters is vide the combined provisions of Section 4(4) (b) and Section 299 of the Constitution as applicable to the Federal Capital Territory Abuja.

Now since lottery is not in the Exclusive and Concurrent Lists it is clearly a residual matter for the States Houses of Assembly to Legislative on. It s therefore outside the Legislative powers of the National Assembly to enact the National Lottery Act applicable to all the States of the federation. The Act in its present form is clearly unconstitutional in its application to the States of the federation save for the Federal Capital Territory.

It is for this and the more elaborate reasons in the lead judgment that I also enter judgment for the Plaintiffs in terms of the lead judgment.

I abide by the orders made in the lead judgment.

23/12/2024
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(Justice) Abrahams
REGISTRAR
Supreme Court of Nigeria
Official

Jamilu Yammama Tukur
Jamilu Yammama Tukur,
Justice, Supreme Court

Appearances:

B. OLANIPEKUN, SAN, with A. Adeyemi, Esq., O. Ajayi, Esq., A. Makinde, Esq., A. Kawu, Esq., O. Murtala, Esq., and R. Nmarkwe, Esq., for the Plaintiffs.

I.DAAGBA, ESQ with V. Adodo, Esq., and H.M. Gbor, Esq., for the Defendants.