

**SUPREME COURT OF NIGERIA**

7TH JULY, 2006. SC. 99/2005,

SC. 121/2005, SC. 216/2005 (CONSOLIDATED)

**CORAM:- I. L. KUTIGI, U. A. KALGO, N. TOBI, D.**

**MUSDAPHER, I. C. PATS-ACHOLONU, G. A. OGUNTADE,**

**W. S. N. ONNOGHEN, JJSC**

1. A-G OF ABIA STATE

2. A-G OF DELTA STATE

..... APPELLANTS

3. A-G OF LAGOS STATE

AND

1. A-G OF THE FEDERATION

2. A-G OF ADAMAWA STATE

3. A-G OF AKWA IBOM STATE

4. A-G OF ANAMBRA STATE

5. A-G OF BAUCHI STATE

6. A-G OF BAYELSA STATE

7. A-G OF BENUE STATE

8. A-G OF BORNO STATE

9. A-G OF CROSS-RIVER STATE

10. A-G OF EBONYI STATE

11. A-G OF EDO STATE

12. A-G OF EKITI STATE

13. A-G OF ENUGU STATE

14. A-G OF GOMBE STATE

15. A-G OF IMO STATE

16. A-G OF JIGAWA STATE

..... RESPONDENTS

17. A-G OF KADUNA STATE

18. A-G OF KANO STATE

19. A-G OF KATSINA STATE

20. A-G OF KEBBI STATE

21. A-G OF KOGI STATE

22. A-G OF KWARA STATE

23. A-G OF NASSARAWA STATE

24. A-G OF NIGER STATE

- 25. A-G OF OGUN STATE
  - 26. A-G OF ONDO STATE
  - 27. A-G OF OSUN STATE
  - 28. A-G OF OYO STATE
  - 29. A-G OF PLATEAU STATE
  - 30. A-G OF RIVERS STATE
  - 31. A-G OF SOKOTO STATE
  - 32. A-G OF TARABA STATE
  - 33. A-G OF YOBE STATE
  - 34. A-G OF ZAMFARA STATE
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**WORDS & PHRASES** - Federalism - Meaning of - It connotes an association of states - For common purpose - Where the individual states retain - Large measure of their original autonomy (H1)

**CONSTITUTIONAL LAW** - Federal principle - Requirements of - Is that the general and regional governments - Shall be independent of each other - Within its sphere (H2)

**CONSTITUTIONAL LAW** - Federalism in government - Objectives of - Are to reduce the power of the majority at the centre - And to allow each group develop along its characteristic lines (H3)

**WORDS & PHRASES** - Unitarism - Meaning of - Is a constitutional arrangement - With a very strong central command - Making the regions dependent on the centre (H4)

**CONSTITUTIONAL LAW** - National Assembly - Legislative powers of - Only covers matters on Exclusive list - And matters allotted to it in the concurrent list (H5)

**CONSTITUTIONAL LAW** - Legislative lists - Concurrent list - Is no longer a free shopping centre - As under the 1999 Constitution - Legisla-

tive powers of both National Assembly and State Houses - Are set out therein (H6)

CONSTITUTIONAL LAW - Local government affairs - Ss. 7(1) and 197, 1999 Constitution - Generally puts everything relating to local government - In the province of the State Government (H7)

CONSTITUTIONAL LAW - Accounts - State Joint Local Government Account - By s.162 of 1999 Constitution - National Assembly had to "allocate" amount due to states - While State Houses "distribute" same to the local government (H8)

CONSTITUTIONAL LAW - Accounts - State Joint Local Government Account - By establishing a Committee for the Account - National Assembly impliedly purported to establish the Account itself - In breach of s.162(6) 1999 Constitution (H9)

CONSTITUTIONAL LAW - Supremacy of the Constitution - A person whose function is spelt out - In the Constitution - Cannot perform other statutory functions - Not borne out from the Constitution (H10)

STATUTES - Omnibus clauses - Interpretation of - Is not to be made at large - But related to the preceding original matter - Specifically named (H11)

CONSTITUTIONAL LAW - Accountant General of Federation - Functions of - Do not extend to watching - Over State or Local Government Funds (H12)

CONSTITUTIONAL LAW - National Assembly - Legislative powers of - Do not extend to monitoring distribution of funds - To local governments - By their State governments (H13)

CONSTITUTIONAL LAW - Federation Account - Allocation Committee

of - Is a federal body - And not entitled to returns - In matters in exclusive domain of States (H14)

CONSTITUTIONAL LAW - Constituent States - Borrowing powers of -  
B National Assembly is empowered - Under the Exclusive list - To legislate on borrowing powers of States (H15)

STATUTES - Constitutionality of - Monitoring of Revenue Allocation to  
C Local Government Act, s.7 - Is inconsistent - With s. 162(8) of 1999 Constitution (H16)

CONSTITUTIONAL LAW - Covering the field - Doctrine of - Can only apply - Where National Assembly exercises its powers constitutionally  
D (H17)

CONSTITUTIONAL LAW - National Assembly - Legislative Powers of - To create offences - Is incidental to power to legislate - On subject matter concerned (H18)

CONSTITUTIONAL LAW - Auditor General of Federation - Functions of - Are limited to auditing and reporting - On public accounts of the  
F Federation - Not those of the States (H19)

WORDS & PHRASES - Allocation and Distribution - Meaning of - To allocate is to give something as share - To distribute is to share out (H20)

G ESTOPPEL - Applicability - Estoppel cannot avail defendant - In a case of breach of the Constitution - Being an equitable defence (H21)

CONSTITUTIONAL LAW - National Assembly - Oversight functions of  
H - Cannot be invoked - In respect of law making powers - Of State Houses of Assembly (H22)

CONSTITUTIONAL LAW - Supremacy Doctrine - Implication of - Is

that the Constitution is the beginning and the end - Not only of jurisprudence - But also of the entire legal system (H23)

INJUNCTIONS - Scope of - Injunction lies only in respect of live issues - Not in respect of dead issues - Or action already completed (H24) B

ACTIONS - Reliefs - Granting of - Court is confined to the reliefs of the plaintiff - Defendant can only seek reliefs - Where he counter claims (H25) C

### **FACTS**

The three plaintiffs each brought a separate action before the Supreme Court, pursuant to the court's original jurisdiction, challenging the validity of the Monitoring of Revenue Allocation to Local Government Act 2005. It is their various contention that the Act contravenes the provisions of the 1999 Constitution of Nigeria and should be nullified in accordance with the doctrine of Supremacy of the Constitution. Their contention is based on the Federal structure of the nation. They maintain that it is unconstitutional for an Act of the National Assembly to impose a duty or obligation on a State Government in matters within the exclusive legislative competence of the State legislature. D E

As a fact, the Act in s.1 provides for establishment and membership of the Joint Local Government Account Allocation Committee for each State and makes two federal officers part of the committee for each State. S.2 provides for functions of the committee to include monitoring of payment and distribution of funds in the State Joint Local Government Account of each State. And the committee is to render monthly returns on this to the Federation Account Allocation Committee under s.3. While s.7(2) empowers Federal Government to make first charge on a State's next allocation where the State defaults in the distribution of funds to local governments. These sections and others like them are the main grouse of the plaintiffs against the Act. The three actions were consolidated and heard together by the Supreme Court. F G H

### **ISSUE FOR DETERMINATION**

“Whether the first defendant has the legislative competence to enact the Monitoring of Revenue Allocation to Local Governments Act, 2005 and whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.”

**HELD** (Partially granting the Plaintiffs' Claim by a majority decision per **TOBI JSC**, Kutigi & Musdapher JJSC Dissenting)

***Federalism - Meaning of***

1. Federalism, as a legal and political concept, generally connotes an association of states; formed for certain common purposes, but the states retain a large measure of their original independence or autonomy. It is the coordinate relationship and distribution of power between the individual states and the national government, which is at the centre. Federalism, as a viable concept of organizing a pluralistic society such as Nigeria, for governance, does not encourage so much concentration of power in the centre, which is the Federal Government. In Federalism, the component States do not play the role of errand boys. The other extreme is also true and it is that they do not exercise sovereignty, which only belongs to the nation as a sovereign entity. States in a Federation rather exercise the middle role, if I may say so, for lack of better expression of exercising legislative and fiscal autonomy as provided for in the Constitution. (p. 2485 B)

***Federal principle - Requirements of***

2. Professor Wheare, in his Book titled, Federal Government v. Oxford University Press (1963) said at page 93:

“The peculiar federal problem is this. The federal principle requires that the general and regional governments of a country shall be independent each of the other within its sphere, shall be not subordinate one to another but co-ordinate with each other. Now, if this principle is to operate not merely as a matter of strict law but also in practice, it follows that both general and regional government must each have under its own independent control, financial resources sufficient to perform its exclu-

*sive functions. Each must be financially co-ordinate with the other. To quote some words from The Federalist: 'It is, therefore as necessary that the State governments should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect to the wants of the union.'* " B

The operative and telling sentence for our purpose is "... the general and regional governments of a country shall be independent each of the other within its sphere....." The most pungent words are "within its sphere". Normally, a Federal Constitution, by its federal nature, cleanly and clearly arranges the functions of the Federal and State Governments so much so that it is easy to identify the sphere of each other, and here the word "sphere" generally means an area or range of activity in terms of functionality. (p. 2485 E) C

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### ***Federalism in government - Objectives of***

3. Federalism in government, Professor Nwabueze said, seeks to achieve two objectives. By taking away certain powers from the centre and localizing them in certain groups which it establishes into distinct governmental units existing independently of the centre and of each other; it greatly reduces the power of the majority at the centre and thus minimizes the danger of its domination of the other groups; at the same time it enables each group to develop at its own speed and along its own characteristic lines within the unity of the whole. (p. 2486 C) E F

### ***Unitarism - Meaning of***

4. Unitarism, on the other hand, is a constitutional arrangement where the Constitution concentrates at the central or national level, a very strong central command, making the regional or groups parasitic on the centre, in the sense that they do not enjoy any autonomy. It is an arrangement in which there exists a strong central government and weak regional governments. In some aspects, it is an arrangement where two or more areas or groups have joined together with a common aim, objective and purpose, controlled essentially by a single government, so to say. Unlike federalism, unitarism has not that clear bifurcation of legislative func- G H

tions in terms of the central and regional Governments. (p. 2487 A)

***National Assembly - Legislative powers of***

5. Let me first take briefly the legislative powers of the National Assembly. By Section 4(1), the legislative powers of the Federal Republic of Nigeria are vested in the Senate and the House of Representatives which are duly provided for in Sections 47 to 49 of the Constitution.

The main enabling provision of law making of the National Assembly is in Section 4(2). It reads:

*“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.”*

By the provision, the law making power of the National Assembly is not restricted to the Federal Government, but extends to any part of the Federation if the matter is in the Exclusive Legislative List. The second arm of Section 4(2), like the first arm, is not open ended. It is restricted to matters included in the Exclusive Legislative List, set out in Part I of the Second Schedule to the Constitution. In other words, and putting it in a positive language, the National Assembly is vested with legislative powers across the country if the subject matter is an item contained in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. Putting it in a negative language, the National Assembly cannot exercise legislative powers in matters not included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution.

In addition to the provision of Section 4(2), Section 4(4) vests in the National Assembly the power to make laws with respect to the following matters:

*“(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.”*



Unlike the constitutional arrangement in the 1963 Constitution, the Concurrent Legislative List is no longer a free shopping centre for both the Federal and State Governments. On the contrary, the Concurrent Legislative List clearly sets out those items that the National Assembly can freely legislate. So too, the House of Assembly of a State as it relates to Section 4(7)(b) of the Constitution. Section 4(4)(b) is an omnibus and generic provision anticipating what is not covered by Section 4(2), and 4(4)(a) of the Constitution. (p. 2487 G)

### ***Legislative lists - Concurrent list***

6. The Concurrent Legislative List contains 30 items. As I indicated earlier, the Concurrent Legislative List is not a free shopping centre for both the National Assembly and the House of Assembly of a State. The 1979 Constitution dislocated the arrangement in the 1960 and 1963 Constitutions where both the National Legislature and the State Legislatures freely legislated subject only to the check by the doctrine of covering the field. In the 1979 Constitution which is now in the 1999 Constitution, the legislative powers of the National Assembly and the House of Assembly of a State are clearly set out.

Although the Exclusive Legislative List does not contain the division or allocation of public revenue to Local Government Councils, the Concurrent Legislative List in Item 1(a) contains division of public revenue to Local Government Councils. The Item reads:

*“Subject to the provisions of this Constitution, the National Assembly may by an Act make provisions for:*

*(a) the division of public revenue:*

*(i) between the Federation and the States;*

*(ii) among the States of the Federation;*

*(iii) between the States and local government councils;*

*(iv) among the local government councils in the States.”*

(p. 2490 H)

### ***Local government affairs - Ss. 7(1) and 197***

7. This Court interpreted the provisions of Sections 7(1) and 197 and

Item 22 of the Second Schedule to the Constitution in Attorney-General of Abia State v. Attorney-General of the Federation. Ogundare, JSC., in his judgment said at page 422:

B *“In my respectful view, by the combined effect of Sections 7(1) and 197 and Item 22 of the Second Schedule Part I, the Constitution intends that everything relating to local government be in the province of the State Government rather than in that of the Government of the Federation. The minor exception to this scheme is to be found in Item 11 of the Concurrent Legislative List where power is given to the National*  
C *Assembly with respect to the registration of voters and the procedure regulating elections to local government council. There is also power given to the National Assembly, pursuant to Section 7(6)(a) to make provisions for statutory allocation of public revenue to local government councils*  
D *in the Federation. Other than these, I can find no provision in the Constitution empowering the National Assembly to make laws affecting local government.”* (p. 2492 C)

E **State Joint Local Government Account - By s.162**

8. By Section 162(3), the National Assembly is empowered to distribute among the federal and State Governments and the Local Government councils in each State, any amount standing to the credit of the Federation Account on such terms and in such manner as the Legislature may  
F prescribe. By Section 162(5), the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.  
G As a law making body, the National Assembly will be able to carry out the powers conferred on it in Section 162(5) by enactment of an Act.

Section 162(6) enjoins each State to maintain a special account to be called “State Joint Local Government Account” into which shall be  
H paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State. The subsection is designed to enforce the provision of Section 162(3). That apart, the second leg of the subsection enjoins the State to also pay into the

“State Joint Local Government Account”, contribution for Local Government Councils from the Government of the State. In other words, the State Joint Local Government Account will be made up of allocations from the Federation Account and from the Government of the State.

By Section 162(7), the National Assembly is empowered to prescribe how each State shall pay Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as it deems fit. By Section 162(8), the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

While the Legislature involved in Section 162(3), (5) and (7) is the National Assembly, that involved in Section 162(8) is the House of Assembly of the State. Section 162(6) does not provide for the Legislature.

There is a difference between Section 162(5) and Section 162(8). While Section 162(5) talks about allocation, Section 162(8) talks about distribution. Accordingly, the point should be made that the only constitutional function of the National Assembly under Section 162(5) is to allocate to the States the amount standing to the credit of Local Government Councils. It is the constitutional function of the House of Assembly of the state to distribute the amount. Putting it in clear and precise language, Section 162(5) stops at allocation, and Section 162(8) picks up from Section 162(5) to distribute the money. (p. 2493 D)

***State Joint Local Government Account - By establishing a Committee***

9. As it is, Section 1(1) of the Act establishes the State Joint Local Government Account Allocation Committee to perform the functions vested in it in Section 1(2) thereof. Does the Constitution vest power in the National Assembly to establish such Committee? If so, where is the enabling constitutional provision? If not so, can the National Assembly ignore the Constitution and enact an Act in complete disobedience of the Constitution which gave birth to that legislative body?

I should go to the Constitution for answers to the questions I have posed above.

By Section 162(6), it is the function and responsibility of the Government of a State to maintain a special account in the name and style of “State Joint Local Government Account”. A State can decide to do so by the establishment of a Committee or by any other means. I see from the briefs that a few States have established Committees for the purposes of maintenance of the special account. And that is in order.

I do not see anywhere in Section 162, or more specifically, Section 162(6), and finally more generally, any constitutional provision vesting in the National Assembly the legislative power to establish the State Joint Local Government Account Allocation Committee in Section 1(1) of the Act.

The Committee anticipated in Section 162(6) can be established by the House of Assembly of a State pursuant to Sections 4(7)(c), 7 and 162(8) of the Constitution. I need not reproduce the provisions since I have done so above. Can the National Assembly foist on the State House of Assembly, a state of legislative helplessness by running down on the legislative domain or terrain of the State Legislatures? The answer is a big and clear, No. That conduct is clearly against the federal arrangement in the Constitution. It has traits of unitarism. (p. 2495 H)

***Supremacy of the Constitution - A person whose function is spelt out***  
 10. I have carefully examined the provisions of Paragraph 32 of Part I of the Third Schedule to the Constitution as well as Section 2 of the 2005 Act. The result of my examination is that the functions contained in the above provisions are not exactly the same, and I do not expect them to be exactly the same. But my worry here is the membership of the two federal officers.

The first problem I have is in respect of the membership of the Commissioner of Revenue Mobilization, Allocation and Fiscal Commission. And the problem relates to the two sets of functions he is made to perform, the constitutional functions in Paragraph 32, Part 1 of the Third Schedule to the Constitution and Section 2 of the 2005 Act. And this

gives rise to a legal problem and it is this: can a person, body or organization named in the Constitution to exercise specific constitutional functions, be made to perform other functions in a statute, particularly when the statutory functions are not borne out from the constitutional functions? This is my worry. It is also my problem. B

A person, body or organization named in the Constitution and functions spell out therein, cannot in law perform any other statutory functions which are not borne out from the Constitution, particularly when the statutory function deviates or subtracts from the constitutional function. This is the essence of Section 1 of the Constitution. C  
(p. 2501 E & 2503 D)

### ***STATUTES - Omnibus clauses***

11. I do not agree that the functions contained in Section 2 of the 2005 Act are advisory in nature to bring them within Paragraph 32(c) thereof. A possible argument is that the omnibus provision of Paragraph 32(c) can justify Section 2 of the Act. An omnibus provision in a Statute is never at large but is regimented by many other parameters. This is aimed at curbing a likely abuse of omnibus clauses in statutes. Certainly, a statute enacted by a Legislature outside it's laid down legislative functions, cannot be heard to rely on omnibus clause for the enactment of the statute. D E F

Where a constitutional or statutory provision such as Paragraph 32 Part I, Third Schedule to the Constitution on Revenue Mobilization, Allocation and Fiscal Commission, anticipates a futuristic act or in futurity, in relation to a constitutional or statutory body, such act must be construed or interpreted within the anticipated confinements or limits of the preceding specifically named or mentioned act. It will be against all known canons of constitutional or statutory interpretation to construe or interpret such omnibus and nebulous provision at large to the extent that it can assimilate or accommodate all forms and types of acts whether they are connected, related or traceable to the original matter. In my view, that will be giving too much strength to omnibus clauses in the Constitution. That day should not come. And so Paragraph 32(e) is not G H

authority for Section 1(2)(b) of the Act. (p. 2503 F)

***Accountant General of Federation - Functions of***

12. I move from the Commissioner to the representative of the Accountant General of the Federation. The Constitution does not provide for the office of the Accountant-General of the Federation and so I do not have the same constitutional yardstick to measure the constitutionality of the membership. But I am not totally helpless or hopeless. I know as a matter of fact that the Accountant-General takes charge of or watches Federal Government finances anywhere in the country. The moment a State maintains a special account in the name and style of “State Joint Local Government Account”, it ceases to be Federal Government finance and the Accountant-General, in my humble view, cannot police the funds. In other words, the Accountant General has no constitutional power to sit in judgment over the Section 162(6) Account. (p. 2504 C)

***National Assembly - Legislative powers of***

13. So much of my arguments above on Section 1 of the Act apply mutatis mutandis to Section 2. The moment the amount standing to the credit of Local Government Councils in the Federation Account is allocated to the States in accordance with Section 162(5) of the Constitution, the business of the State in terms of fiscal policy starts under Section 162(8) of the Constitution. Accordingly, the National Assembly has not the legislative power to ensure that the funds paid into the State Joint Local Government Account are distributed to the Local Government Councils. In my view, the National Assembly has not the legislative competence to legislate on the nicety or nitty-gritty of the allocation. To that extent, the words “distributed” in Section 2(b) and “monitor” and “distribution” in Section 2(c) offend the provision of Section 162(8) of the Constitution. In other words, the expressions I have put in inverted commas offend the federal arrangement in the Constitution and the federal principle. (p. 2506 A)

***Federation Account - Allocation Committee of***

14. Section 3 of the Act is in the following terms:

*“(1) The Committee shall render monthly returns to the Federation Account Allocation Committee through the member representing Revenue Mobilization, Allocation and Fiscal Commission.*

*(2) The Federation Account Allocation Committee shall scrutinize the returns to it by the Committee and make quarterly returns through the Accountant-General of the Federation to each House of the National Assembly.”*

Once again, the federal arrangement in the Constitution is breached by Section 3. It is realized that the Federation Account Allocation Committee is a federal body. In the circumstance, the rendition of monthly returns to a federal body in a matter which is within the exclusive domain of the State, vide Section 162(8), is against the federal structure in the Constitution. And what is more, Section 162 of the Constitution, otherwise known as the fiscal provision in the Constitution, does not provide or order such rendition. And again, what is more, the Federation Account Allocation Committee is not known in the Constitution and therefore cannot play any constitutional or statutory role in the face of the clear provisions of Section 162 of the Constitution. (p. 2506 E)

### ***Constituent States - Borrowing powers of***

15. Section 6 of the Act deals with the power of State Governments to borrow money. The complaint is on Section 6(1). It provides:

*“The power of State Governments for borrowing money shall not extend to the money, funds or revenue allocated to Local Government Councils from the Federation Account and from the State concerned.”*

The Exclusive Legislative List in Item 7 provides as follows:

*“Borrowing of moneys within or outside Nigeria for the purposes of the Federation or of any State.”*

Item 7 covers borrowing within and outside Nigeria. Section 6(1) of the Act prohibits borrowing from within Nigeria. As Section 4(2) empowers the National Assembly to make laws with respect to any matter included in the Exclusive Legislative List, it is my view that the provision of the subsection is intra vires the National Assembly. When a Leg-

islature enacts law in accordance with the Constitution, this court and courts below it have not the jurisdiction to question the vires of the law on grounds of non-desirability or morality or for any plausible reason at all because the primary duty of a Legislature is to make laws, and courts of law cannot remove the constitutional powers, unless the law passed is ultra vires the Constitution. (p. 2507 A)

***STATUTES - Constitutionality of***

16. The ambition of Section 7(1) is to police the distribution of Local Government Council funds. While I see clear good intentions in the subsection, good intentions can only be valid if they tally with the Constitution. And I do not think Section 7(1) can get on or go along with the Constitution. Section 7(6)(b) vests in the House of Assembly of a State, the power to make provisions for statutory allocation of public revenue to Local Councils within the State. That apart, Section 162(8) of the Constitution vests in the House of Assembly of a State, the power to distribute amount standing to the credit of Local Government Councils of a State on such terms and in such manner as it thinks proper. None of these two provisions or any other provision in the Constitution support Section 7(1) of the Act. (p. 2508 F)

***Covering the field - Doctrine of***

17. What will happen if, in the process of enforcing the proviso, there arises conflict between the Act of the National Assembly and the Law of the House of Assembly of a State on the subject of the proviso? Can Section 4(5) with all its federal power and strength be invoked to abrogate the law passed by the House of Assembly of a State? In my humble view, Section 4(5) which provides for the common law doctrine of covering the field can only apply in a situation where the National Assembly exercises its law making power under Section 4(2) of the Constitution. It will not apply in a situation where the National Assembly encroaches on the law making power of the House of Assembly of a State under Section 4(7) of the Constitution. (p. 2509 B)



***National Assembly - Legislative Powers of - To create offences***

18. In most democracies in the world, the Constitution does not normally contain penal provisions. These are mostly left to be taken care of by statutes. That is the position in Nigeria. An Act of the National Assembly can contain penal provisions and that is normal. Courts of law cannot question the National Assembly because they do not have the legislative power to do so. But there is a caveat and it is this. Where the National Assembly in the exercise of its legislative power under Section 4(2) purports to create offence or offences traceable to any provision in the Constitution, the courts must react, if the penal provision is not vindicated by the Constitution. That is the problem and that is what the plaintiffs have raised. After all, the principles of penology and criminology are not generally known to the Constitution.

I entirely agree with the submission of learned Senior Advocate for the 2nd plaintiff that the power of both the National Assembly and the House of Assembly of the State to create offences is not at large. I also agree with him that the power to create offences is an incident of the power to legislate on a subject matter.

Can the National Assembly rely on the above provision to justify Section 7(3) of the Act? I think not. Can the 1st defendant rely on Item 68, Part 1 of the Second Schedule? Again, I think not. Both provisions in their specific contents are too remote to be of any assistance to the 1st defendant. Let me explain the position further. Item 68 provides for any matter incidental or supplementary to any matter mentioned elsewhere in the exclusive Legislative List. I cannot place my hands on any item in the exclusive Legislative List touching on the 2005 Act. And so in whatever way one expands the frontiers of the omnibus Item 68, it will never be of any assistance to the 1st defendant in respect of Section 7(3) of the Act. The above applies to the interpretation of Paragraph 2(a), Part III of Second Schedule to the Constitution.

In *Attorney-General of Ondo State v. Attorney-General of the Federation*, Ejiwunmi, JSC., said at page 408:

*“It is manifest from the provisions of Section 2(a) Part III of the Second Schedule to the Constitution that it was enacted in order to ex-*

*pand the effect and the extent of the provisions of Item 68. It is by virtue of this provision that offences may be enacted by the National Assembly if it is shown that such offences as may be created are incidental and supplementary to matters in which the National Assembly is vested to enact laws."*

I entirely agree with the interpretation of my learned brother, Ejiofor, JSC, and to zero in on the issue, give a negative answer against the 1st defendant which is therefore a positive one to the plaintiffs.  
(p. 2512 H & 2513 G)

**Auditor General of Federation - Functions of**

19. And that takes me finally to Section 9, the last part of the complaint. It reads:

*"The Auditor-General for the Federation shall, following the end of each financial year report to each House of the National Assembly, stating how the monies allocated to each State for the benefit of the Local Government Councils within the State ..... were spent."*

I have a few questions to ask here: what has the Auditor-General of the Federation got to do in a matter which is exclusively a State affair? What has the National Assembly got to do in a matter which is exclusively a State affair? What does Section 9 expect the National Assembly to do; if that House is not satisfied in the way the monies allocated to each State for the benefit of the Local Government Councils were spent? Will the House invoke Section 7 of the Act? Will such an invocation not be foul to the Federal arrangement of our Constitution?

What is the constitutional function of the Auditor-General of the Federation? Unlike the Accountant-General of the Federation, the Constitution provides for the function of the Auditor-General of the Federation and it is in Section 85(2) of the Constitution. It reads:

*"The public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on by the Auditor General who shall submit his report to the National Assembly ..."*

Can the Federal Auditor-General stray from his constitutional functions in Section 85(2), and grab, usurp, dislodge, or displace the

constitutional functions of an Auditor-General of a State? I think he has enough to chew from Section 85(2) of the Constitution. (p. 2514 G & 2516 B)

***Allocation and Distribution - Meaning of***

20. Learned counsel for 1st defendant submitted that the combined effect of Sections 7(6) (a) and 162(5) of the Constitution is that the National Assembly has the constitutional power to allocate public revenue to Local Governments in the Federation. That is a beautiful submission which I cannot fault. But by the contents of the 2005 Act, the functions of the Committee go beyond allocation to distribution. Let me borrow the definition of the two expressions from the 2nd plaintiffs brief. Quoting from Cambridge International Dictionary of English (1995), he said that “allocate” means to give something to someone as their share of a total amount. “Distribute” means to share or give something out to several people, or to spread out.

Allocation, the act of allocating, connotes a share or amount that has been allocated. Distribution, the act of distributing, connotes dividing and giving out among several people, or places. While allocation could be a bulk or lump sum, distribution may not be invariably so. Relating the etymological meanings of the expressions to the Constitution leave us with the result that while Section 162(5) empowers the National Assembly to allocate funds to the State for the benefit of their Local Government Councils, Section 162(8) empowers the House of Assembly of a State to distribute the bulk sum received under Section 162(5) to the Local Government Councils. This should be an adequate answer to the submission of learned counsel for the 1st defendant. (p. 2516 C)

***ESTOPPEL - Applicability***

21. Learned counsel for the 1st defendant relied on Attorney-General Bendel State v. Attorney-General of the Federation and submitted that this court held that the phrase “on such terms and in such manner as may be prescribed” in Section 149(1) of the 1979 Constitution bestows on the National Assembly extensive powers to legislate in respect of the alloca-

tion of the Federal Account to Local Government Councils. As I indicated earlier, the problem is not allocation under Section 162(5) but distribution under Section 162(8).

B Learned counsel for the 1st defendant also seems to raise the defence of estoppel. He submitted that as legislators from the States of the plaintiffs participated in the enactment of the Act and were not recalled, the plaintiffs cannot be heard to complain. This submission is quite strange to me. Estoppel, an equitable defence, cannot avail a defendant in a case of breach of the Constitution. Legislators cannot by collusion or connivance breach the Constitution, which is not their exclusive C property but the property of all Nigerians. (p. 2517 F)

***National Assembly - Oversight functions of***

D 22. There are three types of oversight functions. These are the power of the Legislature to conduct investigations, control and surveillance over the financial affairs of the Executive, and control and supervision of Government general business.

E Oversight functions can only be exercised within the law making powers of the National Assembly. The functions are not at large and must be exercised within the provisions of the Constitution. More relevantly, the National Assembly cannot invoke its oversight functions in F respect of the law making powers of the House of Assembly of a State in Section 4(7) of the Constitution. That will be unconstitutional. (p. 2518 F)

***CONSTITUTIONAL LAW - Supremacy Doctrine - Implication of***

G 23. The Constitution of a nation is the fons et origo, not only of the jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system. In Greek language, it is the alpha and the omega. It is the barometer in which all statutes are measured. In H line with this kingly position of the Constitution, all the three arms of Government are slaves of the Constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the Constitution over and

above every statute be it an Act of the National Assembly or a law of the House of Assembly of a State.

The supremacy clause is provided for in Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999. All the three arms of Government must dance to the music and chorus that the Constitution B beats and sings, whether the melody sounds good or bad. Regarding the first place Section 1 occupies in the Constitution, I regard and christen it as the golden section of the Constitution, the adjectival variant of the noun gold. It is the same golden position in sports that the Constitution C occupies in any jurisprudence and legal system, including ours.

While I recognize the constitutional right of the Legislatures, that is, the National Assembly and the House of Assembly of the States, to amend the Constitution, until that is done, they must kowtow (using the Chinese expression) to the provisions of the Constitution, whether D they like it or not. (p. 2520 A)

### ***INJUNCTIONS - Scope of***

24. An injunction will lie in respect of live issues. An injunction will not E lie when an issue is dead in the sense that an action is completed and cannot in law be resuscitated. It is both a factual and legal impossibility to resurrect a dead matter to attract or take advantage of an injunction.

It is clear from relief (f) in Attorney-General of the Federation F that virtually all the reliefs were live and this court was therefore correct in granting injunction. But in this case, there is no live issue and I cannot see my way clear in granting the injunction. The Act has already been enacted and so an injunction cannot lie in law. (p. 2526 G)

### ***ACTIONS - Reliefs - Granting of***

25. A few of the defendants asked this court to declare that the whole Act is a nullity. The Attorney-Generals of Nassarawa, Rivers and Yobe are good examples. It is elementary law that a court of law is confined to the H relief or reliefs of the plaintiff. It does not go outside the relief or reliefs to grant what the plaintiff does not ask for. A court of law can grant all the reliefs sought by the plaintiff. It can also grant part of the reliefs. But it

cannot grant reliefs not sought by the plaintiff.

While a defendant can seek reliefs related or borne out from the original action in a counter-claim, he cannot do so in his Statement of Defence. That is what the Attorney-Generals of the States mentioned  
B above have done by asking this court to declare the whole Act a nullity.

In the light of the above, thereby declare Sections 1, 2, 3, 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 null and void being inconsistent with the provisions of Sections 4, 7, 162(5), (6) and (8) of the Constitution. I refuse the prayer in respect  
C of Section 6(1) of the Act on the ground that the section is not inconsistent with any provision of the Constitution. I also refuse the prayer for injunction by the 2nd and 3rd plaintiffs. (p. 2527 G)

#### D **NOTABLE POINTS OF INTEREST**

##### **TOBIJSC**

*1. The facts of A-G. Bendel State are distinguishable*

It is elementary law that a case is decided on the facts before the court.  
E It is now an axiom or an aphorism to say that facts are the fountain head of the law. Decisions of cases are related to facts and they should be construed in their factual milieu.

The facts of Attorney-General of Bendel State v. Attorney-Gen-  
F eral of the Federation are not similar, to say the least, to those of this case. To put it in a stronger language, the facts are in some ambitious difference.

With the greatest respect to learned counsel for the 1st defen-  
G dant, the case is inapposite or not relevant to this case because of the following two reasons: (1) the facts are quite different. (2) While Attor-  
ney-General of Bendel State has to do with the interpretation of the Allo-  
cation of Revenue (Federation Account, etc.) Act, 1982, now Cap. 16 of  
the Laws of the Federation, 1990, this case has to do with the interpreta-  
H tion of the Monitoring of Revenue Allocation to Local Governments Act,  
2005. And more importantly, the provisions of the two Acts are different.  
(p. 2497 G)

2. *Good intentions of legislature can not save their unconstitutional enactments*

I know as a matter of fact that the Act is yet another effort to push corruption out of the Nigerian polity. It is a genuine effort to wipe out corruption at the grass root. It is a notorious fact that there are leak- B  
ages here and there in Local Government funds, leakages that are caused by human beings that either operate the system or supervise the operation of the system. There are many thieves in the system and any effort to plug the leakages within the dictates of the Constitution must be sup- C  
ported by any well meaning institution, including the Judiciary.

This court has never condoned corruption and will never condone corruption. In Attorney-General of Ondo State v. Attorney-General of the Federation, this court condemned corruption in all its facets and D  
ramifications.

But that is not to say that the court will be blind to a situation where an Act which is out to check corruption is enacted in contravention of the Constitution. In such a situation, this court will stoutly rise to condemn such an Act, even though an Act on corruption is designed to E  
promote the highest good and economic well being of the society.  
(p. 2522 F & 2524 B)

**OGUNTADE JSC**

3. *Meaning of "to allocate" and "to distribute" - Limited roll of Na- F  
tional Assembly*

In ordinary terms, it is easy to conclude that 'to allocate' means the same thing as 'to distribute'. But in the manner the two expressions are used in G  
Section 162 of the Constitution, there is no doubt that the draftsman intended that there be different connotations or meaning for each. The New Oxford Dictionary of English defined 'allocate' as meaning 'distribute resources or duties for a particular purpose and the noun 'allocation' is defined as meaning 'the action or process of sharing out something'. H  
The word 'distribute' is however defined in the same Dictionary to mean 'give a share or a unit of (something) to each of a number of recipients.' As I have shown above, it is the State Government that distribute the

B funds that have been allocated to the Councils in a State by the National Assembly. The conclusion to be arrived at therefore is that the National Assembly is only to formulate the technical data or criteria required to determine the quantum of allocation due to the Local Government Councils in each State. When this has been done, the National Assembly also directs the payment of the amount due to State Government who thereafter proceed to distribute the funds to the Local Government in the States. (p. 2547 A)

C 4. *The 2005 Act is an attempt to set Local Governments against their State Governments*

D It is as far as I can see apparent that the Act is directed solely against State Governments and their public officials. It is my view that the intentment of the provisions in the 1999 Constitution is to grant power and autonomy to State Government in its relationship with Local Government Councils in a State and to subordinate Local Government Councils to a State Government. That in my view, explains why Sections 7(6) and

E 162(5) only give the power to allocate funds from the Federation account to a Local Government Council to the National Assembly through a State; and further to leave the distribution of such funds to the State Government while confining the National Assembly only to allocation of

F funds. It would appear that the National Assembly by enacting the Act into law in relation to States had unwillingly engaged in a cause that is a hindrance to the autonomy granted a State Government in its power to control the Local Government Council. It is also an attempt albeit unintended to set the Local Government Councils in a State against their State

G Governments. This arises from the fact that, the Act in its language, and the functions it assigned to the Committee created thereunder, convey that it was to prevent the State Government converting to its officials for their own use, funds meant for Local Government Councils. I think that

H under our Constitution, the Federal and State Governments are sovereign when acting within the limits of the power granted them by the Constitution. (p. 2549 G)



*5. National Assembly should leave Local Govts. to complain if they feel short-changed*

The notion that allocation of funds from the Federation account in a Constitution fashioned on Federalism can be construed to confer a right on the National Assembly to ascertain whether or not a State Government has transmitted the funds sent through it to a Local Government reached the Local Government is untenable. It seems to me that the National Assembly ought to leave the Local Governments Councils, which feel, short-changed by a State Government to themselves bring an action to compel a State Government concerned to pay over to them their entitlements. There is no doubt that the intention of the National Assembly in enacting the Act is laudable and an honest attempt to ensure that funds meant for Local Government Councils reach them but I think that the Constitution as it stands enables Local Government Councils on their own to fight for their entitlements. (p. 2550 F)

*6. Important thing is for Local Govts. to get full value for allocation not necessarily cash*

Under paragraph 2 of the Fourth Schedule dealing with the Functions of a Local Government Council, a Local Government is enjoined to participate with the State Government in respect of the following matters-

“(a) the provision and maintenance of primary, adult and vocational education;

(b) the development of agriculture and natural resources other than the exploitation of minerals;

(c) the provision and maintenance of health services, and

(d) such other functions as may be conferred on a Local Government Council by the House of Assembly of the State.”

Now, is it to be supposed that in the joint performance of the above functions, it will not be necessary for a State Government to transfer funds in and out of the Joint Local Government Account in relation to a particular Local Government. It is also to be expected that because of the inability of a particular Local Government Council on its own to meet the expense involved in certain projects like building of schools and hospi-

tals, that one or more Local Government Councils may come together to syndicate funds and resources for such projects. The State Government is expected to be the arrowhead or co-ordinator of such projects which require joint funding by Local Government Councils. If a State Government Council alter, deduct or withdraw funds standing to the credit of the Local Government Councils concerned how can the State and Councils jointly or singly perform such constitutional duties? What is important, is that at the end of the day, particular Local Governments should get full value for the allocations due to them; and this can be ascertained by computing the movement of funds in either direction i.e. to the State and Local Government Councils for this to be taken into consideration in the final accounts. Thus, it is seen that Section 7(2) in fact constitutes a serious hindrance to Local Government and State Governments in the performance of their duties. (p. 2551 B)

**ONNOGHEN JSC**

*7. Political expediency ought to be sacrificed for rule of law*

I hold the view that though we may continue to say that our democracy is at its infancy, we cannot lose sight of the fact that ours is a constitutional democracy based on the rule of law. Where the rule of law reigns, political expediency ought to be sacrificed on the altar of the rule of law so as to guarantee the continued existence of democratic institutions fashioned to promote social values of liberty, orderly conduct and development, particularly in a Republic founded on the principles of federalism where power is not only apportioned between the Federal and State Government but also the Local Governments with checks and balances. Within the Federal and State Governments, power is further apportioned among the three arms of Government termed the Legislature, Executive and the Judiciary - See Sections 4, 5 and 6 of the 1999 Constitution. What is relevant to the determination of the present action is the legislative powers of the National Assembly in relation to the passing of the Act in issue. By constitutional arrangement, both the National Assembly and the State Houses of Assembly have different spheres of legislative competence, which is commonly referred to as the exclusive legislative list and the

concurrent legislative list - see parts 1 and 2 of the second schedule. There is however a third list which is not expressly mentioned in the Constitution or second schedule to the Constitution, it is the Residual list which literally means what remains after the items in the exclusive and concurrent lists are taken out. The concurrent legislative list is supposed to be the common legislative shopping centre for both the National Assembly and the State Houses of Assembly in the exercise of their legislative powers or functions. (p. 2560 A) B

**KUTIGI JSC** (Dissenting) C

*8. Judge is to interpret the law as it is - Nigerians are to decide whether they want true federalism*

I would like to point out that my duty is simply to interpret the relevant provisions of the Constitution and the laws in what in my opinion they really are, and not what they ought to be, which is the function of the legislature. D

Our country, Nigeria is no doubt a Federation. It therefore has a Federal Constitution as its supreme law. Nigeria is not the only Federation in the world. All Federations do not operate the same Constitution. They differ from country to country. That being so, Nigerians are entitled to give to themselves the type of Constitution they choose. This they have done by making and enacting the 1999 Constitution. The question therefore of whether or not any of the provisions of the 1999 Constitution or the laws made thereunder, are in tune with what some people call true or proper federalism, does not in my view arise here now. That is for Nigerians to decide, if and when, they choose to amend the Constitution. We must bear in mind that there is no perfect Constitution anywhere in the world. Each country takes its own peculiar and special circumstances and or conditions into consideration before enacting its Constitution. Nigeria cannot be different and it is not different. Reading through the Constitution, it is clear to me that the Federal or Central Government has and exercises tremendous powers over and above the other two tiers of Government. Nigerians have therefore in my view demonstrated that they preferred a strong central Government rather than E  
F  
G  
H

a weak one. It is their choice. I cannot pretend to whittle down any of those powers in the guise of a judgment. That is not my function but that of the Nigerian people. My duty as I said is simply to interpret the relevant provisions of the Constitution and the laws made thereunder.

B (p. 2577 G)

9. *Concurrent legislative list - Act of National Assembly shall prevail*

C It is therefore clear that whereas the National Assembly has exclusive legislative powers over matters in the Exclusive List, the States do not enjoy such exclusivity over matters in the concurrent legislative list. So, where the power to legislate on a subject matter is given to both National Assembly and State House of Assembly and both exercise the power, the legislation by the National Assembly shall prevail by virtue of Section D 4(5) of the Constitution where there is any inconsistency (see for example *Att. Gen of Ondo v. Att. Gen of the Federation* (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222). (p. 2579 F)

E 10. *The Constitution empowered National assembly to enact the Act*

Note carefully the phrase “on such terms and in such manner as may be prescribed” in subsections (3), (4), (5), (7) & (8) above. It seems to me that the suit will largely be determined by the interpretation of this vital F phrase.

The combined effect of Sections 7(6)(a) and 162(5) above, is that the National Assembly has the constitutional power to allocate public revenue to Local Governments in the Federation and the consequential power to prescribe the terms and manner upon which such allocations G may be made. I dare say that the only way the National Assembly may make such “terms and manner” is to enact an Act as has been done now vide the Monitoring of Revenue to Local Government Act, 2005. In the case of *Att. Gen, of Bendel State v. Att. Gen, of the Federation & Ors.* H (1983) NSCC Vol. 14, 181 at 192, it was held by this court, amongst others, that the phrase “on such terms and in such manner as may be prescribed” occurring in Section 149(4) of the 1979 Constitution, now Section 162(5) of the 1999 Constitution above, bestows on the National

Assembly extensive powers to legislate in respect of the allocation of the Federation Account to State Local Government Councils. Similar power is given to State Houses of Assembly under Section 162(8) above, as regards revenue to Local Government deriving from the State Governments. The two subsections (5) & (8) of Section 162 clearly demonstrate that the legislative competence over the terms on which such revenue are allocated and the manner of allocation are distinct and depend on whether it is from the Federation Account or from the State. A good example in the case of States is the Lagos State Joint Local Government Account Committee Law No. 3 of 2004 (Exhibit "LASG 1" in the proceedings) passed by the Lagos State Government which is a law establishing the Lagos State Joint Local Government Account Committee, providing for functions of the Committee and for connected purposes.

Accordingly, I hold that the National Assembly was competent to enact the Monitoring of Revenue Allocation to Local Government Act, 2005. (p. 2580 H)

#### *11. Clarification of purpose of the Monitoring Act*

One last point to make is whether by enacting the Monitoring of Revenue Allocation to Local Government Act, 2005, the Federal Government is thereby dictating or prescribing how, and in what way or manner Local Governments are to spend the allocations made to them. The answer in my view is clearly in the negative. There is nothing in the Act which suggests the way and manner the Local Governments should spend their allocations or any part thereof. There is no provision anywhere directing them to spend money on this item or that item or a percentage or a fraction of the allocations on any item whatever. As I have said earlier, the Act is essentially to monitor allocations to Local Governments and ensuring that such allocations are promptly paid into the State Joint Local Government Account and distributed in accordance with the laws.

It must now be clear that the Federal Government by the Act has not prescribed any way and or what manner the Local Government spend their allocations. Even the reports by the Accountant-General and the Auditor-General referred to in Sections 9 & 10 of the Act respectively,

are about payments actually made to the Local Governments and actual expenditures incurred by them. Thus, these are reports of receipts and expenditures actually made and not reports about the ways and manners and for what purposes the expenditures were incurred. The simple question therefore is - were the actual allocations received? And were they really spent? Accountability and transparency is what the Act is all about. The allocations; they must have, and spending, they must also do. The allocations must not go into private pockets or private accounts.

The only conclusion I have come to, is that the Act is valid and proper and not in any way either wholly or partially inconsistent with any provision of the Constitution of the Federal Republic of Nigeria, 1999. (p. 2582 C)

**MUSDAPHER JSC (Dissenting)**

*12. Court may suo motu end proceedings if it becomes manifestly incompetent*

In their claims, Abia State and Lagos State had made the other 35 States of the Federation as defendants along with the 1st defendant, the Federal Government of Nigeria. In the reliefs I have reproduced above, there is clearly no claim whatsoever against any of the other 35 defendants representing the States in the Federation. To invoke the original jurisdiction of the Supreme Court under Section 232(1) of the Constitution, there must be dispute involving some questions of law or fact on which the existence or extent of a legal right depends. I have carefully examined the claims of Abia and Lagos States and the reliefs they are claiming and it is manifest that there is no claim whatsoever against the other 35 defendants and accordingly the other 35 defendants were not properly sued and the suit against them is incompetent. Although some of the other 35 defendants have filed briefs and appeared at the hearing of this matter, I shall in this judgment ignore their presence and strike out their names in these proceedings. The fact that they may be interested in the result of these proceedings is of no moment. In the case of *Westminster Bank Ltd. v. Edwards* (1942) AC 529, Lord Wright pointed out:

*“Now it is clear that a court is not entitled but bound to put an*

*end to the proceedings if at any stage and by any means it becomes manifest that it is incompetent, it can do so of its own initiative even though the parties have consented to the irregularity, because as Willes J said in City of London Corporation v. Cox, in the course of giving the answers of the Judge to the House, mere acquiescence does not give B jurisdiction."*

Since there is no dispute whatever between the plaintiffs and the other 35 States in each of the cases filed by Abia and Lagos States, the Supreme Court has no jurisdiction to entertain the purported claims against other States. See Attorney-General of the Federation v. Attorney-General C of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 3 S.C. 106. I accordingly strike out the 35 States defendants in the two suits. (p. 2586 G)

D

### *13. Constitutional provisions override the principles of federalism*

In Nigeria, in order to underscore the federal nature of the country the Constitution divides the Legislative lists between the components of the Federal Structure. See Section 4(3) above. There are other provisions in E the 1999 Constitution which show the federal nature of the country. e.g. the preamble to the Constitution, Sections 2(1), 3(4) and 3(6). It is also important to bear in mind that generally the principle of federalism requires that the central and state governments shall be independent of one F another within its jurisdiction or legislative competence. None is subordinate to the other but coordinate with each other. It is therefore necessary to understand that each of the federating state government is not an appendage of the central government but an autonomous and independent G entity being able to exercise its constitutional responsibility the way it sees fit. But it is important to bear in mind always that the constitutional provisions override the principles of federalism. (p. 2592 G)

### *14. 1999 Constitution in fact deprives the state of true autonomy*

H

Professor Nwabueze in reflections on 1999 Constitution lamented the distortion of federalism. He said that the 1999 Constitution has significantly distorted the configuration of powers initially created by the 1960

and 1963 Constitutions to the detriment of the States. The true position as aptly pointed out before is that power sharing arrangement under Nigeria's federal system, assigns to the federal government powers and resources so overwhelmingly greater than those assigned to the states, thereby depriving the latter of any meaningful autonomy in relation to the federal government.

It is this apparent lopsidedness in the division of legislative powers among the three tiers of governments in Nigeria under the 1999 Constitution that has given rise to sustained agitations in recent times for an amendment to the Constitution with a view to amongst other things, widen the scope of matters in which the states and even the local government councils can exercise legislative powers in the true spirit of federalism as obtainable in other countries that operate a federal system of government. (p. 2594 F)

*15. National Assembly has power to enact the Act under the concurrent list*

I have above, in this judgment reproduced the main features of the Act and I have also reproduced the rationale and the reasons behind the enactment of the legislation. The outstanding feature of the Act is the establishment of the Joint Local Government Account Allocation Committee and the main function is to ensure that funds meant for local governments reach the local government and are not used or employed for any other purpose other than each purposes of the local government. I note that the Act does not determine how the local governments are to utilize the money. In my view, item 1 of the Concurrent Legislative List gives the power to the National Assembly to ensure "the division of Public Revenue" to the Local Government Council. The question may be asked, how else other than by this legislation could the National Assembly ensure the faithful compliance with the provisions of item 1 of the Concurrent Legislative List? (p. 2597 F)

*16. Broad interpretation of the Constitution should generally be preferred*

I do not buy the argument that there is a distinction between to "allocate"



and to “distribute” or to “divide”. It is a distinction without a difference. In any event, item 1 of the concurrent list clearly talks of “division “ of the funds between States and Local Government Councils. And as mentioned above, a close examination of Section 7 (b), Section 162(5) and Item 1 of the Concurrent Legislative List clearly empowers the National Assembly to legislate on the allocation and distribution of the amounts accruable to Local Governments in the country. Clearly, there is no specific provision in the Constitution which forbids the National Assembly from enacting the Act in question. The only argument advanced is that because we operate a federal system, the National Assembly should not legislate in a matter which under a federal system should be enacted by the States concerned. In the case of *Nafiu Rabi'u v. State* (1980) 8-11 S.C. (Reprint) 85; (1981) 2 NCLR 293, it was held that the Supreme Court in its interpretation of the constitutional provisions should always lean, where the justice of the case so demands to the broader interpretation, unless there is something in the context or in the rest of the Constitution to indicate that the narrow interpretation will best carry out the object and purpose of the Constitution. (p. 2599 G)

### **REPRESENTATION**

Chief Solo U. Akuma, Esq., (A-G); (with him, Mrs. Egoro Awa-Kalu, Mrs. C. S. Chioma (DCL), I. C. Nwachukwu (PSC), Vin O. Chukwu (SC), Chuks Udo Kalu, Esq., Ohakam D. C. (Mrs.)), for the 1st Plaintiff. Professor Fidelis Oditah, QC, SAN., (with him O. B. Utuama (Miss)), for the 2nd Plaintiff.

A. R. Ipaye, Esq., (with him, A. Haroun (SSC) and E. C. Ohakin (Mrs.)), for the 3rd Plaintiff.

Duro Adeyele, Esq., for the 1st Defendant.

Yakubu Ngbale, Esq., (with him, Samuel Yaumade, Esq.), for the 2nd Defendant.

I. E. Ukanna, Esq., (Director, Civil Litigation), for the 3rd Defendant. N. J. Ohika (Mrs.) (Solicitor-General), (with her V. O. Onwuka (Mrs.) (Principal State Counsel)), for the 4th Defendant.

5th Defendant not represented.

H. P. M. Apeli (DCL), (with him, A. P. Egbegi and T. Y. Abasi (Principal State Counsel, respectively), for the 6th Defendant.

S. D. Ato (Solicitor-General), (with him, I. M. A. Abounu (Mrs.) (Director Citizens Rights) and S. C. Egede (Asst. DCL)), for the 7th Defendant.

8th Defendant not represented.

Eyo O. Ekpo (Attorney-General), (with him, Esirah Emmanuel (State Counsel Grade II), for the 9th Defendant.

10th Defendant not represented.

Austin O. Alegeh, Esq., (with him, Atano Cyril, Esq.), for the 11th Defendant.

Chief Duro Ajayi (Attorney-General), (with him, Apostle Peter Ogunkile, Esq.), for the 12th Defendant.

13th & 14th Defendants not represented.

A. N. Eluwa (Mrs.), (Director of Civil Litigation), for the 15th Defendant.

16th - 21st Defendants not represented.

Saka A. Isau (Attorney-General), (with him, H. A. Gegele (PSC) and Abdul Lateef Jida, Esq.), for the 22nd Defendant.

I. M. J. Agum (DCL), (with him, I. I. Edo (PSC)), for the 23rd Defendant.

H. O. Afolabi, Esq., (with him, A. O. Popoola, Esq.), for the 24th Defendant.

Akin Osinbajo, Esq. (Attorney-General), (with him, O. Ogunfowora (DCL)), for the 25th Defendant.

A. O. Adebuseye, Esq., (Solicitor General), (with him, W. R. Olamide (DPP) and F. S. Akinnibosun (ACLO)), for the 26th Defendant.

Ayo Ajayi, Esq., (with him, Abidemi Oladigbolu, Esq.), for the 27th Defendant.

M. F. Lana, Esq., (Attorney-General), (with him, Akintola Ladapo (DLAS),

B. A. Aiku, Esq., and G. Ogundele (Mrs.)), for the 28th Defendant.

F. B. Lotben (Mrs.), (DCL), for the 29th Defendant.

I. R. Minakiri (Mrs.), (DCL), (with her, D. D. Ihua-Maduenyi, Esq., (SC)), for the 30th Defendant.

Suleiman Abdulkadir, Esq., (with him, Ahmed Gambo Sale, Esq., for the 31st Defendant.

32nd Defendant not represented.

Saleh Samanja, Esq., (Solicitor-General), for the 33rd Defendant.

Muktar Yushau, Esq., (Solicitor-General), (with him, Musa U. Abubakar, B Esq., (PSC), and Abdul Ahmed, Esq., (SC)), for the 34th Defendant.

### **CASES REFERRED TO**

Ilechukwu v. Iwugo (1989) 2 NWLR (Pt. 101) 99

Total (Nig.) Plc v. Efakpokire (1998) 5 NWLR (Pt. 549) 307

Ugo v. Obiekwe (1989) 2 S.C. (Pt. II) 41; (1989) 1 NWLR (pt. 99) 566

Ilodibia v. NCC Ltd. (1997) 7 NWLR (Pt. 512) 174

Udom v. E. Michellitti and Sons Ltd. (1997) 8 NWLR (Pt. 516) 187

Olaopa v. OAU Ile-Ife (1997) 7 NWLR (Pt. 512) 204

Ezeakabekwe v. Emenike (1998) 9-10 S.C. 80; (1998) 11 NWLR (Pt. 575) 529

A. G Abia State & Ors. v. A.G of the Federation (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264

### **STATUTES REFERRED TO**

Allocation of Revenue (Federation Account, etc) Act 1981, s.2

Constitution of the Federal Republic of Nigeria, 1979, s. 149

Constitution of the Federal Republic of Nigeria, 1999, ss.4,7,128,162 and 197

Monitoring of Revenue Allocation to Local Governments Act, 2005, ss.1 to 9

### **BOOK REFERRED TO**

Esebagbon Ray, The Nigerian Legislative Process; Law Links Consults (2005).

### **LEAD JUDGMENT BY TOBI JSC**

This is yet another open quarrel between the States and the Federal Government. This court is by now thoroughly familiar and used to

such quarrels, as they come before it fairly regularly in the last few years or so. The open quarrel dovetails to a subtle one between the concepts of federalism and unitarism in constitutional law and politics. Paradoxically, the two concepts do not have the slightest inkling or knowledge of the open quarrel they are roped in subtly, as they remain quiet in reference and text books. The open quarrel seems to wake them up to their apparent consternation. They seem to be used as conduit pipes in the carnage of the case of each party to a successful end. I will deal with the two concepts in this judgment, albeit briefly.

The cynosure or fulcrum of the quarrel is in respect of some sections of the Constitution of the Federal Republic of Nigeria, 1999 and some sections of the Monitoring of Revenue Allocation to Local Governments Act, 2005. It looks an apparently short Act of ten sections, but has caused much anxiety, furore and turbulence. It has caused so much ill-feeling and rancour too, particularly in the States. That has caused this large litigation involving the Federal Government and all the States.

The Attorney-General of Abia State, the 1st plaintiff, ignited the candle that raised the fire. He set the ball rolling as he initiated the first action. He was followed by his colleague of Delta State, the Attorney-General of Delta State, the 2nd plaintiff. The Attorney-General of Lagos State took the third position, not in an examination setting though. He filed the action last and so he took the rear as the 3rd plaintiff. As the reliefs sought by the plaintiffs are basically similar, this court consolidated the three suits on 20th October, 2005. This was on the application of the 2nd and 3rd plaintiffs.

Although the suits were consolidated, I should set out the reliefs of each plaintiff. The 1st plaintiff claims as follows:

*“(a) A declaration that no law made by the National Assembly can validly direct the plaintiff or any other State Government to include a Commissioner of the Revenue Mobilization Allocation and Fiscal Commission as a member of the State Joint Local Government Allocation Committee envisaged by Section 162 of the Constitution*

*(b) A declaration that no law made by the National Assembly can validly direct the plaintiff’s Joint Local Government Allocation Com-*

*mittee to render monthly returns to the Federation Account Allocation Committee or at all.*

*(c) A declaration that save and except for laws of the Federation with respect to:*

*(i) The prescription of such terms and in what manner any amount B standing to the credit of the Federation shall be distributed among the Federal and State Governments and the Local Government Councils;*

*(ii) The prescription of such terms and in what manner the amount standing to the credit of Local Government Councils in the Federation C Account shall also be allocated to the States for the benefit of their Local Government Councils;*

*(iii) The establishment of the Federal Capital Territory Joint Area Council Allocation Committee and the Federal Capital Territory D Joint Area Council Committee -*

*‘it is the House of Assembly of a State not the National Assembly which may make a law prescribing the terms and manner in which the amount standing to the credit of the Local Government Councils in a State shall be distributed.’ E*

*(d) A declaration that the provisions contained in Sections 1, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, are, from the date of commencement of the Act, inconsistent with the provisions of the Constitution of the Federal Republic of F Nigeria, 1999 and are accordingly null and void and inoperative.”*

The 2nd plaintiff claims as follows:

*“1. A declaration that Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 as they relate to the plaintiff are unconstitutional and void being inconsistent with Sections 4, 5, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999. G*

*2. An order of perpetual injunction restraining the Government of the Federation, its functionaries, agencies, whomsoever, including the Revenue Mobilization Allocation and Fiscal Commission or any of its commissioners, the Accountant-General of the Federation or his representative from enforcing or purporting to enforce by sanctions in any way H*

*or manner whatsoever directly or indirectly, the provision or any of the provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005 against the Government of Delta State, its functionaries, public officers, servants and agencies whomsoever.”*

B The 3rd plaintiff claims as follows:

“1. A declaration that the provisions of Sections 1, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, are inconsistent with the provisions of Sections 4, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria 1999 and therefore unconstitutional, null and void.

2. A declaration that the provisions of Sections 1, 2 and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, by imposing a duty and obligation on the State Government violate the principles of Federalism enshrined in the Constitution of Nigeria, 1999 and relevant case law and are therefore unconstitutional, unlawful, null and void.

3. A declaration that by virtue of the provisions of Sections 4, 7, and 162(6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is the body competent to make laws for the establishment, composition and functions of the State Joint Local Government Account Committee for Lagos State.

4. A declaration that having regard to the provisions of Sections 7 and 128 of the Constitution of Nigeria, the defendant cannot by the Monitoring of Revenue Allocation to Local Governments Act 2005 or any other Act of the National Assembly exercise oversight functions over Local Government administration in any State of the Federation.

5. An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or whomsoever from implementing or giving any effect whatsoever to the said Monitoring of Revenue Allocation to Local Governments Act, 2005.

6. An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant, by itself, agents and servants or whomsoever from acting in any manner in contravention of

*the provisions of Sections 4, 7, 128 and 162 of the Constitution of the Federal Republic of Nigeria, 1999.”*

While the 1st plaintiff seeks four reliefs, the 2nd plaintiff seeks two reliefs. The 3rd plaintiff seeks six reliefs. There is yet another aspect of the reliefs. While the 1st plaintiff’s reliefs seek to nullify Sections 1, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, the 2nd plaintiff’s reliefs seek to nullify Sections 1, 2, 3 and 7 of the Act. The 3rd plaintiff’s reliefs seek to nullify Sections 1, 2, 3, 6(1), 7 and 9 of the Act.

The Monitoring of Revenue Allocation to Local Governments Act, 2005, which is the bone of contention in this matter, was passed by the National Assembly and assented to by the President on the 12th day of April, 2005. As indicated above, the Act contains ten sections. Section 1 provides for the establishment and membership of the Joint Local Government Account Allocation Committee for each State. Section 2 provides for the functions of the Committee, Section 3 provides for rendering of monthly returns by the Committee to the Federation Account Allocation Committee. Section 4 provides for Joint Area Councils Account Allocation Committee for the Federal Capital Territory and Section 5 provides for the functions of that Committee. Section 6 provides for limitation of power of borrowing by State Governments. Section 7 prohibits State or the Federal Capital Territory to alter, deduct or re-allocate funds standing to the credit of the State Joint Local Government Account or the Federal Capital Territory Joint Area Councils Account. Section 7(3) contains penalty for contravention or breach of the provisions of Section 7(1). Section 8 enjoins the Accountant-General to report to each House of the National Assembly on a quarterly basis, the payments made to each State under the Act and stating whether or not the payments were correctly made under the Act. Section 9 enjoins the Auditor-General of the Federation to report to the National Assembly at the end of each financial year how the monies allocated to each State for the benefit of the Local Government Councils within the State and the Area Councils in the Federal Capital Territory were spent. Section 10 is the citation clause. The above in brief is the run down of the Act.

All the plaintiffs filed their briefs. So too the 1st defendant and most of the defendants. The 1st plaintiff formulated one issue for determination:

B “Whether the first defendant has the legislative competence to enact the *Monitoring of Revenue Allocation to Local Governments Act, 2005* and whether the said Act is not wholly or partially inconsistent with extant provisions of the *Constitution of the Federal Republic of Nigeria, 1999*.”

C The 2nd plaintiff formulated the following issues for determination:

D “ 1. Whether the provisions of Sections 1(1) and 7(1) of the *Monitoring of Revenue Allocation to Local Governments Act, 2005* are inconsistent with Section 162(6) and (8) of the *Constitution of the Federal Republic of Nigeria, 1999* in so far as the Act seeks to regulate the manner the amount allocated to the State for the benefit of the Local Governments in the plaintiff State is to be distributed in the light of the decision of the Supreme Court in *Attorney-General, Ogun State v. Attorney-General, Federation* (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR 232.

F 2. Whether Sections 1(2), 2 and 3 of the *Monitoring of Revenue Allocation to Local Governments Act, 2005* in so far as they seek to subject the plaintiff State to the authority of the National Assembly do not offend the spirit and letter of the *Constitution of the Federal Republic of Nigeria, 1999*.

G 3. Whether Section 7 of the *Monitoring of Revenue Allocation to Local Governments Act, 2005* which creates a federal offence and seeks to subject State functionaries to sanctions by the National Assembly in respect of domestic matters of a State over which the plaintiff State’s House of Assembly has prescriptive powers under Section 162(8) of the *Constitution of the Federal Republic of Nigeria, 1999* is not ultra H vires and unconstitutional.”

The 3rd plaintiff formulated the following issues for determination:

“1. Whether the provisions of Sections 1, 2, 3, 6(1), 7, and 9 of



the Monitoring of Revenue Allocation to Local Governments Act, 2005 are not inconsistent with the provisions of Sections 4, 7, and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void.

2. Whether or not Sections 1, 2, and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, by imposing a duty and obligation on the State Government in matters within its legislative competence are not in violation of the principles of Federalism enshrined in the Constitution of the Federal Republic of Nigeria, 1999 and relevant case law on the issue.

3. Whether by virtue of the provisions of Sections 4, 7 and 162(6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is not the body competent to make laws for the establishment and composition and functions of the State Joint Local Government Account Committee for Lagos State.

4. Whether having regard to the provisions of Sections 7 and 128 of the Constitution of the Federal Republic of Nigeria, the defendant can by the Monitoring of Revenue Allocation to Local Governments Act, 2005 or any other Act of the National Assembly exercise oversight functions over Local Government Administration in any State of the Federation.”

The 1st defendant, the Attorney-General of the Federation formulated the following issues for determination:

“ 1. *Whether the 1st defendant (representing the National Assembly in this case) has the legislative competence to enact the Monitoring of Revenue Allocation to Local Governments Act, 2005.*

2. *Whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.*”

Learned counsel for the 1st plaintiff, Chief Solo U. Akuma, submitted that the 1st defendant has not the legislative competence to enact some sections of the Monitoring of Revenue Allocation to Local Governments Act, 2005. He referred to Sections 4, 7, and 162 of the Constitution and the following cases: Attorney-General of Abia State v. Attorney-

General of the Federation (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264; Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542; Attorney-General of Ogun State v. Attorney-General of the Federation (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR (Pt. 798) 232. Referring to Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, learned counsel submitted that the provisions are unconstitutional and void, being inconsistent with Sections 4, 5, 7, 162(5), (6) and (8) of the Constitution. Counsel urged the court to apply the blue pencil rule to the Act enabling the severance of Sections 4 and 5 of the Act and the nullification of Sections 1, 2, 3 and 7 thereof.

Learned counsel pointed out that the 1st plaintiff has no complaint against the Act in so far as it seeks in Sections 4 and 5 to make provisions relating to the Federal Capital Territory only. He urged the court to grant the reliefs as in Paragraph 10 of the Statement of Claim.

Learned counsel for the 2nd plaintiff, Professor Fidelis Oditah, QC, SAN, submitted on Issue No. 1 that the provisions of Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, are inconsistent with Sections 4, 5, 7 and 162 of the Constitution in so far as the Act seeks to create offence and regulate the manner the amount allocated to the State for the benefit of the Local Governments in the 2nd plaintiff's State is to be distributed. He took each of the sections of the Act and the Constitution in some detail. He referred to Attorney-General, Ogun State v. Attorney-General of the Federation (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR (Pt. 798) 232; Attorney-General of Lagos State v. Attorney-General of the Federation (2003) 6 S.C. (Pt. I) 24; (2003) 12 NWLR (Pt. 833) 1; Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 1-2 S.C. (Reprint) 7; (1982) 1-2 S.C. 1; Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222 and MacFoy v. UAC (1961) WLR 3. Relying on Cambridge International Dictionary of English, learned Senior Advocate brought out the difference between the words, "allocate" and "distribute" as they relate to Section 162(5) and 162(8) of the Constitution, respectively.

Learned Senior Advocate submitted on Issue No. 2 that where a court grants a declaration, it will also grant an order of injunction to preserve the declaration. He referred to *Attorney-General of the Federation v. Attorney-General of Abia State* (No. 2) (2002) 4 S.C. (Pt. 1) 1; (2002) 6 NWLR (Pt. 764) 542. He urged the court to grant the reliefs B sought by the 2nd plaintiff against the 1st defendant.

Learned counsel for the 3rd plaintiff, Mr. A. R. Ipaye, submitted that Sections 1, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with the provisions C of Sections 4, 7, 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void. He also submitted that it is unconstitutional for an Act of the National Assembly to impose a duty or obligation on a State Government in matters within the legislative competence of the State Legislature. He also D took each of the sections of the Act and the Constitution in some detail. He referred to *Attorney-General of Ogun State v. Attorney-General of the Federation* (2003) 12 S.C. 1; *Attorney-General of Lagos State v. Attorney General of the Federation* (2003) 6 S.C. (Pt. 1) 61; *Bailey v. Drexel Furniture Co.* 259 US (1921) at pages 449 to 453 and 450; *Attorney-General of Ogun State v. Attorney-General of the Federation* (1982) 1-2 S.C. (Reprint) 7; (1982) 13 NSCC 1. E

Learned counsel for the 1st defendant, Mr. Duro Adeyele, submitted on Issue No. 1 that the combined effect of Sections 7(6)(a) and F 162(5) of the Constitution is that the National Assembly has the constitutional power to allocate public revenue to Local Governments in the Federation and the consequential constitutional power to prescribe the tenure and manner upon which such allocations may be made. To learned counsel, the only way the National Assembly may make such prescription is G to enact an Act like has been done *instanta*, vide the Monitoring of Revenue to Local Governments Act, 2005. He referred to *Attorney-General of Bendel State v. Attorney-General of the Federation* (1983) NSCC 181 H at 192. He submitted that the decision of this Court in *Attorney-General of Abia State v. Attorney-General of the Federation* (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264, buttressed the position he has taken. He

referred specifically to the statement of Ogundare, JSC., that “there is also power given to the National Assembly pursuant to Section 7(6)(a) to make provisions for statutory allocation of public revenue to Local Government Councils in the Federation.

B Counsel submitted on Issue No. 2 that the Monitoring of Revenue Allocation to Local Governments Act, 2005 is not inconsistent with extant provisions of the Constitution, as the Act was validly enacted. Relying on the case of Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) FWLR (Pt.111) C 1972 at page 2146, learned counsel pointed out that the Federal Government seeks to check the twin vices of corruption and abuse of power by the enactment of the Act.

D Taking the case of Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542, learned counsel contended that this court decided the case in the way it did because the National Assembly had not enacted any law relating to revenue allocation as it is empowered to do by Section E 162(2) of the Constitution. He distinguished the case of Attorney-General of Ogun State v. Attorney-General of the Federation (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR (Pt. 798) 232 from this case. He relied on Section 162(5) of the Constitution. He urged the court to dismiss the claims F of the plaintiffs in their entirety.

All the defendants who filed briefs have urged this court to grant the reliefs sought by the plaintiffs. A few of them have asked for other reliefs not contained in the actions of the plaintiffs. I do not intend to take the length and breadth of their briefs but I should give a summary of their G submissions. As parties, they are entitled to be heard and they must be heard.

H The 2nd defendant, the Attorney-General of Adamawa State, submitted that the exercise of jurisdiction over any amount standing to the credit of Local Government Councils in the State is the absolute prerogative of Adamawa State Government, as prescribed by the Adamawa State Joint Local Government Account (Distribution and Fiscal Committee) Law, 2001.

The 3rd defendant, the Attorney-General of Akwa Ibom State, examined the provisions of the Act in question and submitted that they offend the spirit and letter of principles of federalism which enable each level of Government to be supreme within its sphere of authority.

The 4th defendant, the Attorney-General of Anambra State, submitted that there is no provision in the 1999 Constitution that vests in the National Assembly power to legislate for the establishment of the State Joint Local Government Account Allocation Committee.

The 6th defendant, the Attorney-General of Bayelsa State, submitted that it was abundantly clear that Sections 1, 2 and 3 of the 2005 Act are inconsistent with Sections 4, 5, 7, and 162(6) of the Constitution as they affect the spirit and letter of the principles of federalism. He also submitted that the Act has grossly eroded the autonomy of the State House of Assembly to make laws in respect of Local Government finances.

The 9th defendant, the Attorney-General of Cross River State, submitted that there is no provision in Section 162 of the Constitution that enables the National Assembly to make laws to control and monitor the revenue accruing to the Local Governments of the various States in the Federation from the Federation Account.

The 10th defendant, The Attorney-General of Ebonyi State, submitted that the Federal Government cannot in anyway exercise supervisory authority over a State Government and that the Constitution of the Federal Republic of Nigeria, 1999 guarantees that as a Federation of States, all the States in the Federation are to an extent autonomous as it concerns the internal governance and smooth running of its affairs.

The 11th defendant, the Attorney-General of Edo State, submitted that Sections 1, 2, 3, 6(1), (7) and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with the substantive provisions of Sections 7 and 162(5), (6) and (8) of the 1999 Constitution and are therefore inoperative, null and void to the extent of their inconsistencies. He also submitted that the purport of the Monitoring of Revenue Allocation to Local Governments Act, 2005 offends the spirit of federalism as entrenched in our Constitution.

The 12th defendant, the Attorney-General of Ekiti State, submitted that Sections 1, 2, 3, 6(1), 7 and 9 of the 2005 Act which seek to impose duty and obligations on the State Government in the distribution of allocation to the Local Governments constitute an inconsistency with the provisions of the 1999 Constitution and to the extent of that inconsistency, is null and void.

The 15th defendant, the Attorney-General of Imo State, submitted that Local Government is not an item in the Exclusive Legislative List or the Concurrent Legislative List. It should ordinarily be regarded as an item in the residual list.

The 22nd defendant, the Attorney-General of Kwara State, asserted that it is only the State House of Assembly that has the necessary legislative competence on Local Government finances except as otherwise permitted by the Constitution.

The 23rd defendant, the Attorney-General of Nasarawa State, urged the court to declare that the 2005 Act in its entirety is unconstitutional, invalid, null and void, as under the 1999 Constitution, the National Assembly has no legal or constitutional power to legislate upon matters in respect of Local Government Councils.

The 24th defendant, the Attorney-General of Niger State, submitted that any exercise of legislative power by the National Assembly to legislate and vest competence in a Committee regarding the distribution of fund to Local Government is a usurpation of the powers of the State House of Assembly.

The 25th defendant, the Attorney-General of Ogun State, submitted that the 2005 Act is a trespass on the legislative powers of the States, and described the Act as a coloured legislation.

The 26th defendant, the Attorney-General of Ondo State, submitted that Local Government as an item belongs to the residual list which only the State can legislate upon.

The 27th defendant, the Attorney-General of Osun State, who dealt at some length with the blue pencil rule, submitted in addition that Sections 4, 5, 6(2), 8 and 10 of the Act should also be declared a nullity.

The 28th defendant, the Attorney-General of Oyo State, submit-

ted that the powers given to the National Assembly, vide Section 162 of the Constitution are limited.

The 30th defendant, the Attorney-General of Rivers State, submitted that having taken the position that Sections 1, 2, 3, 6, 7, and 9 of the 2005 Act are inconsistent with the constitutional provisions, the court on the authority of Sections 1(3) and 315 of the Constitution should declare the entire Act null and void.

The 31st defendant, the Attorney-General of Sokoto State, submitted that the 2005 Act is an undisguised encroachment on the constitutional powers and functions of the States with regard to the allocation of revenue to Local Government Councils in the States.

The 33rd defendant, the Attorney-General of Yobe State, submitted that the law passed by the National Assembly (the 2005 Act) completely negates the provision of Section 162(8) of the Constitution of the Federal Republic of Nigeria and therefore invalid.

Finally, the 34th defendant, the Attorney-General of Zamfara State, submitted that the National Assembly cannot make a law imposing obligation on States to create or compel the inclusion of Federal functionaries in the State bodies.

Learned counsel for the 3rd plaintiff, in his Reply Brief, submitted that Section 4(5) of the Constitution does not apply where the subject matter of the law in contention has been expressly reserved to the State Assembly either by specific provision of the Constitution or by virtue of it being a residual matter. He contended that the matter is a residual one. To learned counsel, Sections 7(6)(a) and 162(5) of the Constitution can only justify allocation and must be interpreted in the light of other provisions of the Constitution and indeed the accepted principles of federalism.

Reacting to the case of Attorney-General, Bendel State v. Attorney-General of the Federation, particularly the decision of Uwais, JSC., (as he then was) cited by learned counsel for the 1st defendant, counsel submitted that the decision does not take cognizance of the fact that under the 1999 Constitution, the obligation to maintain a State Joint Local Government Account is placed squarely in the Government of the State

by Section 162(7) of the 1999 Constitution. He argued that in the context of the constitutional provision, it would be wrong to contend that the Committee to maintain and manage the account in the State must be established by Federal law. In a Federal system, and in the absence of an express provision enabling it in that regard, the Federal Legislature undoubtedly has the power to make provisions for the allocation of revenue to all component units but it lacks the power to establish a management committee for a State or its Local Government Councils, counsel argued.

While conceding that the allocation to States and Local Government Councils of funds is done directly by the Federal Government on a monthly basis even before the release of funds, he argued that once the allocation so done and funds released, the Federal Government becomes functus officio; otherwise the National Assembly would be in a position to specify budgetary items, contracting regulations, disbursement methods, accounting processes, etc. for States and Local Government Councils which would more or less amount to take over of the administration of those tiers of government.

Taking the case of Attorney-General of Ondo State v. Attorney-General of the Federation cited by counsel for the 1st defendant, learned counsel submitted that the case cannot apply to the facts of this case. He argued that in the face of express and unambiguous constitutional provisions, there can be no room for implied legislative powers. He called in aid Section 7(1) of the Constitution. He contended that although the National Assembly could establish the ICPC to fight corruption nationwide, the same excuse must not be allowed for the Federal Government take over of the supervision of Local Government Councils and other constitutional functions of States.

On the argument of counsel for the 1st defendant in respect of a first charge, learned counsel relied on the case of Attorney-General of Lagos State v. Attorney-General of the Federation. On the issue of estoppel raised by counsel for the 1st defendant, learned counsel submitted that the defence is not available to the 1st defendant as unconstitutional legislation cannot be legitimized by collusion of legislators.

I indicated in the opening paragraph of this judgment that apart



from the open quarrel between the Federal and State Governments, there is also a subtle quarrel between the concepts of federalism and unitarism. I will deal briefly with these concepts as a necessary adjunct to the examination of the provisions of the Constitution and the Monitoring of Revenue Allocation to Local Governments Act, 2005.

**Federalism, as a legal and political concept, generally connotes an association of states; formed for certain common purposes, but the states retain a large measure of their original independence or autonomy. It is the coordinate relationship and distribution of power between the individual states and the national government, which is at the centre. Federalism, as a viable concept of organizing a pluralistic society such as Nigeria, for governance, does not encourage so much concentration of power in the centre, which is the Federal Government. In Federalism, the component States do not play the role of errand boys. The other extreme is also true and it is that they do not exercise sovereignty, which only belongs to the nation as a sovereign entity. States in a Federation rather exercise the middle role, if I may say so, for lack of better expression of exercising legislative and fiscal autonomy as provided for in the Constitution.**

**Professor Wheare, in his Book titled, Federal Government v. Oxford University Press (1963) said at page 93:**

*“The peculiar federal problem is this. The federal principle requires that the general and regional governments of a country shall be independent each of the other within its sphere, shall be not subordinate one to another but co-ordinate with each other. Now, if this principle is to operate not merely as a matter of strict law but also in practice, it follows that both general and regional government must each have under its own independent control, financial resources sufficient to perform its exclusive functions. Each must be financially co-ordinate with the other. To quote some words from The Federalist: ‘It is, therefore as necessary that the State governments should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect to the wants of*

*the union.*”

The operative and telling sentence for our purpose is “... the general and regional governments of a country shall be independent each of the other within its sphere.....” The most pungent words are “within its sphere”. Normally, a Federal Constitution, by its federal nature, cleanly and clearly arranges the functions of the Federal and State Governments so much so that it is easy to identify the sphere of each other, and here the word “sphere” generally means an area or range of activity in terms of functionality.

**Federalism in government**, Professor Nwabueze said, seeks to achieve two objectives. By taking away certain powers from the centre and localizing them in certain groups which it establishes into distinct governmental units existing independently of the centre and of each other; it greatly reduces the power of the majority at the centre and thus minimizes the danger of its domination of the other groups; at the same time it enables each group to develop at its own speed and along its own characteristic lines within the **unity of the whole**. See Constitutional Law of the Nigerian Republic, Butterworths (1964) at pages 148 to 149.

This court has construed federalism and the federal structure in the Constitution of the Federal Republic of Nigeria, 1999. In Attorney-General of Lagos State v. Attorney-General of the Federation, this court held that by the doctrine of federalism which has been adopted by virtue of Section 2(2) of the 1999 Constitution, the autonomy of each government, which presupposes its separate existence and its independence from the Federal Government, is essential to federal arrangement. Therefore, each government exists not as an appendage of another government but as an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs, free from direction by another government.

In Chief Olafisoye v. Federal Republic of Nigeria (2004) 4 NWLR (Pt. 864) 580, this court also held that the concept of State autonomy must be examined in the context of the Constitution of the Federal Republic of Nigeria, 1999. This is because it will not be a useful exercise to

take the concept outside the constitutional arrangement and therefore in a vacuum or in vacuo.

**Unitarism, on the other hand, is a constitutional arrangement where the Constitution concentrates at the central or national level, a very strong central command, making the regional or groups parasitic on the centre, in the sense that they do not enjoy any autonomy. It is an arrangement in which there exists a strong central government and weak regional governments. In some aspects, it is an arrangement where two or more areas or groups have joined together with a common aim, objective and purpose, controlled essentially by a single government, so to say. Unlike federalism, unitarism has not that clear bifurcation of legislative functions in terms of the central and regional Governments. Britain is an example of unitarism. As a matter of fact, it is one of the oldest, if not the oldest unitary Government in the world.**

Nigeria, as a Federation, operates federalism. This is made possible by the Federal Constitutions enacted in the past, culminating in the current Constitution of the Federal Republic of Nigeria. Chapter 1, Part 1, clearly describes Nigeria as a Federal Republic. The Part contains three strongly worded sections.

In the true culture and tenet of federalism, the Constitution of the Federal Republic of Nigeria, 1999, makes a clear distinction between legislative powers of the National Assembly and House of Assembly of a State. Section 4 is the source of the legislative powers of the Legislatures. While Section 4(1) to (4) provides for the legislative powers of the National Assembly, Section 4(6) and (7) provides for the legislative powers of the House of Assembly of a State. Section 4(5) provides for the common law doctrine of covering the field.

**Let me first take briefly the legislative powers of the National Assembly. By Section 4(1), the legislative powers of the Federal Republic of Nigeria are vested in the Senate and the House of Representatives which are duly provided for in Sections 47 to 49 of the Constitution.**

**The main enabling provision of law making of the National**

Assembly is in Section 4(2). It reads:

*“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.”*

By the provision, the law making power of the National Assembly is not restricted to the Federal Government, but extends to any part of the Federation if the matter is in the Exclusive Legislative List. The second arm of Section 4(2), like the first arm, is not open ended. It is restricted to matters included in the Exclusive Legislative List, set out in Part I of the Second Schedule to the Constitution. In other words, and putting it in a positive language, the National Assembly is vested with legislative powers across the country if the subject matter is an item contained in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. Putting it in a negative language, the National Assembly cannot exercise legislative powers in matters not included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution.

In addition to the provision of Section 4(2), Section 4(4) vests in the National Assembly the power to make laws with respect to the following matters:

*“(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.”*

Unlike the constitutional arrangement in the 1963 Constitution, the Concurrent Legislative List is no longer a free shopping centre for both the Federal and State Governments. On the contrary, the Concurrent Legislative List clearly sets out those items that the National Assembly can freely legislate. So too, the House of Assembly of a State as it relates to Section 4(7)(b) of the Constitution. Section 4(4)(b) is an omnibus and generic provision antici-

**pating what is not covered by Section 4(2), and 4(4)(a) of the Constitution.**

I skipped Section 4(3). It is intentional. I wanted to first deal with the legislative powers of the National of Assembly before I move to Section 4(3) which looks double-barreled in the sense that it deals with both the National Assembly and House of Assembly of a State. By the subsection, 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 the Constitution, be to the exclusion of the Houses of Assembly of States. Section 4(3) is consistent with Section 4(2). It also vindicates Section 4(7) of the Constitution; a subsection I will take anon. The above, in summary, are the legislative powers of the National Assembly.

I go to the legislative powers of the House of Assembly of a State. The main enabling provision, which is the counterpart of Section 4(2), is Section 4(6) of the Constitution. It reads:

*“The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.”*

As it is, Section 4(6) is more precise than Section 4(2). But Section 4(7) provides for similar situation in respect of law making power in the State or any other part, as the subsection relates vaguely to Section 4(2).

I do not think I have made myself clear. Perhaps the point I am struggling to make will become clear after taking the subsection. Subsection 7 reads:

*“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 regard 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.”*

As it is, the legislative powers of the National Assembly under Section 4(2) extend to the Federation or any part thereof, which include the States. Section 4(7) extends to the States and any part thereof, which includes the Local Governments. I think I have made myself clear.

While the House of Assembly of a State is prohibited from exercising legislative functions on matters in the Exclusive Legislative List, the House can exercise legislative powers on matters contained in Section 4(7) of the Constitution. This is in respect of matters not included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution and any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto. See Section 4(7)(a) and (b). Section 4(7)(c) is the House of Assembly of a State counterpart of Section 4(4)(b) of the National Assembly.

Again, I skipped Section 4(5) of the Constitution. Again, it is intentional. The subsection provides as follows:

*“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 the other Law shall to the extent of the inconsistency be void.”*

As I indicated earlier, this subsection provides for the common law doctrine of covering the field. It vindicates the true practice of federalism. The operative valid expressions in the subsection are “any law validly made by the National Assembly”, and a law can only be validly made by the National Assembly if it is made within the provisions of Section 4 of the Constitution.

There are two Legislative Lists in the 1999 Constitution. These are the Exclusive Legislative List and the Concurrent Legislative List. The Exclusive Legislative List in Part I, Schedule 2 to the Constitution contains 68 items. By Section 4(2), only the National Assembly can exercise legislative powers on the 68 items. That is not all.

**The Concurrent Legislative List contains 30 items. As I indicated earlier, the Concurrent Legislative List is not a free shop-**

ping centre for both the National Assembly and the House of Assembly of a State. The 1979 Constitution dislocated the arrangement in the 1960 and 1963 Constitutions where both the National Legislature and the State Legislatures freely legislated subject only to the check by the doctrine of covering the field. In the 1979 Constitution which is now in the 1999 Constitution, the legislative powers of the National Assembly and the House of Assembly of a State are clearly set out. One may ask, with this arrangement, where lies the meaning of concurrent? I need not answer the question because an answer is not necessary as the Constitution says so and let it be so.

Although the Exclusive Legislative List does not contain the division or allocation of public revenue to Local Government Councils, the Concurrent Legislative List in Item 1(a) contains division of public revenue to Local Government Councils. The Item reads:

*“Subject to the provisions of this Constitution, the National Assembly may by an Act make provisions for:*

*(a) the division of public revenue:*

*(i) between the Federation and the States;*

*(ii) among the States of the Federation;*

*(iii) between the States and local government councils;*

*(iv) among the local government councils in the States.”*

I will examine in this judgment whether Item 1 (a)(iv) vests legislative powers on the National Assembly to enact or in enacting the Monitoring of Revenue Allocation to Local Governments Act, 2005.

I should now take Section 7 of the Constitution, the Section I regard as mothering the system of Local Government in Nigeria. Although Section 7(1) of the Constitution guarantees the system of Local Government in Nigeria, I shall not examine it but rather I should take Section 7(6), which is relevant for my purpose. The subsection provides as follows:

*“Subject to the provisions of this Constitution:*

*(a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federa-*

tion; 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.”

B While Section 7(6)(a) anticipates allocation of public revenue to the Local Government Councils within the provision of Section 3(6) and the Local Government Councils enumerated in Part I, First Schedule to the Constitution, Section 7(6)(b) enjoins or empowers the House of Assembly of a State to make such allocation to the Councils within the C State.

**This Court interpreted the provisions of Sections 7(1) and 197 and Item 22 of the Second Schedule to the Constitution in Attorney-General of Abia State v. Attorney-General of the Federation. Ogundare, JSC., in his judgment said at page 422:**

***“In my respectful view, by the combined effect of Sections 7(1) and 197 and Item 22 of the Second Schedule Part I, the Constitution intends that everything relating to local government be in the province E of the State Government rather than in that of the Government of the Federation. The minor exception to this scheme is to be found in Item 11 of the Concurrent Legislative List where power is given to the National Assembly with respect to the registration of voters and the procedure regulating elections to local government council. There is also F power given to the National Assembly, pursuant to Section 7(6)(a) to make provisions for statutory allocation of public revenue to local government councils in the Federation. Other than these, I can find no provision in the Constitution empowering the National Assembly to G make laws affecting local government.”***

I move to Section 162 of the Constitution. The relevant subsections are (3), (5), (6), (7) and (8). They read:

***“(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.***

***(5) The amount standing to the credit of local government coun-***



*cils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.*

*(6) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.*

*(7) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.*

*(8) The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.”*

**By Section 162(3), the National Assembly is empowered to distribute among the federal and State Governments and the Local Government councils in each State, any amount standing to the credit of the Federation Account on such terms and in such manner as the Legislature may prescribe. By Section 162(5), the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly. As a law making body, the National Assembly will be able to carry out the powers conferred on it in Section 162(5) by enactment of an Act.**

**Section 162(6) enjoins each State to maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State. The subsection is designed to enforce the provision of Section 162(3). That apart, the second leg of the subsection enjoins the State to also pay into the “State Joint Local Government Account”, contribution for Local Government Councils from the Government of the State. In other words, the State Joint Local**

**Government Account will be made up of allocations from the Federation Account and from the Government of the State.**

**By Section 162(7), the National Assembly is empowered to prescribe how each State shall pay Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as it deems fit. By Section 162(8), the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.**

**While the Legislature involved in Section 162(3), (5) and (7) is the National Assembly, that involved in Section 162(8) is the House of Assembly of the State. Section 162(6) does not provide for the Legislature.**

**There is a difference between Section 162(5) and Section 162(8). While Section 162(5) talks about allocation, Section 162(8) talks about distribution. Accordingly, the point should be made that the only constitutional function of the National Assembly under Section 162(5) is to allocate to the States the amount standing to the credit of Local Government Councils. It is the constitutional function of the House of Assembly of the state to distribute the amount. Putting it in clear and precise language, Section 162(5) stops at allocation, and Section 162(8) picks up from Section 162(5) to distribute the money.**

**A community reading of the provisions of Section 7(6)(a) and Section 162(5) and (7) of the Constitution, brings out some fiscal affinity or relationship between the two sections. So too Sections 7(6)(b) and Section 162(8). In Section 7(6)(a) and Section 162(3), (5) and (7), power is vested in the National Assembly; in Section 7(6)(b) and Section 162(8), power is vested in the House of Assembly of the State. This dichotomy is important for the determination of the live issues in this case. In Attorney-General of Ogun State v. Attorney-General of the Federation, this court interpreted Section 162(5) and (8) of the Constitution in the context of Section 3 of the Allocation of Revenue (Federation Account) Act,**

Cap. 16, Laws of the Federation of Nigeria, 1990. I will return to the case later.

The above examination of the relevant provisions of the Constitution has provided the congenial atmosphere to examine the relevant provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005. In sum, the plaintiffs' complaints centre on Sections 1, 2, 3, 6(1), 7 and 9. I will take the sections seriatim in the light of the Constitution.

Section 1 of the Act provides as follows:

*"1. (1) Each State of the Federation shall establish a body to be known as the State Joint Local Government Allocation Committee (hereinafter referred to as "the Committee")."*

*(2) The Committee shall include the following members:*

*(a) The Commissioner or any other officer charged with the responsibility for Local Government in the State who shall be the Chairman;*

*(b) a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission provided that the Commissioner shall not serve in his own State.*

*(c) all the Chairmen of the Local Government Councils in the State;*

*(d) the Accountant-General of the State;*

*(e) a representative of the Accountant-General of the Federation; and*

*(f) a representative of the State Revenue Board."*

The submission here is in two parts. The first is a general one and the second, a more specific one. The general one is that the National Assembly lacks the legislative competence to enact an Act establishing the State Joint Local Government Account Allocation Committee. The more specific one is the membership of federal bodies in the Committee, particularly, a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission.

**As it is, Section 1(1) of the Act establishes the State Joint Local Government Account Allocation Committee to perform the**

**functions vested in it in Section 1(2) thereof. Does the Constitution vest power in the National Assembly to establish such Committee? If so, where is the enabling constitutional provision? If not so, can the National Assembly ignore the Constitution and enact an Act in complete disobedience of the Constitution which gave birth to that legislative body?**

**I should go to the Constitution for answers to the questions I have posed above.** Section 162(6) is relevant here and I produce the ipsissima verba, even at the expense of prolixity:

*“Each State shall maintain a special Account to be called ‘State Joint Local Government Account’ into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.”*

**By Section 162(6), it is the function and responsibility of the Government of a State to maintain a special account in the name and style of “State Joint Local Government Account”. A State can decide to do so by the establishment of a Committee or by any other means. I see from the briefs that a few States have established Committees for the purposes of maintenance of the special account. And that is in order.**

**I do not see anywhere in Section 162, or more specifically, Section 162(6), and finally more generally, any constitutional provision vesting in the National Assembly the legislative power to establish the State Joint Local Government Account Allocation Committee in Section 1(1) of the Act. I can still go further. The word “State” as used in Section 1(1) is not the same or co-terminus with the meaning of the word in international law, as a sovereign nation, which in that context, is Nigeria. On the contrary, the word means what it says in the context, and it is a State in the Nigerian Federation. It conveys the meaning provided for in Section 3 and Part 1, First Schedule to the Constitution. And bearing that meaning, the establishment of the Committee is clearly a forbidden area on the part of the National Assembly. If no section specifically spelt out the exclusive legislative power of the House of Assembly of a State, the second word in Section 162(6) should leave**

nobody or person or organization in doubt as to the exclusive legislative function of the House of Assembly of a State. And the second word is "State". The word is unambiguous and I have no other way of interpreting it than what I have done above. I think I am correct.

**The Committee anticipated in Section 162(6) can be established by the House of Assembly of a State pursuant to Sections 4(7)(c), 7 and 162(8) of the Constitution. I need not reproduce the provisions since I have done so above. Can the National Assembly foist on the State House of Assembly, a state of legislative helplessness by running down on the legislative domain or terrain of the State Legislatures? The answer is a big and clear, No. That conduct is clearly against the federal arrangement in the Constitution. It has traits of unitarism.**

Learned counsel for the 1st defendant cited the case of Attorney-General of Bendel State v. Attorney-General of the Federation in support of his case. He relied specifically on the following statement of Uwais, JSC., (as he then was) at page 192:

*"As already shown in the phrase 'on such terms and in such manner as may be prescribed', which is found under Section 149 subsection (4) of the Constitution, bestows on the National Assembly extensive powers to legislate in respect of the allocation of the Federation Account to State Local Government Councils. Similar power is also given to the National Assembly under Section 149 subsection (6) of the Constitution and Item A Paragraph 1(a)(iv) of the Concurrent Legislative List to legislate with regard to the payment or distribution and division of the amount so allocated. Therefore, when the National Assembly enacted Section 6 subsection (1) of the Act, No. 1 of 1982 which created the State Joint Local Government Account Allocation Committee, it must have done so in the exercise of either one or all these enabling powers."*

It is elementary law that a case is decided on the facts before the court. It is now an axiom or an aphorism to say that facts are the foundation head of the law. Decisions of cases are related to facts and they should be construed in their factual milieu.

The facts of Attorney-General of Bendel State v. Attorney-Gen-

eral of the Federation are not similar, to say the least, to those of this case. To put it in a stronger language, the facts are in some ambitious difference. In that case, the National Assembly acting under Section 149(1) of the 1979 Constitution enacted the Allocation of Revenue (Federation Account, etc.) Act No. 1 of 1982, the purpose of which was to prescribe a basis for distribution of revenue accruing to the Federation Account between the Federal, State, and Local Governments; and a formula for the distribution among the States inter se; the proportion of the total revenue of each State to be contributed to the State Joint Local Government Account, etc.

Section 2(1) of the Act No. 1, 1982 provided for the fund to be administered by the Federal Government for the amelioration of the ecological problems in any part of Nigeria. Section 2(2) provided for “a fund to be administered by the Federal Government for the development of mineral producing areas in Nigeria”, and Section 6(1) provided for the establishment of a Joint Government Account Allocation Committee for each State.

The plaintiffs commenced the action seeking a declaration that Section 2(1) of the Act, in so far as it provides for a fund to be administered by the Federal Government for the amelioration of ecological problems was unconstitutional; that it was unconstitutional also for the Act to make provision for a fund to be administered by the Federal Government for the development of mineral producing areas. It also sought a declaration that in so far as Section 6(1) of Act No. 1 of 1982 provides for the establishment of a Joint Local Government Account Allocation Committee for each State, it was also unconstitutional and void.

With the greatest respect to learned counsel for the 1st defendant, the case is inapposite or not relevant to this case because of the following two reasons: (1) the facts are quite different. (2) While Attorney-General of Bendel State has to do with the interpretation of the Allocation of Revenue (Federation Account, etc.) Act, 1982, now Cap. 16 of the Laws of the Federation, 1990, this case has to do with the interpretation of the Monitoring of Revenue Allocation to Local Governments Act, 2005. And more importantly, the provisions of the two Acts are different.

Let me pause here and take the functions of the two Committees to drive the point I am making home. I hope I know where that home is. Section 5(3) of the Allocation of Revenue (Federation Account etc.) Act provides for the following functions of the Committee:

*“(a) To ensure that allocations made to the States from the Federation Account are promptly and fully paid into the Treasury of each State on the basis and terms prescribed by this Act; and*

*(b) to report annually to the National Assembly in respect of the function specified in the above paragraph.”*

On the other hand, Section 2, goes a step further than Section 5(3) of Cap. 16. While Section 5(3) of Cap. 16 provides for two functions. Section 2 of the 2005 Act provides for three functions, one of which is the ambitious one of monitoring. The word “monitoring” conveys some element of policing the State Governments. The word means to watch, to check. In terms of showing the strength of the Federal Government, it is a very arrogant word that spells some doom in a federal structure.

The composition of the two Committees is also different. While Section 6(1) of Cap. 16 mainly restricts the membership to the State, (excepting two representatives of the Accountant-General of the Federation), Section 1(2) of the 2005 Act includes a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission, a federal officer. In view of the fact that the 1979 Constitution did not provide for the Revenue Mobilization, Allocation and Fiscal Commission, Section 5(1) of Cap. 16 could not have provided for the Section 1 (2)(b) membership in the 2005 Act. In other words, this court was asked to interpret Cap. 16 of the Laws of the Federation, 1990 and not the 2005 Act; Acts which are differently worded.

The above apart, of the three reliefs sought by the plaintiffs, in the case, this court refused to grant claim 2. It granted claims 1 and 3. Let me read the reliefs sought to enable me make a point:

*“1. A declaration that subsections (1) and (2) of Section 2 of the Allocation of Revenue (Federation Account, etc.) Act, 1981 is unconstitutional and void in so far as each of the said subsections makes*

*provision for a fund to be administered by the Federal Government.*

2. *A declaration that subsection (1) of Section 6 of the aforesaid Act is unconstitutional and void in so far as it enacts the establishment of a body to be known as the Joint Local Government Account Allocation Committee.*

3. *A declaration that the Government of Bendel State is entitled to have from time to time, a true and correct statement of all moneys paid by the Federal Government into the Federation Account kept pursuant to Section 149 of the Constitution.”*

I must say here that by granting claims 1 and 3, this court vindicated the concept of federalism, and in particular, the federal arrangement in the 1979 Constitution. Idigbe, JSC, made the point in his contribution at page 205:

“The problem arising from the above submission is one which is unknown in jurisdictions with a unitary form of government and a supreme legislature. It arises only in a Federal Government such as ours, when powers, legislative and executive powers within the Federation are shared principally among two tiers of government, the National or Federal Government and the State Governments within the Federation. In a Federal set up, it is necessary that each of the two tiers of government is reasonably autonomous i.e. each has separate existence from and remains independent of control by the other...”

I am tempted to speculate (though courts are forbidden from speculation) that the concept of federalism and the federal arrangement in the 1979 Constitution informed this court to grant claims 1 and 3. That decision, in my humble view, should not be a darling of the 1st defendant, but rather a darling of the plaintiffs and the defendants who filed briefs. As I have been able to explain the differences in the two cases, I should not take Attorney-General Bendel State any further, hoping that I have made the point. It is my view that the case is not helpful to the 1st defendant. Considering the fact that counsel heavily relied on the case, particularly the pronouncement of Uwais, JSC., (as he then was), I want to believe that his case on Section 1(1) is crumbling if it has not totally crumbled.



The more appropriate case is Attorney-General of Ogun State v. Attorney-General of the Federation, a case which, like this case, interpreted Section 162 of the 1999 Constitution vis-à-vis Section 3 of the Allocation of Revenue (Federation Account, etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990. This court held that Section 6(1) of the Act which provides for the establishment of a Joint Local Government Account Allocation Committee for each State is inconsistent with Section 162(8) of the Constitution in so far as it seeks to regulate the manner the amount allocated to the State for the benefit of the Local Governments in that State is to be distributed.

And that takes me to the membership of the Committee. Section 1 (2) provides for the membership of the Committee. The plaintiffs attack the membership of federal bodies, particularly, a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission. Their bone of contention is the membership of federal officers in a State Committee. Of the six members, two are federal officers. They are a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission and a representative of the Accountant General of the Federation.

**I have carefully examined the provisions of Paragraph 32 of Part I of the Third Schedule to the Constitution as well as Section 2 of the 2005 Act. The result of my examination is that the functions contained in the above provisions are not exactly the same, and I do not expect them to be exactly the same. But my worry here is the membership of the two federal officers.**

**The first problem I have is in respect of the membership of the Commissioner of Revenue Mobilization, Allocation and Fiscal Commission. And the problem relates to the two sets of functions he is made to perform, the constitutional functions in Paragraph 32, Part 1 of the Third Schedule to the Constitution and Section 2 of the 2005 Act. And this gives rise to a legal problem and it is this: can a person, body or organization named in the Constitution to exercise specific constitutional functions, be made to perform other functions in a statute, particularly when the statutory functions are not borne out from the constitutional functions? This is my**

**worry. It is also my problem.**

It is possible to argue that Paragraph 31 does not specifically mention a Commissioner as provided in Section 1(2)(b) of the 2005 Act. This argument will have no strength when taken along with the provision  
B of Paragraph 32 thereof. By a community reading of Paragraph 31 (b) of Part I of the Third Schedule to the Constitution and Section 1(2) of the 2005 Act, the Commissioner provided for in Section 2 fits into Section 31(b). In my view, it cannot be otherwise. If I am right and I think I am,  
C then the Commissioner is made to perform constitutional and statutory functions as contained in Paragraph 32 of Part I of the Third Schedule to the Constitution and Section 1(2) of the 2005 Act respectively.

Let me read the functions vested in the Commission qua Commissioner by the Constitution. Paragraph 32 of Part I of the Third Schedule to the Constitution provides:  
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*“The Commission shall have power to -*

*(a) monitor the accruals to and disbursement of revenue from the Federation Account;*

*(b) review, from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities,*

*Provided that any revenue formula which has been accepted by an Act of the National Assembly shall remain in force for a period of not less than five years from the date of commencement of the Act;*  
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*(c) advise the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased;*

*(d) determine the remuneration appropriate for political office holders, including the President, Vice President, Governors, Deputy Governors, Ministers, Commissioners, Special Advisers, legislators and the holders of the offices mentioned in Sections 84 and 124 of this Constitution; and*  
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*(c) discharge such other functions as are conferred on the Commission by this Constitution or any Act of the National Assembly.”*  
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I should now read the functions vested in the same Commissioner in the Committee under Section 2 of the Monitoring of Revenue Allocation to Local Governments Act, 2005:

*“2. The functions of the Committee shall be to:*

*(a) ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the State concerned are promptly paid into the State Joint Local Government Account;*

*(b) ensure that the funds paid into the State Joint Local Government Account under paragraph (a) of this section are distributed to the Local Government Councils in accordance with the provisions of the Constitution of the Federal Republic of Nigeria 1999 and any law made in that behalf by the House of Assembly of the State; and*

*(c) monitor the payment and distribution of the funds mentioned in Paragraphs (a) and (b) of this section so as to ascertain the actual amount paid to each local Government.”*

I do not think I should bother myself to fish out the differences. The laws speak for themselves. A bird's eye view of the two laws clearly shows that the functions are not exactly the same. And here, the earlier question I asked becomes relevant. Without repeating the question, I should answer it by saying that **a person, body or organization named in the Constitution and functions spell out therein, cannot in law perform any other statutory functions which are not borne out from the Constitution, particularly when the statutory function deviates or subtracts from the constitutional function. This is the essence of Section 1 of the Constitution.**

**I do not agree that the functions contained in Section 2 of the 2005 Act are advisory in nature to bring them within Paragraph 32(c) thereof. A possible argument is that the omnibus provision of Paragraph 32(c) can justify Section 2 of the Act. An omnibus provision in a Statute is never at large but is regimented by many other parameters. This is aimed at curbing a likely abuse of omnibus clauses in statutes. Certainly, a statute enacted by a Legislature outside it's laid down legislative functions, cannot be heard to rely on omnibus clause for the enactment of the statute.**

**Where a constitutional or statutory provision such as Paragraph 32 Part I, Third Schedule to the Constitution on Revenue Mobilization, Allocation and Fiscal Commission, anticipates a fu-**

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turistic act or in futurity, in relation to a constitutional or statutory body, such act must be construed or interpreted within the anticipated confinements or limits of the preceding specifically named or mentioned act. It will be against all known canons of constitutional or statutory interpretation to construe or interpret such omnibus and nebulous provision at large to the extent that it can assimilate or accommodate all forms and types of acts whether they are connected, related or traceable to the original matter. In my view, that will be giving too much strength to omnibus clauses in the Constitution. That day should not come. And so Paragraph 32(e) is not authority for Section 1(2)(b) of the Act.

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**I move from the Commissioner to the representative of the Accountant General of the Federation. The Constitution does not provide for the office of the Accountant-General of the Federation and so I do not have the same constitutional yardstick to measure the constitutionality of the membership. But I am not totally helpless or hopeless. I know as a matter of fact that the Accountant-General takes charge of or watches Federal Government finances anywhere in the country. The moment a State maintains a special account in the name and style of “State Joint Local Government Account”, it ceases to be Federal Government finance and the Accountant-General, in my humble view, cannot police the funds. In other words, the Accountant General has no constitutional power to sit in judgment over the Section 162(6) Account.**

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And so I ask: what are the Commissioner and the representative of the Accountant-General of the Federation doing in an exclusively State affair? What roles or functions are they expected to play? If they play the roles or functions provided in Section 2, are such roles and functions consistent with federalism? If they are not, then can one say they are donated by the Constitution of the Federal Republic of Nigeria, 1999? If they are not donated by the Constitution, can they constitutionally exercise such roles or functions? I still have two more questions but I think I can save my breath, hoping that I have made the point. The oddity of the membership of federal officers, particularly the Commissioner of the

Revenue Mobilization, Allocation and Fiscal Commission becomes clear when it is taken in the light of Paragraph 32, Part I of the Third Schedule to the Constitution, a provision I have already taken.

In my humble view, the two federal officers mentioned in Section 1(2)(b) and (e) are mere busybodies who have no constitutional function to exercise. As busybodies, they should find their way out of the Committee. As busybodies, I will order them to get out of the Committee and I so order them. They have no constitutional function in an exclusively State affair. That is antitheses to federalism and in our federal arrangement, Section 162(8) of the Constitution is the answer.

Above all, the language of Section 1(1) of the Act is clear and it is that “Each State of the Federation shall establish a body to be known as the State Joint Local Government Allocation Committee”. By the subsection, States of the Federation are the only components of the Federation to establish the Committee and not the National Assembly. In my view, the body that is vested with statutory responsibility to establish a Committee will invariably have the right to provide for the composition and functions of the Committee. Unfortunately, this is not the position, vide Sections 1 and 2 of the Act. It is unfortunate, to say the least, that the National Assembly took over the legislative business of the State, despite the very clear language it used in Section 1(1). It should not be so, or better, it cannot be so.

That takes me to Section 2 of the Act. It provides as follows:

*“The functions of the Committee shall be to:*

*(a) ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the State concerned are promptly paid into the State Joint Local Government Account;*

*(b) ensure that the funds paid into the State Joint Local Government Account under Paragraph (a) of this section are distributed to the Local Government Councils in accordance with the provisions of the Constitution of the federal Republic of Nigeria 1999 and any law made in that behalf by the House of Assembly of the State; and*

*(c) monitor the payment and distribution of the funds mentioned in Paragraphs (a) and (b) of this section so as to ascertain the actual*

*amount paid to each Local Government.”*

**So much** of my arguments above on Section 1 of the Act apply *mutatis mutandis* to Section 2. The moment the amount standing to the credit of Local Government Councils in the Federation Account is allocated to the States in accordance with Section 162(5) of the Constitution, the business of the State in terms of fiscal policy starts under Section 162(8) of the Constitution. Accordingly, the National Assembly has not the legislative power to ensure that the funds paid into the State Joint Local Government Account are distributed to the Local Government Councils. In my view, the National Assembly has not the legislative competence to legislate on the nicety or nitty-gritty of the allocation. To that extent, the words “distributed” in Section 2(b) and “monitor” and “distribution” in Section 2(c) offend the provision of Section 162(8) of the Constitution. In other words, the expressions I have put in inverted comas offend the federal arrangement in the Constitution and the federal principle.

**Section 3** of the Act is in the following terms:

*“(1) The Committee shall render monthly returns to the Federation Account Allocation Committee through the member representing Revenue Mobilization, Allocation and Fiscal Commission.*

*(2) The Federation Account Allocation Committee shall scrutinize the returns to it by the Committee and make quarterly returns through the Accountant-General of the Federation to each House of the National Assembly.”*

Once again, the federal arrangement in the Constitution is breached by Section 3. It is realized that the Federation Account Allocation Committee is a federal body. In the circumstance, the rendition of monthly returns to a federal body in a matter which is within the exclusive domain of the State, vide Section 162(8), is against the federal structure in the Constitution. And what is more, Section 162 of the Constitution, other wise known as the fiscal provision in the Constitution, does not provide or order such rendition. And again, what is more, the Federation Account Allocation

Committee is not known in the Constitution and therefore cannot play any constitutional or statutory role in the face of the clear provisions of Section 162 of the Constitution.

Section 6 of the Act deals with the power of State Governments to borrow money. The complaint is on Section 6(1). It provides:

*“The power of State Governments for borrowing money shall not extend to the money, funds or revenue allocated to Local Government Councils from the Federation Account and from the State concerned.”*

The 1st and 3rd plaintiffs raised Section 6(1). The 2nd plaintiff did not. The 1st plaintiff merely raised it but did not offer any argument. The 3rd plaintiff argued that although Item 7 of the Exclusive Legislative List empowers the National Assembly to make laws providing for the borrowing powers of the State, it is wrong for the National Assembly to control and supervise monies already allocated to the Councils.

With respect, I am not with him on Section 6(1) of the Act. **The Exclusive Legislative List in Item 7 provides as follows:**

*“Borrowing of moneys within or outside Nigeria for the purposes of the Federation or of any State.”*

Item 7 covers borrowing within and outside Nigeria. Section 6(1) of the Act prohibits borrowing from within Nigeria. As Section 4(2) empowers the National Assembly to make laws with respect to any matter included in the Exclusive Legislative List, it is my view that the provision of the subsection is intra vires the National Assembly. When a Legislature enacts law in accordance with the Constitution, this court and courts below it have not the jurisdiction to question the vires of the law on grounds of non-desirability or morality or for any plausible reason at all because the primary duty of a Legislature is to make laws, and courts of law cannot remove the constitutional powers, unless the law passed is ultra vires the Constitution.

I move to Section 7 of the Act. I read it:

“(1) It shall be unlawful for any organ, authority or official of a

State or the Federal Capital Territory, however described or constituted, to alter, deduct or reallocate funds standing to the credit of the State Joint Local Government Account, or the Federal Capital Territory Joint Area Councils Account.

B Provided always that nothing in this subsection shall prevent the House of Assembly of a State, or the National Assembly, from prescribing by law, the terms and manner for distributing money standing to the credit of any of the Joint Accounts, as the case may be, to the Local Government Councils in the State, or the Area Councils in the Federal  
C Capital Territory.

(2) In the case of any default in the allocation or distribution to any local government, such amount shall be a first charge on the State's next allocation from the Federation Account and shall be credited to the  
D affected local government.

(3) Any person who acts in contravention of the provisions of subsection (1) of this section, commits an offence and is liable on conviction to a fine twice the amount altered, deducted or re-allocated illegally, or imprisonment for a term of five years, or to both such fine and imprisonment."

This is a very ambitious section. It does not hide its ambition to 'kill'. It contains two sets of punishment: first charge on the State's next allocation from the Federation Account and monetary fine or five years  
F imprisonment in the alternative or both.

I will take the subsections in turn. **The ambition of Section 7(1) is to police the distribution of Local Government Council funds.** While I see clear good intentions in the subsection, good intentions  
G can only be valid if they tally with the Constitution. And I do not think Section 7(1) can get on or go along with the Constitution. Section 7(6)(b) vests in the House of Assembly of a State, the power to make provisions for statutory allocation of public revenue to  
H Local Councils within the State. That apart, Section 162(8) of the Constitution vests in the House of Assembly of a State, the power to distribute amount standing to the credit of Local Government Councils of a State on such terms and in such manner as it thinks



**proper. None of these two provisions or any other provision in the Constitution support Section 7(1) of the Act.**

I come to the proviso. The proviso seems to give concurrent powers to the National Assembly and the House of Assembly of a State. This is clearly borne out from the opening sentence: “*Provided always that nothing in this subsection shall prevent the House of Assembly of a State or the National Assembly from prescribing...*” What a proviso! How can such a proviso find its way in the 2005 Act in a country operating a Federal Constitution? What has the National Assembly to do there? **What will happen if, in the process of enforcing the proviso, there arises conflict between the Act of the National Assembly and the Law of the House of Assembly of a State on the subject of the proviso? Can Section 4(5) with all its federal power and strength be invoked to abrogate the law passed by the House of Assembly of a State? In my humble view, Section 4(5) which provides for the common law doctrine of covering the field can only apply in a situation where the National Assembly exercises its law making power under Section 4(2) of the Constitution. It will not apply in a situation where the National Assembly encroaches on the law making power of the House of Assembly of a State under Section 4(7) of the Constitution.**

In my humble view, the National Assembly has no business to perform in the proviso because it is exclusively a State affair. Section 162(6) of the Constitution clearly empowers a State to maintain a special account to be known as “State Joint Local Government Account” and so the National Assembly has no legislative function to exercise. This is because Section 7(1) talks of the same State Joint Local Government Account, which the proviso also maintains.

Section 7(1) commences as follows: “It shall be unlawful for any organ.....” I should say with the greatest respect that what is unlawful in the subsection is the National Assembly trying to suffocate the legislative powers of the House of Assembly of a State, in the sense (and on the lighter side) that both will be breathing in oxygen at the same time and breathing out carbon dioxide at the same time. It is in the interest of the health of both bodies that they are separated. And the Constitution has

clearly separated the two Legislatures. While the National Assembly can legislate under Section 4(2) of the Constitution, the House of Assembly of a State can legislate on Section 4(7) of the Constitution. As the proviso offends Section 4(7), because of the presence of the National Assembly, B I will happily remove that body. And I so order.

Apparently taking strength from Section 7(1) (and I do not see any strength there). Section 7(2) introduces the first charge principle in fiscal law. The subsection effortlessly and in a most ambitious fashion, C provides that in the case of any default in the allocation or distribution to any Local Government, such amount shall be a first charge of the State's next allocation from the Federation Account. How can that be? Why should that be? Does the Constitution say so? By the provision, officials in charge of the Federation Account will keep a vigil, like a Nigerian D vigilante group, for any defaulter in the context of Section 7(2), and grab the defaulting State. What follows thereafter is the sanction of "first charge on the State's next allocation". In view of the fact that the Constitution does not mention any first or second or charges ad infinitum, Section E 7(2) cannot sail through the Constitution.

There is still one more point on the subsection. Learned counsel for the 1st plaintiff submitted that what Section 7(2) seeks to accomplish is to override the decision of this court in Attorney-General of Ogun State F v. Attorney-General of the Federation. I see some meat in the submission of counsel. In Attorney-General of Ogun State, this court held that the National Assembly cannot validly make a law permitting direct allocation to the Local Government Councils. Rather, such money must be allocated direct to the States, which shall in turn pay same into the State G Joint Local Government Account vide Section 162(6) of the Constitution.

I now see the point made by counsel for the 1st plaintiff. I had earlier thought that the point was not valid. A close and careful reading of H Section 7(2) reveals that the amount designated as "a first charge" will be credited to the affected Local Government. And that Local Government, when taken in the context of Section 7(1) is the one that any organ, authority or official of a State, has offended. The language of Section

7(2) is clear and it is that the amount resulting in the first charge “shall be credited to the affected Local Government.” This means that the money will be paid direct to the Local Government Council concerned. This is what this court said the National Assembly cannot do. And so, counsel for the 1st appellant is correct when he said that Section 7(2) is to over- B  
ride the decision of this court.

Our decision was given on 13th December 2002, The Monitoring of Revenue Allocation to Local Governments Act, 2005 was enacted on 12th April, 2005. By an application of some arithmetic, which I know C  
very little, the decision of this court was given for about two years and four months before the 2005 Act was enacted. If my arithmetic is correct, then I can come to a speculative conclusion that the National Assembly had knowledge of the decision of this court before Section 7(2) D  
of the Act was passed. I say speculative conclusion because there is the possibility of the National Assembly not knowing of the decision.

Assuming the National Assembly knew of our decision before passing Section 7(2), then I see a serious problem and it is a problem of a cold war between the two bodies, if I may use that expression for lack E  
of better language. I must quickly concede the point that the National Assembly has the power, in the course of legislating, or making law, to nullify or abrogate decisions of any court of law, including the Supreme Court, the highest court of the land. In other words, courts of law can- F  
not question the vires of the Legislature to nullify or abrogate the common law and once that is done, the particular decision of the court will no more have the force of law. That is one side of the coin.

The other side of the coin is that the courts, in the exercise of G  
their judicial powers under Section 6 of the Constitution, have the jurisdiction to nullify legislation which is not enacted in accordance with the Constitution. That is exactly what this court did in Attorney-General of Ogun State. Section 6 of the Constitution apart, by Section 4(8) of the Constitution, the exercise of legislative powers by the National Assembly H  
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. I should mention that the power of the National Assembly to pass legislation to nullify or abrogate the common law is not a violation of Section 4(8) of the Constitution because the subsection specifically deals with ouster of jurisdiction of the courts. In other words, it is only when the National Assembly enacts an Act to oust the jurisdiction of the court that Section 4(8) will be violated, not when a decided case which has nothing to do with ouster of jurisdiction is nullified or abrogated.

It looks to me that by the 2005 Act, an essential ratio in Attorney-General of Ogun State has been nullified. The whole affair looks to me like a vicious circle and it is bad that it is so. This is not the best practice of democracy. I do not intend to say more. While I come to this conclusion, I take solace in a possible fact that the National Assembly may not be aware of our decision in Attorney-General of Ogun State. If the National Assembly was aware of our decision, it could not have enacted so much of the Act. I say this because members of that Assembly are men and women of great learning, integrity and understanding. They are a disciplined lot who respect the Judiciary as the third arm of Government; they being traditionally known and named as the First.

But in the event that the National Assembly did not know of the existence of Attorney-General of Ogun State, I will suggest the establishment of a Legal Department which should, amongst other things, update the Legislature of current decisions of this court. If such Department already exists, I would suggest that it should be beefed up for a more challenging job.

That takes me to Section 7(3). It is the penal section. The National Assembly means business by showing their hatred for corruption and that is good. All well meaning Nigerians hate corruption. They provide both fine and sentence to run either cumulatively or concurrently. So far so good but the question arises whether the subsection can stand the test of the Constitution. That is the problem that I see and it worries me, the Judge that I am.

**In most democracies in the world, the Constitution does**

not normally contain penal provisions. These are mostly left to be taken care of by statutes. That is the position in Nigeria. An Act of the National Assembly can contain penal provisions and that is normal. Courts of law cannot question the National Assembly because they do not have the legislative power to do so. But there is a caveat B and it is this. Where the National Assembly in the exercise of its legislative power under Section 4(2) purports to create offence or offences traceable to any provision in the Constitution, the courts must react, if the penal provision is not vindicated by the Constitu- C tion. That is the problem and that is what the plaintiffs have raised. After all, the principles of penology and criminology are not generally known to the Constitution.

I entirely agree with the submission of learned Senior Advocate for the 2nd plaintiff that the power of both the National D Assembly and the House of Assembly of the State to create offences is not at large. I also agree with him that the power to create offences is an incident of the power to legislate on a subject matter.

Let me see whether Part III, Second Schedule to the Constitu- E tion can help the 1st defendant. The relevant provision is Paragraph 2. It reads in part:

*“In this Schedule, reference to incidental and supplementary mat- F ters include, without prejudice to their generality, references to*

*(a) offences;*

*(b) the jurisdiction, powers, practice and procedure of courts of law;*

*(c) the acquisition and tenure of land.”*

Can the National Assembly rely on the above provision to G justify Section 7(3) of the Act? I think not. Can the 1st defendant rely on Item 68, Part 1 of the Second Schedule? Again, I think not. Both provisions in their specific contents are too remote to be of any assistance to the 1st defendant. Let me explain the position H further. Item 68 provides for any matter incidental or supplementary to any matter mentioned elsewhere in the exclusive Legislative List. I cannot place my hands on any item in the exclusive

**Legislative List touching on the 2005 Act. And so in whatever way one expands the frontiers of the omnibus Item 68, it will never be of any assistance to the 1st defendant in respect of Section 7(3) of the Act. The above applies to the interpretation of Paragraph 2(a), Part III of Second Schedule to the Constitution.**

**In Attorney-General of Ondo State v. Attorney-General of the Federation, Ejiwunmi, JSC., said at page 408:**

*“It is manifest from the provisions of Section 2(a) Part III of the Second Schedule to the Constitution that it was enacted in order to expand the effect and the extent of the provisions of Item 68. It is by virtue of this provision that offences may be enacted by the National Assembly if it is shown that such offences as may be created are incidental and supplementary to matters in which the National Assembly is vested to enact laws.”*

**I entirely agree with the interpretation of my learned brother, Ejiwunmi, JSC, and to zero in on the issue, give a negative answer against the 1st defendant which is therefore a positive one to the plaintiffs.**

Basing his argument on the need to check corruption and abuse of power, learned counsel for the 1st defendant cited the case of Attorney-General of Ondo State v. Attorney-General of the Federation. With respect, the case does not apply. In that case, the centre pin or cynosure of the action was the Corrupt Practices and Other Related Offences Act, 2000. The whole issue was on corruption as opposed to this matter which is not directly on corruption but in respect of allocations to Local Government Councils. I concede that there is some element of checking corruption in the 2005 Act but not in the prominence of the ICPC Act. Accordingly, the decision of Attorney-General of Ondo State cannot apply here.

**And that takes me finally to Section 9, the last part of the complaint. It reads:**

*“The Auditor-General for the Federation shall, following the end of each financial year report to each House of the National Assembly, stating how the monies allocated to each State for the benefit of*

*the Local Government Councils within the State ..... were spent.”*

The 1st and 2nd plaintiffs did not seek any relief on Section 9. It was only the 3rd plaintiff that did so. **I have a few questions to ask here: what has the Auditor-General of the Federation got to do in a matter which is exclusively a State affair? What has the National Assembly got to do in a matter which is exclusively a State affair? What does Section 9 expect the National Assembly to do; if that House is not satisfied in the way the monies allocated to each State for the benefit of the Local Government Councils were spent? Will the House invoke Section 7 of the Act? Will such an invocation not be foul to the Federal arrangement of our Constitution?**

**What is the constitutional function of the Auditor-General of the Federation? Unlike the Accountant-General of the Federation, the Constitution provides for the function of the Auditor-General of the Federation and it is in Section 85(2) of the Constitution. It reads:**

***“The public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on by the Auditor General who shall submit his report to the National Assembly ...”***

The subsection is so clear as to what finances the Auditor-General can audit and they are the public accounts of the Federation and of all offices and courts of the Federation. In my humble view, the subsection means offices and courts of the Federal Government, wherever they may be located. For example, the Auditor-General of the Federation has the constitutional right to audit the accounts of the courts enumerated in Section 6(5)(a), (b), (c), (d), (f) and (h). This is in addition to Federal offices.

Perhaps, the point I am making will become clearer if I take Section 125(2) of the Constitution, the State counterpart of Section 85(2). The subsection reads in part:

***“The public accounts of a State and of all offices and courts of that State shall be audited by the Auditor-General for the State who shall submit his reports to the House of Assembly...”***

Again, the subsection is so clear as to finances the Auditor-Gen-

eral of a State can audit and they are the public accounts of the State and of all offices and courts in the State. Again, in my humble view, the subsection means offices and courts in the State. Giving my same pet example in Section 6 of the Constitution, the Auditor-General can audit the accounts of the courts enumerated in Section 6(5)(e), (g) and (i). This is in addition to State offices.

**Can the Federal Auditor-General stray from his constitutional functions in Section 85(2), and grab, usurp, dislodge, or displace the constitutional functions of an Auditor-General of a State?** I think he has enough to chew from Section 85(2) of the Constitution.

Learned counsel for 1st defendant submitted that the combined effect of Sections 7(6) (a) and 162(5) of the Constitution is that the National Assembly has the constitutional power to allocate public revenue to Local Governments in the Federation. That is a beautiful submission which I cannot fault. But by the contents of the 2005 Act, the functions of the Committee go beyond allocation to distribution. Let me borrow the definition of the two expressions from the 2nd plaintiffs brief. Quoting from Cambridge International Dictionary of English (1995), he said that “allocate” means to give something to someone as their share of a total amount. “Distribute” means to share or give something out to several people, or to spread out.

Allocation, the act of allocating, connotes a share or amount that has been allocated. Distribution, the act of distributing, connotes dividing and giving out among several people, or places. While allocation could be a bulk or lump sum, distribution may not be invariably so. Relating the etymological meanings of the expressions to the Constitution leave us with the result that while Section 162(5) empowers the National Assembly to allocate funds to the State for the benefit of their Local Government Councils, Section 162(8) empowers the House of Assembly of a State to distribute the bulk sum received under Section 162(5) to the Local Government Councils. This should be an adequate answer to the submission of



**learned counsel for the 1st defendant.**

Relying on Attorney-General of Abia State v. Attorney-General of the Federation, learned counsel for the 1st defendant submitted that the position of the Supreme Court in the case justifies the enactment of the 2005 Act. He pointed out that the provisions of Item A Paragraph 1 (a) (iv) of the Concurrent Legislative List in both the 1979 Constitution and the 1999 Constitution are similar. The provisions referred to empower the National Assembly to enact an Act for the division of public revenue among the Local Government Councils in the State. Item A, Paragraph 1(a)(iv) vindicates Section 162(5) and no more. The two provisions are consistent as they share, National Assembly, as their common denominator. Item A, Paragraph 1(a)(iv), in my humble view, does not vest legislative power on the National Assembly to enact the 2005 Act. That statute can only be enacted by a House of Assembly of the State under Section 162(8) of the Constitution. While Ogundare, JSC, as a matter of general principle of constitutional law, said that the National Assembly is given the power pursuant to Section 7(6)(b) to make statutory allocations of public revenues to Local Government Councils, he was very clear on the issue before the court when he said as follows:

*“..... the Constitution intends that everything relating to Local Governments be in the province of the State Government rather than in that of the Government of the Federation.”*

I had earlier cited the above. I do so again in answer to the point raised by counsel for the 1st defendant.

**Learned counsel for the 1st defendant relied on Attorney-General Bendel State v. Attorney-General of the Federation and submitted that this court held that the phrase “on such terms and in such manner as may be prescribed” in Section 149(1) of the 1979 Constitution bestows on the National Assembly extensive powers to legislate in respect of the allocation of the Federal Account to Local Government Councils. As I indicated earlier, the problem is not allocation under Section 162(5) but distribution under Section 162(8).**

Learned counsel for the 1st defendant also seems to raise the defence of estoppel. He submitted that as legislators from the

**States of the plaintiffs participated in the enactment of the Act and were not recalled, the plaintiffs cannot be heard to complain. This submission is quite strange to me. Estoppel, an equitable defence, cannot avail a defendant in a case of breach of the Constitution.**

**B Legislators cannot by collusion or connivance breach the Constitution, which is not their exclusive property but the property of all Nigerians.**

The above apart, it will be bad law to hold a State responsible for the conduct and performance of legislators from the State in the National Assembly. After all, legislators represent particular and specific constituencies and not the States as component parts of the Federation of Nigeria. I say this because I cannot find or see any member of the National Assembly representing a State within the meaning of Section 3(1) of the Constitution. Sections 48 and 49 of the Constitution justify what I have said.

The 3rd plaintiff in Relief No. 4 has asked this court to declare that the National Assembly cannot by the 2005 Act exercise oversight functions over Local Government administration in any State of the Federation. The term “oversight” has two distinct meanings. The more regular usage of the expression is an unintended error. The other meaning which is of less regular use is intentional and watchful supervision. That is the context in which the provisions of the Constitution convey.

**There are three types of oversight functions. These are the power of the Legislature to conduct investigations, control and surveillance over the financial affairs of the Executive, and control and supervision of Government general business.**

**Oversight functions can only be exercised within the law making powers of the National Assembly. The functions are not at large and must be exercised within the provisions of the Constitution. More relevantly, the National Assembly cannot invoke its oversight functions in respect of the law making powers of the House of Assembly of a State in Section 4(7) of the Constitution. That will be unconstitutional.**

Let me take the submissions of plaintiffs on the residual list. The

plaintiffs submitted that as the matters dealt with in the Monitoring of Revenue Allocation to Local Governments Act, 2005 are neither in the Exclusive Legislative List nor in the Concurrent Legislative List for the National Assembly, they are residual to the States.

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 of Ogun State v. Abeniagba* (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. By 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 Federation and the 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 of Abia State v. Attorney-General of the Federation Ogunbare, JSC.*, said:

*“By this silence, the matter becomes residual as it is not on the Exclusive List. By virtue of Section 4(7)(a), residual matters are for the State, not the Federal, to legislate upon.”*

I am of the view that apart from Section 6(1) of the Act, which is within the legislative powers and competence of the National Assembly, the other sections complained about by the plaintiffs are matters in the residual list, which only the States can legislate.

**The Constitution of a nation is the fons et origo, not only of the jurisprudence but also of the legal system of the nation. It is the beginning and the end of the legal system. In Greek language, it is the alpha and the omega. It is the barometer in which all statutes are measured. In line with this kingly position of the Constitution, all the three arms of Government are slaves of the Constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the Constitution over and above every statute be it an Act of the National Assembly or a law of the House of Assembly of a State.**

**The supremacy clause is provided for in Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999. All the three arms of Government must dance to the music and chorus that the Constitution beats and sings, whether the melody sounds good or bad. Regarding the first place Section 1 occupies in the Constitution, I regard and christen it as the golden section of the Constitution, the adjectival variant of the noun gold. It is the same golden position in sports that the Constitution occupies in any jurisprudence and legal system, including ours.**

**While I recognize the constitutional right of the Legislatures, that is, the National Assembly and the House of Assembly of the States, to amend the Constitution, until that is done, they must kowtow (using the Chinese expression) to the provisions of the Constitution, whether they like it or not.**

**Where the National Assembly qua Legislature moves from the constitutional purview of Section 4(2) of the Constitution or vice versa, as it relates to the House of Assembly of a State in respect of Section 4(7), issue or question of constitutionality or constitutionalism arises, and courts of law in the exercise of their judicial powers, when asked by a party, will move in to stop any excess in exercise of legislative power. This is what I am doing and Section 6 of the Constitution is my authority for doing so.**

**What the National Assembly did was to edge out, or should I say**

elbow out, the legislative powers of the House of Assembly of a State in respect of Local Government Councils and perform their business completely outside the Constitution. This, in my humble view, was a clear act of altercation, if not total confrontation, with the legislative powers of the House of Assembly of the States. It is, to say the least, an affront on the tenets of democracy. B

In Attorney-General of Ogun State v. Attorney-General of the Federation, this court said:

*“..... The principle of autonomy in a federal system implies .... that neither the central government nor the regional ones can confer functions or impose duties on the functionaries of the other without the consent of its chief executive.”* C

I should add a caveat and it is that the Chief Executive can only give a valid consent within the legislative powers entrenched in the Constitution. He has no power to go outside the Constitution to give any consent. Such a consent will be ultra vires the Constitution and courts of law will pronounce it a nullity. D

As a Judge, I am hired to interpret the laws of this country which include the Constitution and statutes. Where there is infraction of the law, I have a constitutional duty to say so and I must say so. In the American Case of Bailey v. Drexel Furniture Co. 259 US (1921), Chief Justice Taft of the United States Supreme Court, said at page 450: E

*“It is the high duty and function of this court in cases regularly brought to its bar to decline to recognize or enforce seeming laws of Congress dealing with subjects not entrusted to Congress, but left or committed by the supreme law of the land to the control of the States. We cannot avoid the duty, even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from the breaking down of recognized standards. In the maintenance of local self government, on the one hand, and the national power on the other, our country has been able to endure and prosper for* F  
G  
H

*near a century and a half.”*

The laws of Congress that the Supreme Court of the United States dealt with are in our context the Laws of the National Assembly. The supreme law which Taft, CJ, spoke about is the Constitution of the United States of America, the equivalent of which is the Nigerian Constitution. Taft, CJ, said in the judgment that even if legislation is designed for the common good of the people, the courts can still pronounce it unconstitutional, because it has caused serious breach of the Constitution. I will return to this.

While I say the above, I must also say again and for emphasis, that courts of law, including this court, have no jurisdiction to question the law making power of the National Assembly and the House of Assembly of States. This is because the power to make laws is vested in them and the courts cannot by or through the common law remove the power from them. But where a statute is enacted in breach of the Constitution, the courts must come in to stop the breach. This, the courts can do, only by one or more parties seeking the court’s jurisdiction to declare a statute void.

Learned counsel for the 1st defendant correctly identified the aim behind the enactment of the Monitoring of Revenue to Local Governments Act, 2005 to the intention of the National Assembly to stamp out corruption in Nigeria. He cited the case of Attorney-General of Ondo State v. Attorney-General of the Federation in support of his contention.

I know as a matter of fact that the Act is yet another effort to push corruption out of the Nigerian polity. It is a genuine effort to wipe out corruption at the grass root. It is a notorious fact that there are leakages here and there in Local Government funds, leakages that are caused by human beings that either operate the system or supervise the operation of the system. There are many thieves in the system and any effort to plug the leakages within the dictates of the Constitution must be supported by any well meaning institution, including the Judiciary.

This court has never condoned corruption and will never condone corruption. In Attorney-General of Ondo State v. Attorney-General of the Federation, this court condemned corruption in all its facets and

ramifications. I should refer to some statements of the Justices who did the case. In the lead judgment of the court, Uwais, CJN, said at page 306:

*“Corruption is not a disease which afflicts public officers alone but society as a whole. If it is therefore to be eradicated effectively, the solution to it must be pervasive to cover every segment of the society.”* B

In his concurring judgment, Ogwuegbu, JSC, said at page 337:

*“Corrupt practices and abuse of power can, if not checked threaten the peace, order and good government of the Federation or any part thereof.”*

The learned Justice cited with approval the following passage from the Brief of Chief Afe Babalola, SAN, counsel for the 1st defendant:

*“It is a notorious fact that one of the ills which have plagued and are still plaguing the Nigerian Nation is corruption in all facet of our National Life. It is an incontrovertible fact that the present economic morals and or quagmire in which the country finds itself is largely attributable to the notorious virus which is known as corruption. This court is bound to take judicial notice of these facts and is so invited to do so.....”* D

Mohammed, JSC, also said in his concurring judgment at page 347:

*“It is quite plain that the issue of corruption in Nigerian society has gone beyond our borders. It is no more a local affair. It is a national malaise, which must be tackled by the Government of the Federal Republic. The disastrous consequences of the evil practice of corruption have taken this nation into the list of the most corrupt nation son earth.”* F

Katsina-Alu, JSC., also said in his concurring judgment at page 364:

*“These submissions, in my view, overlook the reality of the situation. Corrupt practices and abuse of power spread across and eat into every segment of the society. It is good sense that everyone involved in corrupt practices and abuse of power should be made to face the law in our effort to eradicate this cankerworm.”* G H

Uwaifo, JSC., was not left out in the condemnation of corruption. He suggested ways to stop the canker in the following words at pages 404-405 :

“..... in our own situation, taking the issue of corruption and abuse of power nationally will best serve the interests of all and the general welfare of Nigeria, both nationally and internationally. Corrupt practice has become an overwhelming malaise for Nigeria. It cannot be left totally to individual States.”

I have taken the time and the trouble to quote the ipsissima verba of the learned Justices to show and make the point that this court does not condone corruption hut condemns it in and out. But that is not to say that the court will be blind to a situation where an Act which is out to check corruption is enacted in contravention of the Constitution. In such a situation, this court will stoutly rise to condemn such an Act, even though an Act on corruption is designed to promote the highest good and economic well being of the society. In the American case of *Bailey v. Drexel Furniture Co.*, a case I quoted earlier. Taft, CJ, said:

*“We cannot avoid the duty, even though it requires us to refuse to give effect to legislation designed to promote the highest good. The good sought in unconstitutional legislation is an insidious feature, because it leads citizens and legislators of good purpose to promote it, without thought of the serious breach it will make in the ark of our covenant, or the harm which will come from the breaking down of recognized standards.”*

I had earlier quoted this. I do so at the expense of prolixity. It is necessary I do so for emphasis.

Let me pause here to take an extra judicial statement of the former Chief Justice of Nigeria.

After circulating the judgment for comments by my learned brothers, as is the usual practice, the former Chief Justice of Nigeria, Hon. Justice M. L. Uwais, in his Inaugural Distinguished Fellows Lecture tilted “The Evolution of Constitutionalism: The Role of the Supreme Court under the 1979 and 1999 Constitutions”, delivered on 31st May, 2005, said at page 41 of the Lecture:

*“The Federal Government is not an overseer or auditor of how the funds distributed by it to States or Local Governments are spent. That function falls on the House of Assembly, the Auditor-General and people*



of Lagos State.”

This, in essence, is what I have said, in this judgment. The word “how” in the context, means “in what way or manner”. That is clearly the mission of the Monitoring of Revenue Allocation to Local Governments Act, 2005. What the former Chief Justice of Nigeria correctly said B the Federal Government cannot do, is what Section 9 of the Act has enjoined the Auditor-General for the Federation to do. I should perhaps reproduce the section for the second time and for ease of reference:

*“The Auditor-General for the Federation shall following the C end of each financial year report to each House of the National Assembly, stating how the monies allocated to each State for the benefit of the Local Government Councils within the State .... were spent.”*

That is the orientation of the Act. Both the extra-judicial statement of the former Chief Justice of Nigeria and Section 9 of the 2005 Act D share two common expressions. They are “are spent” and “were spent”, respectively. In other words, while Justice Uwais used the present tense. Section 9 used the past tense. Whether it is the present or past tense, the meanings conveyed are exactly the same. The difference between the E two is, while Justice Uwais’ statement is in the negative, conveyed by the adverb “not”, Section 9 is in the positive, without “not” and containing the command and preimptory verb of action, “shall”.

There is still one more aspect. It is the involvement of the Auditor General for the Federation in Section 9 of the Act. Since I have taken F that aspect, I shall not repeat myself. But I should point out by way of comparison that Justice Uwais has stated by implication that the function of overseeing or auditing of how funds distributed by the Federal Government to Local Governments are spent, is that of (and relevantly) the G Auditor-General of Lagos State. I cannot see a clearer position than the extra-judicial statement of Justice Uwais. And so, Justice Uwais is clearly on my side, though extra-judicially.

I now come to the relief of injunction. Of the three plaintiffs, H two of them asked for it. They are the 2nd plaintiff, the Attorney-General of Delta State and the 3rd plaintiff, the Attorney-General of Lagos State. What is the case made by 2nd plaintiff? The case is made at page 20 of

his brief. He relied on the case of Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542. In that case, Ogundare, JSC, granted injunction. He said at page 689:

B *“I also grant an injunction as claimed in claim (h) restraining the plaintiff from further violating the Constitution in the manner declared in claim (f) above.”*

What is claim (f)? It is in the following terms:

C *“A declaration that the under listed economic policies and/or practices of the plaintiff are unconstitutional being in conflict with the 1999 Constitution, that is to say:*

D *(i) Exclusion of natural gas as constituent of derivation for the purposes of the proviso to Section 162(2) of the 1999 Constitution.*

*(ii) Non payment of the share of 10th defendant in respect of proceeds from capital gains, taxation and stamp duties.*

*(iii) Funding of the judiciary as a first line charge on the Federation Account.*

E *(iv) Servicing of external debts via first line charge on the Federation Account.*

*(v) Funding of Joint Venture Contracts and the Nigerian National Petroleum Corporation (NNPC) Priority Projects as first line charge on the Federation Account.*

*(vi) Unilaterally allocating 1% of the revenue accruing to the Federation Account to the Federal Capital Territory.”*

G This court granted an injunction in respect of the above. The 2nd plaintiff, relying on the authority of Attorney-General of the Federation, has urged us to grant injunction in this matter. I do not see my way clear in acceding to his request because the circumstances and facts of that case are quite different from those of this case. **An injunction will lie in respect of live issues. An injunction will not lie when an issue is dead in the sense that an action is completed and cannot in law be resuscitated. It is both a factual and legal impossibility to resurrect a dead matter to attract or take advantage of an injunction.** See generally *Ilechukwu v. Iwugo* (1989) 2 NWLR (Pt. 101) 99; *Total (Nig.)*

Plc v. Efakpokire (1998) 5 NWLR (Pt. 549) 307.

**It is clear from relief (f) in Attorney-General of the Federation that virtually all the reliefs were live and this court was therefore correct in granting injunction. But in this case, there is no live issue and I cannot see my way clear in granting the injunction. The Act has already been enacted and so an injunction cannot lie in law.**

Although the 3rd plaintiff sought injunctive reliefs in his claim, he did not argue it in his brief. He did not formulate any issue on it and said nothing about it in his arguments. I take it that he realized the futility of the relief and therefore abandoned it. I think he is correct.

That apart, the law of injunction is designed to ensure that orders of courts are not disobeyed. Accordingly, where a court of law has the confidence that its orders will not be disobeyed, there will be no need to slam an injunction on a defendant. And because it is difficult for the court to know that a particular defendant will not disobey a court order that courts grant prayers of plaintiffs.

It is in this respect, I say that the National Assembly does not appear to me to be a body that will disobey court orders. Even if all things were equal in the sense that the issues were alive, this court should have felt most reluctant to grant an injunction. It is not the best law to grant an injunction to restrain a Legislature from performing its constitutional duties, although it can do so in most deserving circumstances of unconstitutionality. I do not think I am prepared to exercise the discretionary power vested in me to grant an injunction. This court should be very careful in granting injunctions against the Legislature because there is the danger of courts below it to use it as precedent. I do not want to send such a signal to the courts below. I will say no more. I will stop here on the relief of injunction.

**A few of the defendants asked this court to declare that the whole Act is a nullity. The Attorney-Generals of Nassarawa, Rivers and Yobe are good examples. It is elementary law that a court of law is confined to the relief or reliefs of the plaintiff. It does not go outside the relief or reliefs to grant what the plaintiff does not ask**

**for. A court of law can grant all the reliefs sought by the plaintiff. It can also grant part of the reliefs. But it cannot grant reliefs not sought by the plaintiff.** See generally *Ojo v. Abogunrin* (1989) 5 NWLR (Pt. 120) 162; *Ugo v. Obiekwe* (1989) 2 S.C. (Pt. II) 41; (1989) 1 NWLR (Pt. 99) 566; *Ilodibia v. NCC Ltd.* (1997) 7 NWLR (Pt. 512) 174; *Udom v. E. Michellitti and Sons Ltd.* (1997) 8 NWLR (Pt. 516) 187; *Olaopa v. OAU Ile-Ife* (1997) 7 NWLR (Pt. 512) 204; *Ezeakabekwe v. Emenike* (1998) 9-10 S.C. 80; (1998) 11 NWLR (Pt. 575) 529.

C The court is not Father Christmas to dole out gifts not asked for by children. Even Father Christmas is generous with his gifts only on Christmas day. On the joking and jovial side, I can say that today is not 25th day of December.

D **While a defendant can seek reliefs related or borne out from the original action in a counter-claim, he cannot do so in his Statement of Defence. That is what the Attorney-Generals of the States mentioned above have done by asking this court to declare the whole Act a nullity.**

E **In the light of the above, thereby declare Sections 1, 2, 3, 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 null and void being inconsistent with the provisions of Sections 4, 7, 162(5), (6) and (8) of the Constitution. I**  
 F **refuse the prayer in respect of Section 6(1) of the Act on the ground that the section is not inconsistent with any provision of the Constitution. I also refuse the prayer for injunction by the 2nd and 3rd plaintiffs.**

G In the light of the separate actions instituted by the plaintiffs, I enter judgment to the plaintiffs as set out below seriatim:

Suit No. SC. 99/2005 (1st plaintiff)

H All Reliefs sought by the 1st plaintiff are granted, except or other than the Relief on Section 6(1) of the Monitoring of Revenue Allocation to Local Government Act, 2005, which is refused.

Suit No. SC. 121/2005 (2nd Plaintiff)

All Reliefs sought by the 2nd plaintiff are granted, except or other than the Relief on perpetual injunction which is refused.

Suit No. SC.216/2005 (3rd Plaintiff)

All Reliefs sought by the 3rd plaintiff are granted, except or other than the Reliefs on Section 6(1) of the Monitoring of Revenue Allocation to Local Government Act, 2005 and perpetual injunction, which are refused.

I should say finally that any person who is at the corridors of Local Government finances or funds or in some proximity with such finances or funds or sleeping with them and sees this judgment as a victory in the sense that he has the freedom of the air to steal from the finances or funds, should think twice and quickly remind himself that the two anti-corruption bodies, the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), are watching him very closely and will, without notice, pounce on him for incarceration after due process. But that is not as serious as God's Law which says he will go to hell and he will certainly make hell. This is not a curse. God's Law does not lie because God is not a liar.

I make no order as to cost.

When this matter was adjourned for judgment and after the usual post hearing Conference, a member of the panel, a very fine and able Judge, Hon. Justice Ignatius Chukwudi Pats-Acholonu, JSC, passed on to glory. I express my condolence to the family of the deceased.

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### KALGO JSC

In this action, there are three suits filed separately in this court pursuant to the provisions of Section 232 of the 1999 Constitution, which were later consolidated and heard together. In each of the three suits, the Attorney-General of the State concerned was the plaintiff and each is contesting the validity of some provisions of an Act passed by the National Assembly and assented to by the President, entitled, "Monitoring of Revenue Allocation to Local Governments Act 2005". Written briefs were filed by each of the plaintiffs Attorney-General and most of the defendants in this action. The substance of the plaintiffs' claim in this action is

that the provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005, (hereinafter referred to as ‘the Act’) are inconsistent with the provisions of the 1999 Constitution of the Federal Republic of Nigeria.

B In my consideration of this action, I have carefully examined the relevant provisions of the 1999 Constitution and all the relevant legal authorities referred to in the briefs filed by the parties to this action, which I studied side by side with the provisions of the said Act, (particularly Sections 4, 7 and 162 of the Constitution and Sections 1, 2, 3 and 7 of the Act) and came to the conclusion that Sections 1, 2, 3 and 7 of the Act are in my view, inconsistent with the provisions of the 1999 Constitution. No where in the 1999 Constitution was the Federal Government or the National Assembly conferred with the power to “Monitor” the actual allocations made to the Local Government councils in the States. D By Section 162(6) of the said Constitution -

*“Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State”.* E

This is a mandatory provision which all State Governments must comply with in connection with all financial allocations in favour of Local Government Councils within the State. It is not the duty or power of the Federal Government or National Assembly to do it for them. And although it can be true, that he who pays the piper dictates the tune, it cannot apply in this case because although Section 162(5) of the 1999 Constitution speaks of the allocation to Local Government Councils “on such terms and in such manner”, this in my respectful view is only with reference to the manner or extent of the “allocation” as provided by the law “between the Federal Government and the States” and does not extend to actual “monitoring” of the allocation “between the State Government and the Local Government Councils”. F G H

And the decision of this court in A.G Bendel State v. A.G of the Federation & Ors. (1983) NSCC 181 where the words “in such terms and in such manner” was interpreted in Section 149(2) of the 1979 Con-

stitution only deals with the manner of payment and distribution of the (payments) amounts allocated and not the actual monitoring of the allocation. This is because already the Constitution has specified the account into which the amounts allocated by the Federal and State Governments was to be paid. There is no doubt that the pith and substance of the Act B is, in reality of the present Nigerian situation, very good, but in effect its contents, when carefully examined, attempted to drastically eat away and usurp the powers of the States granted to them by the 1999 Constitution. It is constitutionally recognized and fully accepted that Nigeria is C running a Federal democratic system of government under which State Governments are autonomous, subject only to the powers expressly given by the Constitution to the Federal Government over them.

It is not in any doubt that the National Assembly has power “to D make laws for the peace, order and good government of the Federation” but this power is not open-ended or limitless; it is only exercised in respect of “any matter included in the Exclusive Legislative List” of Part I of the Second Schedule to the Constitution. In *A.G Ogun State & Ors. v. A.G of the Federation* (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR (Pt. E 798) 232, this court held that in so far as any Act of the National Assembly provides for Joint Local Government Account Allocation Committee for each State to regulate the manner the amount allocated to the States for the benefit of the Local Governments is to be distributed, such Act is F inconsistent with Section 162(8) of the 1999 Constitution. This is what Sections 1 and 2 of the Act seek to do in this case. Also in *A.G Abia State & Ors. v. A.G of the Federation* (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264, this court held that apart from the power conferred in Item II G of the concurrent Legislative List and Section 7(6)(a) of the 1999 Constitution, (power to make provision for statutory allocation of public revenue to Local Government Councils in the Federation) the National Assembly does not possess any other power to enact laws affecting local H governments. It was also held that the additional Assembly, being a creature of the Constitution, does not have any inherent power to make laws on any issue it deems fit.

In this case therefore, I find no such powers conferred on the

National Assembly or the Federal Government to “monitor funds” allocated to the Local Government Councils. Therefore, the provisions of the Act dealing with the monitoring of local government councils funds of the States by establishing State Joint Local Government Account Allocation Committee and providing sanctions therein, are not supported in my view, by any provision of the 1999 Constitution. Therefore, the provisions of the Act, except those relating to the Federal Capital Territory, Abuja, are inconsistent with the provisions of the 1999 Constitution and to that extent, null and void. I so declare.

I have had the privilege of reading in draft the judgment of my learned brother Niki Tobi, JSC, in this action, and I find myself in full agreement with his reasoning and conclusions. I therefore give judgment for the plaintiffs in this action and make the same orders as he has made in the leading judgment including the order as to costs.

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### PRONOUNCEMENT

**MADE BY I. L. KUTIGI JSC, s. 294 (2) of the Constitution**

HON JUSTICE I.C. PATS-ACHOLONU, who participated with us in the hearing of the consolidated suits agreed at our conference to grant plaintiffs' claims.

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### OGUNTADE JSC

Three suits were consolidated for hearing in this matter. In SC.99/2005 and SC. 216/2005, the Attorney-Generals of Delta State is the plaintiff. In Suits Nos. SC 121/2005, the Attorneys-General of Delta and Lagos States are respectively the plaintiffs. By each of the suits, each of the three Attorney-Generals is contesting the validity of some of the provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005. Each of the plaintiffs filed a brief as did the 1st defendant and some of the other defendants.

The plank upon which the three plaintiffs found their claims was



that the provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005 (hereinafter abbreviated as ‘the Act’) were inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999. The claims speak for themselves and at the risk of prolixity, I reproduce them hereunder. The claims of the Attorney-General of B Abia State (hereinafter referred to as the ‘1st plaintiff’) reads:

“(a) A declaration that no law made by the National Assembly can validly direct the plaintiff or any other State Government to include a Commissioner of the Revenue Mobilization Allocation and Fiscal Commission as a member of the State Joint Local Government Allocation Committee envisaged by Section 162 of the Constitution. C

(b) A declaration that no law made by the National Assembly can validly direct the plaintiff’s Joint Local Government Allocation Committee to render monthly returns to the Federation Account Allocation Committee or at all. D

(c) A declaration that save and except for laws of the Federation with respect to:

(i) The prescription of such terms and in what manner any amount standing to the credit of the Federation shall be distributed among the Federal and State Governments and the Local Government Councils; E

(ii) The prescription of such terms and in what manner the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils; F

(iii) The establishment of the Federal Capital Territory Joint Area Council Allocation Committee and the Federal Capital Territory Joint Area Council Committee - G

*“it is the House of Assembly of a State not the National Assembly which may make a law prescribing the terms and manner in which the amount standing to the credit of the Local Government Councils in a State shall be distributed.” H*

(d) A declaration that the provisions contained in Sections 1, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are, from the date of commencement of the Act, incon-

sistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and are accordingly null and void and inoperative.”

The claims of the Attorney-General of Delta State (hereinafter referred to as the ‘2nd plaintiff’) reads:

B “1. A declaration that Sections, 1, 2, 3 and 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with the provisions of Sections 4, 5, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999.

C 2. An order of perpetual injunction restraining the Government of the Federation, its functionaries, agencies whomsoever, including the Revenue Mobilization, Allocation and Fiscal Commission or any of its commissioners, the Accountant-General of the Federation or his representative from enforcing or purporting to enforce by sanctions in any  
D way or manner whatsoever directly or indirectly the provisions or any of the provisions of the Monitoring of Revenue Allocation to Local Government Act, 2005, against the Government of Delta State, its functionaries, public officers, servants and agencies whomsoever.

E The claims of the Attorney-General of Lagos State (hereinafter referred to as the ‘3rd plaintiff’) read:

1. A declaration that the provisions of Sections 1, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments  
F Act, 2005, are inconsistent with the provisions of Sections 4, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria 1999 and therefore unconstitutional, null and void.

2. A declaration that the provisions of Sections 1, 2 and 3 of the  
G Monitoring of Revenue Allocations of Local Governments Act, 2005 by imposing a duty and obligation on the State Governments violate the principle of Federalism enshrined in the Constitution of Nigeria, 1999 and relevant case law and are therefore unconstitutional, unlawful, null and void;”

H 3. A declaration that by virtue of the provisions of Sections 4, 7 and 162(6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is the body competent to make laws for the establishment, composition and functions of the State

Joint Local Government Account Committee for Lagos State.

4. A declaration that having regard to the provisions of Sections 7 and 128 of the Constitution of Nigeria, the defendant cannot by the Monitoring of Revenue Allocation to Local Governments Act, 2005 or any other Act of the National Assembly exercise oversight functions over B local Government administration in any State of the Federation.

5. An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or howsoever from implementing or giving any effect whatsoever to the said Monitoring of Revenue Allocation to Local Governments C Act, 2005.

6. An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or howsoever from acting in any manner in contravention of the provisions of Sections 4, 7, 128 and 162 of the Constitution of the Federal Republic of Nigeria, 1999.” D

The 1st plaintiff’s issue for determination reads:

*“Whether the first defendant has the legislative competence to E enact the Monitoring of Revenue Allocation to Local Government Act, 2005 and whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.”* F

The 2nd plaintiff’s issues for determination read:

*"1. Whether the provisions of Sections 1(1) and 7(1) of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with Section 162(6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 in so far as the Act seeks to regulate the manner the amount allocated to the plaintiff State is to be distributed in the light of the decision of the Supreme Court in Attorney-General, Ogun State v. Attorney-General, Federation (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR 232. G H*

*2. Whether Sections 1 (2), 2 and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 in so far as they seek to subject the plaintiff State to the authority of the National Assembly do*

*not offend the spirit and letter of the Constitution of the Federal Republic of Nigeria, 1999.*

3. *Whether Section 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 which creates a Federal offence and seeks to subject State functionaries to sanctions by the National Assembly in respect of domestic matters of a State over which the plaintiff State's House of Assembly has prescriptive power, under Section 162(8) of the Constitution of the Federal Republic of Nigeria, 1999 is not ultra vires and unconstitutional.*"

*The 3rd plaintiff's issues for determination read:*

"3.1 *Whether the provisions of Sections 1, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Government Act, 2005 are not inconsistent with the provisions of Sections 4, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void.*

3.2 *Whether or not Sections 1, 2 and 3 of the Monitoring of Revenue Allocation to Local Government Act, 2005, by imposing a duty and obligation on the State Government in matters within the legislative competence are not in violation of the principles of Federalism enshrined in the Constitution of the Federal Republic of Nigeria, 1999 and relevant case law on the issue.*

a. *Whether by virtue of the provisions of Sections 4, 7 and 162(6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is not the body competent to make laws for the establishment and composition and functions of the State Joint Local Government Account Committee for Lagos State.*

b. *Whether having regard to the provisions of Sections 7 and 128 of the Constitution of the Federal Republic of Nigeria, the defendant can by the Monitoring of Revenue Allocation to Local Government Act, 2005 or any other Act of the National Assembly exercise oversight functions over Local Government Administration in any State of the Federation."*

*The 1st defendant's issues for determination read:*

"1. *Whether the 1st defendant (representing the National Assem-*

bly in this case) has the legislative competence to enact the *Monitoring of Revenue Allocation to Local Governments Act, 2005*.

2. *Whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.*"

Counsel for the plaintiffs and the other defendants excluding the 1st defendant have in their diverse briefs canvassed arguments as to why we should grant the reliefs claimed. The 1st defendant, standing alone has argued that we dismiss the suits. I shall reflect some of these arguments in the consideration of the issues for determination in these suits as raised by the principal parties.

The central question in these suits is: Are the provisions of the Act wholly or partly inconsistent with the provision of the 1999 Constitution of Nigeria? It is desirable that I reproduce in full the terms of the Act against which the three suits are directed:

*"Enacted by the National Assembly of the Federal Republic of Nigeria:*

*"1(1) Each State of the Federation shall establish a body to be known as the State Joint Local Government Allocation Committee (hereinafter referred to as 'the Committee')*

*(2) The Committee shall include the following members:*

*(a) The Commissioner or any other officer charged with the responsibility for Local Government in the State who shall be the Chairman;*

*(b) A Commissioner of Revenue Mobilization, Allocation and Fiscal Commission provided that the Commissioner shall not serve in his own State;*

*(c) all the Chairmen of the Local Government Councils in the State;*

*a. the Accountant-General of the State;*

*b. a representative of the Accountant-General of the Federation; and*

*c. a representative of the State Revenue Board.*

*(3) The Permanent Secretary of the State Ministry charged with*

*responsibility for Local Government or such officer as may be designated by the Chairman shall be the Secretary to the Committee.*

*2. The functions of the Committee shall be to:*

*(a) ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the State concerned are promptly paid into the State Joint Local Government Account;*

*(b) ensure that the funds paid into the State Joint Local Government Account under paragraph (a) of this section are distributed to the Local Government Councils in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and any law made in that behalf by the House of Assembly of the State; and*

*(c) monitor the payment and distribution of the funds mentioned in Paragraphs (a) and (b) of this section so as to ascertain the actual amount paid to each local Government.”*

*3.(1) The Committee shall render monthly returns to the Federation Account Allocation Committee through the member representing Revenue Mobilization, Allocation and Fiscal Commission.*

*(2) The Federation Account Allocation Committee shall scrutinize the returns to it by the Committee and make quarterly returns through the Accountant-General of the Federation to each House of the National Assembly.*

*4. In case of Federal Capital Territory, there is hereby established a Federal Capital Territory Joint Area Councils Account Allocation Committee, which shall comprise the following members:*

*(a) the Permanent Secretary of the Federal Capital Territory who shall be the Chairman;*

*(b) a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission, provided that the Commissioner is not from the Federal Capital Territory;*

*(c) the Chairman of each Area Council in the Federal Capital Territory;*

*(d) one representative of the Accountant-General of the Federation;*

*(e) the Director in charge of finance; and*

(f) *a Director in the Federal Capital Territory to be appointed by the Minister in charge of the Federal Capital Territory who shall be the Secretary of the Committee.*

5. *The functions of the Federal Capital Territory Joint Area Councils Allocation Committee shall be to ensure that any allocation made to the Area Councils in the Federal Capital Territory from the Federation Account and from the Federal Capital Territory are promptly paid into the Federal Capital Territory Joint Area Councils Account and distributed to the Area Councils Account and distributed to the Area Councils in accordance with the provisions of any Act made in that behalf by the National Assembly.*

6(1) *The power of State Governments for borrowing money shall not extend to the money, funds or revenue allocated to Local Government Councils from the Federation Account and from the State concerned.*

(2) *The power of the Federal Capital Territory for borrowing money shall not extend to the money, funds or revenue allocated to Area Councils from the Federation Account, and from the Federal Capital Territory.*

7(1) *It shall be unlawful for any organ, authority or official of a State or the Federal Capital Territory, however described or constituted, to alter, deduct or reallocate funds standing to the credit of the State Joint Local Government Account, or the Federation Capital Territory Joint Area Councils Account.*

*Provided always that nothing in this subsection shall prevent the House of Assembly of a State, or the National Assembly, from prescribing by law, the terms and manner for distributing money standing to the credit of any of the Joint Accounts, as the case may be, to the Local Government Councils in the State, or the Area Councils in the Federal Capital Territory.*

(2) *In the case of any default in the allocation or distribution to any local government, such amount shall be a first charge on the State's next allocation from the Federation Account and shall be credited to the affected local government.*

(3) *Any person who acts in contravention of the provisions of*

subsection (1) of this section, commits an offence and is liable on conviction to a fine twice the amount altered, deducted or re-allocated illegally, or imprisonment for a term of five years, or to both such fine and imprisonment.

B            8. *The Accountant-General of the Federation shall report to each House of the National Assembly on a quarterly basis, the payments made to each State under this Act and stating whether or not the payments were correctly made under this Act.*

C            9. *The Auditor-General for the Federation shall following the end of each financial year report to each House of the National Assembly, stating how the monies allocated to each State for the benefit of the Local Government Councils within the State and the Area Councils in the Federal Capital Territory were spent.*

D            10. *This Act may be cited as the Monitoring of Revenue Allocation to Local Government Act, 2005.” (Underlinings are mine)*

These suits raise the question whether or not the National Assembly of the Federal Republic of Nigeria has by enacting the Act exceeded the limits of its legislative power and authority as conferred by the 1999 Constitution of Nigeria. It is inevitable to say here that Nigeria runs a Constitution which puts in place a Federal Structure of Government as distinct from a unitary form.

F            In Attorney-General, Lagos State v. Attorney-General, Federation (2003) 6 S.C. (Pt. I) 24; (2003) 12 NWLR (Pt.833) at 190-191, this court per Uwaifo, JSC., observed:

G            *“Nigeria operates a federal system of government. Section 2(2) of the 1999 Constitution re-enacts the doctrine of federalism. This ensures the autonomy of each government. None of the governments is subordinate to the other. This is particularly of relevance between State governments and the Federal Government, each being, as said by Nwabueze in his book, ‘The Presidential Constitution of Nigeria, pages 39-42, an autonomous entity in the sense of being able to exercise its own will in the conduct of its affairs within the Constitution, free from direction by another government.”*

And before then this court in Bendel State v. The Federation



(1981) 10 S.C. (Reprint) 1; (1981) 10 S.C. 1 at 240 per Nnamani, JSC., observed:

“.....this court has power (in a proper case i.e. where Section 6(6)(b) or 212 apply) to examine the exercise of legislative power by the National Assembly (which involves the process of law-making) and if it falls short of the provisions of the Constitution to declare such law unconstitutional. This court therefore has power to inquire into the validity of the exercise of legislative power. In making the inquiry, the court is guided by the principle that Parliament in a written Constitution which has set down the limits of its power cannot go outside those limits in the exercise of that legislative power. Such Parliament cannot go contrary to the Constitution which has set down the conditions under which it will make laws. So it is with our National Assembly. It cannot ignore the conditions of law-making that are imposed by the instrument i.e. the Constitution which itself regulates its authority or power to make law.”

The complaint of the plaintiffs in the main, is that the National Assembly acted beyond its powers in enacting into law, Sections 1, 2, 3, 4, 6(1) and 7 of this Act. Necessarily, I have to examine the legislative power and the ambit of such power as conferred by the Nigerian 1999 Constitution. This is because it is the said Constitution that delimits the legislative frontiers or boundaries of the National Assembly. Section 4 of the Constitution of Nigeria provides:

“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 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 -*

B (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*

C (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.*

D (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 -*

E (a) *any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;*

F (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.*

G (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.*

H (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.*” (Underlining mine)

Subsections 3 and 4 of the Constitution reproduced above provide that the National Assembly may only legislate on any matter in (a) the Exclusive Legislative List (b) the Concurrent List and (c) any other matter with respect to which it is empowered to make laws. The case of B the 1st defendant as I understand it is that by the combined effect of Sections 7(b)(a) and 162(5) of the Constitution, the National Assembly could make laws dealing with allocation of funds to the Local Governments in the Country, and that the Act, the subject-matter of this suit was made pursuant to those sections. Counsel relied on Attorney-General of Bendel State v. Attorney-General of the Federation (1983) NSCC 181 at 192 and Attorney-General of Abia State v. Attorney-General of the Federation (2002) 3 S.C. 106; (2002) 6 NWLR (Pt.763) 264. Counsel further submitted that the enactment of the Act by the National Assembly is not inconsistent with any of the provision of the Constitution. Counsel relied on Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) FWLR (Pt.III) 1972 at 2146. Counsel made a distinction between Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 512; Attorney-General of Ogun State v. Attorney-General of the Federation (2002) 12 S.C. (Pt. I) 1; (2002) 18 NWLR (Pt.798) 232. It was counsel’s submission that decision in Attorney-General of the Federation v. Attorney-General of Abia State (No.2) (supra) went the way it did because the National Assembly had not enacted any law relating to Revenue Allocation. Placing reliance on Section 162(5) of the Constitution, counsel urged us to dismiss the suit.

Sections 7(6)(a) and 162(5) deal with the power of the National Assembly to allocate revenue to the Local Governments in the country. It was not the case of the 1st defendant that the National Assembly acted on any other provisions of the 1999 Constitution in addition to Sections 7(6)(a) and 162(5). I find it necessary to set out in full the whole of H Sections 7 and 162 of the Constitution. They read:

“7(1) *The system of local government by democratically elected government councils is under this Constitution guaranteed; and accord-*

*ingly, the Government of every State shall, subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.*

B (2) *The person authorized by law to prescribe the area over which local government council may exercise authority shall -*

(a) define such area as clearly as practicable;

(b) ensure, to the extent to which it may be reasonably justified, 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.*

<sup>D</sup> (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.*

E (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.*

F (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 -*

G (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.

XX

*“162(1) The Federation shall maintain a special account to be called ‘the Federation Account’ into which shall be paid all revenues*

*collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the Armed Forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.* B

*(2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly, proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density:* C

*Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources.* D

*(3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.* E

*(4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manners as may be prescribed by the National Assembly.* F

*(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.* G

*(6) Each State shall maintain a special account to be called 'State Joint Local Government Account' into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.* H

*(7) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.*

(8) *The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.*

B (9) *Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the Federation and the States under Section 6 of this Constitution.*

C (10) *For the purposes of subsection (1) of this section, ‘revenue’ means any income or return accruing to or derived by the Government of the Federation from any source and includes -*

(a) *any receipt, however described, arising from the operation of any law;*

D (b) *any return, however described, arising from or in respect of any property held by the Government of the Federation;*

(c) *any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body.” (Underlining mine)*

It is seen in Sections 7(6) and 162(5) of the Constitution reproduced above, that the National Assembly is granted the power to make provisions for statutory allocation of public revenue to Local Government Councils in the Federation. It is noteworthy that Section 162(5) permits the National Assembly to make the allocation ‘on such terms and in such manner’ as it may prescribe. Section 162(8) of the Constitution however permits each State in the Federation to distribute the amount standing to the credit of Local Government Councils of a State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

Does the National Assembly have the power to enact a Law to monitor what happens to the amount allocated to the Local Government Councils in the States of the Federation after it has made the allocation of funds to them? In answering this question, it is helpful to consider the meaning of ‘allocation’ as contrasted with the meaning of distribution. It cannot escape attention that the power vested in the National Assembly is

the power to 'allocate' whilst the 'distribution' of the funds to Local Government Councils is reserved for each State.

In ordinary terms, it is easy to conclude that 'to allocate' means the same thing as 'to distribute'. But in the manner the two expressions are used in Section 162 of the Constitution, there is no doubt that the draftsman intended that there be different connotations or meaning for each. The New Oxford Dictionary of English defined 'allocate' as meaning 'distribute resources or duties for a particular purpose and the noun 'allocation' is defined as meaning 'the action or process of sharing out something'. The word 'distribute' is however defined in the same Dictionary to mean 'give a share or a unit of (something) to each of a number of recipients.' As I have shown above, it is the State Government that distribute the funds that have been allocated to the Councils in a State by the National Assembly. The conclusion to be arrived at therefore is that the National Assembly is only to formulate the technical data or criteria required to determine the quantum of allocation due to the Local Government Councils in each State. When this has been done, the National Assembly also directs the payment of the amount due to State Government who thereafter proceed to distribute the funds to the Local Government in the States.

The Act, which is being challenged in this suit as being inconsistent with the 1999 Constitution of Nigeria, by its provisions, has nothing to do with the allocation of funds to Local Government Councils. As its 'heading' shows, it is to 'monitor' the revenue allocation to Local Government. The allocation will first have been done, before it can be monitored. In Attorney-General of the Federation Ors. (1983) NSCC Vol.14, 181 at 192, this court said:

*"As already shown, the phrase 'on such terms and in such manner as may be prescribed' which is found under Section 149 subsection (4) of the Constitution, bestows on the National Assembly extensive powers to legislate in respect of the allocation of the Federation Account to State Government Councils. Similarly, power is also given to the National Assembly under Section 149 subsection (6) of the Constitution and item A paragraph 1(a)(iv) of the Concurrent Legislative List to legislate*

with regard to payment or distribution and division of the amount so allocated. Therefore when the National Assembly enacted Section 6 subwithin the enumerated classes of subjects expressly assigned to Parliament (in this case by Section 15(5) and Item 60(a) on the Exclusive B Legislative List of the Constitution), the National Assembly may by enactment provide for matters which, although within legislation, or even executive competence of the States, are necessarily incidental or ancillary to effective legislation by the National Assembly in relation to that C enumerated matter. See *Attorney-General for Ontario v. Attorney-General for the Dominion* (1896) AC 34 at 359 and 360.”

The power of the National Assembly to make Laws under and by virtue of Sections 7(6) and 162(5) of the Constitution must in my view be confined to matters relating to allocation of funds. The cases D referred to by 1st respondent i.e. *Attorney-General of Bendel State v. Attorney-General of the Federation* (supra) and *Attorney-General of Ondo State v. Attorney-General of the Federation* (supra) are in fact only a confirmation of this approach. All it boils down to, is that when called E upon to determine whether or not a particular legislation is inconsistent with the Constitution, the court must first ascertain ‘whether or not the matter to which the particular legislation relates’ falls within any of the three categories of the legislative authority of the National Assembly as F granted under Section 4(3) and (4) of the Constitution.

I now examine the provisions of the Act, which is the subject matter of this suit. The National Assembly has by Sections 1(1) and 1(2) set up a Committee, which shall include among others a Commissioner G of Revenue Mobilization, Allocation and Fiscal Commission and a representative of the Accountant-General of the Federation. The functions of the Committee as stated in the Act are (a) To ensure that allocations made to the Local Government Councils from the Federation account and from the State concerned are promptly paid into the State Local Government H account (b) To ensure that the funds are distributed to Local Government Councils and (c) To be able to know how much fund is paid to each Local Government. Under Section 3 of the Law, the Committee is expected to render monthly returns to the Federal Allocation Committee.



Sections 4 and 5 deal with the allocations to the Federal Capital Territory. Sections 4 and 5 have not been challenged in this suit. Section 6 limits the power of a State to borrow money in relation to the funds or revenue allocated to Local Government Council. There is nothing objectionable in this section, that is, Section 6. B

Section 7(1) creates an offence. Under it, a State or its officials cannot alter, deduct or re-allocate funds standing to the credit of State Joint Local Government Account; and Section 7(3) is a penal clause stating the penalty for the offence created under Section 7(1). C

It is certainly my view that Sections, 1, 2, 3 and 7 all deal with post-allocation matters in respect of which the National Assembly has no power to make laws. In *Attorney-General of Abia State & 35 Ors. v. Attorney-General of the Federation* (2002) 6 NWLR (Pt.763) 264; (2002) 3 S.C 106 at 185 this court per Ogundare, JSC., said: D

*“In my respectful view, by the combined effect of Sections 7(1) and 197 and Item 22 of the Second Schedule Part I, the Constitution intends that everything relating to local government be in the province of the State Government rather than in that of the Government of the Federation. The minor exception to this scheme is to be found in Item 11 of the Concurrent List where power is given to the National Assembly with respect to the Registration of voters and the procedure regulating elections to a Local Government Council. There is also, power given to the National Assembly, pursuant to Section 7(6) to make provisions for statutory allocation of public revenue to Local Government Councils in the Federation. Other than these, I can find no provision in the Constitution empowering the National Assembly to make laws affecting Local Government.”* E F G

It is as far as I can see apparent that the Act is directed solely against State Governments and their public officials. It is my view that the intendment of the provisions in the 1999 Constitution is to grant power and autonomy to State Government in its relationship with Local Government Councils in a State and to subordinate Local Government Councils to a State Government. That in my view, explains why Sections 7(6) and 162(5) only give the power to allocate funds from the Federation H

account to a Local Government Council to the National Assembly through a State; and further to leave the distribution of such funds to the State Government while confining the National Assembly only to allocation of funds. It would appear that the National Assembly by enacting the Act B into law in relation to States had unwillingly engaged in a cause that is a hindrance to the autonomy granted a State Government in its power to control the Local Government Council. It is also an attempt albeit unintended to set the Local Government Councils in a State against their State C Governments. This arises from the fact that, the Act in its language, and the functions it assigned to the Committee created thereunder, convey that it was to prevent the State Government converting to its officials for their own use, funds meant for Local Government Councils. I think that D under our Constitution, the Federal and State Governments are sovereign when acting within the limits of the power granted them by the Constitution.

Item A(1) under Part II of the Concurrent Legislative List provides:

E       *"1. Subject to the provisions of this Constitution, the National Assembly may by an Act make provisions for -*  
           (i) *the division of public revenue -*  
           (i) *between the Federation and the States;*  
 F       (ii) *among the States of the Federation;*  
           (iii) *between the States and Local Government Councils;*  
           (iv) *among the Local Government Councils in the States and*  
           ....."

G       The notion that allocation of funds from the Federation account in a Constitution fashioned on Federalism can be construed to confer a right on the National Assembly to ascertain whether or not a State Government has transmitted the funds sent through it to a Local Government reached the Local Government is untenable. It seems to me that the National H Assembly ought to leave the Local Governments Councils, which feel, short-changed by a State Government to themselves bring an action to compel a State Government concerned to pay over to them their entitlements. There is no doubt that the intention of the National Assembly

in enacting the Act is laudable and an honest attempt to ensure that funds meant for Local Government Councils reach them but I think that the Constitution as it stands enables Local Government Councils on their own to fight for their entitlements.

Further, Section 7(1) which creates an offence that a State Government or its officials cannot alter, deduct, or re-allocate funds standing to the credit of the State Joint Local Government Account is particularly objectionable. This is because under paragraph 2 of the Fourth Schedule dealing with the Functions of a Local Government Council, a Local Government is enjoined to participate with the State Government in respect of the following matters-

*“(a) the provision and maintenance of primary, adult and vocational education;*

*(b) the development of agriculture and natural resources other than the exploitation of minerals;*

*(c) the provision and maintenance of health services, and*

*(d) such other functions as may be conferred on a Local Government Council by the House of Assembly of the State.”*

Now, is it to be supposed that in the joint performance of the above functions, it will not be necessary for a State Government to transfer funds in and out of the Joint Local Government Account in relation to a particular Local Government. It is also to be expected that because of the inability of a particular Local Government Council on its own to meet the expense involved in certain projects like building of schools and hospitals, that one or more Local Government Councils may come together to syndicate funds and resources for such projects. The State Government is expected to be the arrowhead or co-ordinator of such projects which require joint funding by Local Government Councils. If a State Government Council alter, deduct or withdraw funds standing to the credit of the Local Government Councils concerned how can the State and Councils jointly or singly perform such constitutional duties? What is important, is that at the end of the day, particular Local Governments should get full value for the allocations due to them; and this can be ascertained by computing the movement of funds in either direction i.e. to the State

and Local Government Councils for this to be taken into consideration in the final accounts. Thus, it is seen that Section 7(2) in fact constitutes a serious hindrance to Local Government and State Governments in the performance of their duties.

B I respectfully conclude that Sections 1, 2, 3 and 7 are inconsistent with the 1999 Constitution of Nigeria. I therefore agree with the lead judgment of my learned brother, Tobi, JSC. I would also make the same orders as in the lead judgment. I make no order as to costs.

C

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### ONNOGHEN JSC

D This is a consolidated action in which the Attorney-General of Abia State, hereinafter referred to as the 1st plaintiff sued the Attorney-General of the Federation and the Attorney-Generals of the remaining Thirty-Five States of the Federal Republic of Nigeria claiming certain reliefs to be reproduced later in the judgment. The action was followed  
E by that of the Attorney-General of Delta State hereunder referred to as the 2nd plaintiff against the Attorney-General of the Federation and the Attorney-Generals of the other Thirty-Five States of the Federation as defendants while the third action was instituted by the Attorney-General  
F of Lagos State against the Attorney-General of the Federation and the Attorney-Generals of the other Thirty-Five States of the Federal Republic of Nigeria. The Attorney-General of Lagos State is therefore referred to as the 3rd plaintiff. The actions were consolidated by an order of this  
G court made on 20th October, 2005, upon an application by the 2nd and 3rd plaintiffs. The dispute between the parties originates from the promulgation of the Monitoring of Revenue Allocation to Local Government Act, 2005 by the National Assembly, some of whose provisions the plaintiffs consider unconstitutional.

H The reliefs claimed by the plaintiffs are as follows:-  
1st plaintiff:-

*“(a) A declaration that no law made by the National Assembly can validly direct the plaintiff or any other State Government to include*

*a Commissioner of the Revenue Mobilization Allocation and Fiscal Commission as a member of the State Joint Local Government Allocation Committee envisaged by Section 162 of the Constitution.*

*(b) A declaration that no law made by the National Assembly can validly direct the plaintiff's Joint Local Government Allocation Committee to render monthly returns to the Federation Account Allocation Committee or at all.*

*(c) A declaration that save and except for laws of the Federation with respect to:*

*(i) The prescription of such terms and in what manner any amount standing to the credit of the Federation shall be distributed among the Federal and State Governments and the Local Government Councils;*

*(ii) The prescription of such terms and to what manner the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils;*

*(iii) The establishment of the Federal Capital Territory Joint Area Council Allocation Committee and the Federal Capital Territory Joint Area Council Committee -*

*'it is the House of Assembly of a State not the National Assembly which may make a law prescribing the terms and manner in which the amount standing to the credit of the Local Government Councils in a State shall be distributed.'*

*(d) A declaration that the provisions contained in Sections 1, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are, from the date of commencement of the Act, inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and are accordingly null and void and inoperative."*

The 2nd plaintiff claims as follows:

*"1. A declaration that Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 as they relate to the plaintiff are unconstitutional and void being inconsistent with Sections 4, 5, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999.*

2. *An order of perpetual injunction restraining the Government of the Federation, its functionaries, agencies, whomsoever, including the Revenue Mobilization, Allocation and Fiscal Commission or any of its Commissioners, the Accountant-General of the Federation or his representative from enforcing or purporting to enforce by sanctions in any way or manner whatsoever directly or indirectly the provisions or any of the provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005, against the Government of Delta State, its functionaries, public officers, servants and agencies whomsoever.*”

While the 3rd plaintiff claims thus:

“1. *A declaration that the provisions of Sections 1, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act 2005 are inconsistent with the provisions of Sections 4, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void.*

2. *A declaration that the provisions of Sections 1, 2 and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, by imposing a duty and obligation on the State Government, violate the principles of Federalism enshrined in the Constitution of Nigeria, 1999 and relevant case law and are therefore unconstitutional, unlawful, null and void.*

3. *A declaration that by virtue of the provisions of Sections 4, 7, and 162(6) & (8) of the Constitution of the Federal Republic of Nigeria 1999, the House of Assembly of Lagos State is the body competent to make laws for the establishment, composition and functions of the State Joint Local Government Account Committee for Lagos State.*

4. *A declaration that having regard to the provisions of Sections 7 and 128 of the Constitution of Nigeria, the defendant cannot by the Monitoring of Revenue Allocation to Local Governments Act, 2005 or any other Act of the National Assembly, exercise oversight functions over Local Government administration in any State of the Federation.*

5. *An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant, by itself, agents and servants or whosoever from implementing or giving any effect whatso-*

ever to the said Monitoring of Revenue Allocation to Local Governments Act, 2005.

6. *An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or whosoever from acting in any manner in contravention of the provisions of Sections 4, 7, 128 and 162 of the Constitution of the Federal Republic of Nigeria, 1999.*”

From the reliefs reproduced supra, it is very clear that the plaintiffs are seeking the nullification of Sections 1, 2, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Government Act, 2005 (hereinafter referred to as the Act).

The plaintiffs and some of the defendants have filed their briefs of argument and the following are the issues formulated for the determination of the actions.

The 1st plaintiff formulated a single issue, to wit:-

“*Whether the first defendant has the legislative competence to enact the Monitoring of Revenue Allocation to Local Governments Act, 2005 and whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria.*”

On the other hand, the 2nd plaintiff formulated the following issues, namely:

“1. *Whether the provisions of Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with Sections 4, 5, 7 and 162 of the Constitution of the Federal Republic of Nigeria, 1999 in so far as the Act seeks to create offences and regulate the manner the amount allocated to the State for the benefit of the Local Governments in the plaintiff State is to be distributed in the light of the decision of the Supreme Court in Attorney-General, Ogun State v. Attorney-General, Federation (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR (Pt. 798) 232.*

2. *Whether the plaintiff is entitled to an order of injunction restraining the defendant from implementing the provisions of the Monitoring of Revenue Allocation to Local Governments Act, 2005 which are*

*in violation of the Constitution.”*

While the 3rd plaintiff submitted the following four issues for determination -

B “3.1 *Whether the provisions of Sections 1, 2, 3, 6(1), 7, and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are not inconsistent with the provisions of Sections 4, 7, and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void.*

C 3.2 *Whether or not Sections 1, 2, and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005, by imposing a duty and obligation on the State Government in matters within its legislative competence are not in violation of the principles of Federalism enshrined in the Constitution of the Federal Republic of Nigeria, 1999 and relevant case law on the issue.*

E 3.3 *Whether by virtue of the provisions of Sections 4, 7 and 162(6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is not the body competent to make laws for the establishment and composition and functions of the State Joint Local Government Account Committee for Lagos State.*

F 3.4 *Whether having regard to the provisions of Sections 7 and 128 of the Constitution of the Federal Republic of Nigeria, the defendant can by the Monitoring of Revenue Allocation to Local Governments Act, 2005 or any other Act of the National Assembly, exercise oversight functions over Local Government Administration in any State of the Federation.”*

G From the 1st defendant who is the Attorney-General of the Federation and the only true defendant in the actions, we have the following two issues for determination:

H “1. *Whether the 1st defendant (representing the National Assembly in this case) has the legislative competence to enact the Monitoring of Revenue Allocation to Local Governments Act, 2005.*

2. *Whether the said Act is not wholly or partially inconsistent with the extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.”*



In arguing the case, learned counsel for the 1st plaintiff. Chief S. U. Akuma referred the court to Sections 4, 7 and 162 of the 1999 Constitution and the case of Attorney-General of Abia State v. Attorney-General of the Federation (2002) 3 S.C. 106; (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264; Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 6 NWLR (Pt. 764) 542; Attorney-General of Ogun State v. Attorney-General of the Federation (2002) 12 S.C. (Pt.II) 1; (2002) 18 NWLR (Pt. 798) 232 and submitted that the 1st defendant has not the legislative competence to enact some of the sections of the Act particularly Sections 1, 2, 3 and 7 thereof which he termed unconstitutional and therefore void for being inconsistent with Sections 4, 5, 7, 162(5), (6) and (8) of the 1999 Constitution. Learned counsel then urged the court to nullify the said Sections 1, 2, 3 and 7 of the Act and grant the reliefs sought in paragraph 10 of the Statement of Claim.

It should be noted that counsel for the 1st plaintiff has no quarrel with the provisions of Sections 4 and 5 of the Act which make provisions in relation to the Federal Capital Territory.

Prof. Fidelis Oditah, QC, SAN, leading counsel for the 2nd plaintiff while dealing with issue one for the said plaintiff submitted that the provisions of Sections 1, 2, 3 and 7 of the Act are inconsistent with Sections 4, 5, 7 and 162 of the 1999 Constitution as the Act seeks to create offence and regulate the manner the amount allocated to the State is distributed and cited and relied on the case of Attorney-General of Ogun State v. Attorney-General of the Federation (supra); Attorney-General of Lagos State v. Attorney-General of the Federation (2003) 6 S.C. (Pt. I) 24; (2003) 12 NWLR (Pt. 833) 1, Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 1-2 S.C. (Reprint) 7; (1982) S.C. 1, Attorney-General of Abia State v. Attorney-General of the Federation (2002) 3 S.C. 106; (2002) 2 NWLR (Pt. 763) 264; Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222 and Macfoy v. UAC (1961) WLR 3. Learned senior counsel further submitted that there are differences between the words “allocate” and “distribute” as used in Section 162(5)

and 162(8) of the 1999 Constitution.

Turning to issue No. 2, learned senior counsel submitted that this court can grant an order of injunction to preserve a declaration made by the court and cited and relied on the case of Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (supra) and urged the court to grant the reliefs sought.

A. R. Ipaye, Esq. for the 3rd plaintiff submitted that Sections 1, 2, 3, 6(1), 7 and 9 of the Act are inconsistent with the provisions of Sections 4, 7, 162(5), (6) and (8) of the 1999 Constitution and consequently unconstitutional, null and void; that for the National Assembly to impose a duty on the State legislature in matters within the said legislature's competence, the Act is unconstitutional. He referred to the details of the provisions of the particular sections of the Act and the 1999 Constitution and relied on the cases of Attorney-General of Ogun State v. Attorney-General of the Federation (2003) 12 S.C. 1; Attorney-General of Lagos State v. Attorney-General of the Federation (2003) 6 S.C. (Pt. 1) 61; Bailey v. Drexel Furniture Co. 259 US (1921) 449 to 452; Attorney-General of Ogun State v. Attorney-General of the Federation (1982) 1-2 S.C. (Reprint) 7; (1982) 13 NSCC 1.

On the other hand, learned counsel for the 1st defendant, Duro Adeyele Esq., in dealing with issue 1 formulated for the 1st defendant submitted that the combined effect of Sections 7(6), (9) and 162(5) of the 1999 Constitution is that the National Assembly has the constitutional vires to allocate public funds or revenue to Local Governments in the Federal Republic of Nigeria and therefore the constitutional power to also prescribe the manner in which such allocations may be made, and that the power is exercisable by the enactment of an Act such as the one in issue in the case - referring to the case of Attorney-General of Bendel State v. Attorney-General of the Federation (1983) NSCC 181 at 192 and Attorney-General of Abia State v. Attorney-General of the Federation (supra).

On issue 2, learned counsel submitted that the provisions of the Act complained of are not inconsistent with extant provisions of the 1999 Constitution particularly as the Act was validly enacted by the National

Assembly, and that the Federal Government seeks by the Act to check the vices of corruption and abuse of power by enacting the Act, relying on Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) FWLR (Pt. 111) 1972 at 2146. Learned counsel distinguished the case of Attorney-General of Ogun State v. Attorney-General of the Federation (supra) from the instant case and relied heavily on the provisions of Section 162(5) of the 1999 Constitution. Turning to the case of Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (supra), learned counsel submitted that the court decided that case in the way it did because at that time, the National Assembly was yet to enact a law in relation to Revenue Allocation as empowered by Section 162(2) of the 1999 Constitution. Finally, learned counsel urged the court to dismiss the claims of the plaintiffs.

I had earlier in this judgment stated that the 1st defendant is the only true defendant in the actions. That statement is based on the fact that none of the three actions consolidated made any claim against the other defendants based on any breach of duty or the constitution, omission or commission of any wrong, making it necessary for them to be joined as defendants to the action. It is not alleged that they played any role in the enactment of the Act in question. Going through the facts, it is rather clear that the other defendants have common interest in the actions with the plaintiffs because they are adversely affected by the provisions of the Act in issue and the reliefs claimed by the plaintiffs are mutually beneficial to all the States of the Federation. However, for reasons best known to the Attorney-Generals of the other States, they prefer not to join the plaintiffs in the action but remain as defendants - the position erroneously assigned to them by the plaintiffs in the actions particularly as no allegation of wrong doing is made against them nor any relief claimed against them. There is therefore no wonder that the other defendants filed what they termed Statement of Defence which admitted all the claims of the plaintiffs - even though not made against them! They also filed briefs, all of which supported the case of the plaintiffs and some of which asked for reliefs of their own - not contained in the reliefs of the plaintiffs, even though they filed no counter claim.

I hold the view that though we may continue to say that our democracy is at its infancy, we cannot lose sight of the fact that ours is a constitutional democracy based on the rule of law. Where the rule of law reigns, political expediency ought to be sacrificed on the altar of the rule of law so as to guarantee the continued existence of democratic institutions fashioned to promote social values of liberty, orderly conduct and development, particularly in a Republic founded on the principles of federalism where power is not only apportioned between the Federal and State Government but also the Local Governments with checks and balances. Within the Federal and State Governments, power is further apportioned among the three arms of Government termed the Legislature, Executive and the Judiciary - See Sections 4, 5 and 6 of the 1999 Constitution. What is relevant to the determination of the present action is the legislative powers of the National Assembly in relation to the passing of the Act in issue. By constitutional arrangement, both the National Assembly and the State Houses of Assembly have different spheres of legislative competence, which is commonly referred to as the exclusive legislative list and the concurrent legislative list - see parts 1 and 2 of the second schedule. There is however a third list which is not expressly mentioned in the Constitution or second schedule to the Constitution, it is the Residual list which literally means what remains after the items in the exclusive and concurrent lists are taken out. The concurrent legislative list is supposed to be the common legislative shopping centre for both the National Assembly and the State Houses of Assembly in the exercise of their legislative powers or functions.

It is not in doubt that by the provisions of Section 4(2) of the 1999 Constitution, the National Assembly has 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 the said Constitution. In addition to the above, Section 4(4) empowers the National Assembly to legislate on matters in the Concurrent legislative List set out in the first column of part II of the second schedule to the 1999 Constitution and any other matter with respect to which it is empowered to make laws in

accordance with the provisions of the said Constitution.

Also not in doubt is the fact that the legislative powers of a State of the Federation is vested in the House of Assembly of the State as provided by Section 4(6) of the 1999 Constitution. See also Section 4(7) of the 1999 Constitution.

By item 1(a) of the Concurrent Legislative List which deals with divisions of public revenue to Local Government Councils, the National Assembly is empowered to make provisions for the allocation of public revenue between the Federation and the States, among the States of the Federation, between the States and Local Government Councils and among the Local Government Councils in the States.

The system of Local Government in Nigeria is guaranteed by Section 7(1) of the 1999 Constitution which Constitution provided in its subsection (6) of Section 7 that the National Assembly shall make provisions for statutory allocation of public revenue to Local Government Councils in the Federation and that the House of Assembly of a State shall make provisions for statutory allocation of public revenue to Local Government Councils within the State.

Both parties rely on Section 162 of the 1999 Constitution in addition to others in support of their respective contentions. For our purpose in the instant case, the relevant provisions are Section 162(2), (5), (6), (7) and (8) which provide as follows:-

*“(2) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.*

*(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.*

*(6) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.*

*(7) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.*

*(8) The amount standing to the credit of Local Government Councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.”*

From the above provisions, it is very clear that the National Assembly has the power to allocate any amount standing to the credit of the Federation Account among the Federal and State Governments as well as the Local Government councils in the States on such terms and in such manner as the National Assembly or legislature may prescribe. It is also clear that the amount standing to the credit of Local Government Councils in the Federation Account shall equally be allocated to the States for the benefit of their Local Government Councils also on such terms and manner as may be prescribed by the National Assembly by an Act.

Each State Government is enjoined by the said provisions to maintain a special account to be called “State Joint Local Government Account” into which all allocations to the Local Government Councils of the State from the said Federation Account and from the Government of the State concerned shall be paid. In other words, apart from the allocation from the Federation Account to the Local Government Councils, the States of the Federation are enjoined by the 1999 Constitution to also contribute part of their public revenue to the Local Government Councils within their State and to pay that allocation into the said account. A very important and relevant provision for the purposes of this action is Section 162(8) (*supra*) which provides that the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of the State on terms and manner to be prescribed by the House of Assembly of the State. It is very clear that while the National Assembly is empowered by Section 162(5) of the 1999 Constitution to allocate the amount standing to the credit of Local Government Councils in the Federation Account to the States for the benefit of their Local Government Councils on terms and manner to be

prescribed by an Act of the National Assembly, Section 162(8) of the said Constitution empowers the House of Assembly of the State to prescribe the terms and manner of distribution of the amount standing to the credit of Local Government Councils among the said Local Government Councils of the State by enactment of a law to that effect. A very important B fact that must not be lost sight of in this case is the fact that Nigeria operates, by constitutional arrangement, a federal system of government as opposed to unitary system. I had earlier stated that the adoption of the Federal System necessarily means that power must be apportioned be- C tween the Federal and the constituent States of the Federation thereby assigning to each, designated areas or spheres of legislative competence. This principle is designed to minimize areas of legislative conflicts between the Federal and State Legislatures.

On the other hand, in a unitary State such as Great Britain, there D is only one centre of legislative power covering the whole State which State is usually, for administrative convenience divided into regions or provinces. I must confess that due to military incursion into the politics of this nation and having regard to the military's unique command struc- E ture, the line between Federalism and Unitary concepts of State structure became understandably influenced by the single chain command structure of the military thereby adulterating the Federal System of Government as is usually known and practiced in true federalism. I am afraid F that the post-military era which has witnessed the re-introduction of popular democracy is not totally free from the tendency to practice pseudo federalism. It is in the light of the above that the importance of the provisions of sub-sections (5) and (6) of Section 162 becomes very clear. It is G with the above in mind that I proceed to examine the provisions of the impugned Act so as to determine in whose legislative competence the provisions fall, whether the National or State Assembly.

The relevant provisions of the Act are Sections 1, 2, 3, 6(1), 7 H and 9 and they provide respectively as follows:-

*“(1) Each State of the Federation shall establish a body to be known as the State Joint Local Government Account Allocation Committee (hereinafter referred to as the Committee)”.*

(2) *The Committee shall include the following members:*

(a) *the Commissioner or any other officer charged with the responsibility for Local Government in the State who shall be the Chairman;*

B (b) *a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission provided that the Commissioner shall not serve in his own State;*

C (c) *all the Chairmen of the Local Government Councils in the State;*

(d) *the Accountant-General of the State;*

(e) *a representative of the Accountant-General of the Federation; and*

D (e) *a representative of the State Revenue Board.*

(3) *The Permanent Secretary of the State Ministry charged with responsibility for Local Government or such officer as may be designated by the Chairman shall be the Secretary to the Committee."*

E The functions of the Committee are provided for in Section 2 as follows:-

"(a) *ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the State concerned are promptly paid into the State Joint Local Government Account.*

F (b) *ensure that the funds paid into the State Joint Local Government Account under paragraph (a) of this section are distributed to the Local Government councils in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and any law made in that behalf by the House of Assembly of the State, and*

G (c) *monitor the payment and distribution of the funds mentioned in paragraphs (a) and (b) of the section so as to ascertain the actual amount paid to each Local Government."*

H Section 3 provides that:

"(1) *The Committee shall render monthly returns to the Federation Account Allocation Committee through the monthly quarterly returns through the Accountant-General and Fiscal Commission.*

(2) *The Federation Account Allocation Committee shall scruti-*



nize the returns to it by the Committee and make quarterly returns through the Accountant General of the Federation to each House of the National Assembly.”

While Section 6(1) provides that:

“The power of State Government for borrowing money shall not extend to the money, funds or revenue allocated to Local Government Councils from the Federation Account and from the State concerned”.

Section 7 provides as follows -

“(1) It shall be unlawful for any organ, authority or official of a State or the Federal Capital Territory, however described or constituted, to alter, deduct or reallocate funds standing to the credit of the State Joint Local Government Account, or the Federal Capital Territory Joint Area Councils Account.

Provided always that nothing in this subsection shall prevent the House of Assembly of a State, or the National Assembly, from prescribing the law, the terms and manner for distributing money standing to the credit of any of the Joint Accounts, as the case may be, to the Local Government Councils in the State, or the Area Councils in the Federal Capital Territory.

(2) In the case of any default in the allocation or distribution to any local government, such amount shall be a first charge on the State’s next allocation from the Federation Account and shall be credited to the affected local government.

(3) Any person who acts in contravention of the provisions of subsection (1) of this section, commits an offence and is liable on conviction to a fine twice the amount altered, deducted or re-allocated illegally, or imprisonment for a term of five years, or to both such fine and imprisonment.”

Finally, Section 9 provides inter alia that:

“The Auditor-General for the Federation shall, following the end of each financial year report to each House of the National Assembly, stating how the monies allocated to each State for the benefit of the Local Government Councils within the State and the Area Councils in the Federal Capital Territory were spent.”

Taking the provisions one after the other, can it be said that the 1999 Constitution vests the National Assembly with power to set up or establish the State Joint Local Government Account Allocation Committee with functions as stipulated in Section 1(1) and (2) of the Act. I had earlier in this judgment reproduced the provisions of Section 162(6) of the 1999 Constitution and from that provision, it is very clear that it is the function and or responsibility of the Government of a State to maintain a special account in the name and style therein stated and it is very clear from the briefs filed in this action by the other defendants that the States have established the necessary committees for the purposes envisaged by the said Section 162(6) of the 1999 Constitution. It is therefore very clear and I do not hesitate to hold that the National Assembly has no constitutional vires to establish by legislation the State Joint Local Government Account Allocation Committee as envisaged in Section 1(1) and (2) of the Act. I hold the above view based on the fact that by prescribing the membership of the State Joint Local Government Account Allocation Committee to include even Federal Officers, the National Assembly has thereby “established” the said Committee when it is not within its legislative competence so to do. I further hold that by the provisions of Section 162(6) of the said 1999 Constitution, it is only the House of Assembly of a State in the Federation that is empowered to establish such a committee pursuant to the powers conferred on it by Sections 4(7)(c), 7 and 162(8) of the 1999 Constitution. It is therefore clear that by enacting the said Section 1(1) & (2) of the Act, the National Assembly invaded the legislative domain of the State House of Assembly which invasion is unconstitutional. I hold the view, that learned counsel for the 1st defendant, cannot take refuge under the decision of this court in the case of Attorney-General of Bendel State v. Attorney-General of the Federation (*supra*) whose facts are totally dissimilar with the facts of this case, and therefore irrelevant. However, in the case of Attorney-General of Ogun State v. Attorney-General of the Federation (*supra*), in interpreting the provisions of Section 162 of the 1999 Constitution along side Section 3 of the Allocation of Revenue (Federation Account, etc.) Act, Cap. 16, Laws of the Federation of Nigeria, 1990, this court held that Section 6(1) of that

Act which provides for the establishment of a Joint Local Government Account Allocation Committee for each State in the Federation, is inconsistent with Section 162(8) of the 1999 Constitution particularly as it sought to regulate the manner the amount allocated to the State for the benefit of the Local Government Councils in the State is to be distributed. B

As regards Section 1(2) which stipulates the membership of the Committee, I agree with the learned counsel for the plaintiffs that it is not right for Federal Officers to be made members of a purely State Committee. In the instant case, two out of the six members are federal officers. C In any event, having found that the National Assembly has no legislative vires to establish the committee, it follows that it cannot have the vires to determine the members of the said committee, it is not a Joint Federal and State Committee.

Much has been said of the decision of this court in the A-G of D Bendel State v. A-G of the Federation & Ors case (supra), particularly the interpretation of the phrase “on such terms and in such manner as may be prescribed” as now contained in Section 162(5) of the 1999 Constitution, which phrase was held to bestow on the National Assembly extensive powers to legislate in respect of the allocation of the Federation E Account to State Local Government Councils. I hold the view that the above decision is sound law and is very much in accord with Section 162(5) supra. However, I hold the considered view that the extensive F powers granted the National Assembly to legislate in respect of the allocation of the Federation Account is limited strictly to the process of allocating the funds and cannot extend to anything to be done after the funds have been so allocated and paid into the State Joint Local Government G Account. It definitely does not extend to establishment of a State Joint Local Government Account Allocation Committee by prescribing its membership and functions. The said extensive legislative powers are limited to the relevant factors to be taken into consideration in allocating the said revenue which may include population of the area concerned, revenue H yielding capability, land mass, terrain as well as population density as provided in Section 168(2) of the 1999 Constitution. I hold the further view that having allocated the funds in accordance with laid down prac-

stice and procedures, there is nothing left for the Federal Government to monitor.

Looking at the functions assigned to the Committee, I had earlier in this judgment held that while Section 162(5) of the 1999 Constitution deals with allocation of public revenue by the National Assembly to the State and Local Government Councils Section 162(8) deals with the distribution of the said allocated funds. The constitutional responsibility of the National Assembly stops at allocating the amount standing to the credit of the State and Local Government Councils and does not extend to the responsibility of distributing the amount so allocated, which is, by the provisions of Section 162(8) of the said Constitution, the responsibility of the State House of Assembly. This simply means that the National Assembly becomes functus officio after allocating the funds. That apart, the word “monitor” as used in Section 2 of the Act envisages supervision of the distribution by the committee of the allocated amount which I hold to be also an invasion of the legislative domain of the State House of Assembly.

Looking at Section 7 of the Act, it is very clear that the provision is intended to police the distribution of the allocation by providing two sets of punishments for failure to comply. These are:-

(a) first charge on the defaulting State’s next allocation from the Federation Account, and

(b) a fine of five years imprisonment in the alternative or both.

The section is clearly outside the legislative competence of the National Assembly even though the intention of the National Assembly is very good. That apart, I agree with the submission of learned counsel for the 1st plaintiff that by providing in Section 7(2) of the Act that any amount wrongly deducted or re-allocated contrary to the provisions of the Act shall form a first charge on the next allocation of the defaulting State from the Federation Account, the said section is intended to overreach the decision of this court in the case of Attorney-General of Ogun State v. Attorney-General of the Federation (supra) to the effect that the National Assembly has no power under the 1999 Constitution to make a law allowing for direct allocation of revenue to the Local Government

Councils without passing same through the State which is constitutionally saddled with the responsibility of paying same in turn into the State Joint Local Government Account as provided in Section 162(6) of the 1999 Constitution.

Recent happenings in this country concerning funds allocated B from the Federation Account to the State Governments for the benefit of the Local Government Councils must have advised the National Assembly to promulgate the Act in issue in an attempt to bring sanity into the system and ensure some reasonable level of development in the Local C Government Councils. That intention is very good and commendable. However, in a Federation, where legislative power is constitutionally apportioned between the Federal and State Legislatures, such good intention can only be relevant if the mischief intended to correct is within the D legislative competence of the particular legislature - in this case the National Assembly - without which the good intention notwithstanding the effort becomes a mere exercise in futility, as has been found in the instant case.

The constitutional provisions are well intentioned and are crafted E to guarantee effective and efficient governance. Even though at the moment, things are the way they are with the Local Government councils and States in relation to distribution of allocations, the future remains bright and it is hoped that soon and with the increased activities of anti- F corruption agencies being intensified with visible results to serve as deterrent, the wisdom in the allocation of legislative powers between the Federal and State legislatures particularly in relation to allocation and distribution of funds would start to yield positive dividends thereby truncat- G ing the desire to tilt towards unitary tendencies while operating a Federal System of Government. Meanwhile, one can only but hope that the present trend would be checked by those who have created the environment needed for the National Assembly to commit the constitutional error. H However, this court will always do its constitutional duty whenever called upon. In any event, we appear more concerned with what the State Governments are allegedly doing with the allocated funds meant for the Local Government Councils at the expense of what the Local Government

Councils are in fact doing with whatever funds released to them by the State Governments. We appear to assume that the Local Government councils structure or administration is manned by angels or credible and accountable political class different from the one running the State Governments, which is not borne out by empirical evidence. In the circumstance, we can only HOPE and PRAY.

In conclusion, I agree with my learned brother, Tobi, JSC., that the cases have merit and that the reliefs be granted. Accordingly, I hereby enter judgment for the plaintiffs in the following terms:-

(a) SC/99/2005:

(i) It is hereby declared that no law made by the National Assembly can validly direct the plaintiff or any other State Government to include a Commissioner of the Revenue Mobilization Allocation and Fiscal Commission as a member of the State Joint Local Government Allocation Committee envisaged by Section 162 of the Constitution.

(ii) That no law made by the National Assembly can validly direct the plaintiff's Joint Local Government Allocation Committee to render monthly returns to Federation Account Allocation Committee or at all.

(iii) That save and except for laws of the Federation with respect to:

(a) The prescription of such terms and in what manner any amount standing to the credit of the Federation shall be distributed among the Federal and State Governments and the Local Government Councils;

(b) The prescription of such terms and in what manner the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils;

(c) The establishment of the Federal Allocation Committee and the Federal Capital Territory Joint Area Councils Committee -

'it is the House of Assembly of a State not the National Assembly which may make a law prescribing the terms and manner in which the amount standing to the credit of the Local Government Councils in a State shall be distributed.

(d) That the provisions contained in Sections 1, 3, 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are, from the date of commencement of the Act, inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and are accordingly null and void and inoperative, and, B

(e) That Section 6(1) of the Act is consistent with the provisions of the Constitution and therefore validly enacted.

(b) SC/121/2005:

It is hereby declared: C

(i) That Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 as they relate to the plaintiff are unconstitutional and void being inconsistent with Sections 4, 5, 7 and 162(5) (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999. D

(ii) That the order for injunction restraining the Government of the Federation, its functionaries, agencies whomsoever, including the Revenue Mobilization, Allocation and Fiscal Commission or any of its Commissioners, the Accountant-General of the Federation etc, etc, be and is E hereby refused.

(c) SC/216/2005:

It is hereby declared:

(1) That the provisions of Sections 1, 2, 3, 7 and 9 of the Monitoring of Revenue Allocation to Local Government Act, 2005 are inconsistent with the provisions of Sections 4, 7 and 162(5), (8) and (6) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void. F

(2) That Section 6(1) of the said Act is validly made and therefore constitutional. G

(3) That the provisions of Sections 1, 2 and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 by imposing a duty and obligation on the State Government violate the principles of Federalism enshrined in the Constitution of the Federal Republic of Nigeria, 1999 and relevant case law and are therefore unconstitutional, unlawful, null and void. H

(4) That by virtue of the provisions of Sections 4, 7 and 162(6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is the body competent to make laws for the establishment, composition and functions of the State Joint Local Government Account Committee for Lagos.

(5) That having regard to the provisions of Sections 7 and 128 of the Constitution of the Federal Republic of Nigeria, 1999, the 1st defendant cannot by the Monitoring of Revenue Allocation to Local Governments Act, 2005 or any other Act of the National Assembly exercise oversight functions over Local Government administration in any State of the Federation.

(6) That the order of injunction restraining the Federal Government of Nigeria etc, etc be and is hereby refused.

There shall be no order as to costs.

Judgment for the plaintiffs.

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**E KUTIGI JSC (Dissenting)**

By its Statement of Claim in Suit No. SC. 99/2005, the Attorney-General of Abia State (hereinafter referred to as the 1st plaintiff) claimed against the Attorney-General of the Federation as follows -

*F “a. A declaration that no laws made by the National Assembly can validly direct the plaintiff or any other State Government to include a Commissioner of the Revenue Mobilization Allocation and Fiscal Commission as a member of the State Joint Local Government Allocation Committee envisaged by Section 162 of the Constitution.*

*G b. A declaration that no law made by the National Assembly can validly direct the plaintiff’s Joint Local Government Allocation Committee to render monthly Returns to the Federation Account Allocation Committee or at all.*

*H c. A declaration that save and except for laws of the Federation with respect to:*

*(i) The prescription of such terms and in what manner any amount standing to the credit of the Federation shall be distributed among the*



*Federal and State Governments and the Local Government Councils;*

(ii) *The prescription of such terms and in what manner the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils;*

(iii) *The establishment of the Federal Capital Territory Joint Area Council Allocation Committee and the Federal Capital Territory Joint Area Council Committee -*

*“it is the House of Assembly of a State not the National Assembly which may make a Law prescribing the terms and manner in which the amount standing to the credit of the Local Government Councils in a State shall be distributed.”*

*d. A declaration that the provisions contained in Sections 1, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are, from the date of commencement of the Act, inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and are accordingly null and void and inoperative.”*

There is no claim made against any of the other 35 defendants. E

The Attorney-General of Delta State (hereinafter called the 2nd plaintiff) by originating Summons in Suit No. SC. 121/2005 claimed the following reliefs from the Attorney-General of the Federation -

*“a. A declaration that Sections, 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 as they relate to the plaintiff are unconstitutional and void, being inconsistent with Sections 4, 5, 7 and 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999”.*

*“b. An order of Perpetual Injunction restraining the Government of the Federation, its functionaries, agencies whomsoever, including the Revenue Mobilization and Fiscal Commission or any of its Commissioners, the Accountant-General of the Federation or his representatives from enforcing or purporting to enforce by sanctioning in any way or manner whatsoever directly or indirectly the provisions or any of the provisions of the Monitoring of Revenue Allocations to Local Governments Act, 2005 against the Government of Delta State, its functionar-*

*ies, public officers, servants and agencies whomsoever.”*

Here too, no claim is made against any other defendant.

Also, the Attorney-General of Lagos State (hereinafter called the 3rd plaintiff) by way of Originating Summons in Suit No. SC. 216/2005 B claimed against the Attorney-General of the Federation thus -

“a. A declaration that the provisions of Sections 1, 2, 3, 6(1), 7 & 9 of the Monitoring of Revenue Allocations to Local Governments Act, 2005 are inconsistent with the provisions of Sections 4, 7 and 162(5), C (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void.’

“b. A declaration that the provisions of Sections 1, 2 and 3 of the Monitoring of Revenue Allocations of Local Governments Act, 2005, D by imposing a duty and obligation on the State Governments, violate the principles of Federalism enshrined in the Constitution of Nigeria, 1999 and relevant case law and are therefore unconstitutional, unlawful, null and void.”

“c. A declaration that by virtue of the provisions of Sections 4, E 7 and 162(6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999, the House of Assembly of Lagos State is the body competent to make laws for the establishment, composition and functions of the State Joint Local Government Account Committee for Lagos State.”

F “d. A declaration that having regard to the provisions of Sections 7 and 128 of the Constitution of Nigeria, the defendant cannot by the Monitoring of Revenue Allocation to Local Government Act, 2005, or any other Act of the National Assembly exercise oversight functions G over Local Government administration in any State of the Federation.

“e. An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or howsoever from implementing or giving any effect whatsoever to the said Monitoring of Revenue Allocation to Local Govern- H ments Act, 2005.

“f. An order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or howsoever from acting in any manner in contravention of the

*provisions of Sections 4, 7, 128 and 162 of the Constitution of the Federal Republic of Nigeria 1999.”*

Again here too as in the two preceding suits, there is not a single claim against any other defendant.

Upon the application of the respective plaintiffs in Suits Nos. SC. 121/2005 and SC. 216/2005, all the three (3) suits above were by order of court consolidated on 20th October, 2005. It was at that stage that the court ordered the parties to file their respective briefs of argument. I will make it clear therefore that the only papers or briefs to be considered in this judgment are those papers and or briefs filed by the three (3) respective plaintiffs above and that of the defendant, Attorney-General of the Federation. All the other 35 defendants have no business being here. They are not co-plaintiffs even though they claim to be interested in the outcome of the case as it will affect them, and as co-defendants against whom no claim whatsoever is made, none of them has the capacity or capability to file any paper and or brief. This court has in addition not invited any or all of the 35 other defendants as *amicus curiae*. These 35 other defendants must have wasted time coming to court when there is no claim against any of them. Under normal circumstances, the plaintiff or plaintiffs who brought them to court without a claim against any of them would be made to pay heavy costs for wasting their time. I expected these 35 other defendants to have applied for their names to be struck out. They did not. Enough of that!

Now, although the two Attorney-Generals of Delta and Lagos States respectively came by way of Originating Summons supported by affidavits while Abia State came by way of a Writ of Summons supported with a Statement of Claim, the claims involved in the three consolidated suits are essentially the same or identical in many respects. It should be mentioned that the 1st defendant filed a Statement of Defence and Counter-affidavits in response to the claims.

The 1st defendant on page 10 of its brief submitted only one H issue for determination by this court. It reads -

*“Whether the first defendant has the legislative competence to enact the monitoring of revenue allocation to Local Governments Act,*

2005 and whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.”

This is in fact two (2) issues in one (1).

B The 2nd defendant on the other hand has submitted two issues for determination in page 3 of its brief thus -

C “1. Whether the provisions of Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with Sections 4, 5, 7 and 162 of the Constitution of the Federal Republic of Nigeria, 1999 in so far as the Act seeks to create offences and regulate the manner the amount allocated to the State for the benefit of the Local Governments in the plaintiff State is to be distributed, in the light of the decision of the Supreme Court in Attorney-General, Ogun D State v. Attorney-General, Federation (2002) 12 S.C. (Pt. II) 1; (2002) 18 NWLR (Pt. 798) 232.

E 2. Whether the plaintiff is entitled to an order of injunction restraining the defendant from implementing the provisions of the Monitoring of Revenue Allocation to Local Government Act, 2005 which are in violation of the Constitution.”

The issues raised by the Lagos State (3rd plaintiff), on Pages 4-5 of its brief are -

F “1. Whether the provisions of Sections 1, 2, 3, 6(1), 7 & 9 of the Monitoring of Revenue Allocation to Local Government Act, 2005 are not inconsistent with the provisions of Sections 4, 7 & 162(5), (6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore unconstitutional, null and void.

G 2. Whether or not Sections 1, 2 & 3 of the Monitoring of Revenue Allocation to Local Government Act, 2005, by imposing a duty and obligation on the State Government in matters within the legislative competence are not in violation of the principles of Federalism enshrined in H the Constitution of the Federal Republic of Nigeria, 1999 and relevant case law on the issue.

3. Whether by virtue of the provisions of Sections 4, 7 & 162(6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999, the

*House of Assembly of Lagos State is not the body competent to make laws for the establishment and composition and functions of the State Joint Local Government Account Committee for Lagos State.*

4. *Whether having regard to the provisions of Sections 7 & 128 of the Constitution of the Federal Republic of Nigeria, the defendant B can by the Monitoring of Revenue Allocation to Local Government Act, 2005, or any other Act of the National Assembly exercise oversight function over Local Government Administration in any State of the Federation.*”

The Attorney-General of the Federation (the 1st defendant), in its brief of argument submitted that having regard to the claims in the three consolidated cases, the issues formulated by Abia State, the 1st plaintiff, adequately cover the issues calling for determination to wit -

“1. *Whether the 1st defendant (representing the National Assembly in this case) has the legislative competence to enact the Monitoring of Revenue Allocation to Local Governments Act, 2005.*”

2. *Whether the said Act is not wholly or partially inconsistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.*”

A careful reading of the claims and issues in the consolidated suits herein clearly reveal that the crux of the matter is the constitutional-ity or otherwise of the Federal Government’s enactment of the Monitor- F ing of Revenue Allocation to Local Government Act, 2005 (Exhibit “LASG 2” in the proceeding) particularly Sections 1, 2, 3, 6(1), 7 and 9 thereof in view of the provisions of Sections 4, 5, 7 and 162(5), (6) & (8) of the Constitution of the Federal Republic of Nigeria, 1999. I am therefore G satisfied that the issue or issues framed by the 1st plaintiff and rightly adopted by the 1st defendant is adequate for this purpose.

Before I proceed to consider the issues, I would like to point out that my duty is simply to interpret the relevant provisions of the Consti- H tution and the laws in what in my opinion they really are, and not what they ought to be, which is the function of the legislature.

Our country, Nigeria is no doubt a Federation. It therefore has a Federal Constitution as its supreme law. Nigeria is not the only Federa-

tion in the world. All Federations do not operate the same Constitution. They differ from country to country. That being so, Nigerians are entitled to give to themselves the type of Constitution they choose. This they have done by making and enacting the 1999 Constitution. The question therefore of whether or not any of the provisions of the 1999 Constitution or the laws made thereunder, are in tune with what some people call true or proper federalism, does not in my view arise here now. That is for Nigerians to decide, if and when, they choose to amend the Constitution. We must bear in mind that there is no perfect Constitution anywhere in the world. Each country takes its own peculiar and special circumstances and or conditions into consideration before enacting its Constitution. Nigeria cannot be different and it is not different. Reading through the Constitution, it is clear to me that the Federal or Central Government has and exercises tremendous powers over and above the other two tiers of Government. Nigerians have therefore in my view demonstrated that they preferred a strong central Government rather than a weak one. It is their choice. I cannot pretend to whittle down any of those powers in the guise of a judgment. That is not my function but that of the Nigerian people. My duty as I said is simply to interpret the relevant provisions of the Constitution and the laws made thereunder. I shall now proceed to do just that bearing these principles in mind.

Issue (1) - Whether the 1st defendant representing the National Assembly in this case has the legislative competence to enact the Monitoring of Revenue Allocation to Local Government Act, 2005.

The Monitoring of Revenue Allocation to Local Government Act, 2005 (hereinafter referred to as "the Act"), provides amongst others, for the establishment of State Joint Local Government Account Allocation Committee (The Committee) by each State of the Federation (Section 1(1). It also requires the States to include in their Committees certain functionaries some of which are Federal functionaries (See Section 1(2)). The functions of the Committee are set out in Section 2 of the Act essentially to monitor allocations made to Local Governments in a State from the Federation Account and from the State government with a view to ensuring that such allocations are promptly paid into the State Joint Local

Government Account and distributed in accordance with the relevant laws. The Act also makes it unlawful for any organ, authority or official to alter, deduct or re-allocate funds standing to the credit of the State Joint Local Government Account (Section 7(1), and prescribes penalties for defaulting functionaries (Section 7(3)). Section 8 also requires the Accountant-General of the Federation to report payments quarterly to each House of National Assembly, while the Auditor-General is required to make report of expenditure of the funds to the National Assembly as well (Section 9). Above are the essential provisions of the Act. It is a short Act consisting of (10) ten sections only. The Act is clearly headed

*“An Act to provide for the monitoring of Revenue Allocation to Local Government Councils from the Federation Account, and for related matters”*

The plaintiffs contend that Sections 1, 2, 3, 6(1), 7 & 9 of the Act are inconsistent with the provisions of Sections 4, 7, & 162(5), (6) & (8) of the Constitution and therefore unconstitutional, null and void. In the first place, Section 4 of the Constitution sets out the legislative competence and limitations of the National Assembly and State Assemblies respectively. Section 4(2) allows the National Assembly to legislate on items contained in the Exclusive Legislative List set out in Part 1 of the Second Schedule thereof, while Section 4(7)(b) allows State Houses of Assembly to legislate on matters in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the extent prescribed in the second column opposite thereto. It is therefore clear that whereas the National Assembly has exclusive legislative powers over matters in the Exclusive List, the States do not enjoy such exclusivity over matters in the concurrent legislative list. So, where the power to legislate on a subject matter is given to both National Assembly and State House of Assembly and both exercise the power, the legislation by the National Assembly shall prevail by virtue of Section 4(5) of the Constitution where there is any inconsistency (see for example *Att. Gen of Ondo v. Att. Gen of the Federation* (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222).

At this juncture, it is appropriate to set out the provisions of Section 7(6)(a) & (b) of the Constitution thus -

“(6) *Subject to the provision of this Constitution -*

(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.”*

Section 162(3), (4), (5), (6), (7) & (8) of the Constitution also read

“(3) *Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.”*

“(4) *Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.”*

“(5) *The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.”*

“(6) *Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State.”*

“(7) *Each State shall pay to Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.”*

“(8) *The amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.”*

Note carefully the phrase “on such terms and in such manner as



may be prescribed” in subsections (3), (4), (5), (7) & (8) above. It seems to me that the suit will largely be determined by the interpretation of this vital phrase.

The combined effect of Sections 7(6)(a) and 162(5) above, is that the National Assembly has the constitutional power to allocate public revenue to Local Governments in the Federation and the consequential power to prescribe the terms and manner upon which such allocations may be made. I dare say that the only way the National Assembly may make such “terms and manner” is to enact an Act as has been done now C  
vide the Monitoring of Revenue to Local Government Act, 2005. In the case of Att. Gen. of Bendel State v. Att. Gen. of the Federation & Ors. (1983) NSCC Vol. 14, 181 at 192, it was held by this court, amongst others, that the phrase “on such terms and in such manner as may be D  
prescribed” occurring in Section 149(4) of the 1979 Constitution, now Section 162(5) of the 1999 Constitution above, bestows on the National Assembly extensive powers to legislate in respect of the allocation of the Federation Account to State Local Government Councils. Similar power is given to State Houses of Assembly under Section 162(8) above, as E  
regards revenue to Local Government deriving from the State Governments. The two subsections (5) & (8) of Section 162 clearly demonstrate that the legislative competence over the terms on which such revenue are allocated and the manner of allocation are distinct and depend on F  
whether it is from the Federation Account or from the State. A good example in the case of States is the Lagos State Joint Local Government Account Committee Law No. 3 of 2004 (Exhibit “LASG 1” in the proceedings) passed by the Lagos State Government which is a law estab- G  
lishing the Lagos State Joint Local Government Account Committee, providing for functions of the Committee and for connected purposes.

Accordingly, I hold that the National Assembly was competent to enact the Monitoring of Revenue Allocation to Local Government Act, 2005 (see also Att. Gen. of Abia State & Ors. v. Att. Gen. of Federation H  
(2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264.

I therefore answer issue (1) in the affirmative.

Issue (2) - Whether the said Act is not wholly or partially incon-

sistent with extant provisions of the Constitution of the Federal Republic of Nigeria, 1999.

The plaintiffs have no quarrel with the Act in so far as it affects the Federal Capital Territory only, but contend that as it affects other States of the Federation, it must be viewed with suspicion. A close Study of the Act particularly as it affects the composition of the Committee, its functions and the returns to be made thereon, will show that the Federal Government seeks to check the twin vices of corruption and abuse of power (see for example, Att. Gen. of Ondo State v. Att. Gen. of Federation (supra). Offences can therefore be created and penal provisions enacted if incidental and supplementary to matters over which the National Assembly is vested with legislative powers as is the case herein.

One last point to make is whether by enacting the Monitoring of Revenue Allocation to Local Government Act, 2005, the Federal Government is thereby dictating or prescribing how, and in what way or manner Local Governments are to spend the allocations made to them. The answer in my view is clearly in the negative There is nothing in the Act which suggests the way and manner the Local Governments should spend their allocations or any part thereof. There is no provision anywhere directing them to spend money on this item or that item or a percentage or a fraction of the allocations on any item whatever. As I have said earlier, the Act is essentially to monitor allocations to Local Governments and ensuring that such allocations are promptly paid into the State Joint Local Government Account and distributed in accordance with the laws.

I should perhaps reproduce the functions of the Committee as set out in Sections 2 & 3 of the Act thus -

*"2. The functions of the Committee shall be to:*

*(a) ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the State concerned are promptly paid into the State Joint Local Government Account;*

*(b) ensure that the funds paid into the State Joint Government Account under Paragraph (a) of this section are distributed to the Local Government Councils in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and any law made in that*

*behalf by the House of Assembly of the State; and*

*(c) monitor the payment and distribution of the funds mentioned in Paragraphs (a) and (b) of this Section so as to ascertain the actual amount paid to each Local Government.*

*3.(1) The Committee shall render monthly returns to the Federation Account Allocation Committee through the member representing Revenue Mobilization, Allocation and Fiscal Commission.*

*(2) The Federation Account Allocation Committee shall scrutinize the returns to it by the Committee and make quarterly returns through the Accountant-General of the Federation to each House of the National Assembly.”*

It must now be clear that the Federal Government by the Act has not prescribed any way and or what manner the Local Government spend their allocations. Even the reports by the Accountant-General and the Auditor-General referred to in Sections 9 & 10 of the Act respectively, are about payments actually made to the Local Governments and actual expenditures incurred by them. Thus, these are reports of receipts and expenditures actually made and not reports about the ways and manners and for what purposes the expenditures were incurred. The simple question therefore is - were the actual allocations received? And were they really spent? Accountability and transparency is what the Act is all about. The allocations; they must have, and spending, they must also do. The allocations must not go into private pockets or private accounts.

The only conclusion I have come to, is that the Act is valid and proper and not in any way either wholly or partially inconsistent with any provision of the Constitution of the Federal Republic of Nigeria, 1999. Issue (2) is therefore answered in the negative. The two (2) issues are therefore resolved against the plaintiffs.

Consequently, the plaintiffs' claims are hereby dismissed in their entirety. I make no order as to costs.

H

### **MUSDAPHER JSC (Dissenting)**

The three suits herein were duly consolidated for hearing vide an

order to this court dated the 20th day of October, 2005. The crux of the matter in the three suits is the constitutionality or otherwise of some section of the MONITORING OF REVENUE ALLOCATION TO LOCAL GOVERNMENT ACT, 2005 passed by the National Assembly and duly assented to by the President. The three plaintiffs in the three cases invoked the original jurisdiction of the Supreme Court to contend that some sections of the MONITORING OF REVENUE ALLOCATION TO LOCAL GOVERNMENTS ACT, 2005 conflict with some provisions of the Constitution 1999 and to that extent are therefore null and void.

The Attorney-General of Abia State on behalf of Abia State was the first to invoke the jurisdiction of the Supreme Court. He was shortly followed by the Attorney-General of Delta State and that of Lagos State. Although the reliefs of the plaintiffs are similar, it shall be necessary to set them out in detail so as to appreciate the real dispute in this matter. Abia State claims:-

*“(a) A declaration that no law made by the National Assembly can validly direct the plaintiff or any other State Government to include a Commissioner of the Revenue Mobilization Allocation and Fiscal Commission as a member of the State Joint Local Government Allocation Committee envisaged by Section 162 of the Constitution.*

*(b) A declaration that no law made by the National Assembly can validly direct the plaintiff’s Joint Local Government Allocation Committee to render monthly returns to the Federation Account Allocation Committee or at all.*

*(c) A declaration that save and except for Laws of the Federation with respect to:*

*(i) The prescription of such terms and in what manner any amount standing to the credit of the Federation shall be distributed among the Federal and State Government and the Local Government Councils.*

*(ii) The prescription of such terms and in what manner any amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils.*

*(iii) The establishment of the Federal Capital Territory Joint*

*Area Council Allocation Committee and the Federal Capital Territory Area Councils Committee -*

*“It is the house of Assembly of a State and not the National Assembly which may make a law prescribing the terms and the manner in which the amount standing to the credit of the Local Government Councils in a State shall be distributed.”*

*(d) A declaration that the provisions contained in Sections 1, 3, 6(1), 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are xxxxxx inconsistent with the provisions of the Constitution xxxx and are accordingly null and void and in operative.”*

Delta State claimed the following reliefs:-

*“1. A declaration that Sections 1, 2, 3 and 7 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 as they relate to the plaintiff are unconstitutional and void and being inconsistent with Sections 4, 5, and 7, 162(5), (6) and (8) of the Constitution of the Federal Republic of Nigeria, 1999.*

*2. An order of perpetual injunction restraining the Government of the Federation, its functionaries, agencies, whomsoever, including the Revenue Mobilization Allocation and Fiscal Commission or any of its Commissioners, the Accountant-General of the Federation or his representative from enforcing or purporting to enforce by sanctions in any way or manner whatsoever, directly or indirectly, the provisions or any of the provisions of the Monitoring of Revenue Allocation to Local Government Act, 2005 against the Government of Delta State, its functionaries, public officers, servants and agencies whomsoever.”*

Lagos State Attorney-General on behalf of the State claimed against the Attorney-General of the Federation and 35 other Attorney-Generals just like the Abia State Attorney-General aforesaid, the following reliefs:-

*“1. A declaration that the provisions of Sections 1, 2, 3, 6(1) 7 and 9 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 are inconsistent with the provisions of Sections 4, 7 and 162(5), (6) and (8) of the Constitution xxxxxxx and therefore unconstitutional, null and void.*

2. A declaration that the provisions of Sections 1, 2 and 3 of the Monitoring of Revenue Allocation to Local Governments Act, 2005 by imposing a duty and obligation on the State Government violate the principles of federalism enshrined in the Constitution of Nigeria, 1999 B and the relevant case law and are therefore unconstitutional, unlawful, null and void.

3. A declaration that by virtue of the provisions of Sections 4, 7, 162(5), (6) and (8) of the Constitution, xxxxxxxxxxxx the House of Assembly of Lagos State is the body competent to make laws for the establishment, composition and functions of the State Joint Local Government Account Committee for Lagos State. C

4. A declaration that having regard to the provisions of Sections 7 and 128 of the Constitution of Nigeria, The defendant cannot by the Monitoring of Revenue Allocation to Local Governments Act, 2005 or any other Act of the National Assembly exercise oversight functions over D Local Government administration in any State of the Federation.

5. An Order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or howsoever from implementing or giving any effect whatsoever, the said Monitoring of Revenue Allocation of Local Government Act, 2005. E

6. An Order of perpetual injunction restraining the Federal Government of Nigeria represented by the 1st defendant by itself, agents and servants or whomsoever from acting in any manner in contravention of the provisions of Sections 4, 7, 128, and 162 of the Constitution xxxxxxxx." F

G It was after the consolidation of these three matters that the court ordered the parties to file briefs of argument. In their claims, Abia State and Lagos State had made the other 35 States of the Federation as defendants along with the 1st defendant, the Federal Government of Nigeria. In the reliefs I have reproduced above, there is clearly no claim H whatsoever against any of the other 35 defendants representing the States in the Federation. To invoke the original jurisdiction of the Supreme Court under Section 232(1) of the Constitution, there must be dispute involving

some questions of law or fact on which the existence or extent of a legal right depends. I have carefully examined the claims of Abia and Lagos States and the reliefs they are claiming and it is manifest that there is no claim whatsoever against the other 35 defendants and accordingly the other 35 defendants were not properly sued and the suit against them is incompetent. Although some of the other 35 defendants have filed briefs and appeared at the hearing of this matter, I shall in this judgment ignore their presence and strike out their names in these proceedings. The fact that they may be interested in the result of these proceedings is of no moment. In the case of Westminster Bank Ltd. v. Edwards (1942) AC 529, Lord Wright pointed out:

*“Now it is clear that a court is not entitled but bound to put an end to the proceedings if at any stage and by any means it becomes manifest that it is incompetent, it can do so of its own initiative even though the parties have consented to the irregularity, because as Willes J said in City of London Corporation v. Cox, in the course of giving the answers of the Judge to the House, mere acquiescence does not give jurisdiction.”*

Since there is no dispute whatever between the plaintiffs and the other 35 States in each of the cases filed by Abia and Lagos States, the Supreme Court has no jurisdiction to entertain the purported claims against other States. See Attorney-General of the Federation v. Attorney-General of Abia State (No. 2) (2002) 4 S.C. (Pt. I) 1; (2002) 3 S.C. 106. I accordingly strike out the 35 States defendants in the two suits.

Be that as it may, the first defendant (hereinafter referred to as the defendant) filed a Statement of Defence and Counter-affidavits against the claims of the three plaintiffs. Before dealing with the issues formulated for the determination of the matter, it shall be necessary to put up the referred constitutional provisions and the alleged offending or conflicting provisions of the Monitoring of Revenue Allocations to Local Government Act, 2005.

Now, the relevant constitutional provisions referred to are Sections:-

*“4.(1) The legislative powers of the Federal Republic of Nige-*

*ria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representative.*

(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 power 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 the 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 regard 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.*

*7(6) Subject to the provisions of this Constitution -*

*(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.*

*162.(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.*

*(6) Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.*

*(7) Each State shall pay to local government councils in its area of jurisdiction, such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.*

*(8) The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State."*

Now, Sections 1, 2, 3, 6(1), 7 of the Monitoring of Revenue Allocation to Local Government Act, 2005 provide:-

“1. (1) *Each State of the Federation shall establish a body to be known as the State Joint Local Government Allocation Committee (hereinafter referred to as “the Committee”).*

(2) *The Committee shall include the following members:*

(a) *The Commissioner or any other officer charged with the responsibility for Local Government in the State who shall be the Chairman;*

(b) *a Commissioner of Revenue Mobilization, Allocation and Fiscal Commission provided that the Commissioner shall not serve in his own State;*

(c) *all the Chairmen of the Local Government Councils in the State;*

(d) *the Accountant-General of the State;*

(e) *a representative of the Accountant-General of the Federation; and*

(f) *A representative of the State Revenue Board.*

(3) *The Permanent Secretary of the State Ministry charged with responsibility for Local Government or such officer as may be designated by the Chairman shall be the Secretary to the Committee.*

2. *The functions of the Committee shall be to:*

(a) *ensure that allocations made to the Local Government Councils in the State from the Federation Account and from the State concerned are promptly paid into the State Joint Local Government Account;*

(b) *ensure that the funds paid into the State Joint Local Government Account under paragraph (a) of this section are distributed to the Local Government Councils in accordance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and any law made in that behalf by the House of Assembly of the State; and*

(c) *monitor the payment and distribution of the funds mentioned in Paragraphs (a) and (b) of this section so as to ascertain the actual amount paid to each local Government.*

3.(1) *The Committee shall render monthly returns to the Federa-*

*tion Account Allocation Committee through the member representing Revenue Mobilization, Allocation and Fiscal Commission.*

*(2) The Federation Account Allocation Committee shall scrutinize the returns to it by the Committee and make quarterly returns through the Accountant-General of the Federation to each House of the National Assembly.*

*6.(1) The power of State Governments for borrowing money shall not extend to the money, funds or revenue allocated to Local Government Councils from the Federation Account and from the State concerned.*

*(2) The power of the Federal Capital Territory for borrowing money shall not extend to the money, funds or revenue allocated to Area Councils from the Federation Account, and from the Federal Capital Territory.*

*7. (1) It shall be unlawful for any organ, authority or official of a State or the Federal Capital Territory, however described or constituted, to alter, deduct or re-allocate funds standing to the credit of the State Joint Local Government Account, or the Federal Capital Territory Joint Area Councils Account.*

*Provided always that nothing in this subsection shall prevent the House of Assembly of a State, or the National Assembly, from prescribing by law, the terms and manner for distributing money standing to the credit of any of the Joint Accounts, as the case may be, to the Local Government Councils in the State, or the Area Councils in the Federal Capital Territory.*

*(2) In the case of any default in the allocation or distribution to any local government, such amount shall be a first charge on the State's next allocation from the Federation Account and shall be credited to the affected local government.*

*(3) Any person who acts in contravention of the provisions of subsection (1) of this section, commits an offence and is liable on conviction to a fine twice the amount altered, deducted or re-allocated illegally, or imprisonment for a term of five years, or to both such fine and imprisonment.*

*9. The Auditor-General for the Federation shall following the*

*end of each financial year report to each House of the National Assembly, stating how the monies allocated to each state for the benefit of the Local Government Councils Capital Territory were spent."*

Now, it is trite that the 1999 Constitution of the Federal Republic of Nigeria is the supreme and basic law of the land. It is the supreme law and its provisions have sacred binding force on all authorities, institutions and persons through out the Federation. That being the case, any enactment that conflicts or offends the provisions of the Constitution is of necessity ineffective and inoperative. It is a hard fact which must be accepted that any legislation inconsistent either directly or by necessary implication with the provisions of the Constitution must be declared to such extent of inconsistency null and void and of no effect.

It is also very important to bear in mind and as clearly has been demonstrated in the reproduced constitutional provisions above, that Nigeria is a federal political arrangement and operates a federal Constitution. A unique feature of the 1999 Constitution is a division of powers between the Federal Government and the Federating States. The power allocated to each tier of government together with the areas of influence are set out as shown above. Professor M. P. Jain: Indian Constitutional Law 3rd Edition 1978 at page 241 made this point lucidly when he stated:-

*"According to a famous aphorism, federation connotes a legal-istic government. There being a division of powers between the centre and the States, none of the government can step out of its assigned field; if it does so, the law passed by it becomes unconstitutional. Question constantly arise whether a particular matter falls within the ambit of one or the other government. It is for the courts to decide such matters for it is their function to see that no government exceeds its powers."*

In Nigeria, in order to underscore the federal nature of the country the Constitution divides the Legislative lists between the components of the Federal Structure. See Section 4(3) above. There are other provisions in the 1999 Constitution which show the federal nature of the country. e.g. the preamble to the Constitution, Sections 2(1), 3(4) and 3(6). It is also important to bear in mind that generally the principle of federalism requires that the central and state governments shall be independent of

one another within its jurisdiction or legislative competence. None is subordinate to the other but coordinate with each other. It is therefore necessary to understand that each of the federating state government is not an appendage of the central government but an autonomous and independent entity being able to exercise its constitutional responsibility the way B it sees fit. But it is important to bear in mind always that the constitutional provisions override the principles of federalism.

It is also important to bear in mind that the judiciary especially the Supreme Court in particular is an essential integral arm in the governance of the nation. It is the guardian of the Constitution charged with the sacred responsibility of dispensing justice for the purpose of safeguarding and protecting the Constitution and its goals. The judiciary when properly invoked has a fundamental role to play in the structure of governance by checking the activities of the other organs of the government and thereby promoting good governance, respect for individual rights and fundamental liberties and also ensuring the achievement of the goals of the Constitution and not allow the defeat of such good and intentions. It is the duty of the court to keep the government faithful to the goals of democracy, good governance of the benefit of the citizens as demanded by the Constitution. D E

The Supreme Court has the sacred duty to translate into actuality the noble ideals expressed in the basic law, give flesh and blood, in fact life, the abstract concepts of freedom, liberty transparency, a society free from corruption, abuse of power and all the noble goals articulated and reiterated in the Constitution. F

But from the Constitutional provisions referred to and reproduced above, it is quite clear that the legislative powers of the central government are quite extensive and reaching. A part from deriving powers from the long list of items contained in the Exclusive Legislative List, the Federal Legislature concurrently with State legislature in respect of matters contained in the Concurrent Legislative List, and even in the Residual matters under Section 4(b). It is also instructive to bear in mind that where there is conflict between laws made by the Federal and State legislatures on any matter contained in the concurrent list, the Federal G H

law shall prevail and the State law shall be rendered void to the extent of its inconsistency with the Federal laws.

Under the 1999 constitutional provisions, that is, part 1 of the second schedule, the National Assembly is empowered to legislate exclusively on 68 items, while the state legislatures enjoy concurrent powers with the National Assembly in respect of 30 matters on the Concurrent List under part II. Under the present constitutional arrangements, the States cannot lay any claim to any exclusive item or items for legislation since the 1999 Constitution does not contain any listed items as Residual List under which the State Assemblies can legislate exclusively.

This pragmatic federalism (as one writer describes it) is not practiced in many countries who adopt federalism. Justice Bello CJN., captured the virtues of this Nigerian arrangement of federalism in the case of Attorney-General of Bendel State v. Attorney-General of the Federation (1983) 6 S.C. 8, when he said: -

*“It may be observed that although the framers of the Constitution (1999) enshrined therein the principles of division of power between the federation and the component States, they realized that absolute division of such powers would not achieve the purpose of the Constitution which xxxxxxxxxxxxxxxx is to promote the good governance and welfare of all persons in our country. It seems to me the framers appreciated that mutual cooperation, reciprocity and interdependence between the Federal and State governments are essential in the promotion of the laudable purpose of the Constitution.”*

Professor Nwabueze in reflections on 1999 Constitution lamented the distortion of federalism. He said that the 1999 Constitution has significantly distorted the configuration of powers initially created by the 1960 and 1963 Constitutions to the detriment of the States. The true position as aptly pointed out before is that power sharing arrangement under Nigeria’s federal system, assigns to the federal government powers and resources so overwhelmingly greater than those assigned to the states, thereby depriving the latter of any meaningful autonomy in relation to the federal government.

It is this apparent lopsidedness in the division of legislative pow-

ers among the three tiers of governments in Nigeria under the 1999 Constitution that has given rise to sustained agitations in recent times for an amendment to the Constitution with a view to amongst other things, widen the scope of matters in which the states and even the local government councils can exercise legislative powers in the true spirit of federalism as obtainable in other countries that operate a federal system of government.

In the case of A-G. Ondo State v. A-G. Federation & Ors (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222. Uwais CJN stated:-

*"It has been pointed out the provisions of the Act (ICPC ACT) impinge on the cardinal principles of federalism, namely, the requirement of equality and autonomy of the state government and non-interference with functions of state government. This is true, but as seen above, both the States and Federal government share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principles of federalism, then, I am afraid, it is the Constitution that makes provisions that has facilitated the breach of the principles. As far as the aberration is supported by the provisions of the Constitution, I think it cannot be rightly argued that an illegality has occurred by the failure of the Constitution to adhere to the cardinal principles (of federalism) which are ideals to follow or guidance for an ideal situation."*

I respectfully agree with what Tobin, JSC., said elsewhere in relation to this when he said that it is the provisions of the Constitution that we have to interpret rather than these ideals.

Now, the claims of three plaintiffs as shown above are essentially the same or identical in many respects. The crux of the matter common to all the claims is the constitutionality or otherwise of the Federal Government's enactment of the Monitoring of Revenue Allocation to Local Government Act, 2005 particularly Sections 1, 2, 3, 6(1) 7 and 9 thereof in view of Sections 4, 5, 7, 128, 162(5), (6) and (8) of the Constitution. In my view, the issue formulated by Abia State and adopted by the only defendant is adequate for the purposes of this adjudication.

I have above reproduced part of the establishment and membership, of the Joint Local Governments Account Allocation Committee for

each State of the Federation including the Abuja Federal Capital Territory. It provides the function of the Committee. Section 3 provides for the rendering of monthly returns by each State Committee to the Federation Account Allocation Committee. Section 6 prohibits the States from borrowing from the funds allocated to the Local Governments and Section 7 further prohibits the deduction or the reallocation of funds standing to the credits of Joint Local Government Account. Section 7 (3) contains sanctions for contravention or breach of Section 7(1) etc. In summary, the explanatory memorandum at the end of the enactment provides:-

*“This Act provides, among other things, for the establishment of the Joint Local Government Account Allocation Committee for monitoring and ensuring that allocations made to the Local Government Councils in the State from the Federation Account and Allocation from the State concerned are promptly paid into the Joint Local Government Account and distributed in accordance with the provisions of the 1999 Constitution.”*

I have above alluded to the adequacy of the issues formulated by the 1st plaintiff and adopted by the defendant. That is:-

*“Whether the 1st defendant has the legislative competence to enact the Monitoring of Revenue Allocation to Local Government Act, 2005 and whether the said Act is wholly or partially inconsistent with the exact provisions of the Constitution of the Federal Republic of Nigeria, 1999.”*

The crux and the crucial question in these suits is whether the provisions of the Act are wholly or partially inconsistent with the provisions of the Constitution. In other words, whether the National Assembly, in enacting this Act, has exceeded the limits of its legislative competence and authority as conferred by the Constitution. Even though, I have above discussed the extensive and overwhelming legislative powers of the National Assembly, no legislation passed by the National Assembly shall breach or be inconsistent with the provisions of the Constitution.

See Attorney-General, Lagos State v. Attorney-General, Federation (2003) 6 S.C. (Pt. I) 24; (2003) 12 NWLR (Pt. 833) 190 at 191; Bendel State v. The Federation (1981) 10 S.C. (Reprint) 1; (1981) 10



S.C. 1. The plaintiffs argument is that Sections 1, 2, 3, 6(1), 7 and 9 of the Act not only offend but are also inconsistent with the provisions of Sections 4, 7, 162(5) (6) and (8) of the Constitution. Firstly, Section 4 of the Constitution as shown above defines the legislative powers of the National and State Assemblies. Although, we operate a federal system of government, as discussed above, Section 4 grants the National Assembly extensive and far reaching legislative powers. Apart from the long list of items contained in the Exclusive Legislative List, it has the power to legislate concurrently with the State legislature in respect of matters contained in the Concurrent List and even in residual matters. See Section 4(b).

Now item 1 of the Concurrent Legislative List under Part II of second Schedule of the 1999 Constitution provides:-

*“1. Subject to the provisions of this Constitution, the National Assembly may by an Act make provision for-*

*(a) the division of public revenue:*

*(i) Between the Federation and the States;*

*(ii) Among the States of the Federation;*

*(iii) Between the States and Local Government Councils.*

*(v) Among the Local Government Councils in the States and.*

*xxxxxxxxxxxxxxxxxxxxxx”*

I have above, in this judgment reproduced the main features of the Act and I have also reproduced the rationale and the reasons behind the enactment of the legislation. The outstanding feature of the Act is the establishment of the Joint Local Government Account Allocation Committee and the main function is to ensure that funds meant for local governments reach the local government and are not used or employed for any other purpose other than each purposes of the local government. I note that the Act does not determine how the local governments are to utilize the money. In my view, item 1 of the Concurrent Legislative List gives the power to the National Assembly to ensure “the division of Public Revenue” to the Local Government Council. The question may be asked, how else other than by this legislation could the National Assembly ensure the faithful compliance with the provisions of item 1 of the

Concurrent Legislative List? In the case Attorney-General of Ondo State v. Attorney-General of the Federation (2002) 6 S.C. (Pt. I) 1; (2002) 9 NWLR (Pt. 772) 222, that case dealt with the validity of the Independent Corrupt Practices and other Related Offences Act, 2000. Uwais CJN., in B the leading judgment said at page 306:

“It is submitted that “corruption” is not a subject under either the Exclusive or Concurrent List and therefore being a residual matter, the National Assembly has no power to legislate upon it. This submission C overlooks the provisions of Section 4 subsection (4) of the Constitution which provide that the National Assembly has the power to legislate on any matter with respect to which it is empowered to make law in accordance with the provisions of the Constitution. Section 15 subsection (5) D directs the National Assembly to abolish all corrupt practices and abuse of power. xxxxxxxxxxxx.”

In the same vein, having regard to the purposes and the intentment of the Act, the National Assembly has the power under both Section 4 and under Item 1 of the Concurrent Legislative List. The purpose and E the mission of the Act is to ensure compliance and obedience to the constitutional provisions and to prevent abuse of power.

Now, Section 7 (b) of the Constitution dealing with Local Government Councils provides:-

F “The National Assembly shall make provisions for statutory allocations of Public Revenue to Local Government Councils in the Federation.”

And Section 162(5) also provides:-

G “The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils, on such terms and in such manner as may be prescribed by the National Assembly.” (Underlining mine for emphasis)

H In my view, Section 162(5) is very instructive, the prescription of the “terms and in such manner” only comes into operation after the amount has been appropriated in the Federation Account and ‘standing to the credit of Local Government Councils.’ So the issue of on “such terms

and such manner” shall only refer to the actual division of the amount to Local Government Councils in the Joint Local Government Account established by the Act.

By the combined effect of Item 1 Concurrent Legislative List, Section 7(6), Section 162(5), it is clear to me that the National Assembly B has the power to legislate and enact the Act in order to ensure the compliance with the constitutional provisions. The only argument advanced is that we are operating a federal system of government and as such the central government by the promulgation of this Act had exceeded its C legislative competence under a federal set up. This argument overlooks the obvious constitutional provisions.

The phrase “on such terms and in such manner” has been judicially defined while construing Section 149 (4) which is in pari materia D with Section 162 (5). See the case of Attorney-General of Bendel State if. Attorney-General of the Federation & Ors (1983) NSCC 181 at 192 where Uwais JSC., (as he then was) stated:-

*“As already shown, the phrase “on such terms and in such manner as may be prescribed” which is found under Section 149 subsection E (4) of the 1979 Constitution bestows on the National Assembly extensive powers to legislate in respect of the allocation of the Federation Account to State Local Government Councils. Similar power is also given to the National Assembly under Section 149(6) of the Constitution and Item A F paragraph 1 (a) (iv) of the Concurrent Legislative List to legislate with regard to the payment or distribution and division of the amount so allocated. Therefore, when the National Assembly enacted Section 6 subsection 1 of the Act No.1 of 1982 which created the State Joint Local Government Account Allocation Committee it must have done so in the exercise G of either one or all those enabling powers.”*

I do not buy the argument that there is a distinction between to H “allocate” and to “distribute” or to “divide”. It is a distinction without a difference. In any event, item 1 of the concurrent list clearly talks of “division “ of the funds between States and Local Government Councils. And as mentioned above, a close examination of Section 7 (b), Section 162(5) and Item 1 of the Concurrent Legislative List clearly empowers

the National Assembly to legislate on the allocation and distribution of the amounts accruable to Local Governments in the country. Clearly, there is no specific provision in the Constitution which forbids the National Assembly from enacting the Act in question. The only argument advanced B is that because we operate a federal system, the National Assembly should not legislate in a matter which under a federal system should be enacted by the States concerned. In the case of *Nafiu Rabi v. State* (1980) 8-11 S.C. (Reprint) 85; (1981) 2 NCLR 293, it was held that the Supreme C Court in its interpretation of the constitutional provisions should always lean, where the justice of the case so demands to the broader interpretation, unless there is something in the context or in the rest of the Constitution to indicate that the narrow interpretation will best carry out the object and purpose of the Constitution. Item 67 under the Exclusive Legislative List read together the provisions of Section 4 subsection (2) which D provides that the National Assembly is empowered to make law for peace, order and good government, it follows therefore that the National Assembly is empowered to legislate to ensure transparency and to check E the twin vice of corruption and abuse of power. The Act is designed to achieve the objective of the Constitution i.e. to ensure that the allocations to Local Governments are promptly paid into the State Joint Local Government Councils Account and distributed in accordance with the law. F The allocations must not go into private pockets or private accounts. In my view, by enacting the Act, the National Assembly or the Federal Government is not thereby dictating or prescribing how, and in what manner local governments in the country are to utilize the allocations made to G them.

Furthermore as shown above, this court in the case of *Attorney-General of Bendel State v. Attorney-General of the Federation supra*, when examining the constitutionality of Section 6 of Act No. 1 1982 came to the conclusion that the National Assembly had the competence to enact H Section 6(1) which provided for the establishment by the National Assembly of a Joint Local Governments Account Allocation Committee in the States. In any event, I have shown in this judgment the far reaching powers of the National Assembly to legislate almost in any matter de-

signed to achieve the noble goals of the Constitution. The limits placed by federalism must be shown to appear in the Constitution, that is to say there must be specific provisions taking away the powers of the National Assembly to enact the legislation in question, for this court to declare the legislation a nullity. B

As mentioned above, the National Assembly has overwhelming legislative power under the 1999 Constitution and it appears to me that the state legislature under this arrangement has very limited powers. A writer went to the extent of stating: C

*“Two conditions must co-exist before the State House of Assembly can validly make any law in pursuance of its constitutional powers namely:*

*(a) It must ensure that the subject matter of legislation is not included in the Exclusive List as contained under Section 4(7)(a) which is exclusively reserved for the National Assembly.* D

*(b) It must ensure that the subject matter of legislation though coming from the concurrent list is not to conflict with any Federal Legislation on the same subject matter, otherwise, it shaft be rendered void as a result of inconsistency with the Federal Law.”* E

See Ray Esebagbon in his book *The Nigerian Legislative Process*, published in 2005 by Law Link Consults.

There is no doubt in my view, that the National Assembly has the necessary competence backed by constitutional provisions to enact the Monitoring of Revenue Allocation to Local Government Act, 2005. I cannot find any constitutional provision limiting the powers of the National Assembly from enacting the Act in question. F G

Plaintiffs’ claims are dismissed. I make no order as to costs.

H