

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA

IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)

HOLDEN AT GUDU

BEFORE THEIR LORDSHIPS: HON. JUSTICE MODUPE R. OSHO-
ADEBIYI

AND
HON. JUSTICE J. ENOBIE OBANOR

ON THURSDAY THE 2ND DAY OF DECEMBER, 2021

APPEAL NO: CVA/377/2019

SUIT NO.: AMAC/SK/192/2019

BETWEEN:

EMERGING MARKETS TELECOMMUNICATION ----- APPELLANT
SERVICES LTD

AND

ABUJA MUNICIPAL AREA COUNCIL (AMAC) ----- RESPONDENT

JUDGMENT

This is an Appeal against the ruling of Senior Magistrate Court of the Federal Capital Territory, Abuja delivered by his Worship *Ubani Tony Chukwuemeka*, on the 16th of October, 2019 while sitting as a Mobile Court in respect of the Appellants Notice of Preliminary Objection dated 9th of July, 2019 but filed on the 7th of September, 2019 challenging the jurisdiction of the Court to entertain the case. The Trial Magistrate dismissed the Appellant's Notice of Preliminary objection.

Dissatisfied with the ruling of the lower Court, the Appellant filed a Notice of appeal before this Court on the 13th of November, 2019. The appeal is predicated on three grounds of appeal which without their particulars reads as follows: -

GROUND ONE:

The Lower Court erred in law and thereby occasioned a miscarriage of justice when it held that the Respondent had the locus to issue Operational Permit/Licences to the Appellant, and or demand and collect taxes or levies on the offices operated by the Appellant, contrary to the provisions of Section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), the fourth Schedule thereto, and Part III of the Taxes and Levies (Approved List for Collection) Act, 2004. .

GROUND TWO:

The Lower Court erred in law when it failed to give the words "shops and kiosks" their literal meaning as contained in Paragraph 1 (k) (iii) of the 4th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

GROUND THREE:

The Lower Court erred in law when in the absence of any supporting facts or evidence, it held that the Appellant had shops within the Abuja Municipal Area Council.

The relief sought by the Appellant from this Honourable Court is as follows:

An Order setting aside the Ruling and an order striking out/dismissing the suit at the lower court for lack of jurisdiction of the lower court to entertain same.

The facts that led to the institution of this case as could be gleaned from the defaulter's civil summons dated 17/6/2019 is that the Respondent issued demand notices dated 17th June 2019 on the Appellant demanding payment of a cumulative sum of N1,400,000.00 (One Million, Four Hundred Thousand Naira) for defaulting to pay its shop/kiosk rate and obtain operational permit/licence of same.

In response, the Appellant filed Notice of Preliminary objection by which it objected to the jurisdiction of the court on the ground that the Respondent had no locus standi to institute the suit because it lacked the constitutional powers to levy the Appellant for operational permit

and trade licence. The Respondent filed a Reply on points of law to the Appellant's Notice of Preliminary Objection dated 22nd July 2019 but filed on 23rd July, 2019. The Appellant subsequently filed a reply on points of law.

Hearing of the Appellant's preliminary objection held on 24th of July 2019, and the lower court delivered its ruling on 16th October 2019. In its ruling, the lower court found that the Respondent has the requisite locus standi to institute the matter against the Respondent. Dissatisfied with the ruling of the lower court, the Appellant filed an application for stay of proceedings and Notice of Appeal dated 13th November 2019 against the decision of the lower court.

The Appellants filed their brief of argument dated 28th January, 2021 and filed same day. In the said Appellant's brief of argument, three issues for determinations were formulated. The issues are as follows:

- a. **Whether the lower court was right when it held that the Respondent has the requisite locus standi to issue operational permits and licences to the Appellant and demand levies on offices operated by the Appellant.**
- b. **Whether the lower court erred in law and occasioned a grave miscarriage of justice when it failed to give the words "shops and kiosks" their literal meaning as contained in Paragraph 1 (k) (iii) of the 4th Schedule to the Constitution of the Federal Republic of Nigeria.**
- c. **Whether the lower court was right when it held that the Appellant had Shop within the meaning of the law that is situated within the jurisdiction of the Respondent, and is liable to payments under the law.**

On the first issue, learned counsel submitted that the lower court erred in law when it held that the Respondent has the locus standi to institute the matter against the Appellant. Counsel contended that the claims of the Respondent do not fall within the constitutional obligation of the Respondent; therefore, it cannot maintain an action on the said claims. Learned counsel cited **Section 7 (5) and the 4th schedule to the Constitution of the Federal Republic of Nigeria 1999**

(as amended) and submitted that it is clear that although a local government has the power to regulate and control shops and kiosks, it has no power to issue operational licences or permits to corporate entities, neither does it have the powers to demand levies for such licenses or permits. Counsel further cited **Part III of the Taxes and Levies (Approval List for Collection) Act, 2004** which stipulates the taxes and levies that can be collected by the local government and submitted that it is clear that there is no stipulation of trade licence or operational permit as contained in the **Shop, Kiosk, Trade Licence, Private Lockup Shop and Allied Matters Bye-Law (No.14) 2012** of the Respondent. Accordingly, the Bye-Law of the Respondent as it relates to issuing of operational Permit/Licence and Collection of levies in respect to same, is ultra vires and that by the provision of **Section 4 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)** and **items 32 of the Exclusive Legislative List**, the National Assembly has the exclusive powers to enact laws regarding the regulation of corporate bodies.

On the second issue, counsel submitted that the lower court erred when he relied on the Black's law dictionary definition of a shop as the definition is contrary to the intention of the legislature and ought not to have been applied by the Lower Court as it led to a mischief. Counsel further submitted that the mischief that the law envisaged to cure was to grant local government control over small/petty businesses in shops and kiosks within their jurisdiction and not by any means the control of large-scale telecommunication companies registered as limited liability companies, such as the Appellant.

On the third issue, counsel submitted that in the absence of supporting facts or evidence by way of a counter affidavit by the Respondent, the Lower Court erred in law when it held that the Appellant had shops within the jurisdiction of the Respondent. Counsel urged the honourable Court to allow this appeal and set aside the ruling of the lower court. Counsel relied on plethora of cases.

At the hearing of this appeal, learned counsel for the Appellant adopted the submissions in his written address and urged the Court to allow the appeal and strike out the case pending at the Magistrate Court. The Respondent on their part despite service of the record of appeal, brief of argument and other processes did not file a Respondent's brief.

We have read meticulously the records of appeal and the brief of argument filed by the learned counsel and we are of the considered opinion to adopt the first issue of determination formulated by the Appellant's counsel in resolving this appeal. The issue reads thus: -

“Whether the lower court was right when it held that the Respondent has the requisite locus standi to issue operational permits and licences to the Appellant and demand levies on offices operated by the Appellant”.

By the provisions of **Section 7 (5) and Section 1 [k] [iii] of the Fourth Schedule to the 1999 Constitution [as amended]** which provided for the functions of the Local Government Council, is not in dispute that part of the functions of AMAC, like every other local government council, is the control and regulation of shops and kiosks located or carrying on business within the Area Council and in respect of other matters within the ambit of its statutory functions.

The contention of the Appellant is that although a local government has the power to regulate and control shops and kiosks, it has no power to issue operational licences or permits to corporate entities, neither does it have the powers to demand levies for such licenses or permits. And in the affidavit in support of its preliminary objection Appellant had deposed to the fact that it has no shops or kiosks within the Federal Capital Territory. Therefore, the Respondent's Bye-laws on Shop and Kiosk is not applicable to it (the Appellant).

In determining the contention of the Appellant, two questions are critical. The first is whether the Appellant operates a “Shop” or “Kiosk” in respect of which rates may be charged as provided under the Schedule to the Taxes and Levies [Approved List for Collection] Act. The second question is whether fee for license/permit falls within the meaning of “rates” which could be charged for “Shops” or “Kiosks”.

In **Attorney-General of the Federation v. Attorney-General of Lagos State [2013] 16 NWLR [Pt. 1380] 249**, it was held that resort may be had to dictionaries or other law books in defining the words used in statutes. And in **ASSAMS V. ARARUME (2016) 1 NWLR Pt. 1493 Pg. 368 at 387 Para A-C, Per Rhodes-Vivour JSC** held that the well laid down position for the interpretation of the constitution is that once the

words used are clear and free from ambiguity, they should be given their natural meaning without any embellishments.

The **Oxford Advanced Learner's Dictionary; International Student's Edition or new 8th Edition**, defines "shop" as "a building or part of a building where you can buy goods or services". The **Black's Law Dictionary, seventh Edition**, defines "shop" as "A business establishment or place of employment; a factory, office, or other place of business." Now **Part III to the Schedule to the Taxes and Levies [Approved List for Collection] Act Cap. T2 L.F.N. 2004**, provides for taxes and levies to be collected by the Local Governments and item 1 in the taxes and levies to be collected is "Shops and kiosks rates". The **Oxford Advanced Learner's Dictionary; International Student's Edition or new 8th Edition**, defines "rate" as "a fixed amount of money that is charged or paid for something: advertising/insurance/postal, etc." and in **Black's Law Dictionary, seventh Edition**, "rate" is defined as "a sum assessed or payable to the local government in the place where the ratepayer dwells or has property". By **Section 13[1] of the Federal Capital Territory Act** which provides that: "*In addition to any law having effect, or made applicable throughout the Federation, the laws set out in the Second Schedule to this Act shall as from 9th May, 1984 apply in the Federal Capital Territory.*" Serial No. 55 in the Second Schedule to the Federal Capital Territory Act is the **Niger State Local Government Edict 1976. Section 55 of the Niger State Local Government Edict of 1976 [now Law]** provides:

"Subject to the provisions of this Act or any other enactment, a Local Government shall have responsibility for, and power to make bye-laws for, all of the following matters, that is-

[r] collection of community tax, property and other rates and other designated revenue.

It is evident that the local government has power to make bye-laws to make provision for the control and regulation of shops and kiosks located or carrying on business within the Area Council and also in respect of collection of community tax, property and other rates and other designated revenue. In the light of the above definitions of "Shop and rate" and the provision of the **Federal Capital Territory Act**, we take the view of the Senior Magistrate that the Appellant having

averred in paragraph 8 of the Defendant/Applicant's affidavit in support of its preliminary objection that the "Applicant is engaged in the provision of telecommunication services..." shows it's a place of business hence it comes within the meaning of "shop" and we hold same. Also, we hold the view that fee for license/permit comes within the ambit of rates that AMAC is entitled to charge or impose on any shop or kiosk operating within the Area Council, like the Appellant's place of business.

The Appellant is of the believe or understanding that since their primary business is based on communication which is governed by the Nigeria Communication Commission (NCC), it is the NCC that has the authority to issue licence to operate as a Telecommunication. We are in agreement with the Appellant on this, however, we are of the view that the licence the Respondent demands the Appellant to pay is the permit or licence to operate a shop or kiosks as the case maybe not the licence or permit of the business ran in the shop or kiosks.

we will like to differentiate between license/permit to operate a shop/kiosk and operational licence to operate a particular business in a shop/kiosk. The **Black's law Dictionary fourth Edition** defined license as certificate or the document itself which gives permission. That is to say that licence is a legal document giving official permission to do something. Therefore, a shop/kiosk licence is an authority to establish a shop or kiosks in an arear while operational licence is permission or authority to undertake a trade or carry out a particular business activity subject to regulation or supervision by the licensing authority.

It is pertinent as the Senior Magistrate pointed out that the preliminary objection of the Appellant at the lower court stems from a total misconception of the intendment of the **AMAC Bye Law on Shops, Kiosks, Trade Licence, Private Lockup Shop & Allied Matters 2012**, as the word licence used, is permission to operate a shop/kiosks within the territorial jurisdiction of the Respondent.

The Appellant submitted that the Respondent did not file any counter affidavit to dispute the said fact in their affidavit in support of the preliminary objection and that failure of the Respondent to file a counter affidavit amounted to an admission of the fact alleged by the Appellant. That it is an established principle of law that an

uncontroverted fact is deemed admitted and admitted facts need no further proof. However, it is held in **CBN V. OKOJIE (2015) 14 NWLR Pt. 1479 pg. 231 at 258 Para C-D** that “*evidence that is not challenged or discredited should be relied on if such evidence is adduced to establish a relevant fact*”. Also, the Supreme Court held in **GONZEE (Nig.) Ltd V. Nigeria Educational Research and Development Council (2005) 13 NWLR Part 943 Page 634 at 650, para-D** that “*even where the evidence is unchallenged and uncontradicted, the trial court has a duty to evaluate it and be satisfied that is credible and sufficient to sustain the claim*”. Therefore, though the Respondent did not file a counter affidavit to the affidavit in support of the preliminary objection the trial Magistrate is bound to evaluate the evidence of the Appellant and be satisfied that it is credible and sufficient to sustain its claim.

In the light of the above, we agree with the reasoning of the trial Magistrate in his ruling and we do not intend to fault same, as such, we hold very strongly that the trial Magistrate has jurisdiction to entertain the case as presented to him by the Plaintiff/Respondent. In that regard, we resolved the sole issue for determination in this appeal against the Appellant and in favour of the Respondent.

The result is that we uphold the ruling of the trial Magistrate and dismiss this appeal in its entirety for lack of merit.

Parties: Absent

Appearances: No legal representation for either party.

HON. JUSTICE M. R. OSHO-ADEBIYI HON. JUSTICE J. ENOBIE OBANOR

Presiding Judge

Hon. Judge

02/12/2021

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