

SUPREME COURT OF NIGERIA
FRIDAY 19TH JULY, 2013. SC. 462/2010
CORAM:- A. M. MUKHTAR CJN, I. T. MUHAMMAD,
J. A. FABIYI, S. GALADIMA, N. S. NGWUTA,
M. D. MUHAMMAD, S. S. ALAGOA, JJSC

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

LEGISLATURE - Hospitality industry - Lagos State HA - Is entitled to the exclusion of any other legislative body - To enact laws with regard to rendering technical advice - To the State government and LG in the State - In the field of tourism (H1)

LEGISLATION - Validity - Nigerian Tourism Development Corporation Act ss. 4(2)(c)(d) & 7 - Is ultra vires the legislative competence of National Assembly - And therefore unconstitutional (H2)

FACTS

Before the Supreme Court of Nigeria sitting in its original jurisdiction, suits nos. SC.340/2010 and SC.462/2010 were filed by Attorney-General of the Federation and Attorney-General of Lagos State, respectively. Leaned counsel in the two suits agreed to be bound by any decision made in SC.340/2010 since the two cases involve same parties and are similar in facts.

The Attorney-General of Lagos State filed originating summons in suit no. SC.462/2010, claiming a declaration that the House of Assembly of Lagos State is the body entitled, to the exclusion of any other legislative body, to enact laws with regard to rendering technical advice to the State Government and local governments in the State in the field of tourism and with respect to registration, classification and grading of all hospitality and tourism enterprises in Lagos State and that the provisions of the Nigerian Tourism Development Corporation Act Cap. N137 LFN 2004 to wit: section 4[2][c][d] and the Regulations made thereunder and section 7 of the Act is ultra

vires the legislative competence of the National Assembly and therefore unconstitutional, null and void. The court had dismissed plaintiff's case in suits no. SC.340/2010.

HELD (Unanimously allowing plaintiff's claim in suit

No. SC.462/2010 per **GALADIMA JSC**)

LEGISLATURE - Hospitality industry

1. That the House of Assembly of Lagos State is the body entitled to the exclusion of any other legislative body, to enact laws with regard to rendering technical advice to the Lagos State and Local Governments in the State with regard to field of tourism and with respect to registration classification and grading of all hospitality and tourism enterprises in Lagos State. (p. 3219)

LEGISLATION- Validity

2. That the provision of the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of Nigeria 2004 to wit: Section 4(2) (c) (d) and the Regulations made there under and Section 7 of the Act is ultra vires the legislative competence of the National Assembly and therefore unconstitutional, null and void. (p. 3219)

REPRESENTATION

Adeola Ipaye (Attorney-General, Lagos State) with him Lawal Pedro, SAN (Solicitor-General, Lagos State) and Olanrewaju Akinsola Esq. Temitope Dawodu (Principal State Counsel Ministry of Justice, Lagos State) and Justin I. Jacobs (Senior State Counsel Ministry of Justice, Lagos State), for the Plaintiff

T. O. Busari Esq. with Egondur Nnoko Esq., for the Defendant

STATUTE REFERRED TO

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

LEAD JUDGMENT BY GALADIMA JSC

When this case came up for hearing on 23/4/2010, this court was initially faced with two suits filed by the ATTORNEY-GENERAL of Federation v. ATTORNEY-GENERAL, Lagos State in Suit No.SC.340/2010. The other was ATTORNEY-GENERAL Lagos State v. ATTORNEY GENERAL of Federation in Suit No. SC.462/2010. By consensus of all the Learned Counsel for their respective parties, it was agreed that the Suit No. SC.462/2010 should abide by the ultimate decision of this Court in Suit No. SC. 340/2010.

Both Suits are hinged squarely on the interpretation of the same Constitutional provisions which are the same. Since the case of the plaintiff in Suit No.SC.340/2010 has been dismissed, the case of the plaintiff in Suit No.SC.462/2010 is meritorious and it succeeds. It is determined in favour of the plaintiff herein.

Consequently, I hereby declare as follows:-

(1) ***That the House of Assembly of Lagos State is the body entitled to the exclusion of any other legislative body, to enact laws with regard to rendering technical advice to the Lagos State and Local Governments in the State with regard to field of tourism and with respect to registration classification and grading of all hospitality and tourism enterprises in Lagos State.***

(2) ***That the provision of the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of Nigeria 2004 to wit: Section 4(2) (c) (d) and the Regulations made there under and Section 7 of the Act is ultra vires the legislative competence of the National Assembly and therefore unconstitutional, null and void.***

MUKHTAR CJN

The learned counsel for parties in this suit, who are the same in suit No. SC.340/2010, which has been dealt with have agreed to adopt the interpretation therein, as both are hinged on the interpretation of the same constitutional provisions.

In this wise, having dismissed the case of the Plaintiff in suit No. SC.340/2010, I will have to find merit in the case of the plaintiff in suit No. SC.462/2010, which deserves to succeed. The suit is there-

fore determined in favour of the plaintiff.

In this wise I hereby declare that the House of Assembly of Lagos State is the body entitled, to the exclusion of any other legislative body, to enact laws with regard to rendering technical advice to the Lagos State and local governments in the state in the field of tourism and with respect to registration, classification and grading of all hospitality and tourism enterprises in Lagos State.

I declare that the provisions of the Nigerian Tourism Development Corporation Act (Cap. N137) Laws of the Federation of Nigeria 2004 to wit: Section 4(2) (c), (d) and Registrations made there under and Section 7 of the Act is ultra vires the legislative competence of National Assembly and therefore unconstitutional, null and void.

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I. T. MUHAMMAD JSC

Suit No. SC.340/2010 is a sister to the present suit. In SC.340/2010, this court dismissed the Originating Summons. In it, the current plaintiff was the defendant and the current defendant was the plaintiff. The two suits are of same facts, antecedent and essence.

In the process of hearing the two suits, the parties (which are same except in the swapping of status) agreed to be bound by the result of SC.340/2010 in SC.462/2010.

The claim in this suit as for the Originating Summons, against the defendant reads as follows:

1. *“A Declaration that the House of Assembly of Lagos State is the body entitled, to the exclusion of any other legislative body, to enact laws with regard to rendering technical advice to the Lagos State and local governments in the State in the field of tourism and with respect to registration, classification and grading of all hospitality and tourism enterprises in Lagos State.*

2. *A Declaration that the provisions of the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of Nigeria 2004 to wit: Section 4[2][c], [d] and the Regulations made thereunder and Section 7 of the Act is ultra vires the legislative competence of the National Assembly and therefore unconstitutional, null and void”.*

As the plaintiff claims in SC.340/2010 have all failed and were

dismissed, the resultant effect is that all the claims of the plaintiff in this suit are meritorious and ought to succeed. Accordingly, I hereby grant the claims as follows: I hereby declare that:

1. the House of Assembly of Lagos State is the body entitled, to the exclusion of any other legislative body, to enact laws with regard to rendering technical advice to the Lagos State and local governments in the State in the field of tourism and with respect to registration, classification and grading of all hospitality and tourism enterprises in Lagos State. B

2. the provisions of the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of Nigeria 2004 to wit: Section 4[2][c], [d] and the Regulations made thereunder and Section 7 of the Act is ultra vires the legislative competence of the National Assembly and therefore unconstitutional null and void. C

The Originating Summons in this suit succeeds and it is granted accordingly. I make no order as to costs. D

FABIYI JSC

On 23rd April, 2010, this Court had two suits on its cause list inter alia, for hearing. They are Suit No. SC.340/2010 - Attorney General of the Federation v. Attorney General of Lagos State and Suit No. SC.462/2010. Attorney General of Lagos State v. Attorney General of the Federation. Learned counsel for the parties agreed that Suit No. SC.462/2010 should abide the final decision in Suit No. SC.340/2010. E F

There is no doubt that both suits relate to the same facts and constitutional provisions. The plaintiff's suit in SC.340/2010 has been dismissed. Therefore, the plaintiff's suit in SC.462/2010 succeeds. G

Consequently, it is accordingly hereby declared as follows:

“(1) That the House of Assembly of Lagos State is the body entitled to the exclusion of any other Legislative body, to enact laws with regard to rendering technical advice to Lagos State and Local Governments in the State in the field of tourism and with respect to registration, classification and grading of all hospitality and tourism enterprises in Lagos State. H

(2) A declaration that the provisions of the Nigerian Tourism Development Corporation Act Cap. N137 Laws of the Federation of

Nigeria 2004 to wit section 4 (2) (C), (d) and the Regulations made thereunder and section 7 of the Act are ultra vires the legislative competence of the National Assembly and therefore unconstitutional, null and void. ”

The plaintiff’s suit, for avoidance of doubt, succeeds. Same is accordingly granted with no costs awarded.

NGWUTA JSC

The parties herein, though in reversed positions, are the same as in SC.340/2010.

Learned Counsel for the parties agreed that the decision in SC.340/2010 should also apply to SC.462/2010. The plaintiff’s case in SC.340/2010, having been dismissed, it follows that the plaintiff in SC.462/2010 succeeds as the two cases are based on interpretation of the same provisions of the 1999 Constitution (as amended)

I hold and declare that Section 4(2)(c)(d) of the Nigerian Tourism Development Corporation Act Cap N137 Laws of the Federation of Nigeria, 2004 and the regulations made thereunder as well as Section 7 of the Act are not within the legislative competence of the National Assembly and are therefore null and void. Parties to bear their costs.

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M. D. MUHAMMAD JSC

On the date we heard Suit No. SC.340/2010, counsel agreed that the decision in the instant matter will abide the outcome of the former.

With the dismissal of plaintiff’s claims in Suit No. SC.340/2010 the plaintiff in the instant Suit, the defendant in the former Suit, automatically succeeds. I so hold and abide by the consequential orders made in the lead judgment following the success of the plaintiff in Suit No. SC.462/2010.

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ALAGOA JSC

I read before now in draft the lead judgment just delivered by my learned brother Suleiman Galadima, J.S.C. and I agree with his

reasoning and the conclusion reached.

When this matter came up for hearing on the 23rd April, 2010 it was the consensus of both parties and the court that all parties in this suit be bound by the outcome of Suit No. SC.340/2010 which has been found lacking in merit and dismissed.

The consequence is that Suit No. SC.462/2020 is meritorious and succeeds. I abide by the order(s) contained in the lead judgment.

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