

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BELLO KAWU

SUIT NO.: CV/2811/2021

BETWEEN:

YALIAM PRESS LIMITED

CLAIMANT

AND

ABUJA MUNICIPAL AREA COUNCIL

DEFENDANT

JUDGMENT

The Claimant approach this Honourable Court against the Defendant seeking the declaration of the following questions:

1. Whether by the combined reading of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Defendant is empowered to make a legislation for Radio and Television License within the Federal Capital Territory, Abuja?
2. Whether in view of the provisions of Section 7 and Article 1 paragraph (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the bye law enacted by the Abuja Municipal Area Council described as "Radio and Television License Bye-Law 2012" purporting to



collect fees on Radio and Television from the Claimant within the Federal Capital Territory, Abuja is valid?

3. Whether the Notice Served on the Claimant by the Defendant dated 4th January 2021 purporting to collect fees on Radio and Television license from the Claimant is invalid and liable to be set aside since the Claimant does not own or operate a Radio or Television station within its premises or anywhere else?

4. Whether the Radio and Television License fees imposed on the Claimant in the Notice dated 4th of January 2021 without any parameter for determination of the fee charged against the Claimant is not outrageous and baseless in the circumstance?

And upon determination of the above questions the Claimant seeks the following reliefs from the Honourable Court:

1. A DECLARATION that by the combined reading of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Defendant is not empowered to make a legislation for Radio and Television License within the Federal Capital Territory, Abuja.

2. A DECLARATION that in view of the provisions of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the "Radio and Television License Bye-Law-2012" enacted by the Abuja Municipal Area Council purporting to collect levy on Radio and Television from the Claimant is unconstitutional, unlawful and invalid.

3. A DECLARATION that the Notice Served on the Claimant by the Defendant dated 4th January 2021 purporting to collect levy on radio and television license from the Claimant is invalid and liable to be set aside



since the Claimant does not own or operate a Radio or Television station within its premises or anywhere else.

4. A Declaration that the Radio and Television License fee imposed on the Claimant in its Notice dated 4th of January, 2021 without any parameter for the determination of the charge/fee is outrageous and baseless in the circumstance.

5. AN ORDER of this Honourable Court setting aside the "Radio and Television License Bye-Law-2012 purportedly enacted by the Abuja Municipal Area Council for being unconstitutional, unlawful and invalid.

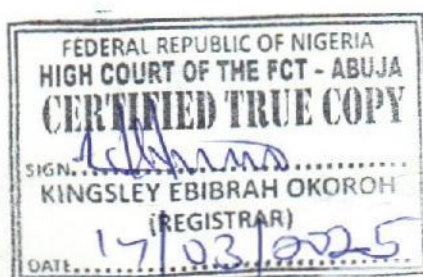
6. AN ORDER restraining the Defendant from demanding or further demanding any fee from the Claimant under the guise of Radio and Television License Fee.

In support of the Originating Summons is 13 paragraphs affidavit of Mr. Moshood Adediran the internal Auditor in the employment of the Claimant.

The crux of the affidavit is that the on 04/01/2021 the Defendant served a DEMAND NOTICE FOR RADIO/TELEVISION LICENCE in the sum of N1,000,000.00 (One Million Naira). And that the Claimant does not own radio or television stations or radio electronics in its premises or anywhere else.

The learned Claimant Counsel in his written address raised the four issues for the determination of the Honourable, the issues are:

1. Whether by the combined reading of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Defendant is empowered to make a legislation for Radio and Television Licence within the Federal Capital Territory, Abuja?



2. Whether in view of the provisions of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the bye law enacted by the Abuja Municipal Area Council described as "Radio and Television License Bye-Law 2012" purporting to collect fee on Radio and Television from the Claimant within the Federal Capital Territory, Abuja is valid?

3. Whether the Notice Served on the Claimant by the Defendant dated 4th January 2021 purporting to collect fee on Radio and Television license from the Claimant is invalid and liable to be set aside since the Claimant does not own or operate a Radio or Television station within its premises or anywhere else?

4. Whether the Radio and Television Licence fee imposed on the Claimant in the Notice dated 4th of January 2021 without any parameter for determination of the fee charged against the Claimant is not outrageous and baseless in the circumstance?

In arguing the four issues together, the learned Claimant Counsel quoted Section 7 (5) of the Constitution which provides:

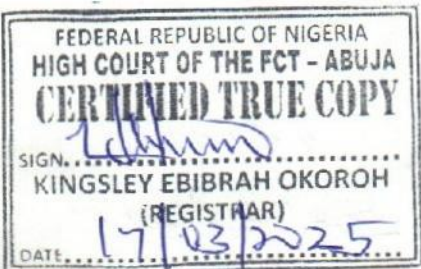
"The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution".

And the Fourth Schedule of the Constitution which enumerates the functions of the Local Government, some of which provides thus:

"The main functions of the Local Government are as follows:

(b) collection of rates, radio and television licences

He argued that where the words of a statute are clear and unambiguous, such words should be construed by their ordinary and natural meaning except where to do so will result in absurdity. He referred the Honourable

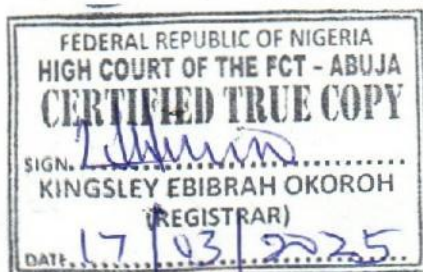


Court to the case of Tumsah Vs. FRN (2018) 17 NWLR (Pt. 1648) 238 at 267 paras B-D where Muktar, JCA (of Blessed memory) stated the law thus:

"By the canons of statutory interpretation, where the words of a statute are plain and unambiguous, the Judge's duty is to interpret the clear and unambiguous words, giving them their ordinary, natural and plain meaning, except where such interpretation would lead to manifest absurdity or inconsistency with the rest of the statute or where the context requires that some special or particular meaning be given to the words. In doing so, he must not add to or remove any words therefrom. If the intention of the framers of the statute must be ascertained from no other source than the words used by them in couching the provisions and its circumstances best declare the intention of the lawmaker see Dankwambo v. Abubakar (2016) 2 NWLR (pt. 1495) 157 at page 180 para D-G; (2015 ALL FWLR Part 1801 at 1831 para C-F per Kekere-Ekun, JSC, Saraki v. FRN (2016) 3 NWLR (Pt. 1500) page 531 at 589-590 para H-A per Mohammed CJN; Action Congress v. Independent National Electoral Commission (2007) 12 NWLR (Pt. 1048) page 222 at 318, para E-H".

He argued further that the Defendant is empowered to collect levies from a person who owns a Radio or Television stations. He placed reliance on Section 1 of the Radio/Television and Communication Mast Bye-Law (No. 15) 2012 which provides thus:

"As from the commencement of this Bye-Law any person who owns or is in control of Radio or Television instrument and/or Communication Mast or other items of the same or similar kind within the territorial jurisdiction of Abuja Municipal Area Council shall pay an annual licence fee of same to the Area Council".



Learned Claimant Counsel also relied on Part III of the Taxes and Levies (Approved List for Collection) Act Cap T2 Laws of the Federation of Nigeria 2004 provides:

14. Radio and Television licence fees (other than radio and television transmitter)"

It is also the learned Claimant Counsel submission that the provision of Section 1 of the Defendant's Bye-law has clearly gone outside the express provisions of the Fourth Schedule to the Constitution of the Federal Republic of Nigeria. That the Constitution only empowers the Defendant to collect the levy on Radio and Television and no more. The Defendant has, however, in its wisdom included "mast, and other items of the same or similar kind".

He submitted further that in a legislation, the express mention of one thing excludes that which is not mentioned. On this he relied on the case of Ehuwa Vs. O.S.I.E.C. (2006) 18 NWLR (Pt. 1012) 544 at 568-569 where the Supreme Court Per Ogbuagu, J.S.C. held that:

"It is now firmly established that in the construction of a statutory provision, where a statute mentions specific things or persons, the intention is that those not mentioned are not intended to be included. The latin maxim is "Expressio unius est exclusio alterius" i.e. the expression of one thing is the exclusion of another. It is also termed inclusio unius est exclusio alterius" or "enumeratio unius exclusio alterius". In other words, the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication with regard to the same issue"

Learned Claimant Counsel also submitted that where the provision of a bye-law is contrary to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), such law is to the extent of the



inconsistency null and void. He relied on Section 1 subsections (1) and (3) of the Constitution of the Federal Republic of Nigeria which provides thus:

(1)"The Constitution is Supreme, and its provisions shall have binding effect on all authorities and persons throughout the Federal Republic of Nigeria".

(3)"If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void".

Learned Counsel further argued that the Defendant did not comply with the Provision of Sections 2 and 4 of the Bye-law before it arrived at the amount imposed on the Claimant, and that even if there was a compliance with section 4 of the Bye-law, none was made available to the Claimant.

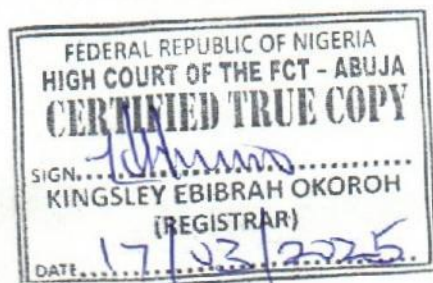
Finally, the leaned Claimant Counsel urged this Honourable Court to grant the reliefs sought by the Claimant in this suit.

The Defendant in opposing the Originating Summons filed Counter Affidavit of 5 paragraphs. 22nd January 2024. It was deposed to by Jeremiah Christiana a litigation clerk in the law office of Counsel to the Defendant.

The wrap up of the Counter Affidavit is that the Claimant Printing Press operates within the meaning of Radio/Television licence, and that its officers assessed the Claimants office before arriving at assessment.

The learned Defendant Counsel on his part raise formulated two issues for determination of the Honourable Court. The issues are:

1. Whether the Defendant is empowered to make a legislation for Radio and Television Licence within the Federal Capital Territory, Abuja and



issue Demand notice for Radio and Television Licence bill on the Claimant?

2. Whether the Radio and Television License Bye-Law 2012 is a valid law and the Demand Notice dated 4th January, 2021 served on the Claimant is valid and should be complied to by the Claimant?

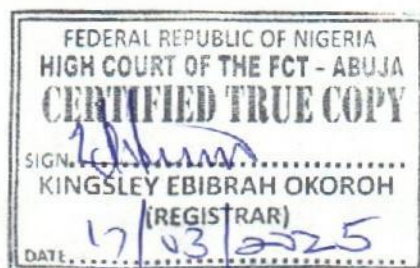
Arguing issues 1 and 2 together, the learned Defendant Counsel submitted that the Defendant is empowered to make a legislation for Radio and Television Licence within the Federal Capital Territory, Abuja and issue demand notice for radio and Television Licence Bill on the Claimant. He referred the Honourable Court to Section 7 (fourth schedule) to the 1999 Constitution (as amended) of the Federal Republic of Nigeria which unequivocally gives the Defendant powers and functions which are well protected and guaranteed.

He submitted that by the provision of Section 299 and Section 318 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Federal Capital Territory is a state and that Area councils are Local Governments, and that the authority and power conferred on the Local Government council by the Constitution also applies to the Defendant and the Defendant is guided by the Constitution and bound by same.

It is his further submission that where the provision of the statutes is clear and unambiguous, the court is enjoined to interpret it using ordinary or literal meaning. He referred the Honourable Court to the case of Niger Progress Ltd Vs. N.E.I Corps (1989) 3 NWLR (Pt. 107) 68.

Learned Defendant Counsel also placed reliance on the case of Global Excellence Comm. Ltd. Vs. Duke (2007) NWLR (Pt. 1059) 22 at 47 & 48, paras. H - C; (SC) where the Supreme Court held that:

"In the interpretation of the Constitution, the court is bound by the provisions of the Constitution. Where the provisions of the



Constitution are clear and unambiguous, the court must give a literal interpretation to them without fishing for a likely or possible meaning. This is because by the clear and unambiguous provision, the makers of the Constitution do not intend any other likely or possible meaning. However, where the provisions are not clear, a court of law can fish for a likely or possible meaning to bring out or arrive at the intention of the makers of the Constitution. Even here, the court has no jurisdiction to go out on an unguarded voyage of discovery completely outside the intention of the makers of the Constitution. The court is expected to apply a compass in a ship to navigate the waters to arrive at the intention of the makers of the Constitution."

He also relied on the case of Shettima Vs. GONI (2012) ALL FWLR (Pt. 609) 1023 at 1050-1051, Paras F-A where the court held that:

"where the words of a statute are clear and unambiguous, a court can only expound it and give effect to those word in their ordinary meaning. The words themselves alone in such a case best declare the intention of the law giver. Words are not to be construed to their meaning by embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands".

Based on the above, he urged the Honourable Court to adopt these rules in interpreting the provisions of Section 1(3); 7 (1) & (5) and the Fourth Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended), Local Government Act 1976 and the AMAC bye-law on radio and television.

It is also the learned Defendant Counsel submission that the assertion of the Claimant that the Defendant can collect RADION/TELEVISION levies from Radio/Television Stations is misleading, as the constitution never mentioned Radio or Television stations.



Learned Defendant Counsel reproduced the words of the AMAC bye-law 2012 which provides:

"As from the commencement of this bye-law any person who owns or is in control of Radio or Television instrument or is in control of Radio or Television instrument and or communication mast or other items of the same or similar kind within the territorial jurisdiction of Abuja Municipal Area Council shall pay an annual licence of same to the Area Council."

He directed the attention of the Honourable Court to the wordings of the statute:

"who owns or is in control of Radio or Television instrument or is in control of Radio or Television instrument and or communication mast or other items of the same or similar kind"

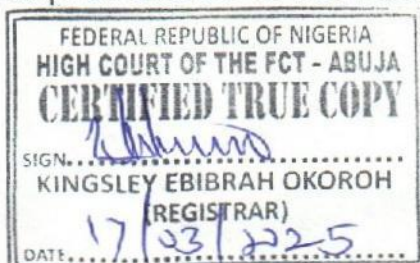
Learned Defendant Counsel further reiterated that the Defendant did comply with Section 2 of the Bye-law which provides that :

"The amount to be paid as annual licence fee shall depend on the use to which the items referred to in section 1 hereof are put (private/commercial) and the volume or numbers of the items or instruments in the premises concerned."

He pointed out that **COMMERCIAL** was boldly written on the notice served on the Claimant in compliance with Section 2 of the Bye-Law.

It is also the learned Defendant Counsel contention that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side, and that the Claimant has clearly failed to discharge the burden.

Finally, he submitted that the Defendant has the power to enact bye-laws to make provisions for the Radio and Television Licence within the Federal



Capital Territory Abuja, and issue Demand Notice for Radio and Television Licence bill on the Claimant.

Learned Defendant Counsel urged the Honourable Court to dismiss the case of the Claimant and order it to comply with the Demand Notice for Radio and Television license (Exhibit Yaliam).

The Claimant, in response to the Counter Affidavit filed Further affidavit of 12 paragraphs on 31/01/2024, it was deposed to by Mr. Moshood Adediran the Internal Auditor in the employment of the Claimant.

The summary of the further affidavit is that the Claimant is a printing press and does not keep radio or television sets in its premises, and that the Claimant does not own a radio, television set or anything of the sort in its premises.

Replying on point of law, the learned Claimant Counsel pick hole in the Defendant argument that the Claimant used the words "radio and television station" in its written thus misleading. He submitted that the word used by the Constitution is "radio" and "television" and no more.

He also submitted that the Defendant definition of radio in its bye law to mean any item that receives and transmits signals is not the intention of the legislature.

It is also the learned Claimant Counsel submission that the Defendant did not state how many items it listed to have seen in the premises of the Claimant to warrant the charge imposed on the Claimant, and that it is the Defendant who alleged that the Claimant has radio and television in its premises that has the onus to prove it. He argued further that the Honourable Court cannot speculate on this facts. He relied on the case of Access Bank Plc Vs. Onwuliri (2021) 6 NWLR (Pt. 1773) 391 at 416 where the Supreme Court held that:



"It has always been the settled position of the law that a court is not entitled to speculate on matters not before it. I have also illustrated elsewhere in this judgment, the binding nature of the record of appeal. The decision of this court to the effect that on no account must the court deliberate on an incomplete record, are in recognition of this principle. Without seeing the material that was before the trial court, the appellate court would not be in a position to reach a just resolution of the issues brought before it. A decision reached in such circumstances, affecting the rights of the parties, would no doubt lead to a miscarriage of justice".

Finally, he urged the Honourable Court to discountenance the submissions of the Defendant and grant the reliefs sought by the Claimant.

I have considered the questions raised by the Claimant together with all the laws cited and arguments canvassed by both sides.

It should be noted that in a matter of this nature, all the Honourable Court needs to do is to interpret the relevant laws in order to answer the questions before the court. And in the circumstance it is trite that since there is a constitutional provision in respect of the issue in question, any other law that is contrary to the constitution is null and void to extent of its inconsistency. I make bold to say that there is no way any of the bye laws made by Abuja Municipal Area Council or any other Council of whatever preeminence can override the Constitution of the Federal Republic of Nigeria.

I will therefore consider the constitutional provision as it relates to this matter, and I will not even go after the constitution for the interpretation of words used because it will be extremely harmful to use a lower legislation in interpreting the ground norm. Doing that is capable is given a different



meaning to the constitution or operating contrary to the necessary intendment of the draftsmen.

By the provision of Section 1 of the 1999 Constitution, the Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. See *Cadbury (Nig.) Ltd Vs. F.B.I.R* (2010) 2 NWLR (Pt. 1179) 561. The Constitution of the Federal Republic of Nigeria, 1999 is the foundation law on which every other law in Nigeria rest. The failure to follow its provisions renders whatever is done contrary to it unconstitutional, null and of no effect whatsoever, and such act is liable to be set aside by the court. See the following cases:

1. *Speaker, K.S.H.A Vs. Adegbe* (2010) 10 NWLR (Pt. 1201) 45.
2. *Erekanure Vs. State* (1993) 5NWLR (Pt. 294) 385
3. *Adediran Vs. Interland Transport Ltd* (1999) 9 NWLR (Pt. 214) 155 at 179.
4. *Ekiti State Vs. Olubunmo* (2017) 3 NWLR (Pt. 1551) 1

Section 7 (5) of the Constitution provides:

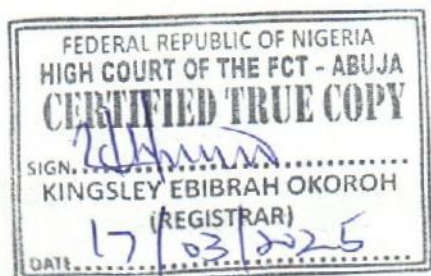
"The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution".

And the Fourth Schedule of the Constitution which enumerates the functions of the Local Government provides that:

"The main functions of the Local Government are as follows:

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

I agree with the submission of the learned Claimant Counsel that where the words of a statute are clear and unambiguous, such words should be construed by their ordinary and natural meaning except where to do so will result in absurdity.



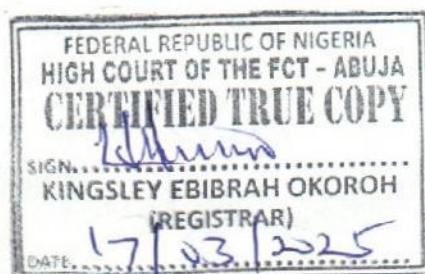
Though the Constitution did not define what radio and television means but the wording did not require special interpretation; radio is radio and television is television. Any other extension will be contrary to intent and purpose of the Constitution.

From the wordings of the paragraph i.e collection of rates, radio and television licences. The word licence means approval of an action, authorization, consent, warrant or permission. But I don't think permission is necessary for a non-existing thing.

The Claimant has shown through its affidavit evidence that he is into printing work and does not keep radio and television in its premises. The Claimant further stated that it does not own a radio television set or anything of the sort in its premises. It is thus incumbent on the Defendant to proof that the Claimant own or use such in its premises.

It should be noted that civil cases are decided on preponderance of evidence and balance of probabilities. See the Supreme Court case of Odojin & Ors. Vs. Magaji & Ors (1978) 4 S.C91 where it was held as follows:

"In deciding whether a certain set of facts given in evidence by one party in a civil case before a court in which both parties appear is preferable to another set of facts given in evidence by the other party, the trial judge, after a summary of all the facts, must put the two set of facts on an imaginary scale, weigh one against the other, then decide on the preponderance of credible evidence which weighs more, accept it in preference to the other and then apply the appropriate law to it. In short, before a judge before whom evidence is adduced by the parties before him in a civil case comes to a decision as to which evidence he believes or accepts and which evidence he rejects, he should first put the totality of the evidence adduced by both parties on that imaginary scale; he will put the evidence adduced by the plaintiff on one side of the scale and that



of the defendant on the other side and weigh them together. He will then see which is heavier, not by the number of witnesses called by each party but by the quality or the probative value of the testimony of those witnesses. This is what it meant when it is said that a civil case is decided on the balance of probabilities."

The Claimant has shown that it does not own or use radio or television in its premises; the burden then shift to the Defendant to proof otherwise. This the Defendant failed to do.

There is nothing before this Honourable Court to show that the Claimant own or use radio or television in its place of business, and I hold.

In view of the above:

1. I DECLARE that by the combined reading of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Defendant is not empowered to make a legislation for Radio and Television License within the Federal Capital Territory, Abuja different from what is contained in the Constitution.
2. I ALSO DECLARE that in view of the provisions of Section 7 and Article 1 paragraph (b) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the "Radio and Television License Bye-Law-2012" enacted by the Abuja Municipal Area Council purporting to collect levy on Radio and Television from the Claimant is unconstitutional, unlawful and invalid.
3. I FURTHER DECLARE that the Notice Served on the Claimant by the Defendant dated 4th January 2021 purporting to collect levy on radio and television license from the Claimant is invalid and liable to be set aside since the Claimant does not own or operate a Radio or Television within its premises or anywhere else.



5. I HEREBY SET ASIDE THE "Radio and Television License Bye-Law-2012 purportedly enacted by the Abuja Municipal Area Council for being unconstitutional, unlawful and invalid.

6. I ISSUE AN ORDER RESTAINING THE Defendant from demanding or further demanding any fee from the claimant under the guise of Radio and Television License Fee.

Right of appeal within 30 days.



Hon Justice Bello Kawu
Presiding Judge
13/03/2025

Appearance(s)

T. R Agbanyi Esq for the claimant

Peter .P Esq for the Defendant

