

SUPREME COURT OF NIGERIA
FRIDAY 19TH JULY, 2013. SC. 340/2010
CORAM:- A. M. MUKHTAR CJN, I. T. MUHAMMAD,
J. A. FABIYI, S. GALADIMA, N. S. NGWUTA,
M. D. MUHAMMAD, S. S. ALAGOA, JJSC

ATTORNEY-GENERAL
OF FEDERATION PLAINTIFF
AND
ATTORNEY-GENERAL
OF LAGOS STATE DEFENDANT

CONSTITUTIONAL LAW - “Tourist traffic” - Meaning of - The words as used in item 60(d) of 2nd schedule of the Constitution - Alludes to ingress and egress of tourists from other countries (H1)

CONSTITUTIONAL LAW - Constitution - Interpretation - Intention of the framers of words used in item 60(d) of the Constitution - Is to confine the powers of National Assembly - To regulation of tourist traffic (H2)

CONSTITUTIONAL LAW - National Assembly - Power - Extent of - NA cannot in exercise of its powers - Confer authority on FG to engage in matters - Which ordinarily ought to be responsibility of State Government (H3)

LEGISLATION - Lagos State HA - Power - Hospitality industry - As the items are not listed in exclusive & concurrent legislative lists - They are residual matters for State - Hence the 3 laws enacted by the HA in this respect - Are within its power (H4)

CONSTITUTIONAL LAW - Constitution - Supremacy - The powers of NA & State HA to legislate on a given matter - Must be traceable to the Constitution - As any legislation outside Constitutional provision - Is null and void (H5)

FACTS

Before the Supreme Court of Nigeria sitting in its original juris-

diction, plaintiff by originating summons instituted this action against defendant in suit no. SC.340/2010, challenging the validity of enactment of the following laws by defendant: Hotel Licensing Law Cap H6 Laws of Lagos State of Nigeria 2003, Hotel Occupancy & Restaurant Consumption Law No. 30 Vol. 42 Lagos State of Nigeria official Gazette 2009 and Hotel Licensing (Amendment) Law No. 23, Vol. 43, Lagos State of Nigeria official Gazette July 2010. Plaintiff seeks for a resolution of the following questions inter alia, whether defendant can enact law in respect of any item listed under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999.

In the event that the questions are answered in the negative, plaintiff among other things claim for a declaration that by virtue of item 60(d) of the Second Schedule part 1 of the 1999 Constitution, defendant has no power to licence and regulate the hospitality industry within the geographical boundaries of Lagos State or any place in Nigeria. On the other hand, defendant contends that it has power to enact the three laws stated above. Furthermore, defendant inter alia argued that from a detailed examination of the entire Constitution of the Federal Republic of Nigeria 1999, it can be seen that the power of National Assembly over tourist related matters is limited to regulation of “tourist traffic” as provided in item 60(d) of the Second Schedule Part 1 of the Exclusive Legislative List and this gives the Federal Government Power to regulate “tourist traffic”. Defendant therefore submits that the laws being challenged by plaintiff are valid and constitutional.

ISSUES FOR DETERMINATION

“(i) Whether regulation, registration, classification and grading of Hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishment are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos State House of Assembly.

“(ii) Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act, Cap N137, LFN:

“(a) Hotel Licensing Law, Cap. H6 Laws of Lagos State of Nigeria, 2003;

“(b) Hotel Licensing (Amendment) law No. 23 Volume 43 Lagos

State of Nigeria Official Gazette of July 20, 2010 and
(c) Hotel Occupancy and restaurant Consumption Law No.
30, Volume 42 Lagos State of Nigeria Official Gazette of June 23,
2009."

HELD (Unanimously dismissing plaintiff's action per
GALADIMA JSC)

CONSTITUTIONAL LAW - "Tourist traffic" - Meaning of

1. I note that the expression "tourist traffic" is difficult of definition. It is nowhere defined in our Constitution. Most English Dictionary affords separate definitions of the two words. Oxford Advanced Learner's Dictionary 7th Edition defines "tourist" as a person who is traveling or visiting a place. Roger's Thesaurus simply defines tourist as a traveler. The same Dictionary, however defines "tourism" as the business activity connected with providing accommodation, services and management of people who are visiting a place for pleasure; and it defines traffic as a movement of people or goods from one place to another, along railway, road, aircraft, etc.

The plaintiff in the circumstance resorted to the definition of "tourist Traffic" as contained in the Republic of Ireland's Traffic Act of 1939. This court in OGUGU v. THE STATE (1994) 9 NWLR (pt.366) at 43 has admonished and loathes at borrowing definition or interpretation from other countries which have no constitutional provisions, resembling that of this country but different constitutional structures, I do the same here. Nigeria and Ireland are two countries. Their constitution is dissimilar in every material respect. Nigeria is a Federal Republic with division of legislative power between the Federal Government and component States. Republic of Ireland practices a unitary system of Government. The courts in this country consistently lean in favour of giving words their ordinary and natural meaning.

In my view the Dictionary definition of "Tourist" and "Traffic" would accord to my own understanding of simple and natural meaning of the two words. The words "tourist traffic" used

in item 60(d) of the second schedule of the Constitution, alludes to the ingress and egress of tourists from other countries. These are international visitors or foreigners.

(p. 3140 A)

B *Constitution - Interpretation*

2. The purpose of interpreting a statute is to ascertain the intention of the law makers. A careful study of the words used in item 60(d) of the second schedule clearly indicates that the intention of the framers of the Constitution is to confine the powers of the National Assembly to regulation of tourist traffic. (p. 3141 D)

CONSTITUTIONAL LAW - National Assembly - Power - Extent of

D 3. In the light of the foregoing, the contention of the plaintiff that matters pertaining to the regulation; registration, classification, grading, of hotels, motels, guest houses, restaurants, travel and tour agencies, and other hospitality and tourism related establishment are matters within the Exclusive Legislative List, cannot be sustained. In effect, the Federal Government lacks the Constitutional vires to make laws outside its legislative competence which are by implication residue matters for the State Assembly: the National Assembly cannot, in the exercise of its powers to enact some specific laws, take the liberty, to confer power or authority on the Federal Government or any of its agencies to engage in matters which ordinarily ought to be the responsibility of a State Government or its agencies. Such pretext cannot be allowed to enable them encroach upon the exclusive constitutional authority conferred on a State under its residual legislative power.

(P. 3141 E)

H *LEGISLATION - Lagos State HA - Power*

4. From the above, it is clear that the specific powers to register, classify and grade hospitality and tourism enterprises are conferred on the Nigerian Tourism Development Corporation. Learned Counsel for the Plaintiff has contended that

this power excludes any other Establishment from exercising it. The Lagos State promulgated the 3 Laws. Having regard to the fact that regulation, registration, classification and grading of hotels, motels, etc are not items in the Exclusive and Concurrent Legislative Lists, they are clearly residual matters for the State. Therefore the 3 laws in question enacted by the Lagos State Government are intra vires the power of the State Government. I have equally noted that in those laws, there are some amendments effected, needless going into details of such amendments.

By virtue of subsection 7 of section 4 of the Constitution (supra) powers of a State House of Assembly to make laws for the peace order and good government of its State is not in doubt. The Lagos State House of Assembly considered these factors in the passing of the 3 laws (supra) to regulate, grade and classify its hotel and other hospitality establishments. These items are not in the Exclusive and Concurrent List; they are within the competence and ambit of the Lagos State House of Assembly to legislate upon. (pp. 3143 B/3144 C)

Constitution - Supremacy

5. Having said this I must not fail to state that the validity of any enactment by the National Assembly is to be measured against the backdrop of Section 4(6) and (7) of the Constitution. Therefore the power of the State Government to legislate on a given matter must be traceable to the body of the Constitution, either the Exclusive Legislative List or the Concurrent legislative List or Residual List and any legislation on a matter outside the ambit of the said Constitutional provisions is null and void. This is amplified by the provisions of Section 1 (3) of the Constitution, which provides as follows:

“if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.”

(p. 3143 E)

NOTABLE POINT OF INTEREST

GALADIMA JSC

1. Federalism – Features of

The defining feature of Federalism is recognition of the separateness and independence of each Government that makes up the Federation. In true Federalism powers within the country are shared among two tiers of Governments.

However, as a final point, I must emphasis on the concept of Federalism and what it is. Again I shall refer to Professor Ben Nwabueze’s book (supra) at P.73: wherein he stated thus:

“Federalism is an arrangement whereby powers of Government within a Country are shared between a national.... and a number of regionalized.... governments in such a way that each exists as a government separately and independently from others operating directly on persons or property within is territorial area, with a will of its own apparatus for the conduct of its affairs...”

The above passage sums up what a Federation is. It expresses the independence of the governments under a Federation. Powers within a country should be allowed to be shared among the two tiers of government. This will include the powers of such federating units to make laws for the benefit or good governance and well being of the people. If so, the Lagos State laws (supra) which are in controversy herein are valid and not unconstitutional. (p. 3138 D)

REPRESENTATION

T. O. Busari Esq. with Egondou Esq., for the plaintiff
Adeola Ipaye (Attorney-General, Lagos State) with Lawal Pedro, SAN (Solicitor-General Lagos State) and Olanrewaju Akinsola Esq.
G Temitope Dawodu (Principal State Counsel Ministry of Justice, Lagos State) and Justin I. Jacobs (Senior State Counsel Ministry of Justice, Lagos), for the defendant

CASES REFERRED TO

H Ogugu v. State (1994) 9 NWLR (pt. 366) 1, 43
N.E.W. Ltd. v. DENAP Ltd. (1997) 10 NWLR (pt. 526) 481
Ojokolobo v. Alamu (1987) 3 NWLR (pt. 61) 377
A-G Lagos State v. A-G Federation (2003) 12 NWLR (pt. 833) 1

A-G Ogun State v. A-G Federation (1982) 3 NCLR 166

Lakanmi v. A-G Western Region (1970) 6 NSCC 143

Toriola v. Williams (1982) 7 SC 27

N.P.A. Plc. v. Lotus Plastics Ltd (2005) 19 NWLR (pt. 959) 1

INEC v. Musa (2003) 3 NWLR (pt. 806) 72

Ishola v. Ajiboye (1994) 7-8 SCN (pt. 1) 1

B

Director SSS v. Agbakoba (1999) 3 NWLR (pt. 593) 314

Chike v. Ifemeludike (1997) 11 NWLR (pt. 529) 390

Ejoh v. IGP (1963) SCNLR 102

Apampa v. State (1982) 6 SC 47

C

Abioye v. Yakubu (1993) 5 NWLR (pt.190) 130

STATUTES REFERRED TO

Hotel Licensing Law Cap H6 Laws of Lagos State 2003 A-G Federation v. A-G Lagos State p. 3119

D

Hotel Occupancy & Restaurant Consumption Law No. 30 Vol. 42

Laws of Lagos State 2009 A-G Federation v. A-G Lagos State p. 3119

Hotel Licensing (Amendment) Law No. 23 Vol. 43 Laws of Lagos State 2010 A-G Federation v. A-G Lagos State p. 3119

E

Nigeria Tourism Development Corporation Act Cap N137 LFN 2004, s. 4(2)(d)

Constitution of Federal Republic of Nigeria 1999, 2nd Schdl. part 1 item 60(d), s. 4(1)-(7)

F

Immigration Act Cap 1 LFN 2004

BOOKS REFERRED TO

Oxford Advanced Learner's Dictionary 7th Ed.

Federalism in Nigeria under the Presidential Constitution p. 73

G

Halsbury's Laws of England 4th Ed. (Re issue) vol. 41(2) para. 1373 on p. 1372

LEAD JUDGMENT BY GALADIMA JSC

By an originating summons taken by the Federal Government as Plaintiff against Lagos State, as the Defendant, the plaintiff challenged the validity of enactment of the following laws: The Hotel Licensing Law Cap H6, Laws of Lagos State of Nigeria 2003; The Hotel Occupancy and Restaurant Consumption Law. No.30, Vol. 42,

Lagos State of Nigeria official Gazette 2009 and The Hotel Licensing (Amendment) Law No. 23, Vol. 43, Lagos State of Nigeria official Gazette, July 2010.

Consequently, the following general questions were raised for determination:

B 1. Whether the Lagos State Government and Lagos State House of Assembly can enact law in respect of any item listed under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999.

C 2. Whether by virtue of the provision of Item 60(d) Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria which lists the regulation of tourist traffic as a legislative item under the exclusive legislative list the National Assembly is entitled to the subsequent provisions of Section 4 (2) (d) of the Nigeria Tourism
D Development Corporation Act Cap N137, Laws of the Federation of Nigeria 2004, which gives the Nigerian Tourism Development Corporation the right to licence, regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resorts, Cafeterias, Restaurants, Fast Food Outlets and other related tourist
E establishments situated and located within the geographical boundaries of Lagos State and or the Lagos State Government can sign into law any law, to license, regulate, register, classify and grade Hotels, Motels, Guest Inn, Travel Agencies, Tour Operating Outfits, Resorts, Cafeterias, Restaurants, Fast Food out lets and other related tourist
F establishments situated and located within the geographical boundaries of Lagos State.

3. Whether the Lagos State Government and the Lagos State House of Assembly can enact a law which directly conflicts with an
G existing law enacted by the National Assembly and where such law, is enacted, whether such law or enactment made by the Lagos State Government and the Lagos State House of Assembly can remain valid where such law or enactment is in conflict with an existing law or enactment made by the Federal Government of Nigeria the
H National Assembly.

Suffice it to note that out of these three general questions posed for the consideration is a precis of the three issues formulated by the plaintiff for determination of his claim. I shall come to this anon.

According to the plaintiff, in the event of the questions raised

above are answered in the negative, they have now adumbrated their claims as follow:

“1 A Declaration that the Lagos State Government and the Lagos State House of Assembly have no power to enact a law to licence, regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resort Cafeterias, Restaurant, Fast Food Outlets and other related tourist establishments within the geographical boundaries of Lagos State or any place in Nigeria.

2. A Declaration that by virtue of the provisions of items 60(d) Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 and the subsequent provisions Section 4(2) (d) of the Nigerian Tourism Development Corporation Act Cap N137 Laws of the Federation of Nigeria 2004, it is only the National Assembly that can legislate, and it is only the Nigerian Tourism Development Corporation, as established that can control matters relating or pertaining to the licensing, regulate, registration, classification and grading of hotels, motels guest inns, travel agencies tour operating outfits, resort, cafeterias, restaurant, fast food outlets and other related tourists establishment within the geographical boundaries of Lagos State and any other place in Nigeria.

4. A declaration that the following legislations, laws and enactments, that is:

“i) Hotel Licensing Law Cap H6 Laws of Lagos State of Nigeria 2003.

ii) Hotel Licensing (Amendment) Law No.23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

iii) Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009 in as much as the said legislations Laws and enactments seek to regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resort, Cafeterias, Restaurants, Fast Food Outlets and other related tourist establishments ARE IN CONFLICT with the provisions of Section 4(2) (d) of the Nigerian Tourism Development Act 1992 (a law enacted by the National Assembly and therefore null and void and of no effect whatsoever.

4) A Declaration that the following legislations, Laws and enactments, that is:

i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

ii) Hotel Licencing (Amendment) Law No.23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

iii). Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos Sate of Nigeria Official Gazette of 23rd June, 2009 in as much as the said legislations Laws and enactment seek to licence, regulate, register, classify and grade hotels, motels, guest inns, travel agencies, tour operating outfits, resort, cafeterias, restaurants fast food outlets and other related tourist establishment are conflict with the provisions of Section 4(2)(d) of the Nigerian Tourism Development Act 1992 (a law, enacted by the National Assembly) are therefore invalid being inconsistent with the provisions of Section 4(2)(3), item 60 (d) Part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 and to the extent of their inconsistency, null and void of no effect whatsoever.

5) An Order of perpetual injunction restraining the Lagos State Government either by itself, its agents, privies, servants, representatives or anybody whosoever acting on it's behalf, from further promulgating, passing into law, enacting or legislating upon issues or any matters relating to the licensing regulation, classification and grading of hotels, motels, cafeterias, restaurants, fast food outlets and other related tourist establishments and from enforcing in any manner or way through itself or any of its agencies, the following legislation:

i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 20034.

ii) Hotel Licencing (Amendment) Law No.23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

iii) Hotel Occupancy and Restaurant Consumption Law, No.30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009. ”

Supporting the Originating Summons is Affidavit of 22 paragraphs sworn to by one Olufunmi Oshinusi, a Legal Practitioner in the Chambers of the plaintiff's Counsel. I deem it necessary to reproduce paragraphs 4-22 of the Affidavit as most relevant to the determination of this action.

These are as follows:

“4) That sometimes in 1992 the National Assembly enacted the Nigerian Tourism Development Corporation Act 1992 (Now CAP

N137 Laws of the Federation of Nigeria 2004) and this enactment was made pursuant to the powers conferred on the National Assembly under Section 4(2) (3), item 60(d) Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999.

5) That the Nigerian Tourism Development Corporation was established pursuant to the aforesaid Nigerian Tourism Development Corporation Act.

6) That by virtue of the provisions of the Nigerian Tourism Development Corporation Act, the Nigerian Tourism Development Corporation is Mandated to register, classify, grade and regulate all Hotels, Motels, Hospitality and tourism enterprises, travel agencies and tour operators.

7) That the Lagos State Government in 2003 promulgated and passed into law the Hotel Licencing Law, Cap H6 Laws of Lagos State of Nigeria 2003, a Law which directly conflicts with the mandate and functions of the Nigerian Tourism Development Corporation as provided for by the Nigerian Tourism Development Corporation Act particularly with Section 4(2)(d) of the Nigerian Tourism Development Corporation Act.

8) That sometime in the year 2009 the Lagos State Government caused to be published in full page advertisement in a number of newspapers a public notice to hoteliers and operators of Tourism Related Establishments operating in the State that the registration of hotels and tourism and other related establishments are now the exclusive responsibility of the Lagos State Ministry of Tourism and inter-governmental relations. Now shown to me and attached herein and marked as EXHIBIT HAGF I is the publication of the National Life Newspaper of the 27th September, 2009.

9) That the public notice issued by the Defendant stated that under the Constitution of the Federal Republic of Nigeria the power of the National Assembly to regulate Tourism is limited to the establishment and regulation of authorities for the Federation or any part thereof to regulate tourist traffic.

10) That the notice further stated that the legislative power of the National Assembly does not extend to making legislation and imposition of levies to tourism facilities.

11) That the public notice by the Lagos State Government stated further that the registration, grading and classification of ho-

tels, motels, guest inns, apartments, travel agencies, tour operating outfits, resorts, cafeterias, restaurants, fast food outlets and other related tourist establishment can only be done by the Lagos State authority or empowered in that regard by the Lagos State House of Assembly.

B 12) *That the Lagos State Government has backed up their public notice with a legislation by promulgating the Hotel Licencing (Amendment) Law contained in No.23, Volume 43, Lagos State of Nigeria Official Gazette dated 20th July, 2010 which law, gives the Lagos State Government power to deal with the regulations, registration, classification and grading of Hotels, Motels, Hospitality and tourism enterprises, Travel Agencies, Tour Operators and other tourism related establishments. Now, shown to me is a copy of enactment as Gazetted and same is attached herein and marked as EXHIBIT D HAGF II.*

13. *That under the Nigerian Tourism Development Corporation Act 1992 the body empowered to register, classify and grade all hospitality, and Tourism Enterprises, travel Agencies, tour operators and other establish tourist establishments is the Nigerian Tourism Development Corporation (NTDC).*

14) *That action of the Lagos State Government is an attempt to usurp and undermine the statutory mandate and responsibilities of the Nigerian Tourism Development Corporation (NTDC).*

F 15) *That the action of the Lagos State Government in issuing the aforesaid public notice and promulgating the aforesaid laws also has the implication of compromising the uniformity of registration, classification and grading of hotels and other tourism facilities in Nigeria with negative implication for tourist safety and national security.*

G 16) *That realizing the adverse and negative effect of the action of Lagos State Government, the Nigerian Tourism Development Corporation issued a public notice advising all operators of hotels, motels guest inns, resorts, apartment, travel agencies tour companies cafeteria, restaurants and fasts food outlets in Lagos State to ignore and disregard the letter of notification and public notice issued by the Lagos State Government on the registration of hotels and other tourism facilities.*

17) *That in the public notice by the Nigerian Tourism Development Corporation, the Corporation made it clear that as a respon-*

sible Federal Government Agency, it ensures that all stakeholders are carried along in the discharge of its statutory functions, hence the setting up of a Joint Tourism Board which among other things agreed on the disbursement of registration fee charged for the administrative processes of registering hotels among the Federal, State and Local Government of which 60% goes to the state where such facilities are located. ^B

18) That despite the steps taken by the Corporation, the Lagos State House of Assembly and the Lagos State Government in utter disregard to the functions and duties of the Nigerian Tourism Development Corporation proceeded to enact legislation to licence and regulate hotels and other related tourist establishment in Lagos State. ^C

19) That the Lagos State Government acting through the Lagos State Commissioner for Tourism and inter Governmental Affairs Mr. Tokunbo Afikuyomi has stated that the licensing, grading of Hotels and other related tourist establishments will fully commence in October 2010. A copy of the Vanguard Newspaper where such statement was made is now shown to me and is hereby attached and marked as EXHIBIT HAGF III.

20) That the action of the Lagos State Government in enacting the legislation to licence and regulate hotels in Lagos State would not only undermine and hinder the activities and mandate of Nigerian Tourism Development Corporation but will also create confusion for operators in terms of compliance as to the legitimate regulatory authority with powers to register, classify and grade hotels and other related tourism establishments. ^F

21) That the confusion created by the Lagos State Government in enacting legislation bill to licence and regulate hotels and other tourist establishment would damage and further worsen the country unenviable Nigeria tourism development Sector which the Corporation has in the last four years been striving to develop and reposition. ^G

22) That unless the player sought for in this suit are granted the action of the Lagos State Government would disrupt the steady progressive development of the Nigerian Tourism Sector.” ^H

The above depositions were challenged in the Defendants Counter-affidavit of 21 paragraphs, sworn to by one Adeola Ipaye, a Legal Practitioner and the Lagos State Governor’s Special Adviser on

Taxation and Revenue. I set out paragraphs 4 - 21 of the said Counter Affidavit as follows:

B “4) *On the 11th day of May, 1983, during the Second Republic, the House of Assembly of Lagos State, in pursuance of its powers under the Constitution of the Federal Republic of Nigeria, 1979, enacted the Hotel Licensing Law (now Cap. H6 Laws of Lagos State of Nigeria 2003) to provide for the licensing of hotels in the State and for purposes connected therewith (‘the Law’).*

C 5) *Following the Military intervention of 1983, Federal Military Government suspended and subsequently amended the Constitution of the Federal Republic of Nigeria 1979.*

D 6) *In furtherance of the depositions contained in the preceding paragraph, the Federal Military Government assumed absolute powers to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.*

E 7) *In exercise of the said absolute powers, the then National Assembly during the regime of General Ibrahim Babangida in 1992 enacted the Nigerian Tourism Development Corporation Act (‘the Act’) whilst the Constitution of the Federal Republic of Nigeria, 1979 remained suspended and amended in part.*

F 8) *The Act established in Nigeria Tourism development Corporation (‘the Corporation’) and empowered it to, among other things, register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operators in the country in such manner as may be prescribed.*

9) *Furthermore, the Act established for each State in the Federation, a State Tourism Board and authorizing the Governor to appoint members of the Board.*

G 10. *Contrary to the depositions contained in Paragraph 7 of the Affidavit in Support, the Law, which was enacted in 1983 and not 2003 as deposed, is to regulate the grant of licence to premises for hotel purpose only and does not contain any provision relating to the regulation of tourist traffic.*

H 11. *I know as a fact that there are far more Nigerians than foreigners using hotel facilities in Lagos State and all Nigerians have freedom of movement within the country.*

12. *I also know that pursuant to the provisions of the Constitution of the Federal Republic of Nigeria 1999, physical planning, traf-*

fic control, kitchen hygiene, fire prevention, general health and safety, etc in hotels and other public establishments are all within the legislative competence of State Houses of Assembly.

13. *In Specific response to the depositions contained in paragraphs 8 to 11 of the Affidavit in Support, the public notice caused to be published by the Defendant was in response to press advertisements published at the instance and at the behest of the Plaintiff through the Corporation in its bid to engage consultants for the registration of Hotels, Motels, Guest Inns, Apartments, Travel Agencies, Tour Operating Outfits, Resorts, Cafeterias, amongst others in Lagos State and throughout the Country. Now shown to me and marked as Exhibit LASG1 is a certified true copy of the said advertisement of the Defendant as published in The Newspaper of Friday, September 4, 2009.*

14. *Further to the depositions contained in the preceding paragraph, the public notice was to inform the operators of hotels and other tourism related establishments in the State of the unconstitutionality of the provisions of Section 4(2) (d) of the Nigerian Tourism Development Corporation Act in the light of the provisions of the Constitution of the Federal Republic of Nigeria, 1999.*

15. *In addition to the foregoing, the Honourable Commissioner for Tourism and Inter-Governmental Relations in the Defendant State caused to be written a letter dated October 15, 2009 to the Honourable Minister for Tourism, Culture and National Orientation wherein the attention of the Minister was drawn to the fact that: "...after the enactment of the Constitution of the Federal Republic of Nigeria, 1999, the power of the National Assembly to regulate tourism in Nigeria is now governed by item 60(d) of the Exclusive Legislative List and limited to "the establishment and regulation of authorities for the Federation or any part thereof to regulate tourist traffic." Now shown to me and marked Exhibit LASG2 is a copy of the said letter.*

16. *The letter referred to in the preceding paragraph (i.e. Exhibit LASG2) further requested the kind intervention of the Honourable Minister to prevent a situation whereby tourism operations are impeded by unnecessary exposure to multiple regulate authorities, levies and charges.*

17. *The foregoing notwithstanding, the Defendant through the*

Corporation caused to be published in the *Thisday Newspapers* of December 31, 2009 a public notice entitled: *Re: Lagos State Registration of Hotels and Tourism Related Establishments and National Security* wherein the Corporation ignored the clear constitutional provisions in that regard and reiterated its position that NTDC (i.e. the Corporation) was the only body with the mandate “to register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operators in the country, which is without exception of any State of the Federation.” Now shown to me and marked Exhibit LASG3 is a certified true copy of the said publication.

18. Contrary to depositions contained in paragraph 12 of the Affidavit in Support of the Originating Summons, the enactment of the *Lagos State Hotel Licensing (Amendment) Law of July 2010* was to extend its application to tourism establishments and not to give the Lagos State Government the power to deal with the regulation of tourist traffic.

19. In answer to the depositions contained in paragraph 14 of the affidavit in support, the action of the Defendant was in consonance with the provisions of the *Constitution of the Federal Republic of Nigeria, 1999* which expressly limits the regulatory power of the Plaintiff to tourist traffic.

20. In specific response to paragraph 15 of the Affidavit in Support, the Defendant’s actions have no negative implication for tourist safety or national security and in fact are in conformity with the principles of federalism which is enshrined in the *Constitution of the Federal Republic of Nigeria* and which envisages the devolution of power among the federating states and not uniformity except as otherwise stated.

21. I know for a fact that:

i. The constitutional power of the Plaintiff qua the Federal Government is expressly limited to the regulation of tourism traffic in Nigeria;

ii. Only the movement of foreigner coming into Nigeria as tourists may be regulated by way of visas and limitation of periods that tourists may remain in the country.

iii. The said power does not extend to registration, classification and grading of hospitality enterprises.

iv. The enactment of the Law is in furtherance of the duty of a

responsible government such as that of Lagos State to promote the well being of the resident and tourists to the State especially in the area of hospitality business.

v. The enactment of the law is to advance the course of the entire hospitality industry especially in Lagos State considering the enormous potentials of the State by virtue of its geographic advantage.” B

Besides the above Affidavit in Support of the Originating Summons and the Counter Affidavit in opposition, the respective Learned Counsel for the parties have formulated some issues for determination. C

The Plaintiff’s issues formulated for determination are as follows:

“1) Whether the matters pertaining to tourism and other tourist related establishments falls under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999. D

2) Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws on matters within the exclusive legislative list as set out in Section 4(2) (d) 1 Second Schedule of the Constitution of the Federal Republic 1999. E

3) Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws which directly conflict with the provisions of an existing law of the National Assembly and if such enactment law exist whether such can supersede an existing law of the National Assembly.” F

On the other hand the Defendant on its part formulated the following issues for determination in the resolving of this case:

“(i) Whether regulation, registration, classification and grading of Hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishment are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos State House of Assembly. G

(ii) Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act, Cap N.137, LFN: H

(a) Hotel Licensing Law, Cap. H6 Laws of Lagos State of Nigeria, 2003;

(b) Hotel Licensing (Amendment) law No. 23 Volume 43 Lagos

State of Nigeria Official Gazette of July 20, 2010 and

(c) Hotel Occupancy and restaurant Consumption Law No. 30, Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2009.”

On 23rd April, 2013, this matter was heard. Learned Counsel B for the plaintiff T. O. Busari, Esq. identified the Plaintiff’s Originating Summons issued out 31st August, 2010 with a supporting Affidavit of 22 paragraphs and a number of documents marked as Exhibits. He also referred to the Plaintiff’s Brief of Argument case Address C which is attached to the Writ of Summons.

The fulcrum of the plaintiff’s case is that by virtue of item 60(d) of the Second Schedule part 1 of the 1999 Constitution, matters pertaining to the regulating, registration, and grading of Hotels, Motels, Guest Inns, Apartments, Tour operating outfits, Restaurants, Travel D Agencies, Cafeteria, Fast Food Outlets and other tourist related establishment are under the exclusive legislative list of the 1999 Constitution. It is submitted that matters pertaining to these enumerated items come under the exclusive legislative list, therefore the Lagos State House of Assembly and the Lagos State Government have no E power to legislate and promulgate laws on these matters.

According to the Plaintiff, their position is fortified by the provisions of the “*Tourist Traffic Act*” from other jurisdiction particularly the Tourist Traffic Act, 1939 of the Republic of Ireland which deals F essentially with items such as enumerated in the exclusive legislative of the 1999 Constitution of the Federal Republic of Nigeria.

It is in the light of the above stance of the Plaintiff, that this Court is being urged to declare that: the Hotel Licensing Law Cap 116 Lagos State of Nigeria 2003, the Hotel Licensing (Amendment) G Law No.23 volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010 and the Hotel Occupancy and Restaurant Consumption Law No.30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009, are illegal, null and void and of no effect whatsoever.

On his part ADEOLA IPAYE Esq., (Hon. Attorney-General) H representing the Defendant referred to the Counter Affidavit and written Address of the Defendant which he adopted as his argument in the case. Learned Attorney-General has faulted the contention of the Plaintiff that the Federal Government has exclusive legislative power over tourism and that regulation of hotels, motels, restaurants, and

such other hospitality ventures, is incidental or supplementary to control of tourism. He submitted that a detailed examination of the entire Constitution of the Federal Republic of Nigeria has revealed that the power of National Assembly over tourist related matters is limited to regulation of “*tourist traffic*” as provided in item 60(d) of the Second Schedule Part 1 of the Exclusive Legislative List and this gives the Federal Government Power to regulate “*tourist traffic*”. It is submitted that the contention of the Plaintiff as stated early, is to import into the 1999 Constitution what is not intended by the drafters of the Constitution. He has noted, although the expression ‘tourist traffic’ is nowhere defined in the 1999 Constitution, the resort made by the Plaintiff to the definition as contained in the Republic of Ireland’s Tourist Traffic Act of 1939 is misleading and not helpful and totally irrelevant, as the Constitutions of the two countries are dissimilar in every material respect. It is further explained that whilst the Republic of Ireland practices Unitary System of Government; where there is no delimitation of power between the Federal Government and component states; on the other hand, Nigeria as a Federal Republic, there is division of legislative power. Reliance was placed on the case of OGUGU v. THE STATE 9 NWLR (pt.366) 1 at 43, particularly on the admonition of this court as regards “*borrowing*” of definition or interpretation from other countries which have no constitutional provision similar or “*resembling our own*”.

The foregoing are the salient points garnered from the depositions, arguments and submissions of the respective counsel in their issues raised for determination of this case. However, in dealing with this case, I am of the respectful view that the issues submitted by the Defendant are quite apt and preferable for their fair resolution. The issues shall be taken together. However, I have noted and shall consider also the Plaintiffs Reply in response to the Brief of Argument. It will not however, be out of place to recapitulate briefly the statement of facts in the briefs of the parties. This is to assist to narrow the areas of disagreement by the parties. The Defendant agrees with the facts in paragraphs 2.1, 2.2, 2.3, and 2.6 of the Plaintiffs statement of facts; but disagrees with fact in paragraph 2.4, 2.5, 2.7, 2.8 and 2.9 of the statement of facts. It is also clear to the parties that the plaintiff is challenging the Constitutionality of the three statutes enacted by the Lagos State House of Assembly as earlier set out in this judgment.

That the basis of the Plaintiffs contention is that the provisions of these Laws are in conflict with the provisions of Section 4(2) (d) of the Nigerian Tourism development Act, Cap N.137, Laws of the Federation of Nigeria (LFN) 2004. The position of the Defendant is that the Laws of the Lagos State being challenged are valid and Constitutional. It is further the contention of the Defendant that to the extent, that the Nigerian Tourism Development Act has failed the Constitutional test of validity as regards subject matter; therefore, it is the Act and not the Laws of Lagos State that is unconstitutional null and void.

Section 2(2) of the 1999 Constitution (As Amended) in 2010 provides that:

“2. Nigeria shall be a Federation consisting of States and a Federal Capital Territory.”

The defining feature of Federalism is recognition of the separateness and independence of each Government that makes up the Federation. In true Federalism powers within the country are shared among two tiers of Governments.

Section 4(1) to (7) of the Constitution of the Federal Republic of Nigeria provides for share Legislative powers as follows:

(1) The Legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.

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

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

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

(a) any matter in the Concurrent Legislative List set out in the

first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and (Second Schedule, Part II).

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

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

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

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

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution: (Second Schedule, Part II).

(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 (second schedule, part II).

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

Close examination and interpretation of item 60(d) of part - 1 of the Second Schedule of the 1999 Constitution is quite imperative as the claim of the plaintiff is predicated mainly on it. Item 60(d) of the schedule reads as follows:

“The establishment and regulation of authorities for the Federation or any part thereof -

(d) To regulate tourist traffic”.

It has been contended that the Federal Government has exclusive legislative powers over tourism and that regulation of hotels, motels, etc is incidental or supplementary to control of tourism. It has been argued on behalf of the plaintiff that item 60(d) deals with matters pertaining to regulation, classification, registration grading of tourist related establishment like hotels, motels, restaurants, fast food outlets, guest inns, apartment, travel agencies, tour operating outfits etc. I agree with the learned counsel for the Defendant that the conten-

tion of the plaintiff has no constitutional basis and that the specific matter assigned to the Federal Government in this regard is “*tourist traffic*” and nothing more.

I note that the expression “*tourist traffic*” is difficult of definition. It is nowhere defined in our Constitution. Most English Dictionary affords separate definitions of the two words. Oxford Advanced Learner’s Dictionary 7th Edition defines “*tourist*” as a person who is traveling or visiting a place. Roger’s Thesaurus simply defines *tourist* as a traveler. The same Dictionary, however defines “*tourism*” as the business activity connected with providing accommodation, services and management of people who are visiting a place for pleasure; and it defines *traffic* as a movement of people or goods from one place to another, along railway, road, aircraft, etc.

The plaintiff in the circumstance resorted to the definition of “*tourist Traffic*” as contained in the Republic of Ireland’s Traffic Act of 1939. This court in *OGUGU v. THE STATE* (1994) 9 NWLR (pt.366) at 43 has admonished and loathes at borrowing definition or interpretation from other countries which have no constitutional provisions, resembling that of this country but different constitutional structures, I do the same here. Nigeria and Ireland are two countries. Their constitution is dissimilar in every material respect. Nigeria is a Federal Republic with division of legislative power between the Federal Government and component States. Republic of Ireland practices a unitary system of Government. The courts in this country consistently lean in favour of giving words their ordinary and natural meaning. See *N.E.W. LTD v. DENAP LTD* (1997) 10 NWLR (pt. 526) 481 AT 523; *OJOKOLOBO v. ALAMU* (1987) 3 NWLR (pt. 61) 377.

In my view the Dictionary definition of “*Tourist*” and “*Traffic*” would accord to my own understanding of simple and natural meaning of the two words. The words “*tourist traffic*” used in item 60(d) of the second schedule of the Constitution, alludes to the ingress and egress of tourists from other countries. These are international visitors or foreigners.

Defendant, understandably, captured these two words in paragraph 21 of his counter-affidavit, deposed to and reproduced hereof

for emphasis:

“21. I know for a fact that:-

(i) The Constitutional power of the plaintiff qua the Federal Government is expressly limited to the regulation of tourism traffic in Nigeria.

(ii) Only the movement of foreigners coming into Nigeria as tourist may be regulated by way of visa and limitation of periods that tourists may remain in the country.

(iii) The said power does not extend to registration classification and grading of hospitality enterprises.

(iv) The enactment of the Law is in furtherance of the duty of a responsible Government such is that of Lagos State to promote the well being of the residents and tourists to the state especially on the area of hospitality business”.

The purpose of interpreting a statute is to ascertain the intention of the law makers. A careful study of the words used in item 60(d) of the second schedule clearly indicates that the intention of the framers of the Constitution is to confine the powers of the National Assembly to regulation of tourist traffic.

In the light of the foregoing, the contention of the plaintiff that matters pertaining to the regulation; registration, classification, grading, of hotels, motels, guest houses, restaurants, travel and tour agencies, and other hospitality and tourism related establishment are matters within the Exclusive Legislative List, cannot be sustained. In effect, the Federal Government lacks the Constitutional vires to make laws outside its legislative competence which are by implication residue matters for the State Assembly: the National Assembly cannot, in the exercise of its powers to enact some specific laws, take the liberty, to confer power or authority on the Federal Government or any of its agencies to engage in matters which ordinarily ought to be the responsibility of a State Government or its agencies. Such pretext cannot be allowed to enable them encroach upon the exclusive constitutional authority conferred on a State under its residual legislative power. See A. G. LAGOS STATE v. ATTORNEY-GENERAL FEDERATION (2003)

12 NWLR (pt.833) 1 at 195-196; ATTORNEY-GENERAL OGUN STATE v. ATTORNEY-GENERAL FEDERATION (1982) 3 NCLR 166 at 195 - 196. In view of the foregoing I resolve this issue in favour of the Defendant.

The next issue that calls for determination is whether the 3
B Laws enacted by the Lagos State House of Assembly are invalid by
reason of their inconsistencies with the provision of the Nigerian Tourism
Development Corporation Act, Cap. N137 LFN 2004. The es-
sence of the plaintiff's case is to invalidate the 3 statutes enacted by
C the Lagos State House of Assembly. Therefore the kernel of the
plaintiff's case is that the Lagos State House of Assembly does not
have constitutional and statutory competence to enact laws in re-
spect of regulation, registration, classification, and grading of hotels,
guest house, motels guest Inns, restaurant and such other hospitality
D ventures.

I have before now reproduced above subsections (1) (2) (3)
(4) (5) (6) and (7) Section 4 of 1999 Constitution. Sub-Section (1)
(2) (3) and (4) deals with the legislative powers of the Federal Gov-
ernment, whereas the legislative powers of a State are as stated in
E subsections 5 and 6 thereof.

It is clear that the pedestal upon which the claim is also an-
chored is the Nigerian Tourism Development Corporation Act (now
to be referred "*NTDC*"). Its enactment derives authority and support
F from a Constitutional provision that is, item 60(d) of the second sched-
ule part I (supra). Some of the functions of the NTDC which are
relevant in my resolution of this issue are as set out in paragraph 4 of
the Act. These are:

*"(a) To encourage people living in Nigeria to take their holi-
G days therein and people from abroad to visit Nigeria, and
(b) To encourage the provision and improvement of tourism
amenities and facilities in Nigeria including the development of hotels
and ancillary facilities.*

*(2) In addition to the specific powers conferred on the Corpo-
H ration by or under the subsequent provision of this Act the Corpora-
tion shall have power:-*

*(d) to register, classify and grade all hospitality and tourism
enterprises, travel agencies and tour operators in such manner as
may be prescribed.*

- (3) *The Corporation shall in particular have power to -*
 (a) *Carry on any undertaking which appears to the Corporation to be necessary for promotions and development of a tourist industry.*
 (b) *Advise appropriate authorities on ways of improving tourist facilities.”*

From the above, it is clear that the specific powers to register, classify and grade hospitality and tourism enterprises are conferred on the Nigerian Tourism Development Corporation. Learned Counsel for the Plaintiff has contended that this power excludes any other Establishment from exercising it. The Lagos State promulgated the 3 Laws. Having regard to the fact that regulation, registration, classification and grading of hotels, motels, etc are not items in the Exclusive and Concurrent Legislative Lists, they are clearly residual matters for the State. Therefore the 3 laws in question enacted by the Lagos State Government are intra vires the power of the State Government. I have equally noted that in those laws, there are some amendments effected, needless going into details of such amendments.

It is however note - worthy that I have earlier adopted the Dictionary and ordinary meaning of the words “*tourist traffic*” as the movement of tourists, particularly foreigners within the context of item 60(d) of the second schedule of the 1999. ***Having said this I must not fail to state that the validity of any enactment by the National Assembly is to be measured against the backdrop of Section 4(6) and (7) of the Constitution. Therefore the power of the State Government to legislate on a given matter must be traceable to the body of the Constitution, either the Exclusive Legislative List or the Concurrent legislative List or Residual List and any legislation on a matter outside the ambit of the said Constitutional provisions is null and void. This is amplified by the provisions of Section 1 (3) of the Constitution, which provides as follows:***

“if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.”

I have carefully studied the main law - the Hotel Licensing Law of 2003. I do not think its provisions have to do with grading or

regulating of hotels generally, other than licensing. It has nothing to do with tourism per se, but in the amendment of 2010 it sought to include “*tourism establishments*”. The October 2010 amendment incorporated the licensing and grading of hospitality sector such as eateries, bars, casinos, hotels and event arenas etc. Clearly this is
 B legislation by a State legislature. Its power to legislate is entrenched in Section 4 (6) - (7) of the second schedule pt. II of 1999 Constitution.

It is note worthy that none of the subject matters introduced in the Amendment Law of Lagos State falls into any of the items under
 C Exclusive Legislative List, under party 1 of the second schedule of the Constitution and which is under items 60(d).

**By virtue of subsection 7 of section 4 of the Constitution (supra) powers of a State House of Assembly to make laws for the peace order and good government of its State is
 D not in doubt. The Lagos State House of Assembly considered these factors in the passing of the 3 laws (supra) to regulate, grade and classify its hotel and other hospitality establishments. These items are not in the Exclusive and Concurrent List; they are within the competence and ambit of the Lagos State House
 E of Assembly to legislate upon.**

The Learned Counsel for the Plaintiff has also contended that the State Laws (supra) in question are directly in conflict with the provisions of all existing law of the National Assembly to wit: Nigerian
 F Tourism Development Corporation Act (supra). The plaintiff in this regard relies in the doctrine of COVERING THE FIELD. I agree with the learned counsel for the Defendant that the doctrine has no application in the Exclusive Legislative List in respect of which the Federal
 G Government has exclusive power to legislate. The relevant authorities are to the effect that the doctrine is applicable to where concurrent legislative powers are validly exercised on the same subject matters. This point was exhaustively thrashed in the locus classicus on the matter in the case of LAKANMI v. ATTORNEY-GENERAL WEST-
 H ATTORNEY-GENERAL OGUN STATE v. ATTORNEY-GENERAL FEDERATION (1982) 13 NSCC 1 at 35, where it was held that

“...the phrase covering the field” means precisely what it says where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof where

the legislation enacted by state is inconsistent with the legislation of the Federal Government, it is void and of no effect for inconsistency.”

Explaining further, the concept of “covering the field” in his book (Federalism in Nigeria under the Presidential Constitution) Professor Ben Nwabueze, SAN, opined thus:-

“The question whether a state law on a concurrent matter can co-exist with a Federal law on the same matter arises where the latter expressly, or impliedly evinces an intention to provide a complete statement of the law governing the matter.”

In the light of the above I find that the doctrine has no application to the issue before this Court.

However, as a final point, I must emphasis on the concept of Federalism and what it is. Again I shall refer to Professor Ben Nwabueze’s book (supra) at P.73: wherein he stated thus:

“Federalism is an arrangement whereby powers of Government within a Country are shared between a national.... and a number of regionalized.... governments in such a way that each exists as a government separately and independently from others operating directly on persons or property within is territorial area, with a will of its own apparatus for the conduct of its affairs...”

The above passage sums up what a Federation is. It expresses the independence of the governments under a Federation. Powers within a country should be allowed to be shared among the two tiers of government. This will include the powers of such federating units to make laws for the benefit or good governance and well being of the people. If so, the Lagos State laws (supra) which are in controversy herein are valid and not unconstitutional.

I cannot therefore, grant the declarations sought by the plaintiff in their Originating Summons reproduced above; they are refused. The order of perpetual injunction sought in the originating summons reproduced above is equally refused. In the whole, the case of the plaintiff fails in its entirety and it is dismissed. I make no order as to costs.

THE CASE DISMISSED.

MUKHTAR CJN

The issues raised by the plaintiff in its originating summons

before this court are:-

“1. Whether the Lagos State Government and the Lagos State House of Assembly can enact law in respect of any item listed under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999.

B *2. Whether by virtue of the provision of item 60(d) Part 1 of*
the Second Schedule of the Constitution of the Federal Republic of
Nigeria which lists the regulation of Tourist Traffic as a legislative item
under the exclusive legislative list the National Assembly is entitled to
C *the subsequent provisions of Section 4(2)(d) of the Nigeria Tourism*
Development Corporation the Right to licence, regulate, register, clas-
sify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Op-
erating Outfits, Resorts, Cafeterias, Restaurants, Fast Food Outlets
D *and other related tourist establishment to the exclusion of the Lagos*
State Government and or any other authority in Nigeria, the Lagos
State House of Assembly can enact any law to licence, regulate, reg-
ister, classify and grade hotels, motels, guest inns, travel agencies,
tour operating outfits, resort, cafeterias, restaurants, fast food outfits
E *and other related tourist establishment situated and located within*
the geographical boundaries of Lagos State and or the Lagos State
Government can sign into law any law to license, regulate, register,
classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour
Operating outfits, Resorts Cafeterias, Restaurants, Fast food outlets
F *and other related tourist establishment situated and located within*
the geographical boundaries of Lagos State and or the Lagos State
Government can sign into law any law to license, regulate register
classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour
G *operating outfits, Resorts, Cafeterias, Restaurants, Fast food outlets*
and other related Tourist establishments situated and located within
the geographical boundaries of Lagos State.

3. Whether the Lagos State Government and the Lagos State
Government and the Lagos State House of Assembly can enact a law
which directly conflicts with an existing law enacted by the National
H *Assembly and where such is enacted, whether such law or enactment*
made by the Lagos State Government and the Lagos State House of
Assembly can remain valid where such law or enactment is in conflict
with an existing law or enactment made by the Federal Government
of Nigeria the National Assembly.”

In the event that the issues are answered in the negative, the plaintiff is claiming the following:-

“(1) A Declaration that the Lagos State Government and the Lagos State House of Assembly have no power to enact a law to licence, regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour operating Outfits, Resort, Cafeterias, Restaurants, Fast Food Outlets and other related tourist establishments within the geographical boundaries of Lagos State or any other Place in Nigeria.

(2) A Declaration that by virtue of the provisions of item 60(d) Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 and the subsequent provisions Section 4(2)(d) of the Nigerian Tourism Development Corporation Act Cap N137 Laws of the Federation of Nigeria 2004, it is only the National Assembly that can legislate and it is only the Nigeria Tourism Development Corporation as established that can control matters relating or pertaining to the licensing, regulation, registration, classification and grading of hotels, motels, guest inns, travel agencies tour operating outfits, resort, cafeterias, restaurants, fast food outlets and other related tourist establishments within the geographical boundaries of Lagos State and any other place in Nigeria.

(3) A Declaration that the following legislations; laws and enactments, that is:

(i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

(ii) Hotel Licensing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

(iii) Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009 in as much as the said Legislations Laws and enactments seek to regulate, register, classify and grade Hotels, Motels Guest Inns, Travel Agencies, Tour Operating Outfits, Resort, Cafeterias, Restaurants, Fast Food Outlets, and other related tourist establishments ARE IN CONFLICT with the provisions of section 4(2)(d) of the Nigerian Tourism Development Act 1992 (a law enacted by the National Assembly and therefore null and void and of no effect whatsoever.

(4) A Declaration that the following Legislations, Laws and enactments, that is:-

(i) *Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.*

(ii) *Hotel Licencing (Amendment) Law No 23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.*

(iii) *Hotel Occupancy and Restaurant consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June 2009 in as much as the said legislations laws and enactments seek to licence, regulate, register, classify and grade hotels, motels, guest inns, travel agencies, tour operating outfits, resort, cafeterias, restaurants, fast food outlets and other related tourist establishment are in conflict with the provisions of Section 4(2)(d) of the Nigerian Tourism Development Act 1992 (a law enacted by the Nigerian Tourism Development Act 1992 (a law enacted by the National Assembly are therefore invalid being inconsistent with the provisions of Section 4(2)(3), item 60(d) Part 1 of the second Schedule to the Constitution of the Federal Republic of Nigeria 1999 and to the extent of their inconsistency, null and void of no effect whatsoever.*

(5) *An order of perpetual injunction restraining the Lagos State Government either by itself, its agents privies, servants, representatives or anybody whatsoever acting on its behalf, from further promulgating, passing into law, enacting or legislating upon issues or any matters relating to the licencing regulation classification and grading of hotels, motels, guest inns, travel agencies tour operating outfits, resort, cafeterias restaurants, fast food outlets and other related tourist establishments and from enforcing in any manner or way through itself or any of its agencies the following legislations.*

(i) *Hotel licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.*

(ii) *Hotel licencing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.*

(iii) *Hotel Occupancy and Restaurant consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009.”*

The Originating Summons is supported by an affidavit sworn to by one Olufunmi Oshinusi. The salient depositions are as follows:-

“4) *That sometimes in 1992 the National Assembly enacted the Nigerian Tourism Development Corporation Act 1992 (Now CAP N137 Laws of the Federation of Nigeria 2004) and this enactment*

was made pursuant to the powers conferred on the National Assembly under Section 4(2) (3), Item 60(d) Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999.

6) That by virtue of the provisions of the Nigerian Tourism Development Corporation Act, the Nigerian Tourism Development Corporation is mandated to register, classify, grade and regulate all Hotels, Motels, Hospitality and tourism enterprises, travel agencies and tour operators.

7) That the Lagos State Government in 2003 promulgated and passed into law the Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003, a law which directly conflicts with the mandate and functions of the Nigerian Tourism Development Corporation as provided for by the Nigerian Tourism Development Corporation Act particularly with Section 4(2)(d) of the Nigerian Tourism Development Corporation Act.

8) That sometime in the year 2009 the Lagos State Government caused to be published in full page advertisement in a number newspapers a public notice to hoteliers and operators of Tourism Related Establishments operating in the state that the registration of hotels and tourism and other related establishments are now the exclusive responsibility of the Lagos State Ministry of Tourism and inter Governmental relations. Now shown to me and attached herein and marked as EXHIBIT HAGF 1 is the publication of the National Life Newspaper of the 27th September, 2009.

9) That the public notice issued by the Defendant stated that under the Constitution of the Federal Republic of Nigeria the Power of the National Assembly to regulate Tourism is limited to the “establishment and regulation of authorities for the Federation or any part thereof to regulate tourist traffic.

10) That the notice further stated that the legislative power of the National Assembly does not extend to making legislation and imposition of levies to tourism facilities.

13) That under the Nigerian Tourism Development Corporation Act 1992 the body empowered to register, classify and grade all hospitality and Tourism Enterprises, travel agencies, tour operators and other tourist establishments is the Nigerian Tourism Development Corporation (NTDC).”

The defendant in its counter-affidavit challenged the above

depositions thus:-

“4. On the 11th day of May, 1983, during the Second Republic, the House of Assembly of Lagos State, in pursuance of its powers under the Constitution of the Federal Republic of Nigeria, 1979, enacted the Hotel Licensing Law (now Cap. H6 Laws of Lagos State of Nigeria 2003) to provide for the licensing of hotels in the State and for purposes connected therewith (‘the Law’).

5. Following the military intervention of 1983, the Federal Military Government suspended and subsequently amended the Constitution of the Federal Republic of Nigeria, 1979.

6. In furtherance of the depositions contained in the preceding paragraph, the Federal Military Government assumed absolute powers to make laws for the peace, order and good Government of Nigeria or any part thereof with respect to any matter whatsoever.

7. In exercise of the said absolute powers, the then National Assembly during the regime of General Ibrahim Badamasi Babangida in 1992 enacted the Nigerian Tourism Development Corporation Act (‘the Act’) whilst the Constitution of the Federal Republic of Nigeria, 1979 remained suspended and amended in Part.

8. That Act established the Nigerian Tourism Development Corporation (‘the Corporation’) and empowered it to, amongst other things, register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operators in the country in such manner as may be prescribed.

9. Furthermore, the Act established for each State in the Federation, a State Tourism Board and authorizing the Governor to appoint members of the said Board.

10. Contrary to the depositions, contained in Paragraph 7 of the Affidavit in Support, the Law, which was enacted in 1983 and not 2003 as deposed, is to regulate the grant of licence to premises for hotel purposes only and does not contain any provision relating to the regulation of tourist traffic.

11. I know as a fact that there are far more Nigerians than foreigners using hotel facilities in Lagos State and all Nigerians have freedom of movement within the country.

11. In specific response to the depositions contained in paragraphs 8 to 11 of the Affidavit in Support, the public notice caused to be published at the instance and at the behest of the Plaintiff through

the Corporation in its bid to engage consultants for the registration of Hotels, Motels, Guest Inns, Apartments, Travel Agencies, Tour Operating Outfits, Resorts, Cafeterias, amongst others in Lagos State and throughout the country.... Marked as Exhibit LASG1 is a certified true copy of the said advertisement of the Defendant as published in The Nation Newspaper of Friday, September 4, 2009. B

12. Further to the deposition contained in the preceding paragraph, the public notice was to inform the operators of hotels and other tourism related establishments in the State of the unconstitutionality of the provisions of section 4(2) (d) of the Nigerian Tourism Development Corporation Act in the light of the provisions of the Constitution of the Federal Republic of Nigeria, 1999. C

15. The foregoing notwithstanding, the Defendant through the Corporation caused to be published in the Thisday newspapers of December 31, 2009 a public notice entitled: *Re: Lagos State Registration of Hotels and Tourism Related Establishments and National Security wherein the Corporation ignored the clear constitutional provisions in that regard and reiterated its position that NTDC (i.e. the Corporation) was the only body with the mandate "to register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operators in the country, which is without exception of any State of the Federation."* Now shown to me and marked Exhibit LASG3 is a certified true copy of the said publication. E

16. Contrary to depositions contained in paragraph 12 of the Affidavit in Support of the Originating Summons, the enactment of the Lagos State Hotel Licensing (Amendment) Law of July 2010 was to extend its application to tourism establishments and not to give the Lagos State Government the power to deal with the regulation of tourist traffic. F

I will confine the treatment of this Originating Summons to the above reproduced depositions and counter-depositions at this stage of the judgment. It is however imperative that I reproduce the issues for determination formulated by the parties at this juncture. The plaintiffs issues are as follows:- G

1) Whether the matters pertaining to tourism and other tourist related establishments fall under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999. H

2) Whether the Lagos State House of Assembly and the Lagos

State Government can enact and promulgate Laws on matters within the exclusive legislative list as set out in Section 4(2)(3) Part 1 Second Schedule of the Constitution of the Federal Republic of Nigeria 1999.

3) Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws which directly conflict with the provisions of an existing law of the National Assembly and if such enactment law exist whether such can supersede an existing law of the National Assembly.”

The issues formulated for determination by the defendant are as follows:-

i. Whether regulations, registrations, classification and grading of Hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishments are matters in the exclusive and concurrent legislative list and outside the legislative power of the Lagos State House of Assembly.

ii. Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provisions of the Nigerian Tourism Development Act Cap N.137, LFN 2004:

a. Hotel Licencing Law Cap H6, Laws of Lagos State of Nigeria 2003;

b. Hotel Licensing (Amendment) Law No. 23, Vol. 43 Lagos State of Nigeria Official Gazette of July 20 2010; and

c. Hotel Occupancy and Restaurant Consumption Law No 30, Vol. 42 Lagos State of Nigeria Official Gazette of June 23, 2009.”

Now, I will consider the Constitutional provisions relating to the subject matter of this litigation i.e. control or otherwise of hotels and tourism establishments in Nigeria. By virtue of section 4 (1-3) of the Constitution of the Federal Republic of Nigeria, the National Assembly is vested with powers to make laws as follows:-

“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”

Bearing in mind the above provision I will look at Part 1 of the Second Schedule mentioned in the said provision, in particular item 60(d), which is pertinent to this summon, and which the plaintiff is relying on. It is a fact that the said item 60(d) of part 1 of the Second Schedule of the Constitution is under the Exclusive list, which is exclusively within the power of the National Assembly. Item 60(d) supra states the following -

*“The establishment and regulation of authorities for the Federation or any part thereof-
(d) to regulate tourist traffic..”*

This item is the crux and heart of the dispute on which the plaintiff has hinged its claim. It is worthy of close consideration and analysis for the purpose of doing, justice to this case.

Unfortunately the definition of tourist traffic is not contained in the Constitution, but I am taking the liberty to reproduce the definition of the two words from the Shorter Oxford English Dictionary on Historical Principles. Tourist in this dictionary is defined as *“One who makes a tour or tours; especially one who does this for recreation; one who travels for pleasure or culture, visiting a number of places for their objects of interest, scenery, or the like...”*

Traffic is inter alia defined as -

“The passing to and fro of persons, along a road, railway, canal, or other route of transport...”

What I can deduce from the above definitions of “tourist traffic” is that it applies to anyone who moves from one place to another for sight-seeing, relaxation and possibly cultural purposes. It may not necessarily be from another Country, but within a country; from one town to another. But within the context of item 60(d) it connotes that a tourist is an international traveler who travels to another country for the purpose of sight-seeing etc, and who must thus obtain a visa to visit the said other country, (in this case Nigeria) which calls for the exercise of the function of the Immigration department of the Ministry of Internal Affairs as governed by the Immigration Act Cap 1 2004 of the Laws of the Federation of Nigeria. My interpretation of tourist traffic used in item 60(d) of the Second Schedule of the Con-

stitution supra is that it alludes to the ingress and egress of tourists from other countries. It is definitely confined to International Visitors i.e. foreigners. It is sequel to this that the defendant in its counter affidavit deposed the following:-

“21. I know for a fact that:-

B Tourist traffic as is stated above to my mind signifies a measure of ingress and egress of tourists, from outside Nigeria.

(i) The Constitutional power of the plaintiff qua the Federal Government is expressly limited to the regulation of tourism traffic in Nigeria.

C (ii) Only the movement of foreigners coming into Nigeria as tourists may be regulated by way of visas and limitation of periods that tourists may remain in the country.

D (iii) The said power does not extend to registration, classification and grading of hospitality enterprises.”

The submission of the learned counsel for the plaintiff is that the court is to ascertain the intention and purpose of the law makers and give effect to it, but it should not give a statute a construction that would defeat the intention and purpose of the law maker, and would not read a particular provision in isolation. Rather the whole statute should be looked at so as to discover its intention. See *Ansaloo v. National Provident Fund Management Board* 1991 2 NWLR part 174, *A.C.B. v. Losada (Mrs.) Ltd* 1995 7 NWLR part 405 page 392. I agree, but at the same time the court cannot bring into a statute extraneous matters that do not form part of the intention of the legislature, even when read together with other provisions in the statute in totality. It is a settled principle of interpretation that provisions in Statutes must be given their simple and direct meaning, which construes and give the Statute its legal meaning. In the process of doing so the intention of the legislature must be explored and taken into consideration, but this will not be to the extent of bringing into the provision a different complexion from what was intended by the legislature. In this wise the court should confine itself to the plain and unambiguous meaning of the words used. The authors of Halsbury’s Laws of England Fourth Edition Re issue volume 41(2) paragraph 1373 on page 1372 legal meaning expressed the following:-

“The legal meaning of an enactment that is the meaning that corresponds to the legislator’s intention is the meaning arrived at by

applying to the enactment, taken with any other relevant and admissible material, the rules, principles, presumptions and canons which govern statutory interpretation. These may be referred to as the interpretative criteria, or guides to legislative intention."

It is incumbent on the court to ascertain the true legal meaning of words used by the legislature. See *Toriola v. Williams* 1982 7 SC. 27, and *N.P.A. PLC v. Lotus Plastics Ltd* 2005 19 NWLR part 959 page 1. B

The plaintiff found solace in the Republic of Ireland's Tourist Traffic Act 1939 which deals with the registration, regulation and classification of hotels, guest houses, holiday hostels, holiday Camps, youth hostel, restaurant, guest inns and other tourist establishments, which the learned counsel has argued can be likened to the regulation of traffic control as is contained in item 60(d) of the Constitution *supra*, which therefore should involve matters pertaining to tourism and other ancillary and supplementary matters as is stated in item 68 of second schedule Part 1 of the Constitution *supra*. The learned counsel for the defendant has however argued that the definition of the words tourist traffic as is contained in the Irish Act *supra* is unhelpful and misleading and also found solace in the case of *Ogugu v. The State* 1994 9 NWLR part 366. C D E

Now, to the Nigerian Tourist Development Corporation Act of 1992 *supra* which supposedly flows from the Constitutional provision already discussed above i.e. item 60(d) of the second schedule part 1 *supra*. By virtue of Section 4 of the above act, some functions of the Corporation are:- F

"(1) (a) to encourage people living in Nigeria to take their holidays therein and people from abroad to visit Nigeria; and

(b) to encourage the provision and improvement of tourism amenities and facilities in Nigeria including the development of hotels and ancillary facilities. G

(2) In addition to the specific powers conferred on the Corporation by or under the subsequent provisions of this Act, the Corporation shall have power - H

(d) to register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operations in such manner as may be prescribed."

I will state here that the definition of tourist traffic falls squarely

under 1(a) supra i.e. there is correlation between the two.

There is no gainsaying that the specific powers vested on the Tourist Development Corporation are contained in Section 4(1), but then additional powers to register classify and grade hospitality and tourism enterprises were conferred on the corporation, which power according to the learned counsel for the plaintiff excludes any other establishment from exercising. However, the Lagos State in 1983 promulgated the Hotel Licensing law, section 4 of which stipulates the following:-

“4(1) No person shall carry on or keep a hotel in any premises in Lagos State without a licence granted by the Authority in respect of that premises under this Law.

(2) Any licence granted under this Law shall be in the prescribed form and shall be subject to such special conditions as the Authority may impose from time to time.

(3) Any licence which is to be granted under this law shall be granted in the name of the proprietor of the hotel.”

By a law to amend the above provisions, the Lagos State House of Assembly in 2010, included some provisions thus:-

“Section 4 of the Principal Law is amended by deleting the marginal note: Hotel Licensing” and replaced with a new marginal note as follows: “Licencing of Hotel and Tourism Establishment.”

Section 4(1) of the Principal Law is amended by inserting the phrase “tourism establishment” after the word “hotel”

The third law passed by the Lagos State that is in controversy is Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State.

Insert a new Section 4(2) to read “No person shall carry out the business of tourism in Lagos State without a licence granted by the Authority” and renumber the subsequent subsection accordingly. The old Section 4(3) of the principal law now Section 4(4) is amended by inserting the phrase ‘and’ in the case of a tourism establishment, the name of the company” after the word “hotel”.

I frown at the practice of borrowing definition from other countries that particularly do not have constitutional provisions that do not resemble ours. Indeed the Republic of Ireland from where the plaintiff got the definition of tourist traffic practices a unitary system of Government where there is no delimitation of power between the

Federal Government and component states, whereas this country is a Federal Republic where there is division of legislative power.

Tourist traffic, as I have already posited in the earlier part of this judgment connotes the movement of tourists particularly foreigners within the context of the said item 60(d) of Second Schedule of the Constitution supra. The use of the word ‘traffic’ confirms that it relates to the authority to control the coming in and out of foreigners who visit this country for the purpose of tourism. The fact that the provision comes within the exclusive legislative list presupposes that it is a matter that comes within the realm of the National Assembly, and is governed by the Immigration Act Cap. 112 of the Laws of the Federation of Nigeria 2004, By virtue of Section 9 of the Act, entry requirements and conditions to Nigeria are inter alia:-

“(1) Application for visa entry permit shall be made to the appropriate diplomatic Nigeria Mission established abroad and the diplomatic head of that Mission shall -

(a) in the case of a person visiting Nigeria, if satisfied that it is a proper case, issue a visa or entry permit.”

I have carefully perused the Hotel Licensing Law of 2003 thoroughly and I fail to see that its provisions have anything to do with grading regulating of hotels, other than licensing. In fact it has nothing to do with tourism, but the amendment of 2010 sought to include tourism establishments, which expanded the authorities in the original law. This amendment is in tandem with the vanguard publication annexed to the supporting affidavit of the plaintiffs originating summons which is captioned *“Lagos Government commences grading of hotels in October”*, a paragraph of which reads:-

“He said that the amendment has incorporated the licensing and grading of hospitality sector such as eateries, bars, casinos, hotels, and event arenas, among others in the state law”

Of course, this is a legislation by a state legislature, whose power to legislate is entrenched in Section 4(6 - 9) of the Second Schedule part II of the Constitution of the Federal Republic of Nigeria supra. Sections 4(6 and 7) of the Constitution supra states the following:-

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

(7) The House of Assembly of a State shall have power to

make laws for the peace, order and good Government of the State or any part thereof with respect to the following matters, that is to say

(a) any matter not included in the Exclusive list set out in part 1 of the Second Schedule to this Constitution:

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

It is instructive to note that none of the subject matters introduced in the Lagos State amended law falls into any of the items under the Exclusive legislative list under part 1 of the Second Schedule of the Constitution, and as I have already posited not under item 60(d). The competence of the powers of a House of Assembly to make Laws is vested in it by subsection 7 of Section 4 of the Constitution, which extends to laws not included in the exclusive legislative list, matters excluded in the concurrent list and any other matter for order and good Government of its state. No doubt the House of Assembly has limitations to pass laws and where such limitations occur any law passed that is beyond the limitation becomes otiose. The intention of the legislature in respect of these provisions is to establish the separation of powers of the legislative arms, and to ensure that each arm keeps within the periphery of its limitation. If the Lagos State House of Assembly considers the passing of the supra laws will regulate, grade, classify and register its hotels and other hospitality establishments will augur well for the peace order and good government of its state, I will say so be it and nobody should quarrel with it. It is the prerogative of the Lagos State Government, so to speak.

In essence, one could say that since regulation, registration, classification and grading of hotels, motels etc are not items in the Exclusive and Concurrent lists, they are within the ambit of the legislative competence of the Lagos State House of Assembly to legislate on them, and so the said reproduced Lagos State Laws supra are perfectly in order, and are therefore constitutional and valid.

I fail to see that the cases of Attorney-General of Ondo State v. Attorney-General of Federation 2002 9 NWLR part 772 page 440

and INEC v. Musa 2003 3 NWLR part 806 page 72 are of assistance to the argument of the plaintiff.

The learned counsel for the plaintiff has asked the question, can the Lagos State House of Assembly and Lagos State Government enact and promulgate the Hotel licensing Law Cap 116 Laws of Lagos State 2003 the Hotel LICENSING (Amendment) Law No. 23 Vol. 43 Lagos State of Nigeria Official Gazette 2010 and the Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009 which directly conflicts, with the provision of Section 4(2)(d) of Nigerian Tourism Development Corporation Act 1992 (Now Cap 137, Laws of the Federation of Nigeria 2004)? I am not oblivious of the provision of Section 4(5) of the 1999 Constitution *supra*, which I will reproduce hereunder, for it should be brought into focus at this stage of the judgment. The provision reads:-

“(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 laws shall to the extent of the inconsistency be void.”

The learned counsel brought in the doctrine of covering the field, and in the process placed reliance on the cases of Attorney-General of Abia v. Attorney-General of Federation 2002 6 NWLR part 763 page 264 and Lakanmi v. Attorney-General. Western State 1970 6 NSCC page 143.

The response of the learned counsel for the defendant is that the doctrine of covering the field has no application in the context of the Exclusive legislation list in respect of which the Federal Government has exclusive power to legislate, and that the relevant authorities are to the effect that the doctrine is applicable where concurrent legislative powers are validly exercised by the Federal Government on the subject matter, and no more. See Attorney-General Ogun State v. Attorney-General Federation 1982 13 NSCC 1.

It is indeed on record that the case of the Plaintiff is predicated on the fact that the Nigerian Tourism Development Tourism Act has its source from part 1 of the Second Schedule of the Constitution, which captures all matters that come under the Exclusive list i.e. the matters that are entirely within the ambit of the legislative competence of the National Assembly. The plaintiffs summons and its argu-

ment are confined to the exclusive list, and not the Concurrent list.

In his exposition of the doctrine of covering the field Dixon J. in the case of *O’Sullivan v. Noarlunga Meat Ltd*, 1957 A.C. 1. posited thus:-

The ‘inconsistency’ does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of paramount legislature to express by its enactment, completely exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a state to govern the same conduct or matter.”

There may be inconsistency between the conducts and subject matters in all the laws i.e. the Federal Law (the Nigerian Tourism Development Corporation Act) and the Lagos State Laws on licencing, regulation, registration, classification of hotels etc. But then even if it is consistent, the heavy weather made that the case was predicated on the conduct or subject matter that came under the Exclusive list not Concurrent list is of no moment. In the case of *Attorney-General of Ogun State v. Attorney General of the Federation* 1982 3 NCLR 166, in which the question of inconsistency or otherwise was explored thus:-

“Where the doctrine of covering the field applies it is not necessary that there should be inconsistency between an Act of the National Assembly and a law passed by a House of Assembly. The fact that the National Assembly has enacted a law on the subject matter is enough for such law to prevail over the law passed by the State House of Assembly but where there is inconsistency, the State Law is void to the extent of the inconsistency.”

I am fortified by the above dictum but my discomfort on the whole exercise on the superiority of the Federal Law (the Nigerian Tourism Development Act) to the Lagos State Laws emanates from the source under which the former got its teeth. I have no doubt whatsoever in my mind that item 60(d) in the Second Schedule on the Constitution supra, which unequivocally talks of Tourist traffic Law did not envisage that a law that regulates, registers and classify restaurants and event arenas would be included in a Federal Law. Surely States within a Federation Unit are at liberty to control their

establishments in as far as they do not infringe on the Constitutional provisions of the country to wit in this present case would be items in the Exclusive list under the second schedule part 1 of the Constitution of the Federal Republic of Nigeria supra, which limits powers to legislate on such subject matters to the National Assembly. Federalism recognises the separation and autonomy of each Government that makes up the Federation Unit. B

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

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

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

To this end I am of the firm belief that the above Lagos State laws that are subject of controversy are valid and in order. The declarations sought in the originating summons reproduced above are hereby refused. Likewise, the order of perpetual injunction sought in the originating summons also reproduced above is refused. The end result is that this case fails in its entirety and it is dismissed. G

H

I. T. MUHAMMAD JSC

By a Motion on Notice heard on the 23rd of April, 2013, this court granted leave to the defendant (as applicant) to amend the

name of the defendant from: *“The Honourable Minister For Justice And Attorney-General of Lagos State” to the Honourable Attorney-General of Lagos State*. And that the amendment should be reflected on all the processes filed deemed to be so amended in relation to the suit.

B The claims made by the plaintiff in its originating summons, against the defendant before the trial court, have been clearly reproduced by my learned brother, Galadima, JSC. Except where it is necessary, I will not repeat same.

C The issues raised by the plaintiff for the determination of the suit by this court, are as follows:

1) *“whether the matters pertaining to tourism and other tourist related establishments falls(sic) under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria, 1999.*

D 2) *Whether the Lagos State House of Assembly and the Lagos state Government can enact and promulgate laws on matters within the exclusive legislative list as set out in Section 4(2)(3) Part 1 Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999.*

E 3) *Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws which directly conflict with the provisions of an existing law of the National Assembly and if such enactments law (sic) exist whether such can supersede an existing law of the National Assembly.”*

F The defendant distilled two issues in its brief of argument placed before this court. They are as follows:

i. *“Whether regulation, registration, classification and grading of hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishment are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos House of Assembly.*

ii. *Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian tourism Development Act, Cap N.137, LFN:*

H (a) *Hotel Licencing Law, Cap. H6 Laws of Lagos State of Nigeria, 2003;*

(b) *Hotel Licencing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of July 20, 2010; and*

(c) *Hotel Occupancy and Restaurant Consumption Law No,*

30, Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2009"

Before I delve into the main issues placed before this court properly, I will crave the indulgence of my noble lords, to permit me, as a fore-runner, to cast a bird's eye view on the general principles upon which the doctrine of Federalism rests. B

First and foremost, it has to be realized that by promulgating and adopting the Constitution of the Federal Republic of Nigeria, 1999, (both before and after its amendment), the Nigerian State has agreed to operate a Republican democracy in Federalism. I think, I should move forward a little, to cite the Constitution itself where it provides that the Federal Republic of Nigeria shall be a State based on the principles of democracy. (See section 14 (1) of the Constitution. C

A Federation is a collectivism of States fused into one nation (federation) with each state maintaining its selected name specially and independence of its Constitutional organs. Ideally, each state should be independent of the other and of the Federal Government. D

Section 2(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) referred to herein below for short as "The Constitution", provides as follows: E

"Nigeria shall be a federation consisting of States and a Federal Capital Territory".

In his *"Federalism in Nigeria under the Presidential Constitution"*, Nwabueze Professor, encapsulated the definition of federalism in the following words: F

"Federalism is an arrangement whereby powers of Government within a country are shared between a national, country-wide government and a number of regionalized (i.e. territorially localized) Governments in such a way that each exists as a government separately and independently from the others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all the others. Federalism is thus essentially an arrangement between governments, a constitutional device by which powers within a county are shared among two tiers of Government." H

In a federated democracy, powers of the various governments such as states and the central government are shared between or-

gans of a State government or that of the central (Federal) government for the purposes of limiting where powers of one organ start and where they end. They call it separation of powers in Constitutional Law parlance. The Nigerian Constitution in limiting the powers of the Federal (central) government and those of a State government demarcated them by means of legislative list as contained in the second schedule to the Constitution.

Exclusive Legislation List, thereof, refers to those items which the Federal Government has the exclusive preserve/power land it alone) can make laws to govern such items. That is contained in part I of the schedule. Concurrent Legislative List is the one contained in part II of the schedule. It is "*Concurrent*" because the Federal (central) government can make laws on the items specified therein. Any of the State governments of the Federation can equally make laws on such specified items therein, But, is it not likely that there shall be multiplicity of laws or conflict of laws, or interference on a given subject matter, where both the Federal (Central) government and a state government legislates on the same subject? This is very obvious and likely. The panacea to it however, its resort to the old doctrine of covering the field. It is a doctrine relevant in a federalism and postulates that where a Federal constitution or a federal enactment has already covered a particular legislative field, no State or even Local Government law can be enacted to cover the same field already covered by the Constitution or the Federal enactment. The doctrine, thus, postulates the mutual non-interference such that in a country operated by rule of law hinged on a Federal Constitution, such as ours, there should be that unsigned agreement among the federating States on one hand and the Federal (Central) government on the other hand, for non-interference, especially by legislative action, in the affairs of the other with a view to achieving a very strong and effective working of the Federal superstructure.

Older democracies, such as the United States of America (USA) and Australia, tested the doctrine of covering the field and it was well propounded. In the case of *HOUSTON V. MOORE* (1820) 5 Wheat, 1; the USA Supreme Court held that where Congress had legislated on a matter in the concurrent legislative list in a matter that clearly showed an intention to cover the whole field, a State Legislature could not again lawfully enact a law to cover the same field, though such

law be not directly in conflict with the federal enactment. Twenty two years thereafter, in 1842, STORY J; in the case of PRIGGS V. PENNSYLVANIA (1842) 16 pet at page 617-618, did observe:

“if congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the State Legislature have a right to interfere, and as it were, by way of complement to the legislation by Congress to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of the congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter.”

In the Australian federalism, the doctrine was analyzed by Dixon J., in the case of EX-PARTE MCHEAN (1930) 43 CLR 472 at page 483, where he observed that the inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. *“It depends”*, he said,

“Upon the intention of the paramount legislation to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a state to govern the same conduct or matter”.

Here in Nigeria, in 1971, this Court, in the case of LAKANMI v. ATTORNEY-GENERAL, WESTERN STATE (1971) 1 UILK 201, voided Edict No. 5 of 1967, promulgated by the then Western State Military Government, because it covered the same field as Decree No.51 which was promulgated by the Federal Military Government. Both the Decree and the Edict purported to cover investigation of assets of Public Officers. In 2002, former Chief Justice of Nigeria (C.J.N), UWAIS, in the case of ATTORNEY-GENERAL OF ABIA STATE & 35 ORS v. ATTORNEY-GENERAL OF THE FEDERATION (2002) 3 SCNJ 158 at page 208, observed as follows:

“I agree that where the doctrine of covering the field applies it is not necessary that there should be inconsistency between the Act of the National Assembly and the law passed by a House of Assembly. The fact that the National Assembly has enacted a law on the subject is enough for such law to prevail over the law passed by a

State House of Assembly but where there is inconsistency, the State Law is void to the extent of the inconsistency”.

In asserting its supremacy, the Constitution, in Section 1 (3) provides that:

B *“If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”*

C *“Inconsistency”, in law, to me, can be taken to be a situation where two or more Laws, enactments and or rules, are mutually repugnant or contradictory, contrary, the one to the other so that both cannot stand and the acceptance or establishment of the one implies the abrogation or abandonment of the other. It is thus, a situation where the two or more enactments cannot function together simultaneously. The Constitution does not tolerate that. In ISHOLA D V. AJIBOYE (1994) 7-8 SCN (part 1) 1, this court held that the Constitution is not only supreme when another law is inconsistent with it, but also when another law seeks to compete with it in an area already covered by the Constitution.*

E In a federal dispensation such as ours, one may ask: Will the State Law merely give way or surrender to the Federal Act just because there is a Federal Act on the matter, or will it only happen where the State law is in conflict with the Federal Act? Is that what the suit on hand presents? The law and practice in both the USA and F Australia as highlighted earlier show that a State law does not become void just because it attempts to cover the field already covered by a Federal Act. It only becomes void when it can be garnered from the Federal enactment that there is intention to cover the entire field expressly, completely, exhaustively and exclusively. This is also what G happened in LAKANMI’S case (supra). Equally, in the case of ATTORNEY-GENERAL OF OGUN STATE v. ATTORNEY-GENERAL OF THE FEDERATION & ORS. (1982) 1-2 SC 13, this court held the view that it is only when a State Law is in conflict with a provision of a Federal enactment that the former will be void. If the two are not H inconsistent but merely cover the same field, the State Law is to be kept in abeyance and made to be inoperative for the period the Federal enactment is in force. In that case, then, the State Law will not be said to be repealed, and, if for any reason the Federal enactment/legislation is repealed, the State Law resuscitates and becomes

operative until there is another Federal enactment that covers the field. See also **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) v. MUSA (2003) FWLR (part 145) 729.**

My lords, some safeguards may be deciphered from earlier cases decided by this Court in determining the relationship between a Federal enactment and State Government's enactment where both seem to legislate on same subject matter. B

(i) In the case of Federal Act covering the field, a state Law/enactment will not be void for competing with or supplanting the provisions of the Constitution. Such a law will only be inoperative or be kept in abeyance or suspended. **INEC v. MUSA (Supra).** C

(ii) The Constitution may, sometimes, allow the National Assembly or even State House of Assembly to enact a Law in addition to what the Constitution has provided for. In that case, the legislature concerned D

(State or Federal) must prove that in enacting those additional provisions, it derives its authority from the Constitution. See: **INEC v. MUSA (Supra).**

(iii) Minute details are not to be necessarily found in the Constitution. The Constitution provides outlines, leaving the filling-up of the gap to be deduced. This means that Federal or State enactments can be made to fill in some provisions in those outlines. See: **DIRECTOR STATE SECURITY SERVICE (SSS) & ANOR. V. AGBAKOBA (1999) 3 NWLR (part 593) 314 at page 357.** E

(iv) Except where a State Law is inconsistent with a Federal Act (in which case it will be void) that Law can compete with a Federal Act and once not in conflict therewith, that State law will only be in abeyance pending when the Federal Act/enactment is repealed. F

(v) A Federal Act does not automatically apply to any or every situation to abrogate a State Law. The aims and objectives of the Federal Act must be exactly the same and not merely alike See: **CHIKE V. IFEMELUDIKE (1997) 11 NWLR (part 529) 390 at page 403.**

My lords, I have decided to go into this jurisprudential excursion only with a view to enabling me have a useful hindsight in the suit placed before us by the plaintiff. H

If the three (3) questions raised by the plaintiff in its originating Summons are answered by this Court in the negative, then the plaintiff would want this Court to grant his claims as follows:

“(1) A Declaration that the Lagos State Government and the Lagos State House of Assembly have no power to enact a law to licence, regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resort, Cafeterias (sic) Restaurants, Fast Food Outlets and other related tourist establishments within the geographical boundaries of Lagos State or any other place in Nigeria.

(2) A Declaration that by virtue of the provisions of items 60(d) part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 and the subsequent provisions section 4(2)(d) of the Nigerian Tourism Development Corporation Act Cap N137 Laws of the Federation of Nigeria 2004, it is only the National Assembly that can legislate and it is only the Nigerian Tourism Development Corporation as established that can control matters relating or pertaining to the licencing, regulation, registration, classification and grading of hotels, motels, guest inns, travel agencies, tour operating outfits, resort, Cafeterias, restaurants, fast food outlets and other related tourist establishments within the geographical boundaries of Lagos State and any other place in Nigeria.

(3) A Declaration that the following legislations, laws and enactments, that is:

(i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

(ii) Hotel Licencing (Amendment) Law NO. 23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

(iii) Hotel Occupancy and Restaurant consumption Law No 30 Volume 42 Lagos State Official Gazette of 23rd June, 2009 in as much as the said legislations Laws and enactments seek to regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resort, Cafeterias. Restaurants, Fast Food Outlets and other related tourist establishments ARE IN CONFLICT with the provisions of Section 4(2)(d) of the Nigerian Tourism Development Act 1992 (a law enacted by the National Assembly) and therefore null and void and of no effect whatsoever.

(4) A Declaration that the following legislations, laws and enactments, that is:

(i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

(ii) *Hotel Licencing (Amendment) Law No 23 Volume 43 Lagos State of Nigeria Official Gazette of 23rd July, 2010.*

(iii) *Hotel Occupancy and Restaurant consumption Law No 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009 in as much as the said legislations, Laws and enactments seek to licence, regulate, register, classify and grade hotels, motels, guest inns, travel agencies, tour operating outfits, resort, Cafeterias, restaurants, fast food outlets and other related tourist establishments are in conflict with the provisions of Section 4(2) (d) of the Nigerian Tourism Development Act 1992 (a law enacted by the National Assembly are therefore invalid being inconsistent with the provisions of Section 4(2)(3), item 60 (d) part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 and to the extent of their inconsistency, null, void and of no effect whatsoever.*

(5) *An Order of perpetual injunction restraining the Lagos State Government either by itself, its agents, privies, servants, representatives or anybody whosoever acting on its behalf. From further promulgating, passing into law, enacting or legislating upon issues or any matters relating to the licencing regulation, classification and grading of hotels, motels, guest in, travel agencies, tour operating outfits, resort, Cafeterias, restaurants, fast food outlets and other related tourist establishments and from enforcing in any manner or way through itself or any of its agencies the following legislations:*

(i) *Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.*

(ii) *Hotel Occupancy and Restaurant consumption Law No 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009."*

The claim is supported by a 24 paragraph affidavit sworn to by one Olufunmi Oshinusi, a legal practitioner in the Chambers of the plaintiff's Counsel.

Some of the salient averments in the affidavit are as follows:

"(2) *That I am informed by Otunba Segun Runsewe, Director General of the Nigerian Tourism Development Corporation at our Abuja Chambers at 784A Herbert Macaulay Way, Central Business District, Abuja on 26th August, 2010 at about 3.00 p.m. and I verily believe him of the facts of this case and those facts are as I now state in the remaining paragraphs of this affidavit.*

(3) *That I have the authority, consent and approval of the*

plaintiff and my employer to swear to this affidavit.

(4) That sometimes in 1992 the National Assembly enacted the Nigerian Tourism Development Corporation Act 1992 (Now CAP N137 Laws of the Federation of Nigeria 2004) and this enactment was made pursuant to the powers conferred on the National Assembly under Section 4(2)(3), Item 60(d) part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999.

(5) That the Nigerian Tourism Development Corporation was established pursuant to the aforesaid Nigerian Tourism Development Corporation Act.

(6) That by virtue of the provisions of the Nigerian Tourism Development Corporation is mandated to register, classify, grade and regulate all Hotels, motels Hospitality and tourism enterprises, travel agencies and tour operators.

(7) That the Lagos State Government in 2003 promulgated and passed into law the Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003, a law which directly conflicts with the mandate and functions of the Nigerian Tourism Development Corporation as provided for by the Nigerian Tourism Development Corporation Act particularly with Section 4(2)(d) of the Nigerian Tourism Development Corporation Act.

(8) That sometime in the year 2009 the Lagos State Government caused to be published in full page advertisement in a number of newspapers a public notice to hoteliers and operators of Tourism Related Establishments operating in the state that the registration of hotels and Tourism and other related establishments are now the exclusive responsibility of the Lagos State Ministry of Tourism and Intergovernmental relations. Now shown to me and attached herein and marked as EXHIBIT HAGF 1 is the publication of the National Life Newspaper of the 27th September, 2009.

(9) That the public notice issued by the defendant stated that under the Constitution of the Federal Republic of Nigeria the power of the National Assembly to regulate Tourism is limited to the “establishment and regulation of authorities for the Federation or any part thereof to regulate tourist traffic.

(10) That the notice further stated that the legislative power of the National Assembly does not extend to making legislation and

imposition of levies to Tourism facilities.

(11) *That the public notice issued by the Lagos State Government stated further that the registration, grading and classification of hotels, motels guest inns, apartments. Travel agencies, tour operating outfits, resorts, cafeterias, restaurants, fast food outlets and other related tourist establishment can only be done by the Lagos State Ministry of Tourism or any other established state authority or empowered in that regard by the Lagos State House of Assembly.* B

(12) *That the Lagos State Government has backed up their public notice with a legislation by promulgating the Hotel Licencing (Amendment) Law contained in No. 23, Volume 43, Lagos State of Nigeria Official Gazette dated 20th July, 2010 which law gives the Lagos State Government power to deal with the regulation, registration, classification and grading of Hotels, Motels, Hospitality and Tourism enterprises, Travel Agencies, Tour operators and other tourism related establishments. Now shown to me is a copy of enactment as Gazette and same is attached herein and marked as EXHIBIT HAGF 11.* C D

(13) *That under the Nigerian Tourism Development Corporation Act 1992 the body empowered to register classify and grade all hospitality and Tourism Enterprises, travel agencies, tour operators and other establish tourist establishments (sic) is the Nigerian Tourism Development Corporation (NTDC).* E

(14) *That action of the Lagos State Government is an attempt to usurp and undermine the statutory mandate and responsibilities of the Nigerian Tourism Development Corporation (NTDC).* F

(15) *That the action of the Lagos State Government in issuing the aforesaid public notice and promulgating the aforesaid laws also has the implication of compromising the uniformity of registration, classification and grading of hotels and other Tourism facilities in Nigeria with negative implication for tourism safety and national security.* G

(16) *That realizing the adverse and negative effect of the action of Lagos State Government, the Nigerian Tourism Development Corporation issues a public notice advising all travel agencies, tour companies, cafeterias, restaurants and fast food outlets in Lagos State to ignore and disregard the letter of notification and public notice issued by the Lagos State Government on the registration of hotels* H

and other Tourism facilities.

(17) That in the public notice issued by the Nigerian Tourism Development Corporation, the Corporation made it clear that as a responsible Federal Government Agency, it ensures that all stake holders are carried along in the discharge of its statutory functions, hence the setting up of a joint Tourism Board which among other things agree on the disbursement of registration fee charged for the administrative processes of registering hotels among the Federal, State and Local Government of which 60% goes to the State where such facilities are located.

(18) That despite the steps taken by the Corporation, the Lagos State House of Assembly and the Lagos State Government in utter disregard to the functions and duties of the Nigerian Tourism Development Corporation proceeded to enact legislation to licence and regulate hotels and other related tourist establishments in Lagos State.

(19) That the Lagos State Government acting through the Lagos State Commissioner for Tourism and Inter Governmental Affairs, Mr. Tokunbo Afikuyomi has stated that the licencing, grading of Hotels and other related tourist establishments will fully commence in October 2010. A copy of the Vanguard Newspaper where such statement was made is now shown to me and is hereby attached and marked as EXHIBIT HAGF III.

(20) That the action of the Lagos State Government in enacting the (sic) as legislation to license and regulate hotels in Lagos State would not only undermine and hinder the activities and mandate of Nigerian Tourism Development Corporation but will also create confusion for operators in terms of compliance as to the legitimate regulatory authorities with power to register, classify and grade hotels and other related tourism establishments.

(21) That the contusion created by the Lagos State Government in enacting legislation bill to license and regulate hotels and other tourist establishment would damage and further worsen the country unenviable Nigeria Tourism Development Tourism sector which the Corporation has in the last four years been striving to develop and reposition.

(22) That unless the prayer sought for in this suit are granted the action of the Lagos State Government would disrupt the steady progressive development of the Nigerian Tourism sector

(23) *That it would be in the interest of justice if all the prayers sought for by the plaintiff are granted.*

(24) *That I depose to this Affidavit believing same to be true and in accordance to the Oaths Act”.*

From the antecedents of the suit, the facts and the evidence relied upon by the learned counsel for the plaintiff, which are within his knowledge and as contained in both his affidavit and brief of argument in support of the Originating Summons, the learned counsel formulated the following three issues for the determination of the suit. They are as follows:

1) *“Whether the matters pertaining to Tourism and other tourist related establishments falls under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria, 1999.*

2) *Whether the Lagos State House of Assembly and the Lagos state Government can enact and promulgate laws on matters within the exclusive legislative list as set out in Section 4(2)(3) Part 1 Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999.*

3) *Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws which directly conflicts with the provisions of an existing law of the National Assembly and if such enactment/law exists whether such can supersede an existing law of the National Assembly.”*

The defendant filed a counter affidavit in opposition to the affidavit in support of the Originating Summons. It was sworn to by one Adeola Ipaye, a legal practitioner and public servant. He was also the Special Adviser to the Governor of Lagos State on Taxation and Revenue. In denial of the facts contained, particularly in paragraphs 4, 6, 7, 11, 12 - 18 and 20 - 23 of the affidavit in support of the Originating Summons, the deponent averred to the following facts:

“4. On the 11th day of May, 1983, during the Second Republic, the House of Assembly of Lagos State, in pursuance of its powers under the Constitution of the Federal Republic of Nigeria, 1979, enacted the Hotel Licensing Law (now Cap. H6 Laws of Lagos State of Nigeria, 2003) to provide for the licensing of hotels in the state and for purposes connected therewith (‘the law’).

5. Following the Military intervention of 1983, the Federal Military Government suspended and subsequently amended the Con-

stitution of the Federal Republic of Nigeria, 1979.

6. *In furtherance of the depositions contained in the preceding paragraph, the Federal Military Government assumed absolute powers to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever.*

B 7. *In exercise of the said absolute powers, the then National Assembly during the regime of General Ibrahim Badamasi Babangida in 1992 enacted the Nigerian Tourism Development Corporation Act, ('the Act') whilst the Constitution of the Federal Republic of Nigeria, 1979 remained suspended and amended in part.*

C 8. *The Act established the Nigerian Tourism Development Corporation ('the Corporation') and empowered it to, amongst other things, register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operators in the country in such manner as may be prescribed.*

D 9. *Furthermore, the Act established for each State in the Federation, a State Tourism Board and authorizing the Governor to appoint members of the said Board.*

E 10. *Contrary to the depositions contained in paragraph 7 of the affidavit in support, the law, which was enacted in 1983 and not 2003 as deposed, is to regulate the grant of licence to premises for hotel purposes only and does not contain any provision relating to the regulation of tourist traffic.*

F 11. *I know as a fact that there are far more Nigerians than foreigners using hotel facilities in Lagos State and all Nigerians have freedom of movement within the country.*

G 12. *I also know that pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, physical planning, traffic control, kitchen hygiene, fire prevention, general health and safety, etc in hotels and other public establishments are all within the legislative competence of State Houses of Assembly.*

H 13. *In specific response to the depositions contained in paragraphs 8 to 11 of the Affidavit in support, the public notice caused to be published by the defendant was in response to press advertisements published at the instance and at the behest of the plaintiff through the Corporation in its bid to engage consultants for the registration of Hotels, Motels, Guest Inns, Apartments, Travel Agencies, Tour Operating Outfits, Resorts, Cafeterias, amongst others, in*

Lagos State and throughout the country. Now shown to me and marked as Exhibit LASG1 is a certified true copy of the said advertisement of the defendant as published in The Nation Newspaper of Friday, September 4, 2009.

14. Further to the depositions contained in the preceding paragraph, the public notice was to inform the operators of hotels and other tourism related establishments in the State of the unconstitutionality of the provisions of section 4(2)(d) of the Nigerian Tourism Development Corporation Act in the light of the provisions of the Constitution of the Federal Republic of Nigeria, 1999. ^B

15. In addition to the foregoing, the Hon. Commissioner for Tourism and Inter-Governmental Relations in the Defendant State caused to be written a letter dated October, 15, 2009 to the Hon. Minister for Tourism, Culture and National Orientation wherein the attention of the Minister was drawn to the fact that: "...after the enactment of the Constitution of the Federal Republic of Nigeria, 1999, the power of the National Assembly to regulate Tourism in Nigeria is now governed by item 60(d) of the Exclusive Legislative List and limited to "the establishment and regulation of authorities for the Federation or any part thereof to regulate tourist traffic." Now shown to me and marked Exhibit LASG2 is a copy of the said letter. ^C

16. The letter referred to in the preceding paragraph (i.e. Exhibit LASG2) further requested the kind intervention of the Honourable Minister to prevent a situation whereby Tourism operations are impeded by unnecessary exposure to multiple regulatory authorities, levies and charges. ^E

17. The foregoing notwithstanding, the Defendant through the Corporation caused to be published in the Thisday newspapers of December 31st, 2009 a public notice entitled: *Re: Lagos State Registration of Hotels and Tourism Related Establishments and National Security* wherein the Corporation ignored the clear constitutional provisions in that regard and reiterated its position that NTDC (i.e. the Corporation) was the only body with the mandate "to register, classify and grade all hospitality and tourism enterprises, travel agencies and tour operators in the county, which is without exception of any state of the Federation." Now shown to me and marked Exhibit LASG3 is a certified true copy of the said publication. ^F

18. Contrary to depositions contained in paragraph 12 of the ^H

Affidavit in support of the Originating Summons, the enactment of the Lagos State Hotel Licensing (Amendment) Law of July 2010 was to extend its application to Tourism establishments and not go give the Lagos State Government the power to deal with the regulation of tourist traffic.

B 19. *In answer to the depositions contained in paragraph 14 of the affidavit in support, the action of the defendant was in consonance with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 which expressly limits the regulatory power of the plaintiff to tourist traffic.*

C 20. *In specific response to paragraph 15 of the affidavit in support, the defendant's actions have no negative implication for tourist safety or national security and in fact are in conformity with the principles (sic) federalism which is enshrined in the Constitution of the Federal Republic of Nigeria and which envisages the devolution of power among the federating states and not uniformity except as otherwise stated.*

21. *I know for a fact that:*

E i. *The constitutional power of the plaintiff qua the Federal Government is expressly limited to the regulation of Tourism traffic in Nigeria.*

F ii. *Only the movement of foreigners coming into Nigeria as tourists may be regulated by way of visas and limitation of periods that tourists may remain in the country.*

iii. *The said power does not extend to registration, classification and grading of hospitality enterprises.*

G iv. *The enactment of the law is in furtherance of the duty of a responsible government such as that of Lagos State to promote the well being of the residents and tourists to the state especially in the area of hospitality business.*

H v. *The enactment of the law is to advance the course of the entire hospitality industry especially in Lagos State considering the enormous potentials of the state by virtue of its geographical advantage.*

22. *The interest of justice will be better served if the prayers sought by the plaintiff in the Originating Summons are refused."*

It is clear from the counter-affidavit that the defendant admitted the averments in paragraphs 2.1, 2.2, 2.3 and 2.6.

The learned counsel for the defendant filed a brief of argument which he adopted and relied upon. He formulated the following two issues for determination, viz:

i. Whether regulation, registration, classification and grading of Hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and Tourism related establishment are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos State House of Assembly. B

ii. Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act, Cap N.137, LFN: C

a) Hotel Licencing Law, Cap. H6 Laws of Lagos State of Nigeria, 2003;

b) Hotel Licencing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of July 20, 2010; and D

c) Hotel Occupancy and Restaurant Consumption Law No. 30, Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2009.”

I prefer the two issues of the defendant as set out above. They are apt, comprehensive and subsume the issues of the plaintiff.

In determining the first issue, it is pertinent, although elementary, to remind ourselves of the basic constitutional law principles relating to the powers given by the Constitution to the Federal or State government or other bodies as created by the constitution. The power to make laws by either the Federal Government or State Government has been spelt out by the Constitution as follows: E F

“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 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 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. H

(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:*

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

F *and*

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

G The Constitution itself has given the interpretation of the terms “Exclusive Legislative List” and “Concurrent Legislative List”. Whereas the former refers to the “List” in Part 1 of the Second Schedule to the Constitution, the latter refers to the “List” of matters set out in the First Column in part II of the Second Schedule to the Constitution with respect to which the National Assembly and House of Assembly may make laws to the extent prescribed, respectively, opposite thereto
H in the second column thereof. The exclusivity referred to in the Exclusive Legislative List, although not comprehensively defined, may, perhaps, refer to a point where the enactment in question is capable of excluding all others, shutting out other considerations not shared by or divided between others. The enactment is sole and single in its

form and application as appropriated by its exclusive right. See: Abraham Onyeniran & Ors v. James Egbetola & Anor (1997) 5 NWLR (Pt.504) 122 at 131. Therefore, apart from the National Assembly, no other legislative assembly whether of state or Local Government (if any) can legally and effectively legislate on any matter listed under the Exclusive Legislative List. B

As for the Concurrent Legislative List, it is clear that both the National and State Assemblies can competently legislate on a matter concurrently having at the back of the legislators' mind, the operation of the doctrine of covering the field (as summed up earlier). C

In this suit, what the plaintiff is trying to appropriate to itself is for this court to accept that all matters pertaining to tourism and other tourist related establishments fall under the Exclusive Legislative List of the Constitution. And that we should, afortiori, declare all laws enacted by the Lagos State House of Assembly relating to Hotel Licensing (registration), regulation, classification and grading of Hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishments coming under the Exclusive Legislative List and outside the legislative power of Lagos State House of Assembly as they are in direct conflict with an existing law E of the National Assembly and are null and void.

Now, what appears from the Exclusive Legislative List of the Constitution in relation to tourism and or other tourist related matters is what is provided thereunder in item 60(d) which states as follows: F

"60. The establishment and regulation of authorities for the federation or any part thereof:

(d) to regulate tourist traffic."

Learned counsel for the plaintiff submitted in his brief of argument that the literal interpretation of the provisions of item 60(d) of the 1999 Constitution is that matters pertaining to regulation of tourism should be under the Exclusive Legislative List of the 1999 Constitution. He contended further, that it is the intention of the makers of the law that item 60(d) of 1999 Constitution deals with all matters pertaining to regulation of tourism and tourist related establishments and which all fall within the words. *"To regulate tourist traffic."* Learned counsel extended his definition to cover item 68 of the second schedule Part I of the Constitution that any matter incidental or supplementary G H

to any matter mentioned elsewhere in this list to enrope all matters pertaining to, incidental to or supplementary to tourism, tourist activities, tourist establishments or tourist traffic to come under the Exclusive Legislative List to the Constitution. Item 60(d), he said, deals with matters pertaining to regulation, classification, registration and
 B grading of tourist related establishments such as Hotels, Motels, Restaurants, Fast Food Outlets, Guest Inns, Apartments, Travel Agencies, Tour Operating Outfits, etc which are all matters incidental and or supplemental to regulation or tourist traffic, which fall under the
 C Exclusive Legislative List. Learned counsel referred to the provisions of the “*Tourist Traffic Act*” of 1939 of the Republic of Ireland, to fortify his submissions.

In his submissions on the first issue, the learned counsel for the defendant stated that Hotels, restaurants, travel agencies or any hospitality outfit are residual matters as they are not contained in the Exclusive and Concurrent Legislative List. He referred to the case of
 D A-G Lagos State v. A-G Federation (2003) 6 SC (Pt.1) 24. He submitted further that the Constitution deals only with matters limited to regulation of tourist traffic in item 60(d) of the Second Schedule, Part
 E I of the Exclusive Legislative List.

My Lords, my difficulty is with the expression “*tourist traffic*,” which appears to be the one and only expression in the whole gamut of the Constitution and in relation to tourism which has no any precise interpretation assigned to it by the framers of the Constitution. A
 F lacuna is created. And, it must be filled-up. In an attempt to do this the only safe way for me to follow is to go back to the well-known canon of interpreting a statute or the Constitution for that matter. One of such rules is that where the meaning given to it in the definition
 G section must be adhered to in the Construction of the provisions of that statute, unless the contrary intention appears therefrom, or the meaning assigned thereto is repugnant to the context in which the definition is used and ordinary meanings attached to such words/phrases must give way to the assigned definitions as per the definition
 H Section. See: Ejoh v. I.G.P (1963) SCNLR 102; Apampa v. State (1982) 6 SC 47; Abioye v. Yakubu (1993) 5 NWLR (pt.190) 130; Attah v. State (1993) 7 NWLR (pt. 305) 257; ACME Builders Ltd. V. Kaduna State Water Board (1999) 2 SCNJ 25.

Resort may also be had to Dictionaries or other Law Books in

defining words used in statute in assigning meanings to them see: Attorney-General of Bendel State v. Agbofodoh (1999) 2 SCNJ 111 at 131.

In his “*12-point Rule of Constitutional Interpretation*,” Obaseki, JSC in the case of Attorney-General of Bendel State v. Attorney-General of the Federation (1981) 10 SC 1; stated, among the rules that:

a) words are the common signs that men make use of to declare their intentions one to another, and when the words of a man express his intentions plainly, there is no need to have recourse to the other means of interpretation of such words.

b) The language of the Constitution, where clear and unambiguous must be given its plain and evident meaning.” Guided further by other pronouncements of this court, on the matter of interpreting the Constitution, I must not forget that the Constitution should always be interpreted liberally to satisfy the yearnings of Nigerians for whom the Constitution was made and also to meet the needs of the Nigerian Society. See: A-G Ogun v. Aberuagba (1985) 1 NWLR (pt.8) 483. The provisions of the Constitution of the Federal Republic of Nigeria, are meant to cater for the uniqueness of Nigeria as a nation hence, Constitutions of other nations are less useful as guides. See: A-G (Kaduna) v. Hassan (1983) 2 NWLR (Pt.483). That is the more reason why I refuse to be influenced by the analogy brought about by the learned counsel for the plaintiff when he cited the Tourist Traffic Act, 1939 of the Republic of Ireland which deals with registration, regulation and classification of hotels, guest houses, holiday hotels, holiday camps, restaurants etc. The two countries (Republics) are different. The Republic of Ireland from history is run as a Unitary System of government where there is no delimitation of power between the Federal Government and its component states. If anything, it can only be equated with the past Military Governments of the Federal Republic of Nigeria which ran the country in a Unitary System with one set of laws governing essentially, both Federal and state governments. But the new Republic of Nigeria, starting from the 1979 Constitution, practices real federalism, where division of legislative power is in vogue at both the federal and state levels. Thus, I am compelled, like my other learned brothers, to resort to the Dictionary meaning of the two key words “*tourist*” and “*traffic*” as used

in item 60(d) of the Schedule under reference.

“Tour” as a noun, according to Webster, is a long trip/journey or circuit as for sight-seeing, inspection, discovery or excursion. And “to tour” means to go on a tour. (Webster’s New Twentieth Century Dictionary, unabridged Second Edition, 1975, Collins World, page B 1929). A reset version of the Shorter, Oxford English Dictionary defined the word “tour” in its intransitive verb to mean making a tour or circuitous journey in which many places are visited, for recreation or business, or to travel from one town to another fulfilling engagements etc. The same Dictionary defines a “tourist” as one who makes C a tour or tours, especially one who travels for pleasure or culture, visiting a number of places for their objects of interest, scenery, or the like (p.233 of the same Dictionary).

The word “traffic”, is capable of carrying many meanings. Such D meanings include, inter alia: the buying and selling or exchange of goods, the transportation of merchandise for the purposes of trade. With evil connotation, traffic can mean dealing or bargaining in something which should not be made the subject of the passing to and fro of persons, or of vehicles or vessels, along a road, railway, canal or E other route of transport. It, in other words, means the ingress or egress of persons or goods into a country, state or Local Government Area.

My lords, I find that a necessary amalgam of the two words F can only lead us to an inevitable interpretation thereof which is convenient and in harmony with the intention of the drafters of the Constitution and that is to say: the two words “tourist” and “traffic” must be taken to mean the passing of persons and goods whether on foot or by other transportation means such as vehicles, vessels, animals G etc. from one country to another; one state to another; one Local Government Area to another; or even one town or village to another.

If that is the true intent and aim of the drafters of the Constitution, then it would be difficult for me to read any meaning outside H that. I would find it difficult, certainly, to agree with the written submission of the learned counsel for the plaintiff that it is only the Nigerian Tourism Development Corporation Act, No.81 of 1992, as contained in Cap. 137 of Laws of the Federation Vol. 12 of 2004, that the body empowered to register, classify and grade all hospitality and

Tourism Enterprises, travel agencies, tour operators and other establishments, is the Nigerian Tourism Development Corporation (NTDC).

The NTDC Act, by the provision of Section 315(1)(a) of the Constitution is an existing law. Some of its notable provisions are contained in paragraph 4 thereof which provide as follows:

“4. Functions

1. the functions of the Corporation shall be:

a) to encourage people living in Nigerian to take their holidays therein and people from abroad to visit Nigeria; and

b) to encourage the provision and improvement of Tourism amenities and facilities in Nigeria including the development of hotels and ancillary facilities.

2. In addition to the specific powers conferred on the Corporation by or under the subsequent provisions of this Act, the Corporation shall have power

a. to provide advisory and information services

b. to promote and undertake research in the field of tourism:

c. to render technical advice to the States and local Governments in the field of tourism:

d. to register, classify and grade all hospitality and Tourism enterprises, travel agencies and tour operators in such manner as may be prescribed.

3. The Corporation shall in particular have power to:

a. carry on any undertaking which appears to the Corporation to be necessary for the promotion and development of a tourist industry;

b. assist in the development of:-

i. museums and historic sites;

ii. parts;

iii. game reserves;

iv. beaches;

v. natural beauty spots;

vi. holiday resorts;

vii. souvenir industries

c. advise appropriate authorities on ways of improving tourist facilities.”

Further, both at State and Local Government Levels, the NTDC Act, created Tourism Board and Committee, respectively. Below are

their functions:

“9. Function of the Tourist Board

The functions of the Tourism Board shall be:

- a) to assist the Corporation on the implementation of this Act;*
- b) to recommend to the Corporation such other measures as*
B *may be necessary in the opinion of the Tourism Board to enable full*
effect to be given to the provisions of this Act;
- c) in consultation with the Corporation:-*
 - i. to advise and carry out schemes aimed at encouraging Nige-*
C *rians to visit the state;*
 - ii. to identify, preserve, protect and develop tourism assets and*
resources:
 - d) to co-ordinate the activities of Tourism agencies; and*
 - e) to perform such other functions as may be assigned to it by*
D *the Corporation.”*

“(3) The Local Government Committee shall subject to the control of the Tourism Board and the Corporation, have responsibility for:-

- a) recommending to the Tourism Board projects for develop-*
E *ment as tourists attraction;*
- b) advising on such matters relating to Tourism within the local Government area; and*
- c) preserving and maintaining monuments and museums in*
F *their areas of jurisdiction; and*
- d) promoting and sustaining communal interest in Tourism.”*

The Act created Hotel Inspectorate Division.

“(2) It shall be the duty of the Division:-

- a) to register, classify, grade and monitor hotels and other hos-*
G *pitality establishments; and*
- b) charge fees and impose such sanctions as may be prescribed from time to time by the Corporation.”*

H It is a matter of history to remind my lords that this Act, is a carbon copy of Decree No 81 of 1992 (by the Military Regime) which has now been saved by the National Assembly. The Act repealed its predecessor, the Nigerian Tourist Board established by the Nigerian Tourist Act, Cap. 330 LFN, 1990.

It is to be noted again that there is a subsidiary Regulation titled:

“Hospitality and Tourism Establishments (Registration, Grading and Classification) Regulations,” made under the NTDC Act. The Regulations deal with a number of issues such as registration, classification or re-classification of Hospitality or Tourism Establishment on payment of such fee as may be prescribed by the Corporation from time to time. B

Permit me to say, my lords, without any fear of contradiction, that the item contained in paragraph 60(d) of the second schedule of the Constitution (Concurrent Legislative List) has no resemblance, direct relation, effect or impact on matters pertaining to regulations, classification, registration, grading of Hotels, Motels, restaurants, fast food outlets, guest inns, apartments etc, of a State government, local government or even the Federal Government. This is in view of the literal and liberal definition allotted to the phrase *“tourist traffic”* as above. C D

The phrase, largely, deals with matters connected with travels/movements of goods and persons into or out of the Federal Republic of Nigeria or any part thereof. Yes! In that regard, the Federal Government has the exclusive and total preserve to regulate or control such movements, especially by foreigners through the issuance of visas or travel/entry permit. This is in order to ensure the peace, stability and security of the nation or any part thereof. Thus, the doctrine of covering the field, as contended by learned counsel for the defendant, will certainly, not apply as it has no relationship with the field under consideration. The primary area under consideration is the establishment of Hotels, Motels, restaurants, fast food outlets, guest inns, apartments etc and matters pertaining to their regulations, registrations, classifications and grading. These are matters which have not been legislated upon by the constitution. They are left for the residuary matters which can be legislated upon by a state Government (Section 4(7)(c) of the Constitution). E F G

The National Tourism Development Corporation Act is an existing law not repealed or declared null and void. It came into force in 1992 through the Military power. It made provision for the registration, classification and grading of all hospitality and tourism enterprises including hotels etc. Its provisions and those of the supplementary legislation (referred to above) were made by the Military Regime which was operating as a unitary Government with its Executive and H

Legislature at the Federal and State level being run under one person, i.e. the Head of the Federal Military Government or a Military Governor/Administrator of a State. Certainly, it was not a true federal government. Thus all powers were under a unitary Military Government. Decree No. 81 of 1992 was made under that regime. That is why it had all the Unitary Military dictatorship. Laws were made to cover both the Federal and State governments as all powers were fused in one authority/person.

But when true federalism was first introduced in the 1979 Constitution, powers to make laws for the Federal Government and any of the state governments were provided by the Constitution such that no one would legislate for the other (except where it became evidently necessary, like in the state of emergency). Thus, the instances where there would be conflict between a federal legislation and that of a state were drastically reduced. This guarantees the successful operation of a Constitutional democracy which is very crucial for the successful operation of a federal superstructure in the country. It is thus, my respectful view, that in as much as the NTDC Act is an existing law, the area covering the operation of Hotels and similar institutions provided therein, must only apply to such institutions as are provided, funded and controlled by the Federal government irrespective of wherever such Hotels or institutions are situate. It cannot have any application or effect on any of such Hotels or institutions which are a creation of a state government, funded, run or controlled by such a state government. It will amount to despotism in a federated democracy to allow the baboon to chop from the ruminants picked up by the baby monkey. That is instilling injustice in a federated democracy. That area of the law (which is a product of dictatorship) must not be allowed to hamper or become a cog-wheel in the progress of democracy.

Accordingly, the laws enacted by the Lagos State Government, that is to say:

- a. Hotel Licencing Law, Cap. H6 Laws of Lagos State of Nigeria, 2003;
- b. Hotel Licencing (Amendment) Law No.23 Volume 43 Lagos State of Nigeria Official Gazette of July 20, 2010 and
- c. Hotel Occupancy and Restaurant Consumption Law No. 30, Volume 42 Lagos State of Nigeria Official Gazette of June 23,

2005 are not in conflict or inconsistent with the Nigerian Tourism Development Act Cap. N.137, LFN. They are valid and Constitutional and I so hold.

In agreeing with my learned brother Galadima, JSC, I, too, find no merit in the Originating Summons which is hereby dismissed. I make no order as to costs. B

FABIYI JSC

The plaintiff by an Originating Summons dated 30th day of August, 2010 is seriously challenging the Constitutionality of the following statutes enacted by the Lagos State House of Assembly: C

1. Hotel Licensing Law, Cap. H6 Laws of Lagos State of Nigeria, 2003;
2. Hotel Licensing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of July 20, 2010; and D
3. Hotel occupancy and Restaurant Consumption Law No. 30. Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2009.

The basis of the plaintiff's stance is that the provisions of the laws are in conflict with the provisions of Section 4 (2) (d) of the Nigerian Tourism Development Act, 1992; now Cap. N137, Laws of the Federation of Nigeria, 2004. E

The position of the defendants is that the laws of Lagos State, being challenged, are valid and constitutional. The defendant felt that on the contrary, to the extent that the said Act has failed the constitutional test of validity as regards subject-matter competence, it is the Act of the National Assembly and not the Laws of Lagos State that is unconstitutional, null and void. F

The statement of facts as set out by the plaintiff traceable in the affidavit in support of the Summons should be depicted as follows - sometimes in 1992, the National Assembly enacted the Nigerian Tourism Development Corporation Act, now Cap. N137, Laws of the Federation of Nigeria, 2004. The Nigerian Tourism Development Corporation (NTDC) was subsequently established pursuant to the Act. By virtue of the provisions of section 4 (2) (d) of the Act, the Nigerian Tourism Development Corporation is mandated to register, classify, grade and regulate all hotels, motels, hospitality and tourism enterprises, travel agencies and tour operators. G
H

In 2003, the Lagos State Government passed into law the Hotel Licensing Law Cap. H6 Laws of Lagos State of Nigeria 2003 which also seeks to regulate, register, classify and grade all Hotels, Motels, Guest-Inn and other tourist related establishments which law is directly in conflict with the provisions of the NTDC Act.

B In year 2009, the Lagos State Government published in various Newspapers to Hoteliers and operators of Tourism related establishments operating in Lagos State that the registration, regulation, licensing and classification of Hotels and other Tourism related establishments now form the exclusive responsibility of Lagos State Ministry of Tourism and Inter Governmental Relations or any other established Lagos State authority empowered in that regard by the Lagos State House of Assembly.

D The plaintiff felt that the action of Lagos State Government is an attempt to usurp and undermine the statutory mandate and responsibilities of the Nigerian Tourism Development Corporation which has the implication of compromising the uniformity of registration, classification and grading of hotels and other tourism facilities in Nigeria with negative implication for tourist safety and National Security.

F The plaintiff maintains that the Lagos State Laws conflict with the provisions of the NTDC Act, an Act of the National Assembly duly passed under the powers conferred on the National Assembly by section 4 (2) (3) Item 60, part 1 of the 2nd Schedule of the Constitution of the Federal Republic of Nigeria, 1999.

G The Lagos State Government seeks to implement these laws as from October, 2010; the effect of which will be damaging and devastating on hotel and tourism business and enterprises in Nigeria. The Federal Government seeks to prevent the action of the Lagos State Government and it's devastating effect by instituting this suit.

H The defendant filed a counter-affidavit in opposition to the Originating Summons. Briefly put, the defendant maintained that the Federal Military Government in 1992 promulgated the Nigerian Tourism Development Corporation Decree of 1992 to establish the Nigerian Tourism Development Corporation which shall be responsible for rendering technical advice to the State Governments and Local Governments in the field of tourism and to make laws and for regulation, registration, classification and grading of hospitality and

tourism enterprises in Nigeria. The Decree also provides for the establishment of State Tourism Board for each State and Local Government Tourism Committee for each Local Government in each State.

From 29th of May, 1999 when the Constitution of the Federal Republic of Nigeria came into operation, the Decree became an existing law deemed to have been enacted by the National Assembly. Section 4 of the 1999 Constitution (as amended) divides legislative powers between the National Assembly for the Federation and the House of Assembly for the State in the Exclusive and Concurrent Legislative Lists and Residual List which include items not contained in the Exclusive and Concurrent Legislative Lists.

The defendant maintained that hospitality and tourism enterprises, not being among the items in the Exclusive and Concurrent Legislative Lists, are residual matters for the State Governments to legislate on.

From May 1999, the Federal Government, represented by the plaintiff did not attempt to repeal or modify the NTDC Act of 1992 to bring it in conformity with the provisions of the Constitution of the Federal Republic of Nigeria 1999. It continues to enforce the Act in Lagos State by seeking to regulate, register and grade hospitality and tourism facilities.

The defendant maintains that the Laws of Lagos State are constitutional and that it is the NTDC Act that has failed the constitutional test of validity as regards subject-matter competence and therefore unconstitutional, null and void.

The defendant felt that it's actions have no negative implication for tourists safety or national security and in fact, are in conformity with the principles of federalism that is enshrined in the Constitution and which envisages the devolution of power among the federating states and not uniformity except as otherwise stated. It asserted that the constitutional power of the plaintiff qua the Federal Government is expressly governed by item 60 (d) of the Exclusive Legislative List and limited to the regulation of tourist traffic. Only the movement of foreigners coming into Nigeria as tourists may be regulated by way of visas and limitation of periods that tourists may remain in the Country. The power does not extend to registration, classification and grading of hospitality enterprises.

On behalf of the plaintiff the issues couched for determination read as follows:-

“(1) *Whether the matters pertaining to tourism and other tourist related establishments falls (sic) under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria, 1999.*

B (2) *Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws on matters within the exclusive legislative list as set out in section 4 (2) (3) Part I Second Schedule of the Constitution of the Federal Republic of Nigeria 1999.*

C (3) *Whether the Lagos State House of Assembly and Lagos State Government can enact and promulgate laws which directly conflict with the provisions of an existing law of the National Assembly and if such enactment/law exist whether such can supercede an existing law of the National Assembly.”*

D The issues decoded for determination by the defendant read as follows:-

“(i) *Whether regulation, registration, classification and grading of hotels, guest houses, motels, restaurants, travel and tour agencies and other hospitality and tourism related establishments are matters in the Exclusive and Concurrent Legislative List and outside the legislative power of Lagos State House of Assembly.*

E (ii) *Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act Cap. N137 LFN;*

F (a) *Hotel Licensing Law Cap. H6 Laws of Lagos State of Nigeria 2003;*

(b) *Hotel Licensing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of July 20, 2010; and*

G (c) *Hotels Occupancy and Restaurant Consumption Law No. 23, Volume 42 Laws of Lagos State of Nigeria Official Gazette of June 23, 2009.”*

H The issues formulated on behalf of the defendant appear apt and coherent and shall be relied upon in the consideration of this suit.

It hardly requires any gainsaying that Nigeria operates a federal system of government. The doctrine of federalism is re-enacted by Section 2 (2) of the 1999 Constitution of the Federal Republic of Nigeria. None of the governments is subordinate to the other. The

State government is not in any way tied to the apron string of the Federal Government. Each tier of government is an autonomous entity with its own legislative competence. The National Assembly has power to legislate for the Federal Republic or any part thereof in respect of matters in the Exclusive Legislative Lists set out in part 1 of the Second Schedule to the 1999 Constitution. This is as provided in section 4 subsections (1), (2) and (3). In addition, it has power to make laws with respect to matters in the Concurrent Legislative List set out in the first column of part II of the Second Schedule to the Constitution and any other matter with respect to which it is empowered to make laws; as extant in section 4 subsection 4 (a) and (b).

The House of Assembly of a State has power to make laws for the State or any part thereof on any matter not included in the Exclusive Legislative List, any matter in the concurrent Legislative List and any other matter which it is empowered to make laws. This is extant in section 4 subsection 7 (a) (b) and (c). Each of these bodies exercise it's powers to make laws for the peace, order and good government of it's respective territory. The functions of a Local Government Council are governed by Section 7 of the Constitution and as enumerated in the Fourth Schedule thereto and such other functions as may be conferred on the council by the House of Assembly of a State. See: Attorney General Lagos State v. Attorney General of the Federation & Ors. (2003) 6 SC (pt.1) 24 at 56.

It should be noted that the plaintiff is placing heavy reliance on item 60 (d) of the Second Schedule, part 1 of the Exclusive Legislative List which gives the Federal Government power over:

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

(d) to regulate tourist traffic..

The expression tourist traffic, is not defined anywhere in the Constitution of the Federal Republic of Nigeria, 1999. The meaning of the stated expression should be explored in another direction. Tourist is defined as 'a person who is traveling or visiting a place for pleasure'. See Oxford Advanced Learners, Dictionary 6th Edition, page 1268. Traffic is defined at page 1271 of the same Dictionary as 'the movement of people or goods from one place to another.' In Black's Law Dictionary, Sixth Edition page 1495, traffic is defined as 'the passing to and fro of persons, animals, vehicles or vessels, along

a route of transportation, as along a street, highways...”.

It will tally with logic to say that ‘*tourist traffic*’ means the movement of a person from one place to another for pleasure, sight-seeing or relaxation. This should relate to foreign visitors who come for sight-seeing; who should obtain visa and be given adequate security.

B I agree with the position taken by the defendant that ‘*tourist traffic*’ relates to regulation of issuance of entry visa, determination of tourist’s period of stay within Nigeria and general regulation of tourists’ movement within the Country. If the drafters of the Constitution had intended otherwise, rather than tourist traffic, they would have opted
C for the expression - ‘general tourism and hotel regulation’ or phrase of similar intendment.

It is clear that the power of the National Assembly is restricted to regulation of tourist traffic which has nothing to do with regulation
D of hotel facilities. This is because the Federal Government can only legislate on matters conferred on it by the Constitution. See: Doherty v. Balewa (1961) 2 NSCC 248 at 252.

The plaintiff attempted to take umbrage under the definition of tourist traffic as contained in the Republic of Ireland’s Tourist Traffic Act of
E 1939. As the Republic of Ireland operates a unitary System akin to the command structure invoked during the Military Era in Nigeria, the Irish statute is not helpful. See Ogugu v. The State (1994) 9 NWLR (Pt.366) 1 at page 43.

F The plaintiff tried to place reliance on the doctrine of covering the field. It should be pointed out right away that the doctrine has no application in the context of the Exclusive Legislative List in respect of which the Federal Government has exclusive power to legislate. The doctrine should be invoked where concurrent legislative powers are
G validly exercised by the Federal Government and the State Government on the same subject matter and no more. See: Lakanmi v. Attorney General Western Region (1970) 6 NSCC 143 and Attorney General Ogun State v. Attorney General Federation (1982) 13 NSCC 1 at 35 where it was held that:

H “—the phrase ‘*covering the field*’ means precisely what it says. Where a mater legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, where the legislation enacted by the State is inconsistent with the legislation of the Federal Government, it is indeed void and of no effect for

inconsistency.”

The argument of the plaintiff missed the mark as no reference has been made to the concurrent legislative list as forming the basis of the plaintiff’s claim. I should repeat it that the doctrine is not applicable to the exclusive legislative list. Therefore, it has no relevance to the issue before this court. B

The plaintiff also attempted to fly the kite that since the laws made by the Lagos State Government are inconsistent with the provisions of the NTDC Act, they are void to the extent of the inconsistency. The vital question here is - was the law made by the National Assembly validly made? The National Assembly has no vires to legislate in respect of regulation of hotels, motels and similar facilities in Lagos state since they are residual matters. The said Act was not validly made. Consequently, the question of inconsistency of the Lagos State Laws does not arise. C

The plaintiff also contended that by virtue of item 68 of the Second Schedule, part 1 of the 1999 Constitution, all matters pertaining to, incidental to or supplementary to tourism, tourist activities, tourist establishments or tourist traffic come under the Exclusive Legislative List. D

Prof. Ben Nwabueze, SAN in his book - ‘Federalism in Nigeria under presidential Constitution, Spectrum Books. 2nd Edition at page 43 maintains that: E

“An incidental matter is one which is concomitant or attendant upon another; something which is an accompaniment or adjunct of another. The relation between the two is of an ancillary to a main matter; both must be closely connected to justify the inference that implying one is an incident of the other.” F

Let me say it that there is no jot of connection between ‘tourist traffic’ and regulation of hotels, motels and other hospitality and tourism establishments. I agree with the defendant that tourist traffic is on the Exclusive Legislative List because of its national and international implication. All over the world, regulation of tourist traffic is usually handled exclusively by the National Government. The practice in a Federation is to vest in the regional government the power to regulate hotels and similar establishments. G

Let me observe it in passing that by Section 7 of the Act there is provision for the establishment of a State Tourism Board for each H

State of the Federation. In addition, it directs the Government of the State to appoint members into the Board. Section 10 of the Act makes similar provisions for the Local Government Councils. Such actions have the command structure modality of the Military Era. It is basic that the National Assembly cannot impose new duty on the Govern-
B ment of a State. In the case of Attorney General Ogun State v. Attorney General of the Federation (1982) 13 NSCC 1 at 21, Udoma, JSC held as follows:-

C *“I am satisfied that neither the National Assembly nor the president has the constitutional power to impose any new duty on the Government of the State. Such an imposition would normally meet with resentment and refusal to perform for the enforcement of which there is no constitutional sanction.”*

D I agree with the defendant that the essence of the power given by the Act to direct the Governor of a State is to make the State Government of an agency of the Federal Government in respect of residual exclusive matters of the State Government. Same is contrary to the principles of Federalism. A court charged with the guardianship of the Constitution must not allow that to happen.

E It is for the above reasons and the fuller ones adumbrated in the judgment of my learned brother Galadima, JSC with which I agree, that I find that the plaintiff’s case fails in its entirety and is hereby dismissed.

F _____

NGWUTA JSC

G I have had the privilege of reading in draft the lead judgment just delivered by My Lord, Galadima, JSC. I agree with the reasons for the conclusion reached. I desire, however, to make a few observations.

H The declarations sought by the plaintiff predicated on the anticipated favourable answers to the posers raised in the Originating Summons, and the relevant affidavit evidence have been set out in the lead judgment and I do not need to repeat them.

Issue 1 in the defendant’s brief reads:

“Whether regulations, registration, classification and grading of Hotels, guest houses, motels, restaurants, travel tour agencies and other hospitality and tourism related establishments are matters in

the Exclusive List and outside the legislative power of Lagos State House of Assembly.”

In my view, all other issues raised and argued by learned Counsel for the parties will swim or sink with defendant’s issue reproduced above. In Section 2 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), it is provided in subsection 1 that: B

“2 (1): Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria.”

Sub-section 2 provides:

“S.2 (2): Nigeria shall be a Federation consisting of States and a Federal Capital Territory.” C

The legislative power is shared by the Constitution between the Federating Units. Section 4 of the Constitution on Powers of the Federal Republic of Nigeria provides as follows:

“S.4 (1): The legislative power of the Federal Republic of Nigeria shall be vested in a National Assembly of 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 port thereof with respect to any matter included in the Exclusive List set out in part 1 of the Second Schedule to this Constitution. E

(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 Legislative List shall, save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of States. F

(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:- G

(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. H

(5) If any law enacted by the House of Assembly of a State is inconsistent with any law made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall

to the extent of the inconsistency be void.

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

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

(a) any matter not included in the Exclusive Legislative List set out in Part 1 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 provided 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 by this constitution, the exercise of the legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of the Courts of law and of judicial tribunal 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 judicial tribunal established by law."

The constitution expressly created two Legislative Lists:

(1) Exclusive Legislative List set out in part 1 of the Second Schedule to the Constitution.

(2) Concurrent Legislative list set out in the first column of part II of the Second Schedule to the Constitution. See Section 4 (2) (6) of the Constitution.

There is a third list which is not stated in the Constitution, that is, Residual Matters. These are matters which are neither in the Exclusive List nor in the Concurrent List.

Matters included in the Exclusive List are within the exclusive domain of the National Assembly to legislate upon. See 4 (3). In addition to its power to legislate in matters in the Exclusive List exclusively, the National Assembly is also empowered to legislate, though not exclusively, on matters in the Concurrent Legislative List.

Residual Matters which are matters not in either Exclusive or Concurrent Lists are matters within the exclusive competent of the States to legislate upon. See *A-G Abia State v. A-G Federation (2006)*

16 NWLR (Pt.105) 265 at 380-381 paras D-C.

The Nigerian Tourism Development Corporation Act of 1992 (now Cap N137 Laws of the Federation of Nigeria 2004) is an Act of the National Assembly made pursuant to its powers under Section 4 (21) (3) and item 60 (d) part 1 of the Second Schedule to the Constitution of the Federal Republic of Nigeria 1999. B

Pursuant to the provision of the Act, the Nigerian Tourism Development Corporation is empowered and mandated to register, classify, grade and regulate all Hotels, Motels, Hospitality and Tourism enterprises, travel agencies and tour operators; pursuant to item 60 (d) in Part 1 of the Second Schedule to the Constitution. Item 60 C over which the National Assembly has exclusive legislative power reads:

'60: The establishment and Regulation of authorities for the Federation or any part thereof:

(d) to regulate tourist traffic., D

Item 60 (d) is a matter in the Exclusive Legislative List. No State is competent, under the Constitution, to legislate on item 60(d) reproduced above.

The doctrine of covering the field raised in the proceedings does not apply as the item is in the Exclusive List upon which only the National Assembly can legislate. The central point in the suit, in my humble view, is whether or not regulation of tourist traffic includes regulation, registration, classification and grading of quest houses, motels, etc. and other related matters as contained in the following legislations passed by the defendant: E

(a) Hotel Licensing Law Cap. H6 Laws of Lagos State of Nigeria, 2003. F

(b) Hotel licensing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of July 20, 2010, and G

(c) Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2005.

In my view, the Lagos State Laws reproduced above, shorn of the verbiage, are legislations on hospitality and tourism and tourism is defined as the business of providing accommodation and services for people visiting a place. See Oxford Advanced Learner's Dictionary p.1264. It is the business of providing amenities for tourists. The same dictionary defines "*tourist*", inter alia, as a person who is travel- H

ing or visiting a place for pleasure; and the provision of the pleasure is, in my view, the business of tourism.

While tourism and tourists within the context of the defendant's law are within the domestic realm; tourist traffic has international connotation. It is concerned with the movement of tourists in and out of the country. It is a matter with the exclusive competence of the National Assembly and it is governed by the Immigration Act Cap 112 Laws of the Federation of Nigeria, 2004, Section 9 of which provides for entry requirements and conditions for entry into the country.

It was the case of the plaintiff that pursuant to the Nigerian Tourism Development Corporation Act, 1992, the Nigerian Tourism Development Corporation (NTDS) is the body empowered to register, classify and grade all hospitality and tourism enterprises' travel agencies, tour operators, etc. and that the laws made by the defendant are void for being inconsistent with the law made by the National Assembly.

Section 4 (5) of the Constitution provides:

"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."

I have said earlier that the doctrine of covering the field is inapplicable in a matter within the exclusive legislative competence of the National Assembly as any law made by a State Assembly will be void for lack of power to make such law. In the same vein, there can be no issue of covering the field in a matter which is neither in the Exclusive List nor in the Concurrent List.

In the case of such residual matters, the State Assembly has exclusive power to legislate and the issue of inconsistency or conflict with a Federal Law will not arise. Also the plaintiff cannot rely on Section 4 (5) of the Constitution which cannot apply as the Federal law was not validly made by the National Assembly. See *A-G Ondo State v. A-G Federation (2002) 9 NWLR (Pt.772) 53 at 55-56 paras A-C*.

The law made pursuant to the 1992 Act empowering the Nigerian Tourism Development Corporation (NTDC) to register, classify and grade all hospitality and tourism enterprises, travel agencies, tour operators etc went far beyond the power vested in the National assembly to regulate tourist traffic in item 60 (d) in the Exclusive

Legislative List.

I hold that the laws made by the defendant against which the plaintiff complained are not in conflict with any law validly made by the National Assembly.

The plaintiff's case has no merit and is hereby dismissed.
Parties to bear their costs.

B

M. D. MUHAMMAD JSC

Between 2003 and 2010 the Lagos State House of Assembly C
enacted the following statutes:-

(a) Hotel licensing law Cap H6 Laws of Lagos State of Nigeria 2003;

(b) Hotel Occupancy and Restaurant Consumption Law No. 30, volume 42 Lagos State of Nigeria official Gazette of June 23rd, D
2009; and

(c) Hotel licensing (Amendment) Law No. 23 volume 43 Lagos State of Nigeria official Gazette of July 20th, 2010.

The constitutionality of these statutes is what the plaintiff by his originating summons dated 30th August, 2010 contests in the suit. I E
shall rely on the plaintiff's claim as recounted by my learned brother Galadima, JSC, in his lead judgment in the course of my determination of the issues the suit raises.

For the determination of the suit, the plaintiff, the Attorney F
General of the Federation, has formulated the following issues:-

“(1) Whether the matters pertaining to tourism and other tourist related establishment falls (sic) under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999.

*(2) Whether the Lagos State House of Assembly and the Lagos G
State Government can enact and promulgate Laws on matters within the exclusive legislative list as set out in Section 4 (2) (3) part 1 Second schedule of the Constitution of the Federal Republic of Nigeria, 1999.*

*(3) Whether the Lagos State House of Assembly and Lagos H
State Government can enact and promulgate laws which directly conflict with the Provisions of an existing Law of the National Assembly and if such enactment/Law exist whether such can supercede an existing law of National Assembly.”*

The defendant, the Attorney General of Lagos State, on the other hand, seeks the determination of the following issues:-

“(1) *Whether regulation, registration, classification and grading of hotels, guest houses, motels, restaurants, travel and our agencies and other hospitality and tourism related establishments are matters in the Exclusive and concurrent Legislative list and outside the Legislative power of Lagos State House of Assembly.*

(2) *Whether the following laws of the Lagos State are invalid by reason of their inconsistency with the provision of the Nigerian Tourism Development Act Cap. N.137, LFN*

(a) *Hotel licensing Law Cap. H6 Laws of Lagos State of Nigeria 2003;*

(b) *Hotels Licensing (Amendment) Law No.23 volume 43 Lagos State of Nigeria official Gazette of July 20, 2010; and*

(c) *Hotel Occupancy and Restaurant Consumption Law No. 23, volume 42 Laws of Lagos State of Nigeria official Gazette of June 23, 2009”*

By the affidavit in support of the originating summons, the plaintiff avers that in 1992 the National Assembly enacted the Nigerian Tourism Development Act presently CAP N 137, Laws of the Federation of Nigeria 2004 which establishes the Nigerian Tourism Development Corporation (NTDC). The Act in Section 4(2)(d), avers the plaintiff, empowers the Corporation to register, classify, grade, regulate all hotels, motels, hospitality and Tourism enterprises, Travel agencies and Tour operators.

It is plaintiff’s, case also that in 2003 the Lagos State Government passed into law the Hotel licensing Law Cap. H6, Laws of Lagos State which, is similarly seeking to regulate, register, classify and grade all Hotels, motels, Guest Inns and other Tourism related Establishments, stands in direct conflict with the provisions of the Nigerian Tourism Development Act 1992. Further to the enactment of the Hotel licensing law CAP H6, the plaintiff further asserts the defendant in 2009, vide newspapers, informed Hoteliers and Operators of tourism related establishments within Lagos State that the registration, regulation, licensing and classification of all Hotels and other tourism related Establishments exclusively vest in the Lagos State Ministry of Tourism and Inter-Governmental Relations or any other established Lagos State Authority designated that behalf by the State

House of Assembly.

The laws passed by the defendant, the plaintiff further claims, stand in clear conflict with National Tourism Development Act as duly passed by the National Assembly pursuant to Section 4 (2) (3) and Item 60, part 1 of the 2nd schedule of the Constitution of the Federal Republic of Nigeria 1999. The laws also constitute a ploy to usurp the powers of the Nigerian Tourism Corporation. The plaintiff by this suit sets out to stop the defendant from giving effect to the unconstitutional legislations billed to take off from October, 2010 in order to forestall the negative consequences of their null and void provisions.

In opposing the Originating Summons, the defendant relies on their counter-affidavit insisting thereby that the Nigerian Tourism Development Corporation came into being in 1992 when the then Federal Military Government promulgated the Decree that brought it about. The Corporation, the defendant maintains, is assigned by the Decree the responsibility of advising States and Local Governments on tourism as well as making laws for the regulation, registration, classification and grading of hospitality and tourism establishments nationwide. The Corporation is also empowered to establish a Tourism Board for each State and a Tourism Committee for each Local Government in each of the States in Federation.

By Section 4 of the 1999 Constitution which came into force on 29th May, 1999, the defendant asserts, hospitality and tourism enterprises ceased to be an item under the Exclusive and Concurrent legislative lists. Being residual matters, only the State Houses of Assembly can legislate on them.

The plaintiff, argues the defendant, has illegally continued to enforce the National Tourism Development Act 1992 which is yet to be modified by the National Assembly by seeking to regulate, register and grade hospitality and Tourism facilities. The National Tourism Development Corporation Act being is in respect of a subject matter the National Assembly is incompetent to legislate upon, the defendant contends, is null and void. The laws the defendant enacted, which constitutionality the plaintiff contests, it is further submitted, cannot, within the context of the plaintiff's null and void National Tourism Development Corporation Act, pose any negative threat to tourist safety or national security. Item 60(d) of part 1 of the 2nd Schedule of the 1999 Constitution the plaintiff claims is the basis of

the Nigeria Tourism Development Corporation Act does not provide for the subject matter the Act dwells upon. The item only empowers the National Assembly to legislate for the purpose of regulating “*Tourist Traffic*”. The defendant contends that the National Tourism Development Corporation Act which goes beyond the movement of foreigners coming into the country as tourists and the time within which they may remain in the country and extends to the registration, classification and grading of hospitality enterprises cannot be the yardstick of adjudging the constitutionality of the laws enacted by the defendant. It is urged that the plaintiff having failed to establish that the National Tourism Development Corporation Act is law validly enacted by the National Assembly, their suit must be dismissed.

Both sides herein are right that by the 1999 Constitution it operates, Nigeria has deliberately adopted a Federal System which in rejecting a unitary form of government provides for some degree of local autonomy. To actualize the preference, the Constitution as a matter of basic imperative provides for an acceptable division of powers between the Central Government and the Federating Units. The instant case shows clearly that the search for this balance of power between the Centre and the States continues to be a major contention notwithstanding the fact that the 1979 Constitution with similar provisions on the very issue had preceded the extant arrangement.

Again, the parties are particularly right in stressing that having provided for a federation consisting of states and a federal Capital Territory for the country in Section 2(2), the 1999 Constitution elaborately provides for power sharing between the Federation and the States. Under Section 4 thereof, the Constitution broadly sets out the legislative functions of the federation and those of the states. Parts I and II of the second schedule to the Constitution contain detailed lists of the areas of legislative competence of each tier of government.

In the case at hand, plaintiff’s contention is that the National Assembly has, given item 60 (d) of part 1 of the 2nd schedule to the Constitution, the competence, to the exclusion of Lagos State House of Assembly, to legislate on what the latter purports to have legislated in the enactments the plaintiff urge this Court to declare Unconstitutional.

Defendant’s case, on the other hand, is that neither item 60 (d) of part 1 of the 2nd schedule containing the Exclusive Legislative

list nor part 2 of the 2nd schedule containing the concurrent list empowers the National Assembly to enact the National Tourism Development Corporation Act CAP N 137 Laws of the Federation of Nigeria 2004. The defendant insists that the National Tourism Development Corporation Act CAP N 137 cannot be deemed to be an existing law pursuant to Section 315 of the Constitution. B

This Court, it appears to me, is asked by both sides to examine the limits of the legislative powers of the National Assembly vis-a-vis those of the Lagos State House of Assembly under the 1999 Constitution of the Federal Republic of Nigeria. C
Section 4 (2), (3) and (4) as well as item 60 (d) of part 1 of the 2nd Schedule of the 1999 Constitution the plaintiff relies on to enforce their claim are hereunder reproduced for ease of reference.

“4 (1) The legislative powers of the Federal Republic of Nigeria shall be vested in National Assembly for the Federation which shall consist of a Senate and a House of Representatives. D

(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. E

(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 State. F

(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 - G

(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 the Constitution. H

(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.”

Under item 60 (d) of part 1 of the 2nd schedule of the Constitution, the National Assembly is vested with the power of making laws for “*the establishment and regulation of authorities for the federation of any part thereof*” which authorities will “*regulate tourist*”
 B *Traffic”.*

The defendant on the other hand relies on Section 4 (6) and (7) which provision are also hereunder reproduced for ease of reference:-

C “(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*

D a) *any matter not included in the Exclusive Legislative List set out in Part 1 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*
 E *thereto; and*

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

It is instructive to allude to Section 315 (1) (a) and item 68 of part 1 of the 2nd schedule of the 1999 Constitution the defendant
 F further relies upon in opposition to plaintiff’s claim.

Section 31 5 (1) (a) provide:-

G “S.315 (1) *Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions and shall be deemed to be;*

(a) *an Act of the National Assembly to the extent that it is a Law with respect lo any matter on which the National Assembly is empowered by this Constitution to make laws. “*

H Item 68 of part 1 of the 2nd schedule to the Constitution empowers the National Assembly to make laws on:-

“68 *Any matter incidental or supplementary to any matter mentioned elsewhere in this list. ”*

This Court had had occasions to consider the foregoing Sec-

tions of the Constitution vis-a-vis the items of the legislative lists parties before us seek to hang their respective case on. Kalgo, JSC, remains most forthcoming in Attorney General, Abia State v. Attorney General Federal (2002) 6 NWLR (Pt 763) 264 when in his concurring contribution he opined at page 481-482 of the law report thus:-

“The cumulative effect of the provisions of subsections (3) and (5) of section 4 of the Constitution, is to affirm the legislative supremacy of the National Assembly but that is clearly subject to the enumerated exceptions within the Constitution itself. There is therefore no question for the National Assembly or indeed any State Assembly having any inherent power to legislate on any topic or matter. Both can legislate only as provided by the Constitution and the State Assembly alone can legislate on concurrent matters subject of course to the supremacy principles.”

Now, the plaintiff in the case at hand claims that the National Tourism Development Corporation Act is an Act of the National Assembly and same is within the Assembly’s legislative competence. I entirely agree with learned counsel for the defendant that if indeed as asserted by the plaintiff the National Assembly has the power to enact the National Tourism Development Corporation Act under the Constitution it does so only if it fully complies with the Constitution. Any Legislation the assembly enacts which is inconsistent with the provisions of the Constitution the Assembly purports to draw its right from, being null and void, remains inoperative. See AG Lagos State v. A.G. Federation (2003) FWLR (Pt. 168) 909.

Again, learned counsel for the defendant on a firm terrain in his submission that item 60 of part 1 of the 2nd schedule to the Constitution the plaintiff claims vests the National Assembly with the legislative competence to enact the National Tourism Development Corporation Act does not do so. The section indeed remains unavailing as it only empowers the Assembly to make laws for “the establishment and regulation of authorities for the Federation or any part thereof” which authorities as created are to “regulate Tourist Traffic”. The phrase “Tourist Traffic” item 60 (d) of part 1 of the second schedule, I agree with learned counsel, has not been defined by the Constitution and plaintiff’s resort to the Republic of Ireland’s Tourist Traffic Act of 1939 is unhelpful. Again, I find defendant counsel’s reliance on Ojokolobo v. Alamu (1987) 3 NWLR (part 61) 377 and N.E.W.

Ltd v. DENAP Ltd & Anor (1997) 10 NWLR (part 526) 481 at 523 in urging us to give the words “Tourist Traffic” their ordinary natural meaning apposite.

The power of the National Assembly under item 60 (d), in my firm view, limited to making laws for the establishment of bodies which regulate “*Tourist Traffic*” only. The words “*Tourist*” and “*Traffic*” as defined in the 6th Edition of the Oxford Learner’s Dictionary, see pages 1268 and 1271 thereof, mean a Person who visits a place for Pleasure and the movement of people or goods from one place to another respectively. The Phrase “*Tourist Traffic*”, therefore, means the movement of persons into and within designated place for visitation or pleasure. Defendant’s summation that regulating “*Tourist Traffic*” implies the imposition of administrative restrictions on entrants to a country by way of permitting them to enter the country and limiting their period of stay within the country is, therefore, enlightened.

The purported exercise by the National Assembly of its legislative power enacting the National Tourism Development Corporation Act which regulates hospitality facilities is certainly a null and void one. The null and void Act cannot even be saved by virtue of item 68 of part 1 of the same 2nd schedule since the subject matter it dwells upon, regulation and classification of Hotels and eateries, is neither incidental nor supplementary to the task the Assembly is empowered to legislate on by virtue of item 60 (d) of Part 1 of 2nd schedule to the Constitution. See *Fawehinmi v. Babangida* (2003) FWLR (Part 146) 835 and *AG Bendel State v. AG Fed.* (1982) 3 NCLR 1 at 40.

Lastly, this court has held in *Ikine v. Ejeroode* (2002) FWLR (part 92) 1775 that any law enacted before the coming into force of the Constitution which contradicts any provisions of the Constitution after the Constitution had come into effect must either be modified or repealed as required by Section 315. In the instant case where the National Assembly has neither modified nor repealed the Act in issue same must be declared unconstitutional. The Act cannot form the basis of assessing the constitutionality or otherwise of the various Laws enacted by the defendant.

As a whole, for the foregoing and more so the fuller reasons adumbrated by my learned brother, I find no merit in plaintiff’s suit which hereby I dismiss. I abide by the consequential orders made in the lead judgment including the one on costs.

ALAGOA JSC

I read before now in draft the lead judgment of my learned brother Suleiman Galadima, JSC and I agree with his reasoning and conclusion that this case lacks merit and should be dismissed. I wish however to say a few words of mine by way of contribution to an undoubtedly well researched and written judgment. B

This is an action instituted by way of Originating Summons by the Honourable Minister for Justice and Attorney General of the Federation as Plaintiff against the Hon. Attorney General of Lagos State as Defendant seeking a number of declaratory and injunctive reliefs. C
In the main the Plaintiff's action is a challenge to the validity of certain laws enacted by the Lagos State Government which purportedly are a contravention of existing laws already being exercised by the Federal Government by an act of the National Assembly and the 1999 Nigerian Constitution. The said Laws passed by the Lagos State House of Assembly are:- D

The Hotel Licensing Law Cap. H6 Laws of Lagos State of Nigeria 2003;

The Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009 and the Hotel Licensing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010. E

Questions raised in the originating summons by the plaintiff for determination by this Court are listed below:- F

1) Whether the Lagos State Government and the Lagos State House of Assembly can enact laws in respect of any item listed under the exclusive legislative list of the Constitution of the Federal Republic of Nigeria 1999. G

2) Whether by virtue of the provision of Item 60(d) part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria which lists the regulation of tourist traffic as a legislative item under the exclusive legislative list the National Assembly is entitled to the subsequent provisions of Section 4(2)(d) of the Nigeria Tourism Development Corporation Act Cap. N 137 Laws of the Federation of Nigeria 2004 which gives the Nigerian Tourism Development Corporation the right to licence, regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resort, H

Cafeterias, Restaurants, Fast Food Outlets and other related tourist establishments to the exclusion of the Lagos State Government and or any other authority in Nigeria.

3) Whether the Lagos State Government and the Lagos State House of Assembly can enact a law which directly conflicts with an existing law enacted by the National Assembly and where such law is enacted, whether such law or enactment made by the Lagos state Government and the Lagos State House of Assembly can remain valid where such law or enactment is in conflict with an existing law or enactment made by the Federal Government of Nigeria the National Assembly.

If any of the above questions is answered in the negative the Plaintiff now claims as follows:

1. A Declaration that the Lagos State Government and the Lagos State House of Assembly have no power to enact a law to licence, regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resorts, Cafeterias, Restaurants, Fast Food Outlets and other related tourist establishments within the geographical boundaries of Lagos State or any other place in Nigeria.

2. A Declaration that by virtue of the provisions of Item 60(d) Part I of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 and the subsequent provisions Section (2)(d) of the Nigerian Tourism Development Corporation Act Cap N 137 Laws of the Federation of Nigeria 2004, it is only the National Assembly that can legislate and it is only the Nigerian Tourism Development Corporation as established that can control matters relating or pertaining to the licensing, regulation, registration, classification and grading of hotels, motels, guest inns, travel agencies tour operating outfits, resort, cafeterias, restaurants, fast food outlets and other related tourist establishments within the geographical boundaries of Lagos State and any other place in Nigeria.

3. A Declaration that the following legislations, laws and enactments, that is”

(i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

(ii) Hotel Licencing (Amendment) Law No. 23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

(iii) Hotel Occupancy and Restaurant consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009 in as much as the said legislations Laws and enactments seek to regulate, register, classify and grade Hotels, Motels, Guest Inns, Travel Agencies, Tour Operating Outfits, Resort Cafeterias, Restaurants, Fast Food Outlets and other related tourist establishments ARE IN CONFLICT with the provisions of Section (2)(d) of the Nigerian Tourism Development Act 1992 (a law enacted by the National Assembly and therefore null and void and of no effect whatsoever. B

4. A Declaration that the following legislations, laws and enactments, that is: C

(i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

(ii) Hotel Licencing (Amendment) Law No.23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010. D

(iii) Hotel Occupancy and Restaurant consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009, in as much as the said legislations, Laws and enactments seek to licence, regulate, register, classify and grade hotels, motels, guest inns, travel agencies, tour operating outfits, resort, cafeterias, restaurants, fast food outlets and other related tourist establishments are in conflict with the provisions of section 4(2)(3), Item 60(d) Part 1 of the Second Schedule to the Constitution of the Federation Republic of Nigeria 1999 and to the extent of their inconsistency, null and void and of no effect whatsoever. E F

5. An order of perpetual injunction restraining the Lagos State Government either by itself, its agents, privies, servants, representatives or anybody whosoever acting on its behalf from further promulgating, passing into law, enacting or legislating upon issues or any matters relating to the licensing, regulation classification and trading of hotels, motels, guest inn, travel agencies tour operating outfits, resort, cafeterias, restaurants, fast food outlets and other related tourist establishments and from enforcing in any manner or way through itself or any of its agencies the following legislations: H

(i) Hotel Licencing Law Cap H6 Laws of Lagos State of Nigeria 2003.

(ii) Hotel Licencing (Amendment) Law No.23 Volume 43 Lagos State of Nigeria Official Gazette of 20th July, 2010.

(iii) Hotel Occupancy and Restaurant consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of 23rd June, 2009.

In support of these questions for determination in the Originating Summons is a 24 paragraph affidavit. In the said supporting affidavit plaintiff deposed that sometime in 1992 the National Assembly enacted the Nigerian Tourism Development Corporation Act 1992 (now Cap N137 Laws of the Federation of Nigeria 2004) and the enactment was made pursuant to the powers conferred on the National Assembly under Section 4 (2) (3) Item 60 (d) part 1 of the 2nd Schedule to the Constitution of the Federal Republic of Nigeria 1999. By virtue of the Nigerian Tourism Development Corporation Act the Nigerian Tourism Development Corporation is mandated to register, classify, grade and regulate all Hotels, Motels, Hospitality and Tourism enterprise, travel agencies and tour operations. It was further deposed by the Plaintiff that the Lagos State Government in 2003 promulgated and passed into law the Hotel Licensing Law Cap. H6 Laws of Lagos State of Nigeria 2003 which is in direct conflict with the Nigerian Tourism Development Corporation Act especially section 4 (2) (d) of the Act. In further deposition the Plaintiff stated that the Lagos State had embarked on a public enlightenment programme about the Act by a Notice which Notice has now been backed up by the promulgation of the Hotel Licensing (Amendment) Law contained in No.23, Volume 43 of the Lagos State of Nigeria Official Gazette dated the 20th July, 2010 which gives the Lagos State Government power over the regulation, registration and grading of Hotels, Motels, Hospitality and Tourism enterprises, Travel Agencies, Tour Operators and other tourism related establishments. The crux of the plaintiff's deposition is to draw attention to the usurpation by the Lagos State Government and the Lagos State House of Assembly of the functions exercisable by the Nigerian Tourism Development Corporation by virtue of the Nigerian Tourism Development Corporation Act an Act of the National Assembly. The Defendant filed a counter affidavit to the affidavit in support of the Originating Summons. Aside from all this, the Plaintiff formulated the following issues:-

1) Whether the matters pertaining to tourism and other tourism related establishments fall under the exclusive legislative list of the

Constitution of the Federal Republic of Nigeria.

2) Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws on matters within the exclusive legislative list as set out in Section (2)(d) Part I Second Schedule of the Constitution of the Federal Republic of Nigeria 1999.

3) Whether the Lagos State House of Assembly and the Lagos State Government can enact and promulgate laws which directly conflict with the provisions of an existing law of the National Assembly.

The Defendant has distilled the following issues for determination of this case:

(i) Whether the regulation registration classification and grading of hotels, guest houses, motels/restaurants, travel and tour agencies and other hospitality and tourism related establishments are matters in the Exclusive and Concurrent Legislative Lists and outside the Legislative power of Lagos State House of Assembly.

(ii) Whether the following laws of Lagos State are invalid by reason of their inconsistency with the provisions of the Nigerian Tourism Development Act, Cap N137 Laws of the Federation of Nigeria:

(a) Hotel Licensing Law, Cap H6 of Nigeria 2003.

(b) Hotel Licencing (Amendment) Law Cap 23 Volume 43 Lagos State of Nigeria Official Gazette of July 20,2010; and

(c) Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2009. The plaintiff is contending that matters pertaining to registration regulation, classificatory, grading of tourist establishments like Hotels, Motels, Guest Inns, Apartments, Tour operating outfits, Restaurants are covered by Item 60(d) of the Second Schedule Part 1 of the 1999 Constitution i.e. the Exclusive Legislative List in respect of which only the Federal Government or an Agency of the Federal Government can legislate or partake in. Thus it is the Nigerian Tourism Development Corporation by virtue of the Nigeria Tourism Development Corporation Act that can deal with these matters to the exclusion of the Lagos State Government. Item 50(d) of the Second Schedule Part 1 of the 1999 Constitution which contain matters under the Exclusive Legislative List states as follows:-

“60 - The establishment and regulation of authorities for the Federation or any part thereof:

(d) *To regulate tourist traffic.*”

What does the expression, “*to regulate tourist traffic*” in the Exclusive Legislative List mean? Can it by any stretch of the imagination be taken as pertaining to the regulatory classification, registration and grading of tourist related establishments like Hotels, Motels, Restaurants, Fast Food outlets, Guest Inns, Apartments, traveling Agencies, Tour operating outfits? What was the intention of the drafters of the Constitution? Unfortunately that expression “*to regulate tourist traffic*” is not contained in any of the numerous dictionaries that I have had recourse to.

It is trite that in the interpretation of statutes, the constitution and like matters, words must be given their natural and ordinary meaning. There are numerous legal authorities on this subject matter.

In WAHAB AIGHOTOSHO SIFUOLA OLANREWAJU v. THE GOVERNOR OF OYO STATE (1992) NWLR (PART 265) 335 this court per Karibi-Whyte, JSC said

“It is well settled that where the words of a statute are clear and unambiguous, the ordinary meaning of the words are to be adopted.”

See also FRED EGBE v. M. D. YUSUF (1992) NWLR (PART 245) 7, ALL NLR 62; YEROKUN v. ADELEKE (1960) 5 FSC 126; AHMED v. KASSIM (1958) 3 FSC 51; SHUAIBU ABDULKADIRIM v. INCAR (NIGERIA) LTD (1992) NWLR (PART 251) 1; NAFIU v. THE STATE (1981) N.C.L.R. 293 at 326.

What then is the “*natural and ordinary*” meaning to be given to the expression, “*to regulate tourist traffic*?” Plaintiff drew support from the “*Tourist Traffic Act 1939*” of the Republic of Ireland which she says deals essentially with the registration, regulation and classification of hotels, holiday camps, youth hostels, restaurants, guest inns and other tourist establishments. Particular reference was made to Sections 25, 26, 27, 33, 34, 35 and 36 of that Act. The Defendant has been quick to warn against borrowing definitions or interpretations from other countries noting that such borrowing must be with regard to countries having constitutional provisions like our own. Reference was made to OGUGU V. THE STATE (1994) 9 NWLR (PART 366) 1 at 43 where this court per Belgore, JSC (as he then was) said as follows:-

“It is to be observed that the foreign cases cited i.e. Catholic

Commission for Justice and Peace in Zimbabwe V. Attorney-General (unreported Zimbabwe Supreme Court No. SC.73/1993; PRATT V. ATTORNEY-GENERAL FOR JAMAICA (1993) 3 WLR 995 and TREVOR WALKER V. QUEEN (1993) 3 WLR 1017 are cases of different constitutional nature of those countries... At any rate it is always of great help to know the line of thinking jurisprudentially in other countries' courts with constitutional provisions resembling our own; none the less our constitution must always remain a creature of its own circumstances and must always be interpreted in its own location and meaning."

See also GROSVENOR CASINOS LTD v. GHASSAN HALAOUI (2009) 10 NWLR (PART 1149) 309 where this court per Ogbuagu, JSC said that:

"The duty of the court is to give effect to the ordinary plain meaning of the words without resorting to any external aid."

Again in CHIEF JOSEPH ADOLO OKOTIE-EBOH v. CHIEF JAMES EBIOWO MANAGER & ORS (2004) 18 NWLR (PART 905) 242 this court per I. C. K. Pats-Acholonu, JSC (of blessed memory) held that -

"The interpretation of the provision of any statute should mirror the social accentuation of the society."

The point has been made that Nigeria does not run a unitary system of Government as Ireland does and in a Federal structure with its great diversity, it would perhaps be unthinkable that matters that pertain to regulation, classification, registration and grading of tourist related establishments like hotels, motels, restaurants, fast food outlets, guest and the like would be made the exclusive preserve of the Federal Government bearing in mind that these are matters that touch the lives of ordinary people. A lot of these outlets are in rural areas ministering to the needs of ordinary people where there is little or no federal government presence. The intendment of the drafters of the Constitution cannot therefore be that the term, *"to regulate tourist traffic"* should be more than what it actually is such as issuance of entry visas, determination of tourists stay in Nigeria and like matters.

A spade must be called by its name. Put more bluntly matters pertaining to the licencing, regulation, registration classification and grading of hotels, motels, guest inns, travel agencies, tour operating

outfits, resorts, cafeterias, restaurants, fast food outlets cannot be taken to come under the exclusive legislative list. Without a shadow of a doubt these items are not expressly or by implication contained in the Concurrent Legislative List and can be legislated upon by state Houses of Assembly as the Lagos State House of Assembly has done.

^B To hold otherwise is to lose sight of Nigeria's federal structure of Government. That cannot be the intendment of the drafters of the Nigerian Constitution.

^C Mention must at this stage be made of the "*doctrine of covering the field.*" Of that doctrine, this court in INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) v. ALHAJI ABDULKADIR BALARABE MUSA (2003) 3 NWLR (PART 806) 72 said as follows, per Niki Tobi, JSC.,

^D "*The doctrine of covering the field can arise in two distinct situations. First where in the purported exercise of the legislative powers of the National Assembly or a State House of Assembly a law is enacted which the Constitution has already made provisions covering the subject matter of the Federal Act or the State Law. Second where*
^E *a State House of Assembly by the purported exercise of its legislative powers enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the State law. In both situations the doctrine of covering the field will apply because of the "Federal might" which relevantly are the Constitution and the*
^F *Act. That doctrine would apply where both the Federal and State legislatures can legislate as in matters under the Concurrent Legislative List.*"

No mention has here been made to the concurrent legislative list as the basis of the Plaintiff's claim.

^G See generally OSUN STATE INDEPENDENT ELECTORAL COMMISSION & ANOR v. ACTION CONGRESS & ORS (2010) 19 NWLR (PART 273) SC; A.G. ABIA STATE v. A.G. OF THE FEDERATION (2002) 6 NWLR (PART 763) 264 at 391; MILITARY GOVERNOR OF ONDO STATE & ANOR. v. VICTOR ADEGOKE ADEWUMO (1988) 6 SCNJ 151 at 159; NWANGWU v. UKACHUKWU (2000) 1 NWLR (PART 662) 674; SALATI v. SHEHU (1986) 1 NWLR (PART 15) 198.

What is of note is that the regulation, registration, classification and grading of hotels, motels, Guest inns, Travel Agencies, Tour Op-

erating outfits, Resort, Cafeterias, Restaurants, food outlets and other related tourist establishments are matters not in the exclusive legislative and concurrent lists and therefore the Lagos State Government and the Lagos State House of Assembly can legislate on them. Therefore the following laws made by the Lagos State House of Assembly namely:-

Hotel Licencing Law Cap. H6 Laws of Lagos State 2003, Hotel Licencing (Amendment) Law No. 23 Volume 43 of Lagos State of Nigeria Official Gazette of July 20, 2010 and Hotel Occupancy and Restaurant Consumption Law No. 30 Volume 42 Lagos State of Nigeria Official Gazette of June 23, 2009 are validly made laws.

It is for these reasons and the fuller reasons contained in the lead judgment of my learned brother that I too, find no merit in the Plaintiff's case and same is accordingly dismissed.

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