

SUPREME COURT OF NIGERIA
24TH APRIL, 1998. SC. 218/1991
CORAM:- M. L. UWAI CJN, A. B. WALI, I.L. KUTIGI,
M. E. OGUNDARE, E. O. OGWUEGBU, JJSC.

1. KNIGHT FRANK & RUTLEY (NIG.) APPELLANTS
2. COSMAS IFEBI & ASSOCIATES
AND
ATTORNEY-GENERAL OF KANO STATE RESPONDENT

CONSTITUTIONAL LAW - *Ultra vires act* - Where the respondent entered into a contract with the appellant - Without constitutional backing - The lower courts rightly held that the respondent acted ultra vires.

CONSTITUTIONAL LAW - *Infringement of the provisions of the Constitution* - When unconstitutional contract - Will be declared null and void.

DAMAGES - *Quantum meruit* - Award of damages on the basis of quantum meruit - Where there was no counter claim to that effect - Such damages cannot be awarded.

FACTS

The respondent took out an originating summons in the Kano High Court seeking for two reliefs. The first was for the trial court to set aside the appointment of the arbitrator. The second was for the court to declare that the contract between the parties was null and void because the Commissioner for Finance who entered into the agreement with the appellants for and on behalf of the Government of Kano State lacked the capacity to do so. By a written agreement dated 10th day of November 1980 between the then Commissioner for Finance Kano State and the appellants, the latter were to prepare a valuation list of all rateable hereditaments for the collection of property rates in certain parts of Kano State. On the 9th day of December, 1987 the Commissioner for Finance

wrote a letter to the appellants in which he stated in part that 'the Government is left with no option than to rescind and determine the valuation contract entered with you'. The reason for this action being that the valuation of the hereditaments requested by the Government of Kano State fell within the responsibilities of Local Governments of the State and not the State Government. The appellants immediately rejected this position and through their solicitor wrote a letter to the Chief Judge of Kano State requesting him as provided by the agreement to appoint an arbitrator to look into the dispute between the parties. The Chief Judge appointed an arbitrator but the respondent objected. It was at this juncture that the respondent took out an originating summons seeking the above stated reliefs.

The learned trial judge refused the first relief in his ruling of 23/8/88 wherein he held that the appointment of the arbitrator was validly made. The second relief was granted in his considered ruling of 17/11/88 wherein it was declared that the contract agreement was ultra vires the powers of the Government and therefore null and void. Dissatisfied with the second ruling, the appellants appealed to the Court of Appeal Kaduna Division. In a reserved judgment, the Court of Appeal unanimously dismissed the appellants' appeal. Further aggrieved by the decision, the appellants have now appealed to the Supreme Court raising three issues. The Respondent failed to file a brief of argument. The appeal was however decided on a lone issue.

ISSUE FOR DETERMINATION

Whether the Respondent acted ultra vires in entering into contract with the Appellants for the purpose of preparing a valuation list of rateable hereditaments in the municipal area of Kano. If the answer is in the negative; whether the Respondent is liable under the contract between it and the Appellants.

HELD (Dismissing the appeal per lend judgment of **UWAIS CJN**, Ogunbare JSC dissenting)

Ultra vires act

1. There is no legislation which empowers Kano State Government to

dabble in or interfere with the compilation of valuation list for the purpose of assessing or collecting rates on private properties in Kano State. Therefore, the Government acted ultra vires in entering into contract with the Appellants to do what only the Local Government Councils concerned were entitled to do under the 1979 Constitution and the Local Government Edict, 1977. Consequently, I hold that both the trial court and the Court of Appeal were right in coming to the conclusion that the Government had no power to award the contract and it acted ultra vires in doing so. (p. 863 E)

Infringement of the provision of the Constitution

2. It is elementary that were a party acted contrary to, infringes or violates any of the provisions of the Constitution, such action is null and void and of no effect whatsoever. It follows that the action by the Respondent in entering into contract with the Appellants, when the former had no power to do so, is null and void and of no effect whatsoever. Consequently the contract is vitiated. It, therefore, becomes null and void. (p. 863 H)

Award of damages on the basis of quantum meruit

3. The Appellants cannot be awarded any damages against the Respondent on the basis of quantum meruit because there was no basis upon which the trial court could have done so since there was no counterclaim to that effect by them. (p. 865 A)

NOTABLE POINTS OF INTEREST

UWAIS CJN

1. Contract that was executed when the constitutional provisions were extant

It is significant to point out that the suspension of the provisions of section 7 subsection (5) of the 1979 Constitution by the Constitution (Suspension and Modification) Decree No. 1 of 1984 has no bearing on this case because the contract entered into by the parties in November, 1983 to have effect from 13th November, 1980 predated the 1984 De-

cree. So that at the time the contract agreement was executed the provisions of the Constitution in question were extant and applicable.

(p. 864 G)

B KUTIGIJSC

2. *Principle of interpretation - Giving words their ordinary meaning*

I think whether one interprets literally, widely, narrowly, liberally, conservatively or in any other way, as a cardinal principle of interpretation you can never escape giving words their ordinary and natural meaning once they are clear and unambiguous as in this case. (See for example A.G. OF BENDEL STATE V. A.G. OF THE FEDERATION (1981) 10 SC. 1; LONDON TRANSPORT EXECUTIVE V. BETTS (1959) A.C. 231). The Court of Appeal must therefore in my view be right when it opined thus:-

"Could the powers of the State and Local Government Councils to order for valuation of rateable hereditaments co-exist and be complementary? I believe that once the State passes a legislation assigning the function of valuation of tenement rates to the Local Government as the Constitution has directed, only the Local Government Council will have the power to deal with that subject matter. The State has no power to deal with the matter and the Local Government Council cannot, even if it wants to, divest itself of those powers."

I agree. It is not enough for the appellants to say that the Valuation List could be passed on to an appropriate Local Government Council for its use, the preparation of the List itself being illegal. (p. 871 A)

G OGUNDARE JSC (Dissenting)

3. *The agreement had not usurped the functions of the Local Government*

With profound respect to their Lordships of the two Courts below I do not share the conclusion they have reached in this matter. I do not see that by the agreement entered into with the Appellants the State Government has usurped the functions of the Local Governments in its area of jurisdiction. The inter-dependence of the State and Local Governments in the area of rating is clearly demonstrated by the provisions of Part XII

of the Local Government Law. It is true that by section 76 the Local Government is a rating authority for its area but there are provisions in the Law which make the exercise of its power as rating authority subject to general direction of the Governor (Administrator) or Commissioner in charge of Local Government. The Constitution ascribes to the Local Government the assessment of privately owned houses or tenements for the purpose of levying rates and collection of such rates. The agreement which the State Government entered into with the Appellants is for the preparation of Valuation List of all rateable hereditaments. This would appear to go beyond privately owned houses or hereditaments. It cannot, therefore, be said that the State Government has usurped the functions of a Local Government. After all the State Government too has power to assess and collect tax on property such as capital gains tax. Moreover, it is quite possible that a valuation list may assist the Commissioner in the exercise of his power under section 83 of the Law. (pp.880 G & 882 A)

4. The agreement is not ultra vires the State Government

The Courts below appear to have failed to address their minds to the fact that the agreement provides also for the training of staff who, in future, would perform the functions of preparing Valuation Lists. Is the training of staff for this purpose also ultra vires the State Government? I rather think not. Section 84 empowers the Commissioner, and not the Local Government, to appoint appraisers. Surely, it is from the rank of such trained staff that appraisers may be appointed. (p. 882 E)

5. Construing the Constitution - Narrow constructions should be avoided

In construing the Constitution, it is important that pedantic and narrow constructions should be avoided. If the Constitution must grow, the crabbed English rules of statutory interpretation are unsuited to its interpretation being, as it were, a rigid constitution. It is, perhaps, in this respect that the English authorities, particularly Privy Council, are not always helpful. The Constitution is not an ordinary Act of Parliament. The attitude of a strict and complete legalism or a literalist construction

will only thwart the growth of the Constitution. The Constitution as an instrument of government is entitled to a progressive construction. Sir Udoma, JSC in his classic judgment in NAFIU RABIU V. THE STATE (1980) 12 NSCC 291 at pp. 300-301; (1980) 8-11SC 130 at pp. 148-149, summed it all up in these words:

"My Lords, in my opinion, it is the duty of this Court to bear constantly in mind the fact that the present Constitution has been proclaimed the Supreme Law of the Land: that it is a written, organic instrument meant to serve not only the present generation, but also several generations yet unborn; that it was made, enacted and given to themselves by the people of the Federal Republic of Nigeria in Constituent Assembly assembled - for which reason and because it is authochthonous, it, of necessity, claims superiority to and over and above any other Constitution ever devised for the governance of this country - the unwarranted intermeddlesomeness of the military authority with some of its provisions notwithstanding; that the function of the Constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the Constitution. (p. 883 A)

6. *Effect upon Local Governments of voiding the agreements*

It is my respectful view that, by the agreement made with the Appellants, the Kano State Government was taking away from the local governments in the State a great burden of financing the preparation of valuation lists without taking away their powers, as rating authorities, to assess and collect tenement rates where they had adopted this mode of rating. The preparation of a valuation list is only a process in ascertaining the amount of the rate to be levied, that is, the assessment of the tenement rate. By helping to have the valuation list prepared the State Government was only assisting the local government in the performance of their constitutional duty of levying tenement rate which involves the

exercise of discretion on the part of the local governments as to the actual amount of assessment in accordance with section 85(1) of the Law. I think a court faced with constitutional construction ought to consider the effect upon local governments of voiding these agreements between the parties given the precarious finances of local governments B in the country as a whole. The agreements were of financial assistance to the local governments concerned rather than a usurpation of their powers and duties. It is interesting to note that no local government complained of any usurpation. (p. 885 A)

C

OGWUEGBU JSC

7. Interference by State Government with Local Government function

There is everything wrong in the State Government entering into the contract with the appellants. Given the circumstances of this case, I D would say that the Kano State Government was meddling in the affairs of the Local Government Councils. It was not exercising supervisory powers over the activities of the Local Government Councils. It had no power to prepare a Valuation List of the properties let alone entering into E an agreement for that purpose. I agree with the Court of Appeal when it held as follows:

"Since the Kano State Government has no power over assessment of tenements (sic) rates, it goes without saying that it has no jurisdiction to enter into any agreement with any body or person for the valuation of rateable hereditaments." F

I must here emphasize that Local Government Councils should be spared this type of illegitimate intrusion or interference by State Governments in G functions specifically assigned to the former by the Constitution. It is my considered view that the Kano State Government does not possess concurrent jurisdiction with the Local Government Councils in Kano Metropolis over the functions set out in the Fourth Schedule to the Constitution. (p. 889 E) H

REPRESENTATION

Parties absent and not represented

CASES REFERRED TO

Cheranci v. Cheranci (1960) N.R.N.L.R. 24

Benson v. Onitiri (1960) 5 F.S.C. 69

R v. Ijoma 1960 WNLR 130

B Aduke v. Oyenubi 1968 N.M.L.R. 477 at p. 481

Sheikh Brothers Ltd. v. Ochsner (1957) A.C. 136

Craven-Ellis v. Canons Ltd. (1939) 2 K.B. 403

A.G. of Bendel State v. A.G. of the Federation (1981) 10 SC

London Transport Executive v. Betts (1959) A.C. 231

C Attorney-General of Ogun State v. Aberuagba (1985) 1 NWLR 395

Rabiu v. The State (1980) 12 NSCC 291

STATUTES AND RULES REFERRED TO

D Arbitration Law Cap. 7 Laws of Northern Nigeria, 1963, s.15

Constitution of the Federal Republic of Nigeria, 1979 ss. 4 (1), 7 (1) (5) 274 (1) and (4) (b)

Kano State Local Government Edict No. 5 of 1977 ss. 3. 4. 38 76, 80,

E 81, 83, 84, 85, 88, 89

Supreme Court Rules, 1985, O. 6 r. 8 (7)

Interpretation Act, 1964, s. 10 (2)

Interpretational Law, Cap. 51 Laws of Northern Nigeria, 1963. s. 32

F Assessment Law, Cap. 8 Laws of Northern Nigeria, 1963

Constitution (Suspension and Modification) Decree No. 1 of 1984

LEAD JUDGMENT BY UWAIS CJN

G By a written agreement entered into on the 10th day of November, 1983 between the then Commissioner for Finance, Kano State, and the Appellants the latter were to "prepare a valuation list of all rateable hereditaments for the collection of property rates in the area verged GREEN on the attached plan and the NEW EXTENSION (No man`s H Land) area of Kano State." The agreement provides that the appointment of the Appellants, by the Commissioner, who acted on behalf of Kano State Government, to prepare the valuation list should be deemed to have taken place retrospectively with effect from the 13th day No-

vember, 1980.

Clause 12 of the agreement reads;

"ARBITRATION - Every dispute arising from this agreement shall be referred to an Arbitrator to be generally accepted by the parties; failure to agree on the appointment of an Arbitrator, either party may apply to the Chief Judge of the State for the appointment of an Arbitrator, in which case the provision of Arbitration law of the Kano State of Nigeria shall apply".

And clause 13 provides that the agreement may be determined by either party thereto on giving at least a month's notice to the other in writing of the intention to terminate the agreement.

On the 9th day of December, 1987 the Commissioner for Finance wrote a letter to the Appellants in which he stated in part that "the Government is left with no option than to rescind and determine the valuation contract entered with you," The reason for this action being that the valuation of the hereditaments requested by the Government of Kano State fell within the responsibilities of Local Governments of the State and not the State Government.

The solicitors of the Appellants - J. B. Majiyagbe & Co. wrote a letter on 25th January, 1988 demanding that the matter be referred to an arbitrator in accordance with the terms of the agreement stated in clause 12 therein. The solicitor of the Government (Acting Deputy Director of Civil litigation) replied contending that the agreement between the parties was void since it was ultra vires the Government and therefore no valid arbitration could be conducted in the circumstance. The reply ended as follows:-

"The Government does however recognise the usefulness of the exercise and does not discountenance the possibility of the Local governments being interested in the project which falls entirely within their constitutional authority. If your clients are interested, it is possible to open discussion along these line with the Local Governments concerned.

We look forward to your response on this please,"

As the proposition was not accepted by the Appellants, their solicitors wrote a letter to the Chief Judge of Kano State on the 16th day

of March, 1988 requesting him to appoint an arbitrator to look into the dispute between the parties. The Chief Judge appointed one Mrs Fatima Kwaku, a private legal practitioner, as the arbitrator. The solicitor to the Government wrote a letter to Mrs. Kwaku on the 20th day of April, 1988, narrating to her the background to the dispute between the parties and drawing her attention to the fact that her appointment to arbitrate between the parties was improper and that she had no jurisdiction, even if she was validly appointed, to rule on the validity of the contract between the parties since she was to derive her authority from a contract that was void. The letter ended by advising that if Mrs , Kwaku was inclined to proceed with the arbitration the government would on her first sitting request her to state these questions under section 15 of the Arbitration law, Cap. 7 of the laws of Northern Nigeria, 1963, applicable in Kano State, for the opinion of the High Court of Kano State. And so an originating summons was taken out of the High Court against the Appellants by the Respondent on the 7th day Of July, 1988.

In the meanwhile the Respondent brought an application for an interim order to restrain Mrs. Kwaku from sitting as an arbitrator to the dispute between the parties. This was refused by the Court as the learned trial Judge (Saka Yusuf, J.) felt that application should have been brought against the Appellants who asked for the arbitration and not the arbitrator.

Two reliefs were asked for by the Respondent in the originating summons. The first was for the trial Court to set aside the appointment of the arbitrator. The second was for the High Court to declare that the contract between the parties was null and void because the Commissioner for finance who entered into the agreement with the Appellants for and on behalf of the Government of Kano State lacked the capacity to do so. The first leg of the claim was regarded dealt with in the ruling given by the learned trial Judge on the Respondent`s application for interim injunction to restrain the arbitrator from sitting. As the second relief was purely a legal question, no witness` evidence was adduced. The trial Court was simply addressed by counsel.

In his ruling, the learned trial judge made the following findings:: -

"It is clear from these various submissions both counsels (sic) agreed that Section 7 of the 1979 constitution has created all Local Governments throughout this country while sub-section (5) assigned various functions to these Local Governments. It is necessary to examine these provisions to see to what extent are these functions. Section (1) (b) and (j) of Schedule 4 to the Constitution provide -

1. The main functions of a local Government council are as follows:

(b) Collection of rates, radio and television licences;

(j) Assessment of privately owned houses, or tenement for the purposes of levying such rates as may be prescribed by the House of Assembly of a state.

Having regard to the above provisions of the constitution it is undisputably plain that the questions (sic) of levying tenement rates and assessment of privately owned houses for that purpose are some of the functions assigned to the Local Governments since section 1 (b) and (j) of the Fourth schedule has squarely placed the levying of rates and assessment of houses at the disposal of Local Governments. What then are the relationships between the local Government and the State Government vis-a-vis the provisions of constitution Section 7. Section 7 also provides:-

'The system of Local Government by democratically elected Local Government Council is under this Constitution guaranteed; and accordingly the Government of every State shall ensure their existence under a law which provides for the establishment, finance and functions of such councils.'

Thus the Constitution has guaranteed the existence of a Local Government once one is established. Government of Kano State, in its Edict No. 5 of 1977 established all the Local Governments throughout the State. By sections 3 and 4 of the same edict, the existence of these Local Governments are (sic) made as separate entities from the State Government. They are independent bodies whose functions are also well set out and defined. Section 76 of the same Edict made all the Local Governments the rating authorities within their respective areas of operation while Sections 88 and 89 empowered them to cause the value of every

tenement subject to the rate in their respective areas to be ascertained and assessed by an appraiser.

These various provisions have therefore made it clear that all the responsibilities for the levying and assessing the value of tenements which are subject to the rate are vested only in the hands of the Local Governments. The position of these Local Governments with regards (sic) to the contracts in the discharge of their function is made clear by section 42 of the same edict, when it provides:-

‘Subject to the provisions of this section, a local Government may enter into any contract necessary for the discharge of any of its functions’.

The learned trial judge concluded his ruling in favour of the Plaintiff (Respondent herein) by stating thus:

"Finally, as i have pointed out earlier in this ruling, the Commissioner for finance has no power either to usurp or to enter into any contract which they too are competent under the law to do. The contract between the commissioner for finance and the defendants (Appellants herein) therefore are ultra vires and consequently the contract is void and in the eyes of the law non-existent notwithstanding whether or not the contract had been performed,"

Dissatisfied with the decision the defendants appealed to the Court of Appeal. In its decision, the Court of Appeal (Uthman Mohammed, J.C.A., as he then was; Ogundere and Achike, JJ. C.A.) adverted (per Uthman Mohammed, J.C.A., who delivered the lead Judgement) to the Fourth schedule of the 1979 Constitution and the provisions of section 76 of Kano State Local Government Edict , No 5 off 1977 which provides as follows:

"76. Every local Government shall for the purposes of this part be the rating authority for its area,"

and found thus

"It has clearly been shown here that the Local Governments councils, in Kano State, have been conferred with the power of assessment of privately owned houses or tenements for the purpose of levying rates..... I believe that once the State passes a legislation assigning the function

of valuation of tenement rates to the Local Government as the Constitution has directed, only the Local Government Council will have the power to deal with that subject matter. The State (Government) has no power to deal with the matter and the Local Government Council cannot, even if it wants to, divest itself of those powers."

B

In dismissing the appeal the Court of Appeal held, as per Uthman Mohammed, J.C.A.

"Since the Kano state Government has no power over assessment of tenements rates, it goes without saying that it has no jurisdiction to enter into an agreement with any body or person for the valuation of rateable hereditaments. it should be noted that this contract is a void one and has been quite rightly, declared so by the learned trial judge."

C

Further aggrieved by the decision, the Appellants have now appealed to this Court contending in the 3 issues they postulated in their brief of argument as follows:-

D

"1. Whether the Court of Appeal was right when it affirmed the Ruling of the High Court in which that Court had held that the commissioner for Finance, on behalf of Kano State Government had no competence to enter into the contract dated 10th November, 1983, which contract was for that reason null and void.

E

2. Whether the Court of Appeal was right when it upheld the decision of the trial court that the contract dated 10th November, 1983 was void because of the impossibility of performance.

F

3. Whether the Court of Appeal was correct when it upheld in effect that Kano State Government could refused to honour its obligation under the contract having taken benefit of it and part performed it by paying an initial deposit of N100,000,00."

G

The Respondent failed to file a brief of argument. At the hearing of the appeal both the Appellants and the Respondent were not represented by counsel. In addition none of the Appellants was present in court, Since the Appellants had filed a brief of argument, we deemed the appeal argued in accordance with the provisions of Order 6 rule 8 (7) of the Supreme Court Rules, 1985 which states-

H

" (7) When an appeal is called, and it is discovered that a

Brief has been filed for only one of the parties and neither of the parties concerned nor their legal practitioners appear to present oral arguments, the appeal shall be regarded as having been argued on that Brief,"

I think the important point which arises from the issues for determination formulated by the Appellants in their brief of argument is: whether the Respondent acted ultra vires in entering into contract with the Appellants for the purpose of preparing a valuation list of rateable hereditaments in the municipal area of Kano. If the answer is in the negative; whether the Respondent is liable under the contract between it and the Appellants.

Arguing in the Appellants's brief of argument, it is submitted that there is nothing in the Constitution or any other law which makes the contract illegal. It is contended that the reason for the preparation of the valuation list was for the collection of property rates and, therefore, it falls short of who was to do the collection of the rates. It is argued that it cannot be presumed that Kano State Government was undertaking the collection of the rates since it had no constitutional power to do so. It is canvassed that courts will presume the constitutionality of acts done by the National Assembly, State Assembly and Executive. Authorities are cited in support of the argument; they include Dahiru Cheranci v Alkali Cheranci, 1960 N.R.N.L.R. 24; Benson v Onitiri, (1960) 5 F. S. C. 69; R v Thomas Ijoma, 1960 WNLR 130 and Ashimowu Aduke v Oyenubi, 1968 N.M.L.R. 477 at p. 481. It is then submitted that it must be presumed that Kano State Government knew the limits of its constitutional powers when it entered into contract with the Appellants. It would not therefore deliberately flout constitutional provisions.

It is further argued that it is within the power of Kano State Government after receiving the Valuation List to pass it on to the Local Governments for their use and the Local Governments would be free to use the list or otherwise. The position would have been different, it is submitted, if the contract between the parties had been for the collection of rates.

The Appellants contend that at that time the parties entered into the contract, they both believed that the Respondent had the legal capacity to enter into the contract. Consequently the Respondent benefited

under the contract and permitted the Appellants to expend time and resources for four years. Therefore the contract was not frustrated for impossibility of performance as found by the court of Appeal on the authority of Sheikh Brothers Ltd. v. Ochsner, (1957) A.C. 136.

Finally it is argued that the Court of Appeal was wrong to have refused to consider what remuneration should be paid to the Appellants for the work done under the contract. It is submitted that the fact that the Appellants had done some work under the contract, albeit, as the Court below found, under a void contract, did not disentitle them to reasonable compensation for work done. Reliance is placed on the case of Craven-Ellis v Canons Ltd., (1936) 2 K.B. 403.

It is urged upon us that we should allow the appeal, set aside the judgements of the lower courts, dismiss Respondents originating summons and make an order that the arbitration sought for by and granted to the Appellants should hold.

In determining whether the contract was ultra vires both the trial court and the court of Appeal relied inter alia on the Constitutional provisions of Section 7 of the Constitution of the Federal Republic of Nigeria, 1979

Now by section 7 subsection (5) of the Constitution of the Federal Republic of Nigeria, 1979 (Cap. 62) the functions which can be conferred by Law on Local Government councils are intended by the constitution to include the functions set out in the Fourth Schedule to the Constitution. The schedule provides in paragraph 1 (b) and (j) thereof as follows-

"1. The main functions of a local government council are as follows:

(b) collection of rates, radio and television licences;

(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State, and;"

It is clear from the foregoing that the collection of rates on rateable hereditaments and the assessment of rates on privately owned houses are subjects within the responsibilities of local government coun-

cils. From the terms of the contract entered into by the Appellants and the Respondent, clause I states that the Government of Kano State was "desirous of having prepared a valuation List of all rateable hereditaments " in the Municipal area of Kano. Clause 2 indicates that the Government was desirous of appointing a consultant" to prepare a valuation list for the purpose of property rates,' It can be seen that the main purpose for which the contract was entered into by the parties corresponds with the functions allocated to local government councils by the 1979 Constitution.

Pursuant to the provisions of section 7 subsection (5) of the 1979 constitution, the Military Government of Kano State promulgated in 1977, Kano State Local Government Edict, No. 5 of 1977. The Edict provides in section 76 thereof as follows:-

"76. *Every Local Government shall for the purposes of this part be the rating authority for its area.*"

These provisions give effect to the Constitutional provisions in section 7 subsection (5) and paragraph 1 (b) and (j) of the Fourth schedule to the 1979 Constitution and put it beyond any doubt that it was the Local Governments in Kano State that possessed the power to assess, impose and collect rates on privately owned property. There was no any other enactment either in the 1979 constitution or any law that provided or suggested that the power conferred on the Local Governments could be shared with the State Government *in* respect of assessment, imposition and collection of the rates, If there were, none was drawn to the attention of the lower courts or indeed this Court.

The powers exercisable by the Federal, State and Local Governments have been clearly identified under the 1979 constitution. With the exception of the items under the concurrent Legislative List each of the three tiers of Government exercises exclusive power over the subject under its control. By the provisions of section 274 subsection (4) of the 1979 Constitution the provisions of the Interpretation Act. 1964, No 1 of 1964 shall be employed in interpreting the provisions of the 1979 Constitution. It is clear from the provisions of paragraph 1 (b) and (j) of the Fourth Schedule read together with the provisions of

Section 7 subsection (5) of the Constitution that the intendment of the Constitution is that only Local Government Councils have the power to assess and impose rates on privately owned property. In interpreting that power Section 10 subsection 2 of the Interpretation Act, 1964 provides

"(2) An enactment which confers a power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it."

It follows from these provisions that the power to award the contract entered into between the parties in this case is exercisable by the Local Government Councils concerned and not Kano State Government. Again section 32 of the Interpretation Law, Cap, 51 of the Laws of Northern Nigeria, 1963 applicable to Kano State at the time material to this case provides-

"32. Where in any Law power is given to any person to do or enforce the doing of any act or thing all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing."

There is no legislation which empowers Kano State Government to dabble in or interfere with the compilation of valuation list for the purpose of assessing or collecting rates on private properties in Kano State. Therefore, the Government acted ultra vires in entering into contract with the Appellants to do what only the Local Government Councils concerned were entitled to do under the 1979 Constitution and the Local Government Edict, 1977. Consequently, I hold that both the trial court and the Court of Appeal were right in coming to the conclusion that the Government had no power to award the contract and it acted ultra vires in doing so.

It is elementary that were a party acted contrary to, infringes or violates any of the provisions of the Constitution, such action is null and void and of no effect whatsoever. It follows that the action by the Respondent in entering into contract with the

Appellants, when the former had no power to do so, is null and void and of no effect whatsoever. Consequently the contract is vitiated. It, therefore, becomes null and void.

In the book Judicial Review of Administrative Action, Third Edition, by S. A. de Smith, the following passage appears on P. 88 thereof:-

"A public body with limited powers cannot bind itself to act *ultra vires*; and if it purports to do so it can repudiate its undertaking, for it cannot extend its powers by creating an estoppel- Fairtitle V Gilbert, (1787) 2 T.R. 169 and Rhl U.D.C. v Rhyl Amusments Ltd., (1959) I.W.L.R. 465."

It remains to mention that the Assessment Law, Cap. 8 of the Laws of Northern Nigeria, 1963 provides for the ascertainment of the value of tenement for rating purposes. The Law empowers the State Commissioner, charged with the responsibility, to appoint appraisers for the purpose of compiling a valuation list which will be employed in determining the rate to be charged on tenements.

Although the Assessment Law was an existing Law under the provisions of section 274 subsections (1) and (4) (b) of the 1979 Constitution, its application is subject to the provisions of the Constitution. Section 7 subsection (5) of the 1979 Constitution read together with the provisions of paragraph 1 (j) of the Fourth Schedule to the Constitution and Section 76 of Kano State Local Government Edict, No 5 of 1977 have effectively removed the power to appoint appraisers to compile valuation list from the State Commissioner in charge and transferred the function to Local Government Councils. This is a further proof that the respondent had no power at the time of entering into the contract to appoint the Appellants as appraisers to compile a valuation list for the purpose of charging tenement rates by the Local Government Councils.

It is significant to point out that the suspension of the provisions of section 7 subsection (5) of the 1979 Constitution by the Constitution (Suspension and Modification) Decree No. 1 of 1984 has no bearing on this case because the contract entered into by the parties in November, 1983 to have effect from 13th November, 1980 predated the 1984 Decree. So that at the time the contract agreement was executed the provi-

sions of the Constitution in question were extant and applicable.

On the whole this appeal fails. **The Appellants cannot be awarded any damages against the Respondent on the basis of quantum meruit because there was no basis upon which the trial court could have done so since there was no counterclaim to that effect by them.** The appeal is hereby dismissed with no order as to costs.

WALI JSC

I have been privileged to read before now, the lead judgment of my learned brother Uwais, CJN and I entirely agree with his reasoning and conclusion for dismissing the appeal, I endorse these reasons as mine.

Based on the facts of this case and the applicable laws to it, the Kano State Government, acting through the Commissioner of finance lacked the legal power to enter into contract with the appellant to prepare a Valuation List of rateable hereditaments within the then Kano Metropolis Local Government, covering the area verged GREEN on the attached plan and the NEW EXTENSION area, popularly known and called No man's land, within the Metropolis. The power to assess rates on privately owned houses or tenements for the purpose of levying such rate is within the exclusive statutory power of each Local Government as conferred on it by section 7(5) of the 1979 constitution and paragraphs 1 (b) and (j) of the Fourth Schedule to the said Constitution and by virtue of the provisions in section 7 (5) of the 1979 Constitution, the Kano State Government in its 1977 Kano State Local Government Edict enacted in section 76 thereof as follows;--

"76. *Every Local Government shall for the purposes of this part be the rating authority for this area.*"

Section 7 (5) of the 1979 Constitution specifically provides as follows;--

"7(5) *The functions to be conferred by Law upon local government councils shall include those set out in the Fourth schedule to this constitution.*"

This is infact what was done in section 76 of the Kano State

Local Government Edict, No. 5 of 1977.

The provisions of these Laws as regards the functions of local government are so clear and unambiguous to call for any other interpretation ,

B The Hon, Commissioner of Finance who entered into the contract with appellant for and on and on behalf of the respondent lacked legal capacity to do so and accordingly the contract is Ultra vires, null and void and of no legal effect. The purported work undertaken cannot be forced on the Respondent.

C The decision of the trial court on the issue as affirmed by the Court of Appeal is hereby further confirmed.

It is for these and the fuller reasons contained in the lead judgment of my learned brother Uwais CJN that I will dismiss the appeal D since there was no counterclaim by Appellants. The appeal is hereby dismissed with no order as to costs.

E **KUTIGI JSC**

On the 10th day of November, 1980, the Kano State Commissioner of finance, on behalf of the Kano State Government entered into a contract with the appellants. Under the contract the appellants were to F prepare for the State Government a Valuation List for the purpose of property rates in certain parts of Kano State. The appellants were also to provide "adequate training facilities for the staff of the State Government who will take over from the appellants after the completion of the exercise". On the preparation and submission of a provisional Valuation List G to the government ,part payment of #100,000.00 was made to each of the appellants. The balance was to be paid subsequently as specified in the contract. Meanwhile the State Government had discovered that it had no constitutional right to have entered into the contract or agreement H in the first place. That the subject matter of the contract was the constitutional responsibility of Local Government Councils. The government communicated its position to the appellants which the appellants immediately rejected.

A dispute having thus arisen, the appellants made moves to refer the dispute to arbitration. One was in fact appointed but the respondent objected. It was at this juncture that the respondent took out an originating summons in the Kano High Court seeking answer to the questions or issues thus:

"1. *Whether the appointment of the Arbitrator under the contract was valid.*

"2. *Whether the contract between the parties herein was a valid contract.*"

The issues were argued before Saka Yusuf, J. Question 1 above was answered in his Ruling of 23/8/88 wherein he held that the appointment of the arbitrator was validly made. The learned trial judge answered Question 2 above in his considered ruling of 17th November, 1988 wherein it was declared that the contract agreement was ultra vires the powers of the Government and therefore null and void.

Dissatisfied with the second ruling dated 17th November, 1988, the appellants appealed to the Court of Appeal, Kaduna Division. In a reserved judgment, the Court of Appeal unanimously dismissed the appellants' appeal as unmeritorious. The ruling of the High Court to the effect that the contract between the parties herein was null and void was confirmed.

Aggrieved by the decision of the Court of Appeal, the appellants have now further appealed to this Court.

When the appeal came before us 2/2/98 both sides were absent and not represented. It was observed that the appellants filed their brief as long ago as 10/9/92 and that the respondent has not responded. The appeal was therefore taken as argued, vide Order 6 Rule 8(7) supreme Court Rules.

The appellants in their brief of argument have submitted three issues as arising for determination in the appeal thus:-

"1. *Whether the court of Appeal was right when it affirmed the Ruling of the High Court* in which that court had held that the Commissioner for Finance, on behalf of the Kano State Government had no com-

petence to enter into the contract dated 10th November, 1983, which contract was for that reason null and void.

2. *Whether the Court of Appeal was right when it upheld the decision of the trial court that the contract dated 10th November, 1983 was void because of the impossibility of performance.*

3. *Whether the Court of Appeal was correct when it upheld in effect that the Kano State Government could refuse to honour its obligation under the contract having taken benefit of it and part performed it by paying an initial deposit of #100,000.00."*

Having regard to the sole issue or question referred to the High Court and subject matter of its ruling dated 17th November, 1988 and which ruling was appealed to the Court of Appeal, I am unable to see how the appellants's issues 2 and 3 above arose from the simple question of whether or not the contract agreement between the parties was validly entered into. I think we are yet to reach a stage of "impossibility of performance" or whether or not there had been part performance and therefore a consideration of the equitable relief of quantum meruit. These are issues on which evidence would be needed when and if the dispute goes for trial, or arbitration. I am of the considered view therefore that issues 2 and 3 are not properly before us and I do hereby strike them out. I am therefore left with issue (1) only which I now proceed to consider.

Probably the power way of appreciating and tackling the issue herein is to carefully and closely examine the relevant part or parts of the contract itself which was sought to be avoided. I reproduce it for emphasis as follows:-

"WHEREAS

1. *The Employer is desirous of having prepared a Valuation List of all rateable hereditaments for the collection of property rates in the area verged GREEN on the attached plan and the NEW EXTENSION (No Man's Land) area of Kano State.*

2. *The Employer is desirous of appointing the consultants for the purposes of providing consultancy services for the compilation of the above mentioned valuation List:*

NOW IT IS HEREBY AGREED as follows:

1. *In consideration of the said agreement and of the remuneration here-in-after described the Employer here by appoints the consultant from the 13th day of November, 1980 (not withstanding the date here of) as their consultants to prepare a Valuation List for the purpose of property rates in the area verged GREEN on the attached plan and the Airport Road NEW EXTENSION (No Man`s Land) area of Kano State.*

(a) (omitted)

(b) (omitted)

(c) (omitted)

2. *The consultant shall provide adequate training facilities for the staff of the Kano State Government who will take over from the consultants after the completion of the exercise.*

3. (omitted)

4. *The above mentioned draft valuation list shall be submitted by the consultants to the Employer on or before 28th day of February, 1981.*

5. *The consultants shall not disclose to any unauthorised person any information of a confidential nature gained in the performance of its duties.*

8. DEFENCE - *Whenever it becomes necessary the CONSULTANTS shall have the right to defend any valuation made by them under this agreement.*

12. ARBITRATION - *Every dispute arising from this agreement shall be referred to an Arbitrator to be generally accepted by the parties: failure to agree on the appointment of an Arbitrator, either party may apply to the Chief Judge of the State for the appointment of an Arbitrator, in which case the provision of Arbitration Law of the Kano State of Nigeria shall apply to the dispute .*

13. *This agreement may be determined by either party giving to the other at least one month`s notice in writing of that party`s intention to terminate the agreement."*

It should be observed at once and this cannot be seriously disputed that the contract agreement herein is concerned with the prepa-

ration of a Valuation List only. However, the agreement went on to state that the reason for preparation of the valuation List is "for the collection of property rates". I should emphasize that it is not stated anywhere in the agreement, who is to do or carry out the collection of the property rates. And the appellants it ought to be known have not been given any contract to collect property rates. It must therefore be understood that the preparation of a Valuation List and the collection of property rates are two distinct and separate functions even though inter-related.

I think there is no dispute between the parties, and I agree with them too, that any Local Government in Kano State is a rating authority within its area of jurisdiction by virtue of the provision in the 1979 Constitution, Fourth Schedule, paragraphs 1. (b) and (j) wherein it has been provided as some of the functions of Local Government Council thus:-

"1.(b) Collection of rates, radio and television licences;

(j) Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and"

and as effected by the Kano State Local Government Edict No. 5 of 1977 particularly sections 78, 88 and 89 thereof.

The area of disagreement it seems to me is therefore a very narrow one. It is whether in spite of the provisions in the Constitution and the Statute or Edict, the State government was still competent to have entered into the contract with the appellants to prepare the Valuation List in question.

It is clear to me that paragraphs 1 (b) & (j) of schedule IV of the 1979 constitution and the Edict above, all vest both

(a) the power of assessment of houses or tenements; and

(b) the power of collection of rates from the houses or tenements.

It is my view therefore that under the circumstances Kano State Government cannot pretend to arrogate to itself the power "to prepare a Valuation List of all rateable hereditaments

for the collection of property rates",
being functions already vested in the Local Government councils by the
Constitution and Kano State Edict No. 5 of 1977.

I think whether one interprets literally, widely, narrowly, liberally, conservatively or in any other way, as a cardinal principle of interpretation you can never escape giving words their ordinary and natural meaning once they are clear and unambiguous as in this case. (See for example A.G. OF BENDEL STATE V. A.G. OF THE FEDERATION (1981) 10 SC. 1; LONDON TRANSPORT EXECUTIVE V. BETTS (1959) A.C. 231).
The Court of Appeal must therefore in my view be right when it opined thus:-

"Could the powers of the State and Local Government Councils to order for valuation of rateable hereditaments co-exist and be complementary? I believe that once the State passes a legislation assigning the function of valuation of tenement rates to the Local Government as the Constitution has directed, only the Local Government Council will have the power to deal with that subject matter. The State has no power to deal with the matter and the Local Government Council cannot, even if it wants to, divest itself of those powers."

I agree. It is not enough for the appellants to say that the Valuation List could be passed on to an appropriate Local Government Council for its use, the preparation of the List itself being illegal.

It is for the above reasons and others contained in the lead judgment of my learned brother, Uwais, CJN., which I read before now that I also dismiss the appeal with no order as to costs.

OGUNDARE JSC (Dissenting)

By two separate agreements, the Kano State Government through its Commissioner for Finance contracted with the Appellants in this appeal for the preparation of a Valuation List "of all rateable hereditaments for the collection of property rates" in certain areas of Kano State. Each agreement dated 13th November 1980 provided in part as follows:

"WHEREAS

1. *The Employer is desirous of having prepared a Valuation List of all rateable hereditaments for the collection of property rates in the area verged on the attached plan and area of Kano State.*

B 2. *The Employer is desirous of appointing the consultant for the purposes of providing consultancy services for the compilation of the above mentioned Valuation List:"*

Apart from preparing a Valuation List the Appellants were also required to

C *"provide adequate training facilities for the staff of the Kano State Government who will take over from the consultant after the completion of the exercise."*

D There was provision in the agreement for remuneration and how it was to be paid to each Appellant. Each agreement included an arbitration clauses which reads:

E *"12. ARBITRATION - Every dispute arising from this agreement shall be referred to an Arbitrator to be generally accepted by the parties: failure to agree on the appointment of an Arbitrator, either party may apply to the Chief Judge of the State for the appointment of an Arbitrator, in which case the provision of Arbitration Law of the Kano State of Nigeria shall apply to the dispute."*

The last paragraph of the agreement provided thus:

F *"13 This agreement may be determined by either party giving to the other at least one month's notice in writing of that party's intention to terminate the agreement."*

G Appellants, as consultants, were each paid N100,000.00 as part-payment under the agreement. It would appear that the Kano State Government (hereinafter is referred to as the Respondent) at a later date changed its mind and revoked the agreement with each of the Appellants on the ground that the agreement was ultra vires the State Government. The contention was that the subject matter of the agreement was a matter for the Local H Governments in the State rather than the State Government. The Appellants through their legal practitioner invoked the Arbitration Clause in the agreement and applied to the State Chief Judge to appoint an Arbitrator to resolve the dispute that had arisen between the parties following the re-

vocation by the Respondent, of the agreement. The learned Chief Judge of Kano State in consequence appointed Mrs. Fatima Kwaku a legal practitioner, as a sole arbitrator. The Respondent on 7th July took out summons seeking an order to set aside the appointment of the arbitrator and another order declaring that the contract entered into between the parties was null and void. The first of the reliefs was argued and on 23rd August 1988 the learned trial Judge (Saka Yusuf J) gave a ruling refusing the first order sought. On 25th October, 1988 the learned Judge took arguments from counsel in respect of the second relief. In a ruling delivered on the 17th November 1988 the learned Judge found that the Commissioner for Finance

"has no power either to usurp the functions of the Local Governments or to enter into any contract which they too are competent under the Law to do. The contract between the Commissioner for Finance and the defendants therefore are ultra vires and consequently the contract is void and in the eyes of law non-existent notwithstanding whether or not the contract had been performed."

Being dissatisfied with this decision the Appellants appealed to the Court of Appeal which latter Court dismissed the appeal and affirmed the finding of the learned trial Judge. It is against this judgment that the Appellants have further appealed to this Court upon three grounds of appeal which without their particulars, read as follows:

"1. The Court of Appeal erred in law when it held that the Kano State Government lacked competence to enter into the contract dated 10th November 1983 (sic) and for that reason, the contract was null and void and thereby came to a wrong decision in this case.

2. The learned Justice of Appeal erred in law when he held that the contract dated 10th 1983 (sic) was unenforceable even though it had been properly executed by both parties to it and there had been some part-payment and some services rendered, and thereby came to a wrong decision in the case.

3. The learned Justice of Appeal erred when he failed to grant to the Appellants the equitable relief of quantum meruit of a contract which had been part performed."

Pursuant to the rules of this Court the Appellants through their counsel J.B. Majiyagbe & Co. filed their written Brief of Argument. The Respondent did not file any Brief. At the oral hearing of the appeal on 2nd February 1998 the parties were absent and were not represented by counsel. Pursuant to Order 6 rule 8 (7) the appeal was regarded as having been argued on the Appellants' Brief and judgment was reserved.

In the Appellants' Brief the following issues are set out as calling for determination in this case:

"1. Whether the Court of Appeal was right when it affirmed the Ruling of the High Court in which that court had held that the Commissioner for Finance, on behalf of the Kano State Government had no competence to enter into the contract dated 10th November 1983, (sic) which contract was for that reason null and void.

2. Whether the Court of Appeal was right when it upheld the decision of the trial court that the contract dated 10th November 1983 (sic) was void because of the impossibility of performance.

3. Whether the Court of Appeal was correct when it upheld in effect that the Kano State Government could refuse to honour its obligation under the contract having taken benefit of it and part-performed it by paying an initial deposit of N100,000.00"

This appeal raises a fundamental issue as to the attitude of the Court to the interpretation of the provisions of the Constitution. The agreement under consideration in this appeal was entered into at a time of constitutionalism in this country, that is, at a time when the provisions of the Constitution of the Federal Republic of Nigeria, 1979 had full effect. Now section 7 of the Constitution provides as follows:

"7. (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

(2) The person authorised by law to prescribe the area over which a local government may exercise authority shall -

(a) define such area as clearly as practicable; and

(b) ensure, to the extent to which it may be reasonably justifiable, that in defining such area regard is paid to -

- (i) the common interest of the community in the area,*
- (ii) traditional association of the community, and*
- (iii) administrative convenience.*

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(3) It shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the State.

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(4) The Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted for at an election to a local government council.

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(5) The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution.

(6) Subject to the provisions of this Constitution -

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(a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation; and

(b) the House of Assembly of a State shall make provisions for statutory allocation of public revenue to local government councils within the State."

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The Fourth Schedule to the Constitution to which reference is made in subsection (5) above spells out the permissible functions of a Local Government. Paragraph 1 of the Fourth Schedule states:

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"1. The main functions of a local government council are as follows -

(a) the consideration and the making of recommendations to a State commission on economic planning or any similar body on -

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- (i) the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and*
- (ii) proposals made by the said commission or body;*

- (b) collection of rates, radio and television licences;
- (c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
- (d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
- (e) establishment, maintenance and regulation of markets, motor parks and public conveniences;
- (f) construction and maintenance of roads, streets, drains and other public highways, parks, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;
- (g) naming of roads and streets and numbering of houses;
- (h) provision and maintenance of public conveniences and refuse disposal;
- (i) registration of all births, deaths and marriages;
- (j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and
- (k) control and regulation of -
 - (i) out-door advertising and hoardings,
 - (ii) movement and keeping of pets of all descriptions,
 - (iii) shops and kiosks,
 - (iv) laundries,"

No doubt it is sub-paragraphs (b) and (j) above that are germane to the issue under consideration in this appeal.

The Kano State Local Government Edict (now Law) No. 5 of 1977 is an existing law by virtue of section 274(1) of the Constitution and it is the legislation that determines the structure, functions etc. of Local Governments in Kano State. Section 38 provides for the powers and duties of a Local Government and it reads:

"38. (1) Every Local Government shall have and exercise over all persons residing or being in the areas over which its authority extends

(a) all the powers conferred upon or vested in it by or under this Edict; {b) all such powers as are conferred upon it under any other

enactment.

(2) *It shall be the*

duty of every Local Government-

(a) *to perform the duties and obligations imposed upon it*

(i) *by this edict*

(ii) *by any other law;*

B

(iii) *by customary law and*

(b) *generally to maintain order and good government in the area over which its authority extends.*

(3) "x x x x x"

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Section 40 lists the legislative powers of a Local Government and, in so far as it is relevant to the matter on hand, it reads:

"40. *Subject to the provisions of section 38(3) a local Government shall have responsibility for, and power to make bye-laws for all or any of the following matters, that is-*

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(t) collection of community tax, property and other rates and other designated revenue; (underlining is mine)

It is the finding of the two Courts below that the Local Government, as against the State Government, has EXCLUSIVE jurisdiction in the area of the assessment and collection of tenement rates within the territorial area of jurisdiction of the local Government and, therefore the State Government would be acting ultra vires in entering into a contract for the preparation of a Valuation List of tenements in the area of a Local Government. The Appellants have argued strenuously in their Brief that this view is wrong. It is their contention that there is nothing in the Constitution or the Local Government law precluding the State Government from entering into the type of contract under consideration in this appeal. With profound respect to their Lordships of the Courts below, I think they had taken too narrow a view of the provisions of the Constitution and of the Law.

G

Reading the 1979 Constitution as a whole, it is correct to say that it provides for three tiers of Government-Federal, State and Local Governments. While the Federal and Local governments have specific functions allocated to them those of the State Government are residual. I may mention also that the state legislature is empowered by section 7

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(1) to prescribe, by law, functions for Local Government which shall include those set out in the Fourth Schedule to the Constitution. The Local Government law is deemed to be a law made by the Kano State Legislature for the purpose of the Constitution. The fact, however, that each tier of the Government has functions ascribed to it by the constitution and the law made thereunder, does not mean that the three tiers are totally independent of each other. An example of this is in housing, a subject that is neither on the exclusive nor on the concurrent Legislative list in the second Schedule of the Constitution and, therefore, strictly not within the jurisdiction of Federal Government, It is not unknown that the Federal Government has engaged in the provision of housing throughout the Federation. Another example is in the area of trade and commerce in item 61 in the exclusive legislative list which this Court examined in *Attorney-General of Ogun State v. Aberuagba* (1985) 1 NWLR 395 and held not to confer on the Federation exclusive power over trade and commerce.

The learned trial Judge in his judgement had this to say:

"Section 1 (b) and (j) of Schedule 4 to the Constitution provide:
'1. The main functions of a local Government Council are as follows:

(b) collection of rates radio, and television licences;
(j) assessment of privately owned houses or tenement for the purposes of levying such rates as may be prescribed by the House of Assembly of a state.

Having regards to the above provisions of the Constitution it is undisputably plain that the questions of levying tenement rates and the assessment of privately owned houses for that purpose are some of the functions assigned to the Local governments since section 1 (b) and (j) of the Fourth Schedule has squarely placed the levying of rates and assessment of houses at the disposal of the Local Governments".

After examining some provisions of the Constitution and the Local Government Law relating to Local Governments, the learned judge observed:

"They are independent bodies whose functions are also well set out and defined. Section 76 of the same Edict made all the local govern-

ments the rating authorities within their respective areas of operation while sections 88 and 89 empowered them to cause the value of every tenement subject to the rate in their respective area to be ascertained and assessed by an appraiser, These various provisions have therefore, made it clear that all the responsibilities for the levying and assessing the value of tenements which are subject to the rate are vested only in the hands of the Local Governments."

It is on the strength of these views that the learned trial judge held that the State government could not enter into the agreement with the Appellants .

The Court of Appeal, as I have earlier observed , affirmed the conclusion reached by the learned trial judge. The Court, per Mohammed JCA (as he then was) posed these questions:

"(1) It has clearly been shown here that the Local Government Councils, in Kano State, have been conferred with the power of assessment of privately owned houses or tenements for the purpose of levying rates. Will it be proper, therefore, of the Kano State Government to enter into a contract with the appellants for the valuation of rateable hereditaments which is clearly within the jurisdiction and power of Local Government Councils?" and

(2) Could the powers of the State and the Local Government Councils to order for valuation of rateable hereditaments co-exist and be complementary?"

The Court then went on to answer these questions thus:

"I believe that once the State passes a legislation assigning the function of valuation of tenement rates to the Local Government as the Constitution has directed only the Local Government Council will have the power to deal with that subject matter. The State has no power to deal with the matter and the Local Government cannot, even if it wants to, divest itself of those powers."

After referring to an English case Brikdale Electric Supply v. Southport H Corporation (1926) AC 355 at 364 and considering the submissions of learned counsel for the parties, Mohammed JCA went on to say:

"Under our Constitution, Government is divided into three sepa-

rate and independent sections viz - the Executive, the Legislature and the Judiciary and it is the duty of each section to avoid encroachment by one on the sphere of the other. See the case of Senator Adesanya v. President of Nigeria (1981) 2 NCLR 358 at 387. The power of each arm of the Government has been clearly defined. If the Legislature exercises its legislative power and enacts a law it is not open to it to interfere with the exercise of Executive or judicial powers which are vested elsewhere."

He made reference to the case of Attorney-General of Ogun State v. Aberuagba (1985) 1 NWLR (Pt. 3) 395 where this Court, per Bello JCA (as he then was), held that the Constitution does not confer on the Federation exclusive power over trade and commerce in item 61 of the exclusive Legislative List. The learned Justice of Appeal then went on -

"The Constitution has given the State Legislatures the legislative power to enact laws and confer functions including assessment of privately owned houses of tenements for the purposes of levying rates. It is my strong view that even in a Military administration the States have only the legislative power over assessment to tenements rates. They act just like a conduct pipe or the Postmaster General. He receives the letters and delivers them to the addressees. The States cannot fail to assign the function to the Local Government Councils since the directive of the Constitution is mandatory. The executive power over it, is without any doubt, the responsibility of the Local Government Councils. I do not have to emphasise that only the executive have the power to enter into agreements for the execution of any development or duty. Since the Kano State Government has no power over assessment of tenements rates, it goes without saying that it has no jurisdiction to enter into an agreement with anybody or person for the valuation of rateable hereditaments."

With profound respect to their Lordships of the two Courts below I do not share the conclusion they have reached in this matter. I do not see that by the agreement entered into with the Appellants the State Government has usurped the functions of the Local Governments in its area of jurisdiction. The inter-dependence of the State and Local Governments in the area of rating is clearly demonstrated by the provisions of Part XII of the Local Government Law. It is true that by section 76

the Local Government is a rating authority for its area but there are provisions in the Law which make the exercise of its power as rating authority subject to general direction of the Governor (Administrator) or Commissioner in charge of Local Government. Furthermore, section 80 of the Law provides for two systems of rating and section 81 empowers a B Local Government as a rating authority to adopt either system. The two sections provide:

"80. For the purpose of this Part there shall be two systems of rating, namely -

(a) upon tenements, assessed in accordance with sections 83 to 93; and

(b) on a capitation basis, assessed in accordance with sections 94 and 95.

81. For purposes of levying a special rate to be imposed by it, a rating authority shall adopt such system of rating authorised by this Part, as it may deem fit."

It is of interest to make mention of sections 83 and 84 as well. These sections provide thus:

"83. (1) Subject to the provisions of this Part, the Commissioner may be order make provision for the method of assessment of tenements.

(2) An order made under this section may provide for -

(a) the assessment of tenements generally; or

(b) the assessment of any particular class of tenements; or

(c) the method of assessment of any such tenement in any area specified in the order.

84. Where a rate on tenements is to be imposed by a rating authority, the Commissioner shall appoint three persons to be appraisers for purposes of this Part."

Having regard to the provisions above, can it correctly be said that the Local Government is completely independent in rating matters and that the State Government has nothing to do with such matters? I would answer this question in the negative. The inter-dependence of the two Governments in rating is clearly borne out by these sections of the Law. What I believe the State Government cannot do is to, itself, assess

and collect rates. There are provisions in the Law for that. The Constitution ascribes to the Local Government the assessment of privately owned houses or tenements for the purpose of levying rates and collection of such rates. The agreement which the State Government entered into with the Appellants is for the preparation of Valuation List of all rateable hereditaments. This would appear to go beyond privately owned houses or hereditaments. It cannot, therefore, be said that the State Government has usurped the functions of a Local Government. After all the State Government too has power to assess and collect tax on property such as capital gains tax. Moreover, it is quite possible that a valuation list may assist the Commissioner in the exercise of his power under section 83 of the Law.

Mention may also be made here that section 90 of the Law provides for the preparation of Valuation List which is to be signed by the appraiser or appraisers, that is, person or persons appointed by the commissioner. I can see no better orderliness in governance than in what the State Government has done in this case. Reading sections 75 to 93 in Part XII of the Local Government Law as a whole I can see nothing ultra vires in what the State Government has done in this case.

The Courts below appear to have failed to address their minds to the fact that the agreement provides also for the training of staff who, in future, would perform the functions of preparing Valuation Lists. Is the training of staff for this purpose also ultra vires the State Government? I rather think not. Section 84 empowers the Commissioner, and not the Local Government, to appoint appraisers. Surely, it is from the rank of such trained staff that appraisers may be appointed. In my respectful view, by the agreement with the Appellants the State Government has sought to render tremendous assistance to the Local Governments in the State in the better performance of their duties as rating authorities. It might be that some or all of the Local Governments would opt for the second system of rating that is, capitation basis, in which case the Valuation List would not be of any assistance to such Local Governments. I would think that any assistance rendered by whosoever to a public authority to enhance the performance of its duties is to be commended.

Had the agreement with the Appellants provided for the actual assessment and collection of rates in this case I would not have hesitated in agreeing with the Courts below. But that is not the case.

In construing the Constitution, it is important that pedantic and narrow constructions should be avoided. If the Constitution must grow, B the crabbed English rules of statutory interpretation are unsuited to its interpretation being, as it were, a rigid constitution. It is, perhaps, in this respect that the English authorities, particularly Privy Council, are not always helpful. The Constitution is not an ordinary Act of Parliament. C The attitude of a strict and complete legalism or a literalist construction will only thwart the growth of the Constitution. The Constitution as an instrument of government is entitled to a progressive construction. Sir Udoma, JSC in his classic judgment in NAFIU RABIU V. THE STATE (1980) 12 NSCC 291 at pp. 300-301; (1980) 8-11SC 130 at pp. 148-149, D summed it all up in these words:

"My Lords, in my opinion, it is the duty of this Court to bear constantly in mind the fact that the present Constitution has been proclaimed the Supreme Law of the Land: that it is a written, organic instrument meant to serve not only the present generation, but also several generations yet unborn; that it was made, enacted and given to themselves by the people of the Federal Republic of Nigeria in Constituent Assembly assembled - for which reason and because it is authochthonous, F it, of necessity, claims superiority to and over and above any other Constitution ever devised for the governance of this country - the unwarranted intermeddlesomeness of the military authority with some of its provisions notwithstanding; that the function of the Constitution is to establish a framework and principles of government, broad and general G in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the H principles of government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view this Court should whenever possible,

and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the Constitution.

B *My Lords, it is my view that the approach of this Court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat. I do not conceive it to be the duty of this*
 C *Court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends."*

D There has been a shift in the literalist attitude of the Privy Council and the Courts of the older Dominions towards construction of their constitutions. For instance, in JAMES V. COMMONWEALTH (1936) 55 C.L.R.I; (1936) AC 578 at p. 614, Lord Wright for the Privy Council declared:

E *"It is true that a Constitution must not be construed in any narrow and pedantic sense. The words used are necessarily general, and their full import and true meaning can often only be appreciated when considered, as the years go on, in relation to the vicissitudes of fact*
 F *which from time to time emerge. It is not that the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning."*

Again, in Tumbunnu Coal Mine v. Victorian Coal Miners Association (1908) 6 CLR 309, 367-8, Justice O'Connor declared:

G *"It must always be remembered that we are interpreting a Constitution broad and general in its terms, intended to apply to the varying conditions which the development of our community must involve."*

H Perhaps the best example of "progressive" construction by the High Court of Australia (the apex Court of Australia) is found in its ruling in R v. Brisla; ex parte Williams (1935) 54 CLR 262 that the Constitution's grant of the postal power to the Commonwealth gave it power to legislate for radio broadcasting.

Coming back to the case on hand, it is my respectful view that, by the agreement made with the Appellants, the Kano State Government was taking away from the local governments in the State a great burden of financing the preparation of valuation lists without taking away their powers, as rating authorities, to assess and collect tenement rates where they had adopted this mode of rating. The preparation of a valuation list is only a process in ascertaining the amount of the rate to be levied, that is, the assessment of the tenement rate. By helping to have the valuation list prepared the State Government was only assisting the local government in the performance of their constitutional duty of levying tenement rate which involves the exercise of discretion on the part of the local governments as to the actual amount of assessment in accordance with section 85(1) of the Law. I think a court faced with constitutional construction ought to consider the effect upon local governments of voiding these agreements between the parties given the precarious finances of local governments in the country as a whole. The agreements were of financial assistance to the local governments concerned rather than a usurpation of their powers and duties. It is interesting to note that no local government complained of any usurpation.

I have read all the authorities referred to in the judgments of the two courts below and I find them inappropriate to the central issue in this appeal. The conclusion I reach is that the two courts below were in error to void the agreements made between the Respondent and the Appellants on 13th November 1980. These agreements are valid and as there had been a breach by the Respondent, the Appellants were entitled to invoke the arbitration clause and to have the dispute that had arisen determined accordingly.

The conclusion disposes of Issues 1 and 2 raised in the Appellants' Brief.

I need briefly to touch on Issue 3. Issue 3 as argued is not the same Issue 3 as formulated. It is however the Issue as argued that can be said to arise from Ground 3 of the Grounds of appeal. Grounds 3 is undoubtedly academic. It does not arise from the judgments of the two Courts below and it could not have arisen as there was no claim before

the trial High Court for an award in quantum meruit. Indeed the Appellants did not claim any relief and an award in quantum meruit could not have been made in their favour. The propriety of failure to make such an award does not, therefore, arise.

B It is for the reasons I have given above that I find myself unable, with respect, to subscribe to the reasoning and conclusion arrived at by my Lord, the Chief Justice a preview of whose judgment I had ere now. It is my respectful view that Grounds 1 and 2 succeed while Ground 3 fails. The appeal, in my respectful conclusion, succeeds and it is allowed
C by me. I set aside the judgments of the two Courts below and, in their stead, I dismiss the reliefs claimed by the Respondent (the Kano State Government) in the trial High Court.

D

OGWUEGBU JSC

I have had the advantage of a preview in draft of the judgment of my learned brother Uwais, C.J.N. I agree entirely with him that this
E appeal should be dismissed. I also agree with the reasoning leading to the conclusion dismissing the appeal.

The main issue for determination in this appeal is whether the contract which the Kano State Government signed with the appellants
F (Firms of Estate Surveyors and Valuers) to prepare a Valuation List of rateable hereditaments within Kano metropolis for the purpose of imposing property rates is void.

I think that the resolution of this issue will hinge on the interpretation of certain provisions of the Constitution of the Federal Republic of
G Nigeria, 1979 and other enactments namely, sections 4(7), 7(1) and (5) and paragraph 1(j) of the Fourth Schedule thereof as well as sections 76 and 88 of Kano State Local Government Edict No. 5 of 1977.

Sections 4(7) and 7(1) and (5) of the Constitution of 1979 pro-
H vide:

"4(7) The House of Assembly of a State shall have power to make laws for 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 B

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

"7(1) The system of local government by democratically elected local government Councils is under this Constitution guaranteed; and accordingly, the Government of every State shall ensure their existence under a Law which provides for the establishment, structure, finance and functions of such Councils. C

(5) The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution." D

The Fourth Schedule provides:

"1. The main functions of a local government council are as follows - E

(a)

(b) collection of rates, radio and television licences;

(c)

(d)

(e)

(f)

(g)

(h)

(j) assessment of privately owned houses or tenements levying such rates as may be prescribed by the House of Assembly of a State." F G

Sections 76 and 88 of Kano State Local Government Edict No. 5 of 1977 provide:

"76. Every Local Government shall for the purposes of this Part be the rating authority for its area.

88. (1) As soon as may be after a rating authority has adopted a system of rating upon tenements, the authority shall cause the value of

every tenement subject to rate in the area concerned, to be ascertained and assessed by an appraiser, and such assessment shall be known as the first general assessment."

Section 7(1) of the Constitution guaranteed the system of democratically elected local government councils throughout the Federation. Even though a State Government has the power under section 7(1) and (2) of the Constitution to establish and define the areas of local government council and to ensure their existence under the Law establishing them, it has no power to enter into the contract with the appellants. Under section 4(7) (c) of the 1979 Constitution, the Kano State Government like any other State Government in Nigeria has power to make laws for the peace, order and good government of the State or any part of it on matters under section 4(7) (a) and (b) of the Constitution, it can also make laws on other matters with respect to which it is empowered to make laws in accordance with the provisions of the Constitution. See section 4 (7) (c) thereof.

The Kano State Government had legitimately in my view enacted the Kano State Local Government Edict No. 5 of 1977 and section 76 of the said law constituted each local government council within the State, a rating authority area. But the power of local government councils in Nigeria including those in Kano to assess privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of the State is conferred by the Constitution in paragraph 1(j) of the Fourth Schedule thereof.

The House of Assembly of a State may be law prescribe the type of rates to be levied on such privately owned houses or tenements. The assessment and collection of such rates are exclusively the function of the local government council as guaranteed by the Constitution and not by the State Legislature. Paragraph 1 (j) of the Fourth Schedule to the Constitution is clear and unambiguous. The State Legislature or the Military Administrator during the present dispensation has no business in the assessment and collection of rates in respect of the premises stated in the said schedule. It will amount to a usurpation of the power of the Local Government Council for the State Government to carry out such exer-

cise or engage any person or authority to do so on its behalf.

What the Kano State Government did in section 75 and 88 of Edict No. 5 of 1977 was to re-affirm what is already provided for in the Constitution. The functions which the State Legislature is to confer on the local government councils shall include those set out in the Fourth Schedule. The word "shall" in section 7(5) of the Constitution is mandatory and the State Legislature or the Military Administrator has no discretion in it. B

The learned counsel for the appellant has argued in the brief that there is nothing in the contract which deals with the collection of rates by the Kano State Government, that it was the hope of the State Government that the Valuation List to be prepared by the appellants was to be used for the purpose of "property rates", that it is within the competence of that Government to pass it on to the Local Government councils for their use if they so desire and that there is nothing illegal or unconstitutional about the preparation of the Valuation List by the Kano State Government or its agents. C D

There is everything wrong in the State Government entering into the contract with the appellants. Given the circumstances of this case, I would say that the Kano State Government was meddling in the affairs of the Local Government Councils. It was not exercising supervisory powers over the activities of the Local Government Councils. It had no power to prepare a Valuation List of the properties let alone entering into an agreement for that purpose. I agree with the Court of Appeal when it held as follows: E F

"Since the Kano State Government has no power over assessment of tenements (sic) rates, it goes without saying that it has no jurisdiction to enter into any agreement with any body or person for the valuation of rateable hereditaments." G

I must here emphasize that Local Government Councils should be spared this type of illegitimate intrusion or interference by State Governments in H functions specifically assigned to the former by the Constitution.

It is my considered view that the Kano State Government does not possess concurrent jurisdiction with the Local Government Councils

in Kano Metropolis over the functions set out in the Fourth Schedule to the Constitution.

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother Uwais, C.J.N., that I B dismissed this appeal. I abide by all the orders made by my learned brother Uwais, C.J.N.

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