IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE FEDERAL CAPITAL TERRITORY JUDICIAL DIVISION
HOLDEN AT JABI FCT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
SUIT NO: FCT/HC/CV/3003/2020

BETWEEN:

UBER TECHNOLOGIES SYSTEM NIGERIA LIMITED……..PLAINTIFF
AND
ABUJA MUNICIPAL AREA COUNCIL…..……DEFENDANT

JUDGMENT

The plaintiff herein took out this originating summons and seeks for the determination of the following questions:

1. Whether having regard to the provisions of sections 1 (6) (b) and 6 of the Abuja Municipal Area Council Motor Packs (Commercial Vehicles Picking up Passengers) Bye-Law (No. 3) 2012 the defendant has the power to impose or collect a fine, fee, penalty, charge, levy or any other sum or amount howsoever called on any person, such as the plaintiff, that does not operate or is not in charge of any commercial motor vehicle including a motor vehicle used for car hire service, within the council area?

Where the answer to question 1 above is in the affirmative:

Whether having regard to the provisions of section 7 (5) and constitution of the Federal Republic of Nigeria 1999, including item 1(e) of the Fourth schedule thereto, section 1 (I) of the Taxes and

Levies (Approved list for collection) Act, including item 9 in part iii of the schedule thereto and section 55 (a) of the Local Government Act, the defendant has the power to make bye-laws in relation to fines or other charges howsoever called, concerning the operation of commercial motor vehicles outside of motor parks, as it has purportedly done by section 1 (6) (b) of the Abuja Area Council Motor Parks (Commercial Vehicles Picking up Passengers) Bye-Law (No. 3) 2012?

Where the answer to question 2 above is in the affirmative:

Whether having regard to the provisions of section 119 (1) of the Local Government Act No. 8 of 1976, the defendant's legislation of section 1 (6) (b) of the Abuja Municipal Area Council Motor Packs (Commercial Vehicles Picking up passengers) Bye-Law (No. 3) 2012, which provides for fines exceeding N100 (One Hundred Naira) for breaches of provisions of the Bye-Law, is not ultra vires the defendant and therefore unlawful, null and void?

Where the answer to question 3 above is in the affirmative:

Whether having regard to the provisions of sections 6 (6) (b), 36 (1) and 36 (4) of the constitution of the Federal Republic of Nigeria 1999 and also sections 1 (6) (b), 2 (1), 3 (1) and (3) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012 the defendant has the power to unilaterally, impose on the plaintiff a fine of N25,000 per vehicle "operating a commercial motor vehicle/logistics

and car hire services business" within the council area, without any prior demand under section 1 (6) (b) of the Bye-Law and without the plaintiff having first being charged with any offence in that regard and convicted by a court of competent jurisdiction?

The plaintiff claims against the defendant as follows:

1. A declaration that by sections 1 (6) (b) and 6 of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012, the Abuja Municipal Area Council does not have the power to demand for and collect any fine, fee, penalty, charge, levy or any other sum of amount however called from the plaintiff, which does not operate and is not in charge of any commercial motor vehicle, including a motor vehicle used for car hire services, within the council area.
2. An order deleting section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012.
3. An order of injunction restraining the Abuja Municipal Area Council whether by itself, staff, agents, or officers or otherwise howsoever called, from enforcing or giving effect to section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012.

Where reliefs 1, 2 and 3 above are refused, the plaintiff seeks reliefs 4 and 5 as follows:

4. A declaration that the Abuja Municipal Area Council does not have the power to make Bye-

Laws in relation to fines or other charges howsoever called, concerning the operation of commercial motor vehicles outside of motor parks, as it has purportedly done in section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012.

5. An order of injunction restraining the Abuja Municipal Area Council whether by itself, staff, agents, or officers or otherwise howsoever called from making any demand or further demand or collecting from the plaintiff any fine, fees, penalty, charge, levy or any other sum or amount howsoever in relation to the operation of any commercial motor vehicle including a motor vehicle used for car hire services, within the council area.

Where all of the above reliefs are refused, the plaintiff seeks reliefs 6, 7, 8, 9, and 10 as follows:

6. A declaration that the legislation of section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks Picking Up Passengers) Bye-Law (No. 3) 2012 which provides for fines exceeding N100 (One Hundred Naira) for breaches of provisions of the Bye-Law, is ultra vires the Abuja Municipal Area Council and therefore unconstitutional, null and void.
7. A declaration that the Abuja Municipal Area Council does not have the power to unilaterally impose on the plaintiff a fine of N25,000 (Twenty Five Thousand Naira) per vehicle for "operating a commercial motor vehicle/logistics and car hire services business" within the council area,

without the plaintiff first having charged with any offence in that regard and convicted by a court of competent jurisdiction.

8. An order deleting that part of section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicle Picking Up Passengers) Bye-Law (No. 3) 2012, which provides for fine exceeding N100 (One Hundred Naira) for breaches of the provisions of the Bye-Law.
9. An order of injunction restraining the Abuja Municipal Area Council whether by itself, staff, agents, or officers howsoever called from, in any manner whatsoever, enforcing, giving effect to or continuing to enforce or give effect to that part of section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012, which provides for fines and penalties exceeding N100 (One Hundred Naira) for breaches of any provisions of the Bye-Law against the plaintiff.
10. An order of injunction restraining the Abuja Municipal Area Council whether by itself, staff, agents, or officers howsoever called from demanding, continuing to demand or collecting from the plaintiff, as a charge, fine, penalty or otherwise howsoever called, any amount exceeding N100 (One Hundred Naira) for breaches of any provisions of the Bye-Law.

Unconditional reliefs sought by the plaintiff, in any event:

11. A declaration that the "Demand Notice for Commercial Motor Vehicles/Logistics, Taxi and

Car Hire services" dated 16th September, 2020 issued by the Abuja Municipal Area Council to the plaintiff is unlawful, null and void.

12. An order setting aside the "Demand Notice for Commercial Motor Vehicles/Logistics, Taxi and Car Hire services" dated 16th September, 2020 issued by the Abuja Municipal Area Council to the plaintiff.
13. An order of injunction restraining the Abuja Municipal Area Council whether by itself, staff, agents or officers howsoever called from, in any manner whatsoever, enforcing, giving effect to or continuing to enforce or give effect to the "Demand Notice for Commercial Motor Vehicles/Logistics, Taxi and Car Hire Services" dated 16th September, 2020 issued by the Abuja Municipal Area Council to the plaintiff or any other similar Demand Notice."

The originating summons is supported by a fifty – six paragraphed affidavit. Attached to the affidavit are some annexures. It is also accompanied by a written address of counsel.

The defendant filed a Fifty-One paragraphed affidavit. Attached to it are annextures "1A ", "1B", "1C" and "1D", and it is accompanied by a final written address.

The plaintiff filed a further affidavit in support of the plaintiff's originating summons and in reply to the defendant's counter affidavit of Twenty – One paragraphs and attached to it are some documents. It is also accompanied by reply address to the defendant's written address.

It is in the affidavit of the plaintiff that Uber B. V., a Dutch registered company provides mobile web-based

software technology, that enables persons seeking transportation services (riders) to connect with independent third-party transportation providers (driver – partners) through the Uber Smartphone software application (Uber App). Both riders and driver – partners enter into commercial agreements with the Uber B. V. for access to the Uber App.

It is stated that in cities where Uber App is available, such as Abuja, riders use their Uber App downloaded on their Smart phones to request a ride from nearby driver-partners. When a nearby driver- partner accepts the rider's request using the Uber App on his Smartphone the driver-partner leads to the rider's pick up location for the purpose of fulfilling the ride request. That the plaintiff provides marketing and support services in Nigeria to Uber B. V. and other affiliated entities within the Uber group but does not provide access to the Uber App or have any contractual relationships with driver-partners or riders in relation to the provision of transportation services. That the plaintiff has no role to play in the process of a rider requesting a ride using the Uber App or a driver-partner accepting the ride using the Ube App or fulfilling the ride request.

The deponent quoted the principal object as contained in the Memorandum and Articles of Association.

It is stated that the plaintiff is not a transport or transportation company and does not own or operate any commercial vehicles or motor vehicles used for car hire services or for interstate transport in the Federal Capital Territory, Abuja or in Nigeria, neither does it co-ordinate or manage any transportation providers, including driver-partners. That the plaintiff does not also in any way employ any driver-partners in Nigeria, as such driver-partners are independent contractors that have the freedom to choose

when, where and how frequently they wish to use the Uber App, and no driver-partners is under any obligation whatsoever to use the Uber App or provide transportation services at any time that all.

On the Demand Notice, the deponent stated that on the 9th August, 2019 the plaintiff received a letter dated 24th June, 2019 from the defendant wherein the plaintiff was notified that the defendant had taken decision to commence the demand and collection of "Revenue" from the plaintiff with effect from 1st July, 2019, and that such decision was in line with the provisions of the 4th schedule to and section 9 of the constitution of the Federal Republic of Nigeria 1999. The taxes and Levies (Approved List for Collection) Act 1998 and the Abuja Municipal Area Council Bye-Law 2012 as it relates to the operation of car hire service within the council area.

It is stated that by a letter dated 23rd August, 2019 the plaintiff responded to the defendant's letter wherein it explained the nature of the business to the defendant, and that the plaintiff subsequently received from the defendant a Demand Notice for Commercial Motor Vehicles/Logistics Taxi and Car Hire Service dated the 23rd September, 2019 wherein the defendant billed the plaintiff the sum of N35,000,000= (Thirty Five Million Naira), payable within fourteen days for operating commercial motor vehicle/logistic and car hire service business within the council area in the 2019 billing year. That to the plaintiff's surprise, the defendant arrived at the billed amount stated in the 2019 Demand Notice on the assumption that the plaintiff operatives 1000 (One Thousand) commercial vehicles for car hire services, to which it applied the sum of N35,000= (Thirty Five Thousand Naira) per vehicle.

It is deposed to the fact that prior to receiving the 2019 Demand Notice from the defendant, the plaintiff was never informed or notified by the defendant of being in violation of any provisions of the Abuja Municipal Area Council Bye-Law 2012.

It is deposed to the fact that during a telephone conference held on 31st October, 2019 at about 12 noon, the deponent was informed by one Onyekwere who is the plaintiff's GL Expert at its support centre in Abuja that on the 10th October, 2019 officials of the defendant visited the Abuja office of the plaintiff situate at shop U27, Jabi Lake Mall Utako, Abuja and threatened to shut down the support office center on the ground that the plaintiff was in default of the 2019 Demand Notice.

The deponent quoted part of the letter the plaintiff wrote dated the 15th October, 2019 to the defendant wherein it restated the nature of its business. That the plaintiff made several representations to the defendant between October, 2019 and January, 2020 to clarify to the defendant that the 2019 Demand Notice had been wrongly issued to the plaintiff, but the defendant was insistent that the said notice was going to be enforced against the plaintiff through the closure of its Abuja office, and that the defendant has no authority or power to take such action without a court order.

It is stated that due to the plaintiff's apprehension of the defendant carrying out its threat to enforce the 2019 Demand Notice against the plaintiff and also pressure by Uber B. V. driver – partners on the plaintiff for the plaintiff to intervene in the matter in any way it can, considering the aforesaid harassment, the plaintiff forwarded the defendant's 2019 Demand Notice to Uber B.V. for its attention, and even though Uber B.V. knows as a fact that

the Demand Notice was unlawful, but having regard to the realities of the threat by the defendant's conduct, Uber B.V. took a business decision to pay the sum of N25,000,000 (Twenty Five Million Naira in full and final satisfaction of the 2019 Demand Notice, and this payment was effected on the 11th February, 2020 and on behalf of Driver-partners who operated within Abuja Municipal Area Council in 2019, and the defendant unconditionally accepted the payment by Uber B. V.

It is stated that subsequently on 17th February, 2020 the defendant wrote a letter to the plaintiff by which it notified the plaintiff that the defendant had resolved to commence the collection of the sum of N200 daily from persons described at the plaintiff's drivers, and this was made pursuant to section 6 (b) of the Bye-Law No. 3 on commercial vehicles picking up passengers, and by the aforesaid letter, the defendant also requested permission to access the plaintiff online platform for the purpose of determining the number of drivers who are active per day, so that the defendant can levy and collect revenue from them. That the plaintiff responded through a letter dated the 24th February, 2020, and in its response the plaintiff specifically clarified that the driver-partners are neither employees nor agents of the plaintiff or any entity within the Uber group and that the plaintiff does not own or operate an online platform, and consequently, the plaintiff rejected the demands made in the defendant's letter.

It is stated that the plaintiff received another demand notice dated 16th September, 2020 that the defendant is demanding the sum of N25,000,000 (Twenty Five Million Naira) as the plaintiff's bill for operating a commercial motor vehicle logistics and car hire services business within the area council, and the demand notice is on the wrong and

baseless assumption that the plaintiff operates 1000 (One Thousand) commercial vehicle for car hire services, to which it applied the sum of N25, 000 (Twenty Five Thousand Naira) per vehicle, and in response the plaintiff wrote a letter dated the 24th September, 2020 by which it rejected the defendant's demand under the 2020 Demand Notice, and also demanded the defendant's withdrawal of the notice, and further gave to the defendant notice that show if (the defendant) fail to withdraw the notice, the plaintiff would pursue legal action.

It is stated that the Demand Notice 2020 was accompanied by a letter dated the 16th September, 2020 wherein the defendant stated among others that:

a. The plaintiff carries on an E-Hailing transport logistics business;
b. The plaintiff recruit and train drivers;
c. If a trip is cancelled, the plaintiff pays the driver any cost incurred, meaning that riders that use the Uber App belong to the plaintiff;
d. The plaintiff screens and certifies vehicles;
e. The plaintiff engages in promotional and other marketing activities on behalf of the drivers; and
f. Driver-partners collect fares on behalf of the plaintiff.

It is stated that all the above statement made by the defendant are false and therefore denied all those statements.

It is stated that the defendant in addition to the Demand Notice 2020, sent to the plaintiff a Commercial Motor Vehicle Logistics service certificate dated 11th February, 2020 Commercial Motor Vehicle Logistics Service Licence/Permit with serial No. 0054, and the plaintiff did not at any time whatsoever apply for a request the issuance of

certificate or permit, and that the plaintiff never paid any Corporate Off-Park Loading and Off-Loading Fee for the year 2019 and does not own any vehicle with No. 001-1000, and that the plaintiff promptly returned those documents to the defendant under the cover of a letter dated the 24th September, 2020.

It is stated further that the defendant took a unilateral decision pursuant to Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012. That the plaintiff is liable to pay the sum of N25,000= (Twenty Five Thousand) Naira per vehicle for operating a Commercial Motor Vehicle Logistics and Car hire services business within the area council, and the only provision on the Bye-Law that specifically provides for or mentions the amount of N25,000 (Twenty Five Thousand Naira) in section 1 (6) (b), which provides for a fine is that amount for failure of any person operating a commercial motor vehicle within the council area, but not using a motor park to pay, on demand, a fee equivalent to the earning per loading as stipulated by the Bye-Law.

It is stated that the plaintiff has never been charged or convicted by any court of competent jurisdiction of any offence under the Bye-Law or any other law so as to warrant the imposition or collection of a fine on or from it by the defendant, and that the plaintiff is not liable to pay and the defendant is not entitled to demand or receive from the plaintiff the sum of N25,000,000= (Twenty Five Million Naira) or any other amount whatsoever on account of operating a commercial motor vehicle logistics or car hire services business within the area council or for breach of any person of the Bye-Law.

It is stated that the defendant by its threat on its letter dated the 17th February, 2020 does not intend to use lawful

means to enforce its demand notice otherwise it would not have made the threat to the plaintiff that it made pursuant to the both 2019 and 2020 Demand Notices.

In his written address the counsel to the plaintiff submitted, with respect to the issue No. 1, that the defendant's power to make a demand, as in the 2020 Demand Notice is not at large but strictly regulated by the provisions of its enabling law, which is the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012 as the demand was made pursuant to section 1 (6) (b) of the Bye-Law.

The counsel referred to the opening phrase of the provision of section 1 (6) (b) of the Bye-Law and submitted that the provisions of section 1 (6) (b) of the Bye-Law can only be enforceable against any person operating a commercial vehicle, within the area specified in the section. To him, although the Bye-Law does not define the meaning of "operating a commercial vehicle" as used in its section 1 (6) (b), section 6 of the Bye-Law specifically defines "persons in-charge of a commercial motor vehicle to mean the owner, the driver or other persons for the time being having control of such vehicle. The counsel urged the court to construe the word "owner" and give its literal meaning, and he referred to the case of **Gana V. SDP (2019) LPELR- 47053 (SC)** to the effect that words must be given their main meaning. He also cited the case of **Idowu V. Ajayi & Ors (2016) LPELR – 41339** where the Supreme Court made reference to Black's Law Dictionary, 8th Edition on the meaning of the word "owner" to mean one who has the right to possess, use and convey something; a person in whom one or more interest are vested. He went further to cite the case of **A. G. Lagos State V. Eko Hotels Ltd (2006) LPELR – 3161 (SC)** where the Supreme Court defined the

word "control" as is used in section 6 of the Bye-Law to mean to have directing influence over something or to regulate or have power over something or to regulate or have powers over something. He then submitted that the interpretation of section 1 (6) (b) is governed by section 6 of the Bye-Law to the effect that it is only the owner, driver or for the time being having control of a commercial motor vehicle that can be liable to make any payment under section 1 (6) (b) of the Bye-Law and not anyone else, and to him, the word "operating" is a synonym of the words used in section 6 of the Bye-Law, and he referred to the Mariam Webster Dictionary which defines the adjective "operating" to mean relating to the way a machine, vehicle, device , etc functions or is used and controlled. He then submitted that the court should give the ordinary meaning to the words used in the Bye-Law which is not applicable to persons outside its contemplation, and he cited the case of **Barbedos Venture Ltd V. F.B.N. Plc (2018) 4 NWLR (pt 1609) 241 at 295, paras. D –E** to the effect that where words in a statute are clear and ambiguous, they must be given their ordinary meaning so long as it would not lead to absurdity or conflict with other provisions of the constitution. The question that arose, to the counsel, is: whether the plaintiff falls within the definition of a person operating commercial motor vehicles? The counsel submitted that in paragraphs 6 -11 of the supporting affidavit, the plaintiff outlined the exact nature of its business as contained in the Memorandum and Article of Association, and specifically answered the above question that the plaintiff is not a transportation company and does not operate any commercial vehicles, rather it is a company that provides support services with respect to promotion and marketing of software, technology and related service provided by other

affiliated companies within the Uber group, and the counsel referred to the Memorandum and Articles of Association which, to him, shows the objects for which the plaintiff was established and nothing within those objects permits the plaintiff to operate commercial motor vehicles or car hire services, and to him also, this fact is of judicial implication, having regard to the provisions of section 39 (1) of the Companies & Allied Matters Act to the effect that a company should not carry on any business not authorised by its memorandum, and he cited the case of **National Palm Produce Association of Nig. V Udom & Ors (2013) LPELR – 21134,** and therefore submitted that the plaintiff has no business operating any commercial vehicle in Abuja and cannot be liable under 2020 Demand Notice.

On the reasons why the defendant issued the 2020 Demand Notice to the plaintiff which are contained in the letter dated the 16th September, 2020 where the defendant, to him, made several inaccurate and out rightly false statement against the plaintiff as to why the plaintiff is considered to be an operator within the meaning of section 1 (6) (b) of the Bye-Law, the counsel submitted that in paragraphs 33 – 37 of the supporting affidavit, the plaintiff has denied the defendant's false statements and such cannot form the basis for liability under the 2020 Demand Notice, and the plaintiff cannot identify specifically any vehicle purportedly operated by it, and therefore, it is the duty of the defendant that has evidential burden to prove that the plaintiff is liable for operating a commercial motor vehicle logistics and car hire services business within the area council, and it is not the plaintiff to prove otherwise, and he cited the case of **Agagu V. Mimiko (2009) 7 NWLR (pt 1140) 342** on evidential burden of proof. He also referred to the cases of **Ogboru V. Uduaghan (2010) LPELR – 3938**

(CA); and **Amgbare V. Sylva (2009) 1 NWLR (pt 1121) 1 at 61.** The counsel submitted that in the absence of any conclusive fact to show that, indeed the plaintiff operates a commercial motor vehicle logistics and car hire services business within the area council, the question must be resolved in favour of the plaintiff and urged the court to resolve question no. 1 in favour of the plaintiff.

On issue No. 2 as to whether the defendant has the power to make Bye-Law in relation to fines or other charges concerning the operation of commercial motor vehicles outside motor parks, the counsel submitted that by virtue of section 318 (1) of the constitution of the Federal Republic of Nigeria 1999 references in the constitution to local government area or local government council area deemed to include reference to the defendant, and to him, the only powers that the defendant has in law are those of a local government and no more. He submitted that pursuant to section 7 (5) of the constitution, the functions conferred on the defendant include those set out in the Forth schedule to the constitution, which in item 1(e) provides the main functions of the defendant include the establishment, maintenance and regulation of motor parks. He submitted further that there are several operational statutes that provide for the manner in which the defendant may perform its constitutional functions which the Local Government Act No. 8 of 1976 LFN (Abuja) 2007 and Taxes and Levies (Approved List for Collection) Act.

The counsel also cited section 55 (a) of the Local Government Act to the effect that the defendant shall have responsibility for, and power to make bye-laws for motor vehicle parks. Also submitted that the Taxes and Levies Act has specific provisions governing the defendant's powers and provides in item 9 of part III of the schedule to

the Act that the defendant shall be responsible for collecting motor parks levies, and to him, by the provisions of the above mentioned statutes, the defendant's power to collect levies is very much limited to motor parks levies, and does not have power to make Bye-Law or collect levy specifically concerning the use of commercial vehicles outside of motor parks, as this will amount to the defendant arrogating to itself a power it does not have under the constitution or as enabling statute in that regard, and he quoted the diction of Karibi White JSC (of blessed memory) in the case of **Alhaji Chief A.R.O. Sanusi V. Alhaji Ibrahim Ayoola & Ors (1992) LPELR 3009 (SC)** to the effect that where the exercise of a power is statutory, such power can only be exercised within the limits prescribed by the statute. The counsel cited the cases of **N.N.P.C. & Anor V. Famfa Oil Ltd (2009) LPELR – SC; and Olarewaju V. Oyeyemi & Ors(2000) LPELR – 6045 (CA)** to buttress his argument that a subsidiary legislation derives its authority and validity from and subject to the provisions of the parent enabling statute.

The counsel raised this question: whether the section 1 (6) (b) of the Bye-Law pursuant to which the defendant has issued its 2020 Demand Notice can be accommodated within the aforementioned enabling provisions of the Local Government Act and Taxes and Levies Act, and he answered that it cannot be so accommodated, and he further reproduced section 1 (6) (b) of the Bye-Law which provides:

> **"Any person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services or interstate transport and on any feeder road within the council but not using a motor park shall at any time before 10:00 am (Mondays to Sundays) or on**

demand pay to the attendant or any duty authorised officer of the council and failure to obtain a ticket after 10:00am shall attract a fine of N25,000 or N35,000 depending on the attitude of the offender as to whether he is first offender and remorseful."

The counsel submitted that on the basis of section 55 (a) of the Local Government Act and Item 9 of part III of the Taxes Levies Act, that section 1 (6) (b) of the Bye-Law is patently unconstitutional, and to him, section 1 (6) (b) of the Bye-Law was made by the defendant specifically to apply in respect of any person operating a commercial motor vehicle, but not using a motor park, and by its specific wordings, section 1 (6) (b) of the Bye-Law must be necessarily be construed by the court as a deliberate and unlawful attempt by the defendant to legislate for itself powers and functions that are extreneous to the constitution, Local Government Act and Taxes and Levies Act. To him, this is based upon the settled principle of law that where a statutory power is to be exercised by a statutory body in respect of items specifically mentioned, any items not mentioned are deemed to be "excluded by law, and this is derived from the Latin maxim "Expressio Unius est exclusio alterius", and he submitted that where the statutory body propose to exercise statutory power in respect of the items not mentioned, such exercise of power is ultra vires, null and void, and he cited the cases of **Ehuwa V, Ondo State Independent Electoral Commission & Ors (2006) LPELR p 56 (SC); and AC Maseer Law Firm V. F.I.R.S. (2019) 121 NWLR (1687) 555 at 574 – 575 paras. A – B.**

The counsel submitted that on the premise of the foregoing and by reason of the fact that the Constitution, Local Government Act and Taxies and Levies Act all

specifically mentioned the items in respect of which the defendant has functions and may make bye-laws, he submitted that section 1 (6) (b) of the Bye-Law, which specifically relates to commercial motor vehicle not using a motor park is unconstitutional, null and void in its entirety, and he referred to the diction of **Okoro JSC in the case of Mobil Producing (NIG) Unlimited V. Johnson (2018) 14 NWLR (pt 1639) 329 at 361, paras. D – F** to the effect that any subsidiary or subordinate legislation which is inconsistence with the principal legislation is a nullity to the extent of the inconsistency, and he urged the court to resolve the issue No. 2 in favour of the plaintiff and to hold that by virtue of section 7 (5) of the constitution, including item 1(e) of the Fourth Schedule thereto, section 1(1) of the Taxes and Levies Act (Approved List of collection) Act, including item 9 in part III of the schedule thereto and section 55 (a) of the Local Government Act, the defendant does not have any power to make bye-law in relation to fines or other charges howsoever called, concerning the operation of commercial motor vehicles outside of motor parks, as it has purportedly done under section 1 (6) (b) of the Bye-Law 2012.

On the question No. 3, the counsel to the plaintiff adopts all of the arguments as canvassed in the issue No. 2, and added the authority of The **Governor of Oyo State & Ors V. Falayan (1995) LPELR-3179 (SC).**

On whether the fine of N25,000= is unlawful, the counsel submitted that section 1(6)(b)of the Bye-Law provides for a discretionary fine of between N25,000.00 (Twenty-Five Thousand Naira) and N35,000.00 (Thirty-Five Thousand Naira) to be imposed on any person who contravenes the provision of that section, and the defendant derives its power to include in the Bye-Law a provision governing and penalising conduct that contravenes provisions of that law

from the Local Government Act which specifically provides in its section 119(1) of Act the that:

> **"There may be provided in or by any bye-law a penalty not exceeding N100 or imprisonment not exceeding six months or both as the Local Government making the bye-law may think fit, as any person who fails to take any action required by or who disobeys, the by-law."**

The counsel then submitted that under the said section, the defendant's power to legislate in a by-law in breaches of such law is limited, in monetary terms, to a maximum penalty of N100 (One Hundred Naira), and so the question that agitates in the mind of the counsel is: where did the defendant get the power to provide in a Bye-Law for a fine of N25,000.00 - N35,000.00 in respect of breaches of the law when the enabling statute clearly provides for a statutory cap. of N100?

The counsel submitted that this answer will be provided by the defendant.

The counsel re-iterated his position that by the enabling statutes the defendant has no power to legislate in a manner that is inconsistent with or purports to expand or extend its powers under the enabling statutes, and he further cited the case of **Olarewaju V. Oyeyemi, & Ors (supra).** To him, a simple comparative analises of section 119(1) of the Local Government Act and section 1(6)(b) of the Bye-Law, it is quite clear what the answer to question 3 of the originating summons is, and he urged the court to resolve this question in favour of the Plaintiff.

On the issue No.4 and with regards to the operation of the Bye-Law and submitted that the Plaintiff is still not in any way liable under the 2020 Demand Notice that:

a. The defendant did not fulfill the condition precedent under section 1(6)(b) of the Bye-Law of serving the

Plaintiff with a demand for a fee equivalent to the earning per loading stipulated in section 1(6)(a) of the Bye-Law; and

b. The Plaintiff has not been charged to court and convicted of any offence under the Bye-Law to warrant the imposition of the fine contained in the 2020 Demand Notice by reason of which the said Notice was issued ultra vires and in violation of the Plaintiff's constitutional right to fair hearing.

On the defendant's failure to fulfill condition precedent, the counsel submitted that section 1(6)(b) of the Bye-Law provides that any person to which the section applies shall on demand by the defendant, pay to the defendant a fee equivalent to the fee per loading, as stipulated in the preceding sub-section and failure to do so after 10:00am shall attract a fine of N25,000.00 - N35,000.00.

To him, by the unambiguous wordings of section 1(6)(b) of the Bye-Law, there is no doubt that before the question of any fine can arise in relation to a contravention of that provisions, the defendant must have made a prior demand on the Plaintiff as per section 1(6)(a) of the Bye-Law and the Plaintiff is in default of the demand, and he consequently submit that the aforesaid demand is a condition precedent to the imposition of any fine under section 1(6)(b) of the Bye-Law, and he cited the cases of **Inajoku V. Adeleke (2007) LPELR-1510 (SC)**; and **Nigercare Development Company Ltd V. Adamawa State Water Board & Ors (2008) LPELR-1997 (SC)** all to the effect that where the constitution or a statute provides for a precondition to the attainment of a particular situation, the precondition must be fulfilled or satisfied before the particular situation will be said to have been attained reached. He then submitted that the defendant has not fulfilled the condition precedent to the

invocation of the penal provisions of section 1(6)(b) of the Bye-Law by reason of which the Plaintiff cannot be liable under the 2020 Demand Notice issued under that section, and therefore the step taken by the defendant is a nullity, and he cited the cases of **Shugaba V. UBN Plc (1999) LPELR 3068(SC)** and **Ngajiwa V. F.R.N (2017) LPELR - 43391 (CA)**, and he urged the court to hold that the Demand Notice is a nullity.

On the violation of the Plaintiff's right to fair hearing, the counsel submitted that the penalty of N25,000.00-N35,000.00 stipulated in section 1((6)(b) of the Bye-Law is described as a fine, and it is on that basis the defendant issued the 2020 Demand Notice to the Plaintiff for the sum of N25,000,000.00 (Twenty-Five Million Naira) based on 1000 vehicles, at the rate of N25,000.00 per commercial vehicle, and he further submitted that the defendant has acted not only ultra vires but also gross violation of the Plaintiff's right to fair hearing under section 36(1) and (4) of the constitution. To him, a fine is a criminal sanction or sentence that can only be imposed by a court of competent jurisdiction pursuant to the provisions of section 6(6)(b) of the constitution, and he cited the case of **Bashir V. FRN (2016) LPELR-40252 (CA)** where the court held that a fine is a pecuniary penalty imposed by a competent court upon a person convicted of a crime. The counsel also cited the case of **National Oil Spill Detection and Response Agency V. Mobil Producing Nigeria Unlimited (2018) LPELR-44210 (CA)** to the effect that a fine is a criminal sanction, and that no other organisations or bodies can usurp that power. He cited also the case of **Shekete V. The Nigerian Air Force (2007) LPELR-8304 (CA).**

The counsel submitted hat the 2020 Demand Notice was issued in violation of the provisions of the Bye-Law, particularly sections 2(1), 3(1) and 3(3) of the Bye-Law

provide for the procedure to be followed in the event of a contravention of the law, however the defendant totally ignored those provisions in issuing the 2020 Demand Notice, and the counsel went further to quote those provisions to the effect that the allegation of contravention of the Bye-Law is to be tried by Magistrate and Area Courts, and to him the defendant has assumed the position of a Magistrate court or Area Court in sentencing the Plaintiff to a hefty fine of N25m, and he urged the court to disallow and to declare it a nullity, and the counsel cited the cases of **Amasike V. Registrar General CAC & Anor (2005)LPELR-5407 (CA)**; and **Tanko V. State (2009) 4 NWLR (Pt. 1131) 430 at 457 para H**.

The counsel then urged the court to hold that the defendant does not have the power to unilaterally impose on the Plaintiff a fine of N25,000.00 (Twenty-Five Thousand Naira) per vehicle for operating a commercial motor vehicle/logistics and car hire services business within the council area, and that the Demand Notice 2020 is unlawful null and void.

It is in the counter affidavit of the defendant that the defendant is not in a position to admit or deny the averments contained in paragraphs 1-3 of the supporting affidavit, and that paragraph 6 is not true as she has visited Uber website made available to Nigerians for either commercial car/transport services or for intending transport services providers, and this website does not in any way provide a distinction or elucidation as averred in paragraph 6 of the supporting affidavit as the only name used in the website is "UBER" without more.

It is stated that contrary to paragraphs 6 and 7, she is aware that in order to work with Uber, drivers must agree to Uber's terms and conditions and therefore Uber is not merely an intermediary party or independent party

considering the extent of Uber's power and control and sanction of its drivers, and she attached a contract document between the Plaintiff and its drivers for commercial transportation in Nigeria.

The deponent stated that in response to paragraphs 6 and 7 of the supporting affidavit, she observed the following as a contradiction to the assertion that the Plaintiff is merely an intermediary or independent third party between drivers and passengers who make use of the app:

a. The relationship between drivers and the Plaintiff is that of master and servant as recently held by the court in common law jurisdiction like the United Kingdom, and she annexed the copy of the judgment of the Supreme Court of the United Kingdom delivered on the 19th February, 2021 in **Uber B.V. V. ASSLAM and Anor;**

b. That the Plaintiff exclusively determines how much drivers are remunerated for the work they do as it is UBER and not drivers that set the fare prices;

c. That Uber drivers have no autonomy in respect to contract or terms of service between themselves and the Plaintiff;

d. That drivers registered with the Plaintiff are subject to penalties if they decline certain number of ride requests and therefore are subject to monitoring from the Plaintiff;

e. That the Plaintiff also exercises sufficient control over the drivers via the passengers' rating system, which can result in a driver's service being discontinued when delivering services, and that Uber restricts communication between a driver and a passenger and no independent commercial relationship could be formed beyond an individual ride;

f. That commercial motorists do not just use the Uber platform for free, one commercial motorists subscribes to the terms and conditions of the Uber contract, Uber gets 15%-20% of the turnover on each transaction being the financial remittance that is expected of such a driver, such that the lifespan of the said contract is premised on the ability of a commercial driver to pick up and drop off customers.

It is stated that paragraph 8 of the supporting affidavit is not true to the extent that Uber is a generic name for a group of companies and its subsidiaries across the world, which provides platform for car hire, or commercial transportation business including the Plaintiff who is incorporated in Nigeria. That according to Uber B.V's terms and conditions, every user of the App acknowledges that portions of the services may be made available under Uber's various brands or request options associated with transportation or logistics, including the transportation request brands currently referred to as "Uber", and also that services may be made available under such brands or request options by or in connection with:

i. Certain of Uber's subsidiaries and affiliates; or
ii. Independent third party providers, including transportation network company drivers, transportation charter permit holders of similar transportation permits, authorisations or licences. She exhibited a copy of a contract document between the Plaintiff and its users in Nigeria.

It is stated that having a cursory look at EXH."A" attached to the affidavit in support, which is the Memorandum and Article of Association, all the subscribers are:

a. Uber International Holding B.V., Barbara International Holding B.V., Barbara Strozzliaan 101, 1083 MN Amsterdam. Tel: +31202402402492,kuk-nr: 55976255;
b. Uber International B.V., Barbara Strozzliaan 101. 108 HN Amsterdam. Tel: +31202402492,kuk-nr: 55808646;
c. The said document was witnessed at San Francisco by a paralegal, who is also not a Nigerian.

It is stated that Uber International Holding B.V. is the principal shareholder and a person with significant control of the Plaintiff's company while Uber International B.V. is also a shareholder of the Plaintiff. That the deponent observed that the persons who Uber International Holding B.V. and Uber International B.V. as directors in the Plaintiff as shown in the Memorandum and Article of Association are Travis Kalanick and Ryan Graves.

The deponent stated that she has reached the above personalities and found out the following facts:

a. Travis Kalanick is an American billionaire businessman, best known as the co-founder and former CEO of Uber. In October, 2010, Trans Kolanick succeeded Ryan Graves as CEO which position, he held until June, 20, 2017. Trans Kolanick was a director/shareholder in the Uber International Holding B.V. at the material time it gained registration status in Nigeria.
b. Ryan Graves is an American billionaire businessman, CEO for a brief period in 2010, previously the SUP of Global Operations at Uber and was a board director until 2019. Ryan Grades was also Director/Shareholder in the Uber International B.V. at the material time it gained registration status in Nigeria.

It is stated that contrary to paragraphs 8, 9, 10, and 11 of the supporting affidavit, without the Plaintiff's incorporation in Nigeria, there will not be in existence any transportation company or platform called Uber, which is now a household name in Nigeria, being patronised for commercial transport services/car services. That looking at EXH. "A" annexed to the supporting affidavit and the facts in (a) and (b) above, the Plaintiff is a subsidiary or affiliate of the Uber parent companies in Nigeria. That the deponent observed that on the face of the website as evidenced by EXH. 1A and Uber agreements that the name UBER is a generic name for both the Plaintiff, and all other group of companies under Uber B.V.

It is stated that having gone through the Memorandum and Article of Association (EXH."A"), the Plaintiff is clearly responsible for every and any physical transaction between Uber and its customers in Nigeria, which is why the plaintiff has several offices in Nigeria, particularly in Abuja, to cater to/for these interactions. That paragraph 10 of the supporting affidavit without doubt reveals that the Plaintiff is not only an arm of Uber B.V. in Nigeria but also is responsible for whatever outcome that accrues from service delivery using Uber App within Abuja.

It is stated that paragraph 11 of the supporting affidavit is not true to the extent that from the Memorandum and Article of Association of the Plaintiff, specifically, the objects, it is indisputable that the Plaintiff co-ordinates and manages transportation service providers and driver partners who use the Uber App in Abuja and the Abuja office provides physical rendezvous for such customers within Abuja.

The deponent stated that from the content of EXH. "1A" and her personal knowledge gotten from the Uber App in ordering for transportation services, for Uber to permit

any car to be registered on its platform for the purpose of transportation services, Uber specifically requires, among others the following:

a. Prefer Toyota cars;
b. The model of the car;
c. The date such car was manufactured;
d. The condition of the car (whether such law is functional or has air conditioner);
e. A physical inspection of the car intended to be used for the transport service delivery;
f. Certificate of insurance for the attended vehicle; and
g. Provision of valid driver's licence by the applicant driver.

It is stated that from the usage of Uber App by the deponent, Uber usually demands to know the colour of the car about being registered, and update of any alteration in colour of such a car. That from the usage of the Uber App, the deponent knows for a fact that Uber, as a matter of policy, requires and usually obtains the name of the driver manning each car on its platform, and other details about the driver. That all requirements in respect of the law to be used, and the driver manning such cars, as stated above, are preconditions that must be fulfilled before any individual can register their car on the Uber platform, and all these are a well concerted efforts by the Plaintiff, to carefully determine the calibre of those who use the Uber platform to provide transportation services in order to manage, coordinate and largely to control such a transportation services provider as this will help Uber determine the quality of service delivery, safety, and comfort of every passenger.

It is stated that by clause 3(b) of the Memorandum and Articles of Association, the Plaintiff provides support services

to Uber B.V. or other international groups by responding to queries from Uber B.V. Customers and/or providing them with information regarding Uber B.V's services that are offered and these customers include Nigerians. That paragraph 12 is not a true reflection of the matter, and a cursory examination of the terms of and condition for drivers annexed as EXH. A1 will reveal that in order to work with the Plaintiff, drivers must not only agree to Uber's terms and conditions, but also has wide powers to exercise control and sanction its drivers.

On the 2019 and 2020 demand notices, the deponent stated that paragraphs 13-18 of the affidavit in support are true that a demand or request for the data base of the Plaintiff was made via a letter dated the 17th February, 2020 of the commercial transport/car hire service providers within the Abuja Municipal Area Council, and the letter was meant to assist the defendant to properly and adequately levy taxes on all the customers of the Plaintiff using Uber App for commercial transport/car hire services within Abuja Municipal Area Council, but the Plaintiff refused, neglected and failed to provide the defendant with the database.

It is stated that none of the staff or agents of the defendant that has the authority to harass or intimidate any defaulting while demanding taxes/levies and is unaware of the averments in paragraph 19 of the supporting affidavit.

It is stated the defendant did not authorise any of its staff, agents to arrest or threaten to arrest any such vehicles, and that cars that are used under the Uber App for transport services are not usually branded, and so it is not practicable to track them without the assistance of the Plaintiff. That if anyone threatened some cars registered under the Uber transport service platform, such persons are all known to the defendant. That the singular fact that some

Uber commercial transport/car hire services complained to the Plaintiff about a purported harassment and threat, leaves no doubt that the Plaintiff is in charge, manages and coordinates these individuals, who use the Uber platform to provide transport services. That EXH. "F" relied on in paragraph 27 of the affidavit in support was written by Uber B.V. on behalf of both the Plaintiff and Uber B.V. and this was not a mistake but a reflection of the relationship that exists between Uber B.V. and the Plaintiff, and contrary to the averments in paragraph 26-28 of the affidavit in support, the deponent knows for a fact that Uber B.V. paid the sum because it knew that was the right thing to do and this payment was for 2019. That paragraphs 29-38 are true to the extent that the Plaintiff did not clarify any phrases or any contractual imputations, but in a tepid manner denied the fact that drivers who drive all the cars registered carrying on business under the Uber App are subject to their regulations, control and directives.

It is stated that the averments in paragraphs 39-40 (a)-(f) of the supporting affidavit are untrue, and further stated that some representatives of the Plaintiff, had privately approached the defendant with a view to paying lesser than the amount demanded for by the defendant, but the defendant refused. That the defendant is aware that the Plaintiff has on several occasions offered to reimburse Uber drivers who have been served with fines or notices of impediment for non-payment of levies to the defendant.

It is stated that the deponent knows for a fact that the Plaintiff is fully in charge and control of the Uber App, and furthermore, the Uber App does everything a conventional motor park is designed to do and even more, because it informs there would be customers of available cars for hire, the name of the driver of the said car, how much the trip will

cost, the make, colour, model, number plate, features and functionality of the said car, how long it will likely take, and how far a particular car is from the would be customer's current location. That Uber uses its application to monitor every car carrying on business using the Uber App and these measures are put in place to promote and market the Uber App while keeping the Plaintiff in charge and control of what happens and goes on with each car registered on the Uber App platform.

It is stated by the deponent that he knows for a fact from personal knowledge from using Uber App, that it is without doubt, a virtual motor park, and considering the cyber-digital times, he is convinced that Uber App is certainly a replacement for a conventional motor park, and that there is nowhere on the app where it is clearly stated that all users of the App are dealing with Uber B.V. which is a Dutch Company, and not the Plaintiff.

On the certificate and licence, the deponent stated that he knows for a fact that paragraphs 41-46 of the supporting affidavit are untrue as no certificate and permit was issued to the Plaintiff but the defendant or its agent in 2020, and this is because certificate and permits are only issued after payments are done in full satisfaction of taxes levied by the defendant; and there is no wrong, whether legal or otherwise in issuing a 2019 certificate in 2020.

It is stated that contrary to paragraphs 47-51 of the affidavit in support, the defendant did not issue a fine to the Plaintiff but rather it issued a demand notice to the Plaintiff informing the Plaintiff of the consequence of payment of fines over the refusal to pay the said levies in full and substantial compliance with Bye-Law (No. 3) or AMAC Bye-Law 2012 considering the fact that the Plaintiff is operating a virtual motor park, and after the refusal of the Plaintiff to pay

the said tax, the defendant was still mobilising to approach a court of law for redress when the Plaintiff rushed to this Honourable Court to stop the defendant from collecting the tax due to it.

It is stated that contrary to the averments in paragraphs 52-54 of the supporting affidavit, the word used in the defendant's demand notice and other correspondences, are not threats but frank advice, which the Plaintiff refused to adhere to, and the defendant has not shut down the office of the Plaintiff up till this moment.

In his written address, the counsel to the defendant, on issue no.1, submitted that the claim of the Plaintiff is hinged on the argument that the Plaintiff is merely an agent of the Uber B.V., which is a Dutch Company, and is in charge of the Uber App, and he further submitted that no foreign company is permitted by the extant laws of Nigeria to carry on any form of business on Nigerian soil, without first being registered with the Nigerian Corporate Affairs Commission, and he referred to section 78 (1) of the Companies and Allied Matters Act, 2020 (as amended).

He further submitted it is premised on the above provision of the law, that the Plaintiff was registered by Uber B.V. so that through the claimant Uber B.V. would carry on its business in Nigeria, and with Nigerians. To him, premised on this fact, the legal entity known to Nigeria and Nigerians, which is responsible for carrying on the Uber transport business in Nigeria and with Nigerians is the Plaintiff, and to say otherwise will be admitting to the criminality of a Foreign Company carrying on business of any kind in Nigerian soil without due process being followed. He argued that in furtherance of his argument, and to him, a clinical X-ray of paragraph 3(d)-(h) of the Memorandum of Association of the Plaintiff out rightly Uber International B.V. and Uber

Holding International B.V. grant powers to the claimant to do the following:

g. To do such other things as are incidental or conducive to the attainment of the objectives and the exercise of the powers of the company;
h. To carry on any other business which, in the opinion of the company may be capable of being conveniently or profitably carried on in conjunction with or subsidiary to any other business of the company and is calculated to enhance the value of the company.

The counsel then argued that it goes without saying that the Plaintiff was handed a blank check by its owners, to carry on the business of both Uber International B.V., and Uber International Holding B.V. in Nigeria and part of such business includes, and not limited to operating the Uber App while interfacing with customers on behalf of Uber, and it is not in doubt that the Plaintiff was incorporated in furtherance of the business of Uber International B.V., and Uber International Holding B.V. in Nigeria.

The counsel submitted that the Plaintiff uses an internet enabled application called Uber App to execute its mandate as provided for in the Memorandum of Association which has been relied upon by the Plaintiff, and that the Uber App is used to interface with customers either for offering transport car services, and to him, the Uber website is an online platform for any Nigerian interested in either using their car to provide commercial transport services or to work as a driver under the Uber platform.

The counsel took his time to use Oxford Learner's Dictionary (2021 online version) to define motor park as a station for passengers to get on or off buses or taxis. To him, a station is also defined by the same dictionary as a place

or building where a specified activity or service is based or rendered. He opined that a comparison between the above definition of a motor park, vis-à-vis the working of the Uber App exposes no doubt that the Uber App carries out the same functions of a conventional motor park, and simply makes the Uber App a virtual motor park.

On the issue as to whether the Plaintiff is neither in charge nor in control of vehicles used under the Uber App, the counsel submitted that the Plaintiff is a Nigerian Company registered by Uber B.V. and Uber International Holding for the purpose of carrying on the business of providing commercial transport services in Nigeria, and therefore by the Uber App the Plaintiff monitors the trip of every car registered under it and the customers renting the car can also share their trip progress, and he further submitted that this measure of tracking cars registered under their platform has been carefully put by Uber, and for an intent and purpose puts the Plaintiff in control and in charge of each car registered under it.

The counsel cited the case of **A.G., Lagos State V. Eko Hotels (2006) LPELR-3161 (SC)** where the court defined the word "control" to mean to have a directing influence over something or to regulate or have power over something. To him, the Plaintiff is in charge and control of all the commercial transport service providers, registered under its platform. The counsel further submitted that looking at section 1(6)(b) of the Bye-Law 2012 in defining a person in charge of a commercial vehicle states that a person in charge of a commercial motor vehicle means the owner, the driver or other persons for the time being having control of such vehicle. He submits further that the phrase "other persons" being referred to in the Bye-Law fall within this category, and he cited the case of **Idowu V. Ajayi & Ors**

(2016) LPELR-41339 (CA) where the court defined "owner" to mean a person in whom one or more interests are vested, and this corroborates his submission that the word used in section 1(6)(b) of the Bye-Law applies to the Plaintiff who has vested interest in all the cars registered under its platform to provide commercial transport services/car hire to Nigerians.

The counsel argued further that the Plaintiff also hinged its argument that it does not operate commercial vehicles and as such it is not subject to section 1(6)(b) of the Bye-Law, and he referred to Merriam Webster Dictionary (2020 online version) with regards to the definition of the word "operating" to mean "relating to the way a machine, vehicle, device, etc, functions or is used and controlled, and to him, from the averments in paragraphs 11-14 of his counter affidavit, the Plaintiff controls the way all the commercial transport service providers under the platform are used and how they function and therefore section 1(6)(b) of the Bye-Law applies to the plaintiff hook, line and sinker.

The counsel further submitted that the relationship between Uber drivers and the Plaintiff is that of master and servant as was recently held by the courts in other common law jurisdictions like the United Kingdom, and he cited the case of the Supreme Court of the United Kingdom delivered on the 19th February, 2021 of **Uber B.V. V. ASSLAM & Anor. (2021) UCSC 5** where the court held that drivers working for ride-hailing app giant Uber Technologies Inc. are to be classified as workers under employment law and are not self employed. The counsel in that judgment referred to paragraph 100 wherein the Supreme Court of United Kingdom held that taking those factors together, it can be seen that the transportation service performed by drivers

and offered to passengers through the Uber App is very tightly defined and controlled by Uber. Furthermore, it is designed and organised in such a way to provide a standardised service to passengers in which drivers are perceived to be interchangeable and from which Uber rather than individual drivers obtain a benefit of customer loyalty and goodwill.

The counsel submitted that the violation of section 78(1) of the CAMA 2020 is an act of criminality on the part of none Nigerian companies carrying on business in Nigeria directly and by themselves and not through a Nigerian registered company. To him, if this was the case, the Plaintiff is liable and responsible for Uber App, and he further argued that by the contractual terms and conditions entered into by Uber and their customers as evidenced by EXH. "1A" reveals the following:

a. That on the Uber portal, the word Uber is used without distinction as to whether or not, one is Nigerian Company and the other is Dutch company, and this in itself is deceitful and provides the basis upon which the Plaintiff is now arguing not to be the entity in charge of the Uber App.

b. Part of the contractual documents provide for a job opportunity to drive commercial car on the Uber platform and of course provided on the platform, are terms and conditions for the said job offer which clearly spells out obligations and rules, binding on such an applicant for the driving job.

c. That the above clearly grants Uber as a whole an extensive control over each car and driver that is registered on the Uber App, which is operated by the plaintiff in Nigeria.

He argued that from the Memorandum of Article of Association of the plaintiff, it is beyond argument that Uber

B.V. owns the claimant by its very position and from that website, holds itself out to Nigerians as the company in charge and control of every dealing with Uber as per as Nigeria is concerned. To him, this position is given credence by EXH. "1A" which is the standard contract document provided by the claimant to customers who intend to use the Uber App either as a driver, or for the purpose of commercial car transportation or hire. He then submitted that from the EXH. "1A" which was retrieved in February, 2021 by an independent intending commercial car owner, and the provisions of section 78 (l) of CAMA 2020, the argument of the plaintiff that it is not responsible for all the transactions that go on the Uber App in Nigeria does not hold water, and he urged the court to so hold.

The counsel on this issue urge the court to so hold that the plaintiff owns, operates commercial vehicles operating under its platform, and is in charge of them through its App. To him, this is particularly relevant in the light of EXH. "1C" which is a copy of email received by a driver from the plaintiff assuring the said driver of reimbursement for AMAC levies imposed on its drivers, and this is a clear indication that the plaintiff is aware of its obligation under the Nigerian Law, and urged the court to resolve this issue in favour of the defendant.

On the issue Nos. 2 and 3 as formulated by the counsel to the plaintiff, the counsel to the defendant decided to treat them as one and submitted that the constitution that created the defendant, and confer the power to regulate commercial transport service and the constitution is supreme and no other law can streamline or reduce the powers and duties as provided for in it, and to him, it is settled law that it is the supreme and any other law that is inconsistent with any part of it, is null and void to the extent

of such inconsistency, and he cited the case of **Adisa V. Oyinlola & Ors. (2000) LPELR 186 (SC).**

The counsel submitted that the defendant did not draw its powers to enact laws on the motor parks from the Local Government Act or the Taxes and Levies Act, but pursuant to section 7 (5) and the Fourth schedule of the 1999 Constitution (as amended). He argued that the defendant's Bye-Law as a whole covers a variety of issue provided only by the constitution, because the defendant derives its powers, authority, duties and functions from the constitution and not a single part of the said Bye-Law is drafted outside the express provisions of the constitution, and he quoted the Fourth Schedule to the 1999 Constitution which provides:

> **"The main functions of a Local Government Council are as follows:**
>
> **(e) establishing, maintenance, and regulation of slaughter houses, slaughter slaps, markets, motor parks, and public conveniences"**

The counsel further reproduced the definition of a motor park as provided for by section 6 of the defendant's Bye-Law 2012 (No. 3).

> **"Motor Park means any parking place lawfully designated by the council as a motor park where commercial motor vehicles assemble for loading and off loading of passengers or goods."**

Out of the above definition, the counsel raised these posers:

1. **How is the defendant supposed to carry out these constitutional duties, and rights without a working Bye-Law?**
2. **Does the act of "Regulation" as provided by the Fourth Schedule of the 1999 constitution not include levying taxes and levies, and they**

prescribing consequences for non-compliance with same?

3. **Doesn't the Uber virtual park fall under the description and definition of a motor park, such that same is bound by the provisions of the Bye-Law?**

The counsel then decided to argue on the above posers, and submitted that it is obvious from the provisions of the constitution that the defendant can only give power to the wordings and letters of the constitution by enacting laws to regulate motor parks, among other things, and it is only the defendant can give life to the words and letters of the constitution, and this is by enacting a bye-law.

On the second poser, the counsel submitted that the counsel to the plaintiff canvassed argument over the absence of the phrase "but not using a motor park" as used in the Bye-Law, which the counsel to the plaintiff also argued was not contemplated by the Local Government Act, and he cited the case of **Ugwu & Anor V. Ararume & Anor (2007) LPELR – 24345 (SC)** to the effect that it is the duty of a judge in adopting a mischief rule of interpretation is to interpret and enable the suppression of the mischief and to promote the remedy within the intent or intention of the statute and a judge is entitled to consider from the law stood when it was passed, what the mischief was for which the old law did not provide, and the remedy which the new law has provided to cure the mischief. The counsel therefore submitted that the mischief the guidelines were created to solve was to have a well organised and well documented transport service system which is both accountable to its customers, and the motor parks were created to regulate all commercial transport service providers and whether or not they use a designated motor park, the motor park law is

binding on all commercial transport service providers carrying on business within the Abuja Municipal Area Council.

The counsel is of the view that whether the Bye-Law added the phrase "by not using a motor park" or not is not the issue, and to him, the real issue is whether or not these commercial cars, carrying on business transport service within the jurisdiction of the defendant, fall under the regulation of the Bye-Law, and he answered same in the affirmative. He submitted that the Local Government Act, Taxes and Levies Act and the Bye-Law are all subsidiaries to the constitution, but that the Local Government Act and Taxes and Levies Act expound on an already existing mandate of the constitution on the defendant. He submitted further that the constitution does not expressly provide that the defendant which is its creation cannot legislate over issues that relate to parks and commercial motor cars.

On the last poser, the counsel submitted that the Uber App is a virtual motor park, as it falls within the definition and functions of a conventional motor park, and the claim of the claimant holds no water.

The counsel submitted further that the AMAC Bye-Law provided for Levies that are in tandem with the reality of the Abuja society, as it cannot fix levies that does not reflect the prices/rates at which these transport service providers use billing their customers, and he cited the case of **Buhari & Ors V. Obasanjo & Ors. (2003) LPELR – 813 (SC)** to the effect that where a law relies as mere technicality or outmoded or incomprehensible producers and immerses itself in a jackal of hitch-patch legalism that is not in tune with the times, it becomes anachronistic and it destroys or desecrates the temple of justice it stands.

The counsel concluded his argument by urging the court to hold that the failure of the Local Government Act and Taxes and Levies Act to peg the motor park levy for the FCT differently from the Local Government, is at best a lacuna which the Bye-Law of the defendant has cured as the Bye-Law enjoys the backing of the National Assembly as same was approved by the former before the law was gazette.

On issue No. 4, the counsel submitted that the plaintiff pleaded EXH. "G" which is a letter dated 17th February, 2020 which was written by the defendant to the claimant, that is a notice of commencement of collection and enforcement of compliance for payment of daily tickets of Two Hundred Naira only and he submitted further that this notice was issued on the 17th February, 2020, while the Demand Notice was issued on the 16th September, 2020, and he posed this question: which other notice was the plaintiff expecting the defendant to issue in the circumstances of this suit?, and he further submitted that by virtue of the notice dated 17th February, 2020, the defendant complied fully with the dictates of its bye-law and the fact that the notice was issued in 2020 does not invalidate the said notice.

The counsel further quoted the provisions of section 1 (6) (b) of the Bye-Law which he said has provided for the consequence of failure to comply with such provisions, and it was pursuant to the above provisions, the defendant wrote a letter and stated the same thing in its Demand Notice, and he urged the court to dismiss this leg of the claim of the plaintiff as it is speculative, and to him, the law is that he who asserts must prove, and he cited the case of **Akinbade & Anor V. Babatunde & Ors (2017) LPELR – 43463 (SC).**

It is part of the assertion of the plaintiff that the amount it was charged in the 2020 Demand Notice dated the 16th September, 2020 is in violation of the defendant's bye-law, and the counsel to the defendant referred this court to paragraphs 3, 4, & 5 of the notice dated the 17th February, 2020, which is EXH. "G" attached to the plaintiff's affidavit, and submitted that the defendant first of all requested for access to the claimant's database of its customers for the purpose of transparent and equitable levying and collection of revenue due to the defendant under section 1(6) (b) of the Bye-Law, but the plaintiff refused to oblige the defendant, and he further submitted that the plaintiff lacks the moral and legal ground to complain about arbitral levying of the taxes on it, as the plaintiff left the defendant with no option but to approximate such levy from hindsight knowledge of the plaintiff's client base, and income from its transport service business using the Uber App, and this was never denied at any time in the correspondences from the plaintiff to the defendant, and this amounts to admission, and to him, the defendant was not wrong to use and admitted data to issue a demand notice on the plaintiff. The counsel urged the court to invoke the equitable doctrine of he who comes to equity must come with clean hands – against the plaintiff, and, to him, this is in line with laid down principle in the case of **Ifekandu & Anor V. Uzoegwu (2008) LPELR – 1435(SC)** to the effect that parties seeking the discretion of the Supreme Court or any other court for that matter must come with clean hands.

It is in the further affidavit of the plaintiff that denied paragraphs 6, 7, 8 (a), (b), (c), (d), (e), (f) and (g) of the counter affidavit of the defendant.

The plaintiff admit paragraphs 9 and 17 of the counter affidavit to the extent that the word Uber is used as a

generic name for the identification of different and distinct Uber entities across the world, this is done only for branding and marketing purposes and such use of the name does not remove the individuality of each company across the world; and that the terms and conditions mentioned in paragraph 10 of the counter affidavit have nothing to do with the subject matter of this case, and that Uber International Holding B.V, Uber International B.V. and Uber B.V are all Dutch registered companies are not the same but three distinct corporate entities, and that also Uber B.V. is not a shareholder of the plaintiff.

The plaintiff denied paragraph 18 and 19 of the counter affidavit. Denied also are paragraphs 21, 22, 23, 24, 25 and 26 of the counter affidavit. The plaintiff denied paragraphs 30, 31, 32, 36, 37, 38, 39 of the counter affidavit of the defendant.

In reply on points of law submitted that the counter affidavit of the defendant contains extraneous matter, and the affidavit contains statements of facts not derived from the personal knowledge of the deponent or information she believes to be true, and he cited section 115 (l) of the Evidence Act, 2011 and the cases of **Josien Holdings Ltd & Ors V. Lornamed Ltd & Anor (1995) LPELR – 1634 (SC)**; and **General & aviation Services Ltd V. Thahal (2004) LPELR-1317 (SC)** to the effect that the deponent is a legal practitioner in the defendant's legal unit and any depositions that do not fall within the contemplation of her schedule of duties must be traceable to her external source of information, and to him, this is the requirement under section 115(l) and (3) of the Evidence Act, and he cited the case of **Nigeria LNG Ltd V. African Development Insurance Co. Ltd (1995) 8 NWLR (pt 416) 677 at 698 – 702.**

The counsel set out the offending paragraphs as follows:

a. Paragraph 7, the deponent did not state how she became aware of the alleged requirements to work with Uber;
b. Paragraph 8 (a), the deponent did not state the source of her alleged information that a master – servant relationship exists between Uber B.V and its driver-partners;
c. Paragraphs 8 (b) (c) (d) (e) (f) (g) and q, the deponent did not state the source of her alleged information;
d. Paragraph 14, which says "I have researched the above personalities and found out the following facts" and reels out several conclusions drawn by the deponent in relation to the subject matter;
e. Paragraph 16, which says from a cursory examination … it is correct to state that "which this represents a conclusion drawn by the respondent;
f. Paragraphs 18, 19, 20, 21, 26 and 27, the deponent also draws conclusions and makes legal argument, and the counsel submitted that the above paragraphs are incompetent in violation of section 115 of the Evidence Act, 2011, and urged the court to strike them out, and he cited the case of **Nigeria NLG Ltd V. African Development Insurance Co. LTD (1995) 8 NWLR (pt 416) 677 at 698 – 702.**

The counsel submitted that the exhibits "1a", "1b" and "1c" attached to the counter affidavit violate the provisions of the Evidence Act and should be discountenanced, that

is to say, EXH. "1A" is an email printout, which is a computer generated evidence, and the defendant is required to comply with the provisions of section 84 of the Evidence Act, however, did not do so, and he cited the case of **Dickson V. Sylva & Ors (2016) LPELR-41257(SC)**, and the document is not a document addressed to or issued by the defendant and the defendant has offered no explanation in its affidavit as to the source of the document, and he urged the court to discountenance EXH. "1A"; and he cited the case of **Loben Investment Co-Operative Multipurpose Society Ltd V. FRN (2019) LPELR – 47325 (CA).** The counsel further submitted that the same vices afflict EXH. "1B" and "1C" which are also computer generated evidence and documents not addressed to or issued by the defendant, and he urged the court to strike out EXH. "1B" and "1C". He also urged the court to discountenance the judgment of foreign court as it does not meet the requirements under section 106(h) of the Evidence Act.

The counsel submitted that the counsel to the defendant failed to respond to the following arguments, and by reason which is deemed to have accepted them as correct:

a. The impugned demand notice was issued in violation of the plaintiff's constitutional right to fair hearing;
b. The defendant has no power to impose fine under the Bye-Law, and
c. The defendant has the burden of proving the plaintiff's liability under the Bye-Law and demand notice. The counsel referred to the case of **Nwankwo & Ors V. Yar'adua & Ors (2010) LPELR-2109 (SC)** to the effect that where a party fails to counter an argument of his

opponent amounts to a concession of the argument as correct.

The counsel submitted further that the defendant's argument that Uber B.V must have set up the plaintiff in Nigeria for the purpose of carrying on business within the country is incorrect as the core question before this court is whether the plaintiff is liable to pay the defendant's demand notice and not an issue behind the plaintiff's incorporation in Nigeria, and therefore, the question of the applicability of section 78 (I) of the CAMA is academic, and to the extent that the incorporation status of the plaintiff is not in dispute, and to him, this is outside the jurisdiction of this court. He submitted that the counsel to the defendant proffered an argument in one breath that the Bye-Law provides and includes persons operating commercial motor vehicle but not using a motor park, while in another breath he said the plaintiff is liable for operating virtual motor park, and to him, this amounts to approbating and reprobating which the Supreme Court frowns at in the case of **Oliyide & Sons Ltd V. OAU, Ile-Ife (2018) LPELR-43711(SC)**, and he submitted that since it is the Demand Notice issued pursuant to section 1(6) (b) of the Bye-Law that is in issue in this case, the question of whether or not the plaintiff operates a virtual motor park falls outside the scope of this case and should be discountenanced.

Thus, the remaining argument proffered by the counsel to the plaintiff in the reply on points of law is the replica of what was canvassed in the written address of counsel accompanying the supporting affidavit and the originating summons, and I need not to repeat it. The counsel then urged the court to reject all the defendant's arguments and grant the reliefs sought in the originating summons because:

a. The defendant is governed by the provisions of the Local Government Act and Taxes and Levies Act and cannot make a bye-law that contravenes any part of those laws;
b. The defendant's case is self contradictory in several materials, including as to the important question of whether it has the power to legislate on and demand a levy on commercial vehicles operating outside of a motor park;
c. The impugned demand notice is unconstitutional and unlawful;
d. The question of whether a master servant relationship exists between the plaintiff and Uber B.V's driver-partners falls outside the jurisdiction of the court and is also speculative; and
e. The defendant did not discharge its burden of proving, by credible evidence, that the plaintiff is an operator of commercial motor vehicles in the Federal Capital Territory.

Having reviewed the affidavit evidence of both parties and the submissions of their counsel, let me resolve the issues as raised by the counsel to the plaintiff.

Whether, having regard to the provisions of sections 1 (6) (b) and 6 of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012, the defendant has the power to impose or collect a fine, fee, penalty, charge, levy or any other sum or amount howsoever called on any person, such as the plaintiff, that does not operate or is not in charge of any commercial motor vehicles, including a motor vehicle used for car hire services, within the council area?

The plaintiff in its affidavit in support of the summons stated that Uber B.V is a Dutch registered company which provides mobile web-based software technology that enables persons seeking transportation services, which it called "riders" to connect with the independent third party transportation providers which it called "driver-partners" through the Uber Smartphone software applications called Uber App. That both the riders and driver-partners enter into commercial agreements with Uber B.V for access to the Uber App. It is stated that the plaintiff's provides marketing and support services in Nigeria to Uber B.V and other affiliated entities within the Uber group but does not provide access to the Uber App or have any contractual relationships with driver-partners or riders in relation to the provision of transportation services. The plaintiff attached its memorandum of Association, and quoted its objects as in paragraphs (a) (b) and (c) of the Memorandum of Association.

It is also averred that the plaintiff is not a transport or transportation company and does not own or operate any commercial vehicle or motor vehicles used for car hire services or for inter-state transport in the Federal Capital Territory Abuja or in Nigeria, neither does it coordinate or manage any transportation providers, including driver-partners, and no driver-partner is under any obligation whatsoever to use the Uber App or provide transportation services at any time or at all.

The defendant in its counter affidavit averred as stated by the deponent that she visited the Uber Website made available to Nigerians for either commercial car/transport services or for intending transport services providers, and that the deponent is aware that in order to work with Uber, drivers must agree to Uber terms and conditions and

therefore Uber is not merely an intermediary or independent third party considering the extent of Uber's power to control and sanction its drivers, and the deponent relied on a copy of a contract document between the plaintiff and its drivers for commercial transportation in Nigeria which is marked as EXH. "1A". And in further response to paragraph 6 and 7 of the supporting affidavit the deponent of the counter affidavit observed the following:

a. That the relationship between Uber drivers and plaintiff is that of master and servant as was recently held by the court in the United Kingdom in the case between **UBER B.V V. ASSLAM & Anor** which is annexed as EXH. "1B";
b. That the plaintiff exclusively determines how much drivers are remunerated for the work they do as it is UBER and not drivers that set the fare prices;
c. That Uber drivers have no autonomy in respect to the contract or terms of service between themselves and the plaintiff.
d. That drivers registered with the plaintiff are subject to penalties if they decline certain number of the ride requests and therefore are subject to monitoring from the plaintiff.
e. That Uber restricts communication between a driver and a passenger and no independent commercial relationship could be formed beyond an individual ride; and
f. That commercial motorists do not use the Uber platform for free, once any commercial motorist subscribes to the terms and conditions of the Uber contract, Uber gets 15% - 20% of the turnover on each transaction being the financial remittance that is expected of such a driver.

The plaintiff in his further affidavit denied all the assertions of the defendant in its counter affidavit to the extent that the plaintiff has never averred that the plaintiff is never a party to the case decided by the United Kingdom Supreme Court.

Thus, the counsel to the plaintiff contends that by its Memorandum of Association (EXH. "A"), the plaintiff was established and nothing within those objects that permits the plaintiff to operate commercial motor vehicles or car hire services, and he relied on section 39 (1) of the companies and Allied Matters Act, and further relied on the case of **National Palm Produce Association of Nigeria V. Udom & Ors (supra),** and therefore, to him, the plaintiff cannot be liable under the 2020 Demand Notice for operating a commercial motor vehicle logistics and car hire services business within the area council as said in the Demand Notice.

The counsel to the plaintiff further contends that it is the defendant that has the incidental burden of proving its positive allegation, and he relied on the cases of **Agagu V. Mimiko (supra);** and **Ogboru V. Uduaghan (supra),** and further contends that in the absence of any proof that the plaintiff operates commercial motor vehicle logistics and car hire services business within the area council, the plaintiff will not be liable.

The counsel further contents that the provisions of section 1(6)(b) of the Bye-Law (No. 3) 2012 can only be enforceable against any person operating a commercial vehicle, and to him, although the Bye-law does not define the phrase "operating a commercial vehicle" as used in section 1(6) (b), a definition of the phrase "persons in charge of a commercial motor vehicle" has been provided in section 6 of the Bye-law to mean the owner, the driver or

other persons for the time being having control of such vehicle. The counsel cited the case of **Idowu V. Ajayi & Ors (supra)** where the word "owner" was defined to mean one who has the right to possess, use and convey something; a person in whom one or more interests are vested. He also cited the case of **A.G. Lagos State V. Eko Hotels Ltd (supra)** where the word "control" was defined to mean to have a directing influence over something or to regulate or to have power over something.

The counsel then contended that it is only a person that is the owner, driver or for the time being having control of a commercial motor vehicle that can be liable to make any payment under section 1(6) (b) of the Bye-Law and nobody else, and therefore the plaintiff cannot be liable. He took his time to find the definition of the word operating to mean relating to the way a machine, vehicle, device, etc, functions or is used and controlled.

On his part, the counsel to the defendant contends that the plaintiff was registered by Uber B.V so that through the plaintiff Uber B.V would carry on its business in Nigeria and with Nigerians, and the legal entity which is responsible for carrying on the Uber transport business in Nigeria with Nigerians is the plaintiff. He said by looking at paragraphs 3(d) – (h) of the Memorandum of Association of the plaintiff, Uber International B.V. and Uber International Holding B.V out rightly grant powers to the plaintiff to do the following:

g. To do all such things as are incidental or conducive to the attainment of the objectives and the exercise of the powers of the company;
h. To carry on any other business which, in the opinion of the company may be capable of being conveniently or profitably carried on in conjunction with or subsidiary to any other business of the

company and is calculated to enhance the value of the company.

The counsel contended that the plaintiff was given a blank cheque by its owners to carry on the business of both Uber International B.V, and Uber International Holding B.V. in Nigeria and part of such business includes, but not limited to operating the Uber App while interfacing with customers on behalf of Uber.

The counsel relied on the Oxford Learner's Dictionary (2021 Online Version) to find the definition of Motor park to mean a station for passengers to get on or off buses or taxis, and it also means a place or building where a specified activity or service is based or rendered, and by the above, he contends that a comparison between the above definitions and the working of the Uber App exposes that the Uber App carries out the same functions of a conventional motor park.

The counsel adopted the definition of the word "control" as was held and the case of **A.G., Lagos State V. Eko Hotels Ltd (supra)**, and he further relied on the definition as provided in section 1(6) (b) of the Bye-Law, of a person in charge of a commercial vehicle. He further contended that the phrase "other persons" being referred to by the Bye-Law, lives no doubt that the claimant falls within this category. He also adopted the definition of "owner" as was defined by the court in the case of **Idowu V. Ajayi & Ors (supra),** and to him, this corroborates his submission that the word used in the provisions of section 16) (b) of the Bye-Law applies to the plaintiff. it is his contention that the definition of the word "operating", and to him, the plaintiff controls the way all the commercial transports service provides under its platform are used and how they function and as

such the provisions of section 1(6) of the Bye-Law applies to the plaintiff.

The counsel also relies on the judgment of the Supreme Court of United Kingdom delivered on the 19th February, 2021 in the case of **UBER B.V. V. ASSLAM & Anor. (supra)** to canvass argument that the plaintiff controls drivers that are using Uber App within Abuja Municipal Area Council and is therefore liable to payment of tax and levy. He referred to the judgment in **Uber B.V. V. Asslam (supra)** particularly paragraph 100 of that judgment where he summed it up thus:

> **"Taking these factors together, it can be seen that the transportation service performed by drivers and offered to passengers through the UBER App is very tightly defined and controlled by Uber…"**

The counsel urged the court to hold that the claimant owns, and operates commercial vehicles operating under its platform, and is in charge of them through its App, and to him, this is in the light of EXH. "1C" to the effect that on several occasions the plaintiff offered to reimburse Uber drivers who have been served with fines or notices of impoundment for nonpayment of levies to the defendant.

Now, what the issue No. I seeks for this court to determine are whether the plaintiff is in control of Uber drivers who use Uber App, and by that, whether the plaintiff is liable under section I (6) (b) of the Bye-Law.

On the first segment of the issue No. I, it is incumbent upon this court to determine whether or not the plaintiff operates the business of transportation and is in control of the drivers using Uber App within Abuja Municipal Area Council, that is to say whether the plaintiff is in charge of the Uber drivers who use Uber App.

Before delving into the first segment as above, let me deal with the submission of the counsel to the plaintiff made in his reply on points of law that the deponent of the counter affidavit of the defendant is only a legal practitioner in the defendant's legal unit and any depositions that do not fall within the contemplation of her schedule of duties must be traceable to her external source of information, and to him, this is the requirement of section 115 (1) and (3) of the Evidence Act, and he cited the cases of **General & Aviation Services Ltd V. African Development Insurance Co. Ltd. (supra),** and he therefore submitted that paragraph 7 of the counter affidavit violate the provisions of section 115 of the Evidence Act 2011, and urge the court to strike out the paragraph.

Thus, paragraph 7 of the counter affidavit of the defendant reads:

> **"That contrary to paragraph 6 and 7, I am aware that in order to work with Uber, drivers must agree to Uber's terms and conditions and therefore Uber is not merely an intermediary party or independent third party considering the extent of Uber's power to control and sanction its drivers. Now produced and shown to me is a copy of a contract document between the plaintiff and its drivers for commercial transportation in Nigeria. Same is annexed as Exhibit 1A".**

Can the above averment be said to have contravened section 115 (1) and (3) of the Evidence Act, 2011?

Section 115 (1) of the Evidence Act 2011 reads:

> **"Every affidavit used in the court shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal**

knowledge or from information which he believes to be true"

By the above quoted subsection (1) of section 115 of the Evidence Act, it can be inferred to mean that every statement of facts and circumstances to which a witness deposes in an affidavit to be used by the courts must either from the personal knowledge of the witness or from information which he believes to be true.

Section 115 (3) provides:

"When a person deposes to his belief in any manner of fact, and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief."

By this, it can be inferred to mean that where pursuant to section 115(1) of the Act, a person deposes to his belief in any manner of fact, other than that of his personal knowledge, the witness must set forth explicitly the facts and circumstances forming the ground of his belief. See also the case of **General & Aviation Services Ltd V. Thahal (2004) All FWLR (pt 211) p. 1372 at 1390, paras. C-E** where it was held that in any affidavit used in court, it is required that it shall contain only a statement of facts and circumstances derived from the personal knowledge of the deponent or from information which he believes to be true. In the instant case and looking at paragraph 7 of the counter affidavit, it can be inferred that the statement of fact is derived from her personal knowledge as she was shown a contract document between the plaintiff and its drivers for commercial transportation in Nigeria. Therefore, for the fact that the statement of fact is derived from her personal knowledge, the deponent need not set forth the fact or circumstances forming the ground of his belief, and to this, I

therefore so hold. To my mind, the paragraph 7 of the counter affidavit is not defective.

Paragraph 7 of the counter affidavit can now be used having not so defective in contravention of section 115 (1) and (3) of the Evidence Act.

In that paragraph, reference was made to a contract document between the plaintiff and its drivers marked as EXH. "1A".

The counsel to the plaintiff urged the court to discountenance EXH. "1A" on the ground that it is a computer print out or rather computer generated evidence which the defendant is required to comply with the provision of section 84 of the Evidence Act, and he cited the case of **Dickson V. Sylva & Ors (supra).**

Let me refer to the case of **Ilorin East Local Government V. Alasinrin (2012) All FWLR (pt 645) p. 230 at 252, paras. C-F** where the Court of Appeal, Ilorin Division held that a document attached to or exhibited with affidavit forms part of the evidence adduced by the deponent and is deemed to be properly before the court and to be used, once this court is satisfied that it is credible. Being already an evidence before the court (on oath), the formality of certification for admissibility (if it required certification) had been dispensed with. The reason for this is easy to deduce, the first being that affidavit evidence is already an admitted evidence before the court, unlike pleading which must be converted to evidence at the trial at which issues of admissibility of an exhibit is decided. The second point is that an exhibited copy or a document attached to an affidavit evidence must necessarily be a photocopy or secondary copy. It is therefore unthinkable to expect the exhibited photocopy to be certified by the adverse party before the court can attach probative value to it. See also

the case of **Govt. of Kwara State V. Irepodun Block Manuf. Coy (2013) All FWLR (pt 678) pp. 908 – 910, paras. H-G per Mbaba JCA.** In the instant case, even though the counsel to the plaintiff raised an issue as to the admissibility of the EXH. "1A" which is a contract document between the plaintiff and its drivers touching on satisfying the requirement under section 84 of the Evidence Act, the cases cited above cover the same situation that the rules of admissibility of documentary evidence attached to the affidavit does not apply in the present situation, and to this, I therefore so hold. In the circumstances, this court has to examine the said EXH. "1A". See the case of **Chemiron Int'l Ltd V. Egbujuonuwa (2017) All FWLR (pt 395) p. 444** where the Court of Appeal held that a trial court has the power to examine exhibits. In the instant case, the admissibility rules do not apply to the documents marked as EXH. "1B" and "1C", and to this, I therefore so hold.

EXH. "1A" is an e-mail message from Uber Nigeria a uber.nigeria@uber.com forwarded to emeroleemeka@yahoo.com on Monday the 22nd February, 2021 at 4:37AM, and the date of the message is 20th September, 2019 at 11:34am, and the subject of that message is introducing important change on UberX.

In that document, it is written Abuja Fare Changes for UberX and the message reads:

> **"Emeka, over the last few months we have been meeting with driver partners in Abuja. We appreciate your time and the feedback you give to us as this helps in improving your Uber experience.**
>
> **In these meetings, you told us that you were concerned about your earnings when driving with Uber. You also said that you were**

concerned there were a lot of driver-partners but not enough riders requesting trips.

We closely reviewed your concerns and are making these changes to UberX:

From 10am on Monday, 23 September, 2019, we are decreasing the fares on UbeX by 10%. The purpose of this change is to increase your earnings by making it more affordable for new existing riders to take more trips on UberX. We also will work to increase demand by investing in marketing initiatives so that more new and existing riders consider UberX in Abuja.

New fares

Base fare: N220 – N200

Per Km: N55 – N47

Per Min: N6 – N6

New incentives

To help boost your earnings, we're introducing a new promotion. For the week of 23 September, 2019 and for a limited time, you would be able to make an extra N200 on every trip after 25 trips to your 70th trip.

For example, if you complete 40 trips you will make an extra N3,000 (N200 x 15 trips) in Net Earnings on top of your per trip earnings.

We are confident that these changes will have a positive impact on your earnings. In the coming weeks, we will continue to speak with driver-partners to hear your feedback about these changes and your Uber experience.

If you would like to join us to hear more about the new changes, click below to save a seat at one of this week's information sessions.

Book a seat

Help Center Privacy
Terms unsubscribe
Uber B. V.
Mr. Treublaan 7
1097 DP Amsterdam
Uber.com "

By the above content of the document EXH. 1A and coupled with other documents attached to the said exhibit, it can be inferred that the plaintiff exclusively determines how much drivers are remunerated for the work they do as it is Uber and not drivers that set the fare prices, and that the plaintiff exercises sufficient control over the drivers via passenger's rating system, which can result in a driver's service being discontinued when delivering deposes.

EXH. "1C" reads:

Uber
Bamidele

We are aware of the situation in Abuja whereby AMAC is threatening to impound Uber vehicles operating in the city. Our team is working towards a solution, however if you do experience any impoundment/fine you may submit these to Uber for reimbursement via http://uber.com/impoundment through your driver app.

By the above, it can be inferred that the plaintiff has undertook to reimburse any money posed as fine-money paid as a result of the impoundment.

EXH. "1C" is the copy of the judgment in the case between **Uber B.V. & Ors (Appellants) V. Aslam & Ors (Respondents).**

In the above case, I have deduced that Uber B.V. is a Dutch company as already stated or averred by the plaintiff in his affidavit, which owns the Uber App. The 2nd appellant, Uber London Ltd (Uber London"), is a UK subsidiary of Uber B.V which since May, 2012, has been licensed to operate private hire vehicles in London.

The third appellant, Uber Britain Ltd, is another UK subsidiary or Uber B.V which holds licenses to operate such vehicles outside London. It is also deduced from the above case that the court used the name Uber to refer to the appellant's collectively when it is not necessary to differentiate between them.

Thus, by the doctrine of judicial precedent, I am not bound to use the foreign case as above as an authority to reach a decision except where it will be used to have persuasive effect. See the case of **Statoil Nig. Ltd V. Star Deep Water Petroleum Ltd (2015) All FWLR (pt 809) p. 956 at 987, paras. A – C** where the Court of Appeal, Lagos Division held that foreign cases are merely persuasive and not authoritative and Nigerian Courts are not bound to follow them. In the instant case, I have not been able to set my judicial lens on any local case that dealt with similar issues and as such, I have to refer to the case above.

Now, having referred to the above foreign case, I have to examine EXH. "A" attached to the plaintiff's affidavit, that is the Memorandum and Association of the plaintiff.

The objects for which the plaintiff was established among others:

a. to support other affiliated companies in providing on-demand services through mobile devices and web-based requests and everything related thereto.
b. To provide support services to Uber B.V or other international group companies by responding to

queries from Uber B.V's services that are offered from its branches elsewhere in the world.

c. To engage in the business of providing potential customers in Nigeria and neighbouring countries with information regarding services that are provided by the parent company.

In addition to the above, it can be seen that the shareholders/subscribers of the shares of the plaintiff are Uber International Holding B.V and Uber international B.V, and therefore, to my mind, they incorporated the plaintiff to carry on their business in Nigeria in accordance with the objects stated above, and to this, I so hold. It is in this case the provision of section 78(1) of the Companies and Allied Matters Act 2020 will come to limelight, that is to say, without incorporating the plaintiff, Uber International Holding B.V. would not be allowed to carry on any business in Nigeria.

According to the UK Supreme Court judgment, prospective customers downloaded the Uber App (for free) to their Smartphone and create an account by providing personal information including a method of payment. They are then able to request rides. To do so, they open the Uber App on their phone and make a request. Once the driver accepts the offer for the trip, the trip is assigned to that driver and the booking confirmed. On arrival at the destination, the driver presses "complete trip" on his Smartphone and the fare is then calculated automatically by the Uber App based on time spent and distance covered. Drivers are permitted to accept payment in a lower, but not a higher sum than the fare calculated by the App, and the service fee retained by Uber B.V. is still based on the fare calculated by the App.

The fare is debited to the passengers' credit or debit card registered on the Uber App and the passenger is sent a receipt for the payment by email.

Uber B.V. makes a weekly payment to the driver of sums paid by passengers for trips driven by the driver less a "service fee" retained by Uber B.V.

Thus, by the above, and coupled with the objects upon which the plaintiff was incorporated by Uber B.V., it can be inferred that the plaintiff does same in Nigeria and more particularly within Abuja Municipal Area Council by supporting other affiliated companies in providing on demand services through mobile devices and web-based requests and everything related thereto. It also support services to Uber B.V. by responding to queries from Uber B.V.'s customers and/or providing them with information regarding Uber B.V.'s services that are offered from its branches elsewhere in the business of providing potential customers in Nigeria with information regarding services that are provided by the parent company, that is Uber B.V.

Deducing from EXH. "A" of the supporting affidavit, and EXH. "1A", "1B" and "1C" attached to the counter affidavit, coupled with the finding or the decision of the Supreme Court of United Kingdom, it can be inferred that the plaintiff does operate and is in charge of commercial motor vehicle including motor vehicles used for car hire using Uber App within Municipal Area Council, and to this, I therefore so hold.

In dealing with the second segment of the issue No. 1, section 1(6) (b) of the Bye-Law (No. 3) 2012 provides:

> **"Any person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services or for interstate transport and on any feeder road within**

the council but not using motor park shall at any time before 10:00am (Mondays and Saturdays) or on demand pay to the attendant or any duly authorised officer of the counsel and failure to obtain a ticket after 10:00am shall attract a fine of N25,000 or N35,000 depending on the attitude of the offender as to whether he is first offender and remorseful"

The counsel to the plaintiff contends that the above quoted provisions of the Bye-Law can only be enforceable against any person operating a commercial vehicle, within the areas specified in the section. He also referred to section 6 of the Bye-Law which defines "persons in charge of a commercial motor vehicle" to mean:

"The owner, the driver or other person(s) for the time being having control of such vehicle"

The counsel also referred the court to the case of **A.G., Lagos State V. Eko Hotels Ltd (supra)** where the court defined the word "control" to mean:

"to have a directing influence over something or to regulate or have power over something".

The counsel to the defendant in his written address also made reference to the above definitions and urged the court to hold that the plaintiff falls within the category of the phrase "other person(s)"

I agree with the counsel to the plaintiff that when interpreting the provisions of a statute, the courts must not ascribe meanings to clear, plain and unambiguous provisions in order to make such provisions conform to the court's view of their meaning or what they ought to be. See the case of **Saraki V. F.R.N. (2016) All FWLR (pt 836) p. 432 at 492, para. C.**

Now, looking at section 6 of the Bye-Law made mention of the owner of a vehicle or other person(s) for the time being having control of such vehicle, the counsel to the defendant emphasized on the phrase "other person(s)". the section provides an alternative by using, the word "or" which the provisions of section 6 in relation to the definition of persons in charge of a commercial motor vehicle provides that it can be construed disjunctively and not implying similarity. See the case of **Ngige V. Obi (2006) All FWLR (pt 330) p. 1068 at 1172-1173 paras. G-A.** See also the case of Newbreed Org. Ltd V. Erhomosele (2006) All FWLR (pt 307) p. 1089 at 1117, paras. B-C.

In giving a literal meaning to the phrase "other person(s)", it can be construed to mean a person other than the owner, driver of the vehicle. The section also used the phrase "having control of such vehicle", and the both counsel agreed with the definition of the word "control" to mean to have a directing influence over something or having power over something; and to this I also agree with them. In the circumstances and as I have said earlier, Uber B.V though Uber App. to direct the driver to the passengers location through the Smartphone's geo-location system, and identifies the nearest available driver who is logged into the App. The driver and passenger are put into direct contact with each other through the Uber App. The driver learns the destination through the App. The Uber App incorporates route planning software and provides the driver with detailed directions to the destination. The fare is calculated by the Uber App. Drivers are permitted to accept payment. Uber B.V makes a weekly payment to the driver of sums paid by passengers for trips driven by the driver less a service fee retained by Uber B.V. See the case of **Uber B.V & Ors V. Asslam & Ors (supra).**

Let me again quote section 1(6) (b) of the Bye-Law which provides:

> **"Any person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services or for interstate transport and on any feeder road within the council but not including motor park shall at any time before 10:00 am (Mondays to Saturdays) or on demand pay to the attendant or any duly authorised officer of the council fee which is equivalent to the earning per loading as stipulated in the preceding sub-section or as may be reviewed from time to time by the council and failure to obtain a ticket after 10:00am shall attract a fine of N25,000 or N35,000 depending on the attitude of the offender as to whether he is a first offender and remorseful."**

In interpreting the above section, I have to read as a whole the provisions of the Bye-Law (No. 3) 2012 in determining the object of the provisions of the above quoted section. See the case of **Abubakar V. INEC (2019) All FWLR (pt 1010) p. 195 at pp. 320 – 321; paras. F-A.**

Looking at the provisions of section 1(6) (b) of the Bye-Law, it can be seen that it made reference to "fee" and "fine", and the word used thereon is very clear and unambiguous in the sense that any person operating commercial vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services shall at any time before 10:00am pay a fee on demand to the attendant or any officer of the council authorised which is equivalent to the earning per loading as stipulated in the preceding sub-section or as may be received from time to time in the council. Reference is made in the above

paragraph (b) of subsection (6) of section 1 of the Bye-Law to the preceding sub-section, that is sub-section, 5 and in this case paragraph (a) of subsection (b) of section 1 of the Bye-Law which says "fee which is equivalent to 10% of the total earning per loading". So, by the above quoted paragraph (b) of subsection (6) of section 1 of the Bye-Law, it can be interpreted to mean that any person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services but not using a motor park shall pay before 10:00am (Mondays to Saturdays) or on demand a fee which is equivalent to 10% of the total earning per loading to the attendant. In this context, what is to be paid is a fee and not fine. As I have said earlier on that Uber B.V. which by extension the plaintiff makes weekly payment to the driver of sums paid by passengers for trips driven by the drivers less a service fee retained by Uber B.V. This is one of the findings of the UK Supreme Court, and for the fact that Uber B.V. is operating in Nigeria through the plaintiff. the defendant by the provisions of section 1(6) (b) of the Bye-Law has the power to impose or collect fee only equivalent to 10% earning per loading or as may be reviewed from time to time by the council, and to this, I therefore hold.

While failure to obtain a ticket after 10:00am shall attract a fine of N25,000 or N35,000 depending on the attitude of the offender as to whether he is a first offender and remorseful. By this, it can be construed to mean that it was as result of the failure to pay fee and obtain a ticket after 10:00am, that a person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services but not using motor park will be liable to payment of N25,000 or N35,000 fine.

This, the provision of section 3(3) of the Bye-Law will come to limelight which provides:

> **"The court shall have powers to order that any vehicle in respect of which an offence has been committed under this Bye-Law be impounded until the provisions of the Bye-Law are complied with and any fine imposed by it paid, and to order its release upon compliance with the said provisions and payment of such fine."**

By the above quoted provisions, it can be inferred that it is the court that will impose the fine and not the defendant, having regard to the phrase "any fine imposed by it paid", and more so by section 3(1) of the Bye-Law the court means Magistrate Court and Area Courts of whatever grade.

On the whole, I answer the issue No. 1 in the affirmative that by the provisions of section 1(6) (b) of the Bye-Law (No. 3) 2012, the defendant has the power to impose to collect fee only of 10% earning per loading on any person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services but not using or including motor park, and this include the plaintiff.

The issue No. 2 is:

> **Whether having regard to the provisions of section 7(5) of the constitution of the Federal Republic of Nigeria 1999, including item 1(e) of the Forth Schedule thereto, section 1(I) of the Taxes and Levies (Approved List for Collection) Act, including item 9 in Part II of the schedule thereto and section 55(a) of the Local Government Act, the defendant has the**

power to make bye-laws in relations to fines or other charges howsoever called, concerning the operation of commercial motor vehicles outside of motor parks, as it has purportedly done by section 1(6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012?

It is pertinent to look at the provisions of the laws referred to on the issue.

Section 7 (5) of the constitution including item 1 (e) of the Forth Schedule thereto provides:

"The functions to be conferred by law upon Local Government Council shall include those set out in the Forth Schedule to this Constitution."

By this, it can be inferred that the functions of Local Government shall include those set out in the Fourth Schedule to the Constitution. Item 1(e) of the Fourth Schedule provides:

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

(e) Establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences."

By the above, it can also be inferred that it is one of the functions of a Local Government to maintain and regulate motor parks, among others.

The provisions of section 318 of the constitution covers the Municipal Area Council as a Local Government, and to this, I agree with the submission of the counsel to the plaintiff.

Now, it is the contention of the counsel to the plaintiff that by the express provisions of section 55(a) of the Local Government Act, and item 9 of part III of the Taxes and Levies Act, the provision of section 1(6) (b) of the Bye-Law is patently unconstitutional, this is because, to him, the section of the Bye-Law was made specifically in respect of any person operating a commercial motor vehicle" but not using a motor park," and to him, the court must construe the Bye-Law as deliberate and unlawful attempt by the defendant to legislate for itself powers and functions that are extraneous to the constitution, Local Government Act and Taxes and Levies Act. While it is the contention of the counsel to the defendant that the constitution that created the defendant also confer the power to regulate commercial transport services and is the supreme and no other law can streamline or reduce the powers and duties as provided for in the constitution, and to him, any other law that is inconsistent with any part of the constitution is null and void to the extent of that inconsistency, and he cited the case of **Adisa V. Oyinlola (supra).** The counsel submitted that the defendant did not draw its powers to enact laws on the motor parks from the Local Government Act or Taxes and Levies Act, but pursuant to section 7(5) and the Fourth Schedule to 1999 Constitution as amended.

The counsel took his time to refer and quote the definition of motor park as provided by section 6 of the defendants Bye-Law 2012 (No. 3), and he submitted further that the quarrel of the plaintiff is the purported absence of the phrase "but not using a motor park" as used in the Bye-Law, and he cited the case of **Ugwu & Anor. V. Ararume & Anor (supra)** on guidelines to interpretation which is the mischief rule, and to him, that the mischief the guidelines

were created to solve was to have a well organized and well-documented transport service system which is both accountable to its customers and also sate. He opined that the real issue is whether or not these commercial cars carrying on business transport service providing business within the jurisdiction of the defendant, fall under the regulation of the Bye-Law, and he answered same in the affirmative. He further submitted that if the Local Government Act and Taxes and Levies Act which are subsidiary Laws failed to adequately expound on an area which the constitution has already mandated to enact Bye-Law, as long as the Bye-Law is not inconsistent with the constitution, no law can void the said Bye-Law.

Section 55(a) of the Local Government Act, No. 8 of 1976 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:**
> **(a) Markets and motor vehicle parks."**

Looking at the provisions of section 55(a) of the Local Government Act, it can be inferred that it was in pursuance of the provisions of item 1(e) of the Forth Schedule to the constitution the Local Government Act provides that the Municipal Area Council can make bye-laws on motor vehicle parks. To my mind, there is no conflict between the two provisions; as the Local Government Act gives credence to the provisions of section 7(5) and item I (e) of the Forth Schedule of the Constitution, and to this, I therefore so hold.

Thus, section 1 (I) of the Taxes and Levies (Approved List for Collection) Act provides:

"Notwithstanding anything contained in the constitution of the Federal Republic of Nigeria 1999, as amended, or in any other enactment or law, the Federal Government, State Government and Local Government shall be responsible for collecting the taxes and levies listed in part I, Part II and Part III of the Schedule to this Act, respectively."

Part III – Taxes and Levies to be collected by the Local Government. Item 9: Motor Parks Levies.

Thus, looking at the above quoted section 1(I) of the Taxes and Levies Act and more particularly item 9, it can be inferred to mean that a credence is also given to the provisions of section 7(5) of the constitution and item 1(e) of the Forth Schedule to the Constitution, and it is part of the regulation to be made by the Local Government in collecting levies in motor parks. In the circumstances, I am of the view that the constitution, the Local Government Act and the Taxes and Levies Act do not conflict with each other and to this, I therefore so hold.

The grudge of the plaintiff is the insertion of the phrase "but not using a motor park" instead of the phrase "motor parks" in which he argued that where a statutory power is to be exercised by a statutory body in respect of items specifically mentioned, any items not mentioned are deemed to be excluded by law, and such power is ultra vires, null and void, and he cited the case of **Ehuwa V. Ondo State Independent Electoral Commission & Ors (2006) LPELR – 1056 (SC).** He further submitted that any subsidiary or subordinate legislation which is inconsistent with the principal legislation is a nullity to the extent of its inconsistency, and he cited the case of **Mobil Producing**

(Nig.) UnLimited V. Johnson (supra), and he urged the court to resolve the issue No, 2 in favour of the plaintiff.

Thus, in the constitution, and all the Local Government Act and the Taxes and Levies Act, what was mentioned was either motor parks or vehicle motor parks, which are the same. No mention was made to a phrase like "other matters incidental thereto." Section 6 of the Bye-Law defined the phrase "Motor Park" to mean any parking place designated by the council as a motor park where commercial motor vehicle assemble for loading and off-loading of passengers or goods. The question that will need an answer is:

> **Whether Uber drivers do assemble in a place designated by the Municipal Area Council for the purposes of loading and off-loading of passengers? The answer is in the negative.**

Also it is pertinent to note that there is a difference in meaning between the phrase "commercial motor vehicle" and the phrase "Motor Park". Therefore, for all intent and purposes, the constitution, the Local Government Act and the Taxes and Levies Act do not mention the phrases "but not using a motor park" and also "commercial motor vehicle" and to that the regulatory Bye-Law should not have carried the two phrases. Doing so, amounts to placing principal legislation over the subordinate. See the case of **Mobil Producing Nig. Unlimited V. Johnson (2019) All FWLR (pt 975) p. 820 at 855, paras. C-D** where the Supreme Court held that any subordinate legislation which is inconsistent with the principal legislation is a nullity to the content of its inconsistency. In the instant case, the principal legislations are the constitution, Local Government Act and Taxes and Levies Act, while the subordinate legislation is the Bye-Law (No. 3) 2012 of the Abuja Municipal Area Council. See the case of **Fardoun V. MBC Int'l Bank Ltd (2006) All FWLR (pt**

297) p. 1145 at 1164, para. F where the Court of Appeal, Lagos Division held that a legislation is inconsistent with another if the two are not compatible with each other. In the instant case, the insertion of the phrase "but not using motor park" in addition to the phrase "motor park" as used in the principal legislations made them then incompatible.

The issue No. 2 is answered in the negative.

The issue No. 3 is:

> **Whether having regard to the provisions of section 119(l) of the Local Government Act No. 8 of 1976, the defendant's legislation of section 1 (6) (b) of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012, which provide for fines exceeding N100 (One Hundred Naira) for breaches of provisions of the Bye-Law is not ultra vires the defendant and therefore unlawful, null and void?**

The counsel to the plaintiff adopts the already proffered argument in dealing with the issue No. 2 concerning the statutory source of the defendant's power to make Bye-Law, and he cited the case of **The Governor of Oyo State & Ors V. Folayan (supra).** He submitted that section 1(6) (b) of the Bye-Law provides for a discretionary fine of between ₦25,000 (Twenty Five Thousand Naira) and, ₦35,000 (Thirty Five Thousand Naira) to be imposed on any person who contravene the provisions of that section, and the defendant derives its power to include in the Bye-Law a provision governing and penalising conduct that contravenes provisions of that law from the Local Government Act.

The counsel submitted that under section 119(l) of the Local Government Act, the defendant's power to Legislate

on breaches of such law is limited in monetary terms, to a maximum of ₦100 (One Hundred Naira). The question that agitates in the mind of the counsel to the plaintiff is:

> **Where did the defendant get the power to provide in the Bye-Law for a fine of ₦25,000 – ₦35,000 in respect of breaches of the Bye-Law when the enabling statute clearly provides for a statutory cap of ₦100?**

The counsel cited the case of **Olarewaju V. Oyeyemi & Ors (supra)** to the effect that a subsidiary legislation derives its authority and validity from and subject to the provisions of the parent enabling statute.

The counsel urged the court to compare section 119(l) of the Local Government Act and Section 1 (6) (b) of the Bye-Law, and it is clear that the answer to the above question will be in the negative while it is the contention of the counsel to the defendant that the FCT is a peculiars state and this singular fact affects the cost of living which includes transportation. That every society must make laws that are in tune with the reality, and he cited the case of **Buhari V. Obasanjo & Ors (supra).**

He further submitted that the failure of the Local Government Act and Taxes and Levies Act to peg the motor park levy for the FCT differently from other Local Governments is at best a lacuna which the Bye-Law of the defendant served.

Thus, section 119(l) of the Local Government Act provides:

> **"There may be provided in or by any by-law a penalty not exceeding ₦100 or imprisonment not exceeding six months or both as the Local Government making the by-law may think fit, on**

any person who fails to take any action required by or who disobeys the by-law."

By the above quoted provisions, it can be inferred that the word used is "may", that is to say any Local Government may provide a penalty on its Bye-Law not exceeding N100 as that Local Government may think fit.

In the case of **N.N.P.C. V. FAMFA Oil Ltd (2013) All FWLR (pt 635) p. 215 at pp. 238 – 239, paras. H-B** the Supreme Court held that it is the principal law that provides subsidiary legislation the source of its existence. Without the principal law, there can be no subsidiary legislation, and so subsidiary legislation must conform with the principal law. Where the principal law prescribes a particular method of exercising statutory power, the procedure laid down must be followed without any deviation whatsoever. If any provisions of the regulations are inconsistent with the provisions of the statute, the provisions of the regulations shall to the extent of the inconsistency be declared void. In the instant case, the provision of section 119(l) of the Local Government Act does not prescribe the sum of ₦100 (One Hundred Naira) as the maximum amount as penalty to be imposed on any one who breaches the Bye-Law made by any Local Government, rather it made reference to provision of any Bye-Law that may award a penalty not exceeding ₦100 as that Local Government may deem fit to make in its Bye-Law. So, in essence, the Abuja Municipal Area Council Bye-Law is not in conflict with the provisions of section 119(l) of the Local Government Act.

Thus, where the words of a statute or constitution are clear and unambiguous they call for no interpretation, the duty of the court in such circumstances being to apply the words as used by the legislation. See the case of **Buhari V. Yabo (2019) All FWLR (pt 1007) p. 859 at 873, paras. A – B.** In

the instant case, and I have said earlier that the provisions of section 119(l) of the Local Government Act only made reference to the discretionary powers of the Local Government that might have prescribed not exceeding N100 as penalty as that Local Government deemed fit. The provision of section 119(l) of the Local Government Act is not in conflict with section 1(6) (b) of the Abuja Municipal Area Council, Bye-Law (No. 3) 2012, and the council has the discretion to increase whatever amount exceeding N100 as it deems fit. So, there is no lacuna or gap to be cured as the council has discretion to peg or prescribe the extent of the penalty as it deems fit, and to this, I so hold that there is no inconsistency on the part of the Bye-Law against the provisions of section 119(l) of the Local Government Act No. 8, 1976.

The answer to issue No. 3 is in the affirmative, that there is no ultra vires the defendant.

The issue No. 4 is:

> **Whether having regard to the provisions of sections 6 (6) (b), 36(l) and 36(4) of the constitution of the Federal Republic of Nigeria 1999 and also sections 1(6) (b), 2 (l), 3 (l) and 3 of the Abuja Municipal Area Council Motor Parks (Commercial Vehicles Picking Up Passengers) Bye-Law (No. 3) 2012 the defendant has the power to unilaterally impose on the plaintiff a fine of N25,000 per vehicle for "operating a commercial motor vehicle/logistics and car hire services business' within the council area, without any prior demand under section 1 (6) (b) of the Bye-Law and the plaintiff without having first been charged with any offence in that regard and convicted by a court of competent jurisdiction?**

The counsel to the plaintiff contends that the defendant did not fulfill the condition precedent under section 1 (6) (b) of the Bye-Law of serving the plaintiff with a demand notice for a fee equivalent to the earning per loading, and that the plaintiff has not been charged to court and convicted of any offence under the Bye-Law to warrant the imposition of the fine contained in the 2020 Demand Notice by reason of which the said Notice was issued ultra vires and in violation of the plaintiff's constitutional right to fair hearing.

The counsel contends that before the question of any fine can arise in relation to a contravention of the provisions of section 1 (6) (b) of the Bye-Law, the defendant must have made a prior demand on the plaintiff as per section 1 (6) (a) of the Bye-Law and the plaintiff is in default of the demand, and to him the aforesaid demand is a condition precedent to the imposition of the fine under section 1(6) (b) of the Bye-Law, and he cited the case of **Inakoju V. Adeleke (supra).** The counsel submitted that the position of the law on the implication of the defendant's failure to fulfill a condition precedent is that the steps taken are a nullity, and he cited the cases of **Shogaba V. UBN Plc;** and **Nganjiwa V. FRN (supra)** and urged the court to reach a conclusion that the 2020 Demand Notice is a nullity.

The counsel also submitted that the penalty of ₦25,000 – ₦35,000 stipulated in section, 1(6) (b) of the Bye-Law is described as a fine and it is on that basis the defendant issued the 2020 Demand Notice to the plaintiff per commercial vehicle for the sum of N25.M based on 1000 vehicles, and to him, the defendant acted ultra vires and in gross violation of the plaintiff's right to fair hearing under section 36(I) and 36(4) of the constitution. He contends that a fine is a criminal sanction or sentence that can only be

imposed on a person who has been properly charged on a criminal proceedings, tried and convicted by a court of competent jurisdiction pursuant to section 6 (6) (b) of the constitution, and he referred to the case of **Bashir V. F.R.N. (supra),** and to him, it is not within the statutory power of the defendant to impose a fine on the plaintiff, and he cited the case of **National Spill Detection and Response Agency V. Mobil Producing Nigeria Unlimited (supra)** to the effect that in law a fine is a criminal sanction, and no other organisations or bodies can usurp that power. Any law that would consign to anybody other than the courts the power to award fine is unconstitutional. He further submitted that the defendant acted as a complainant, prosecutor and the court without recourse to any court of competent jurisdiction, and he cited the case of **National Oil Spill Detection and Response Agency V. Mobil Producing Nigeria Unlimited (supra).**

The counsel submitted that the defendant totally ignored the provisions of sections 2(I), 3(I) and 3(3) of the Bye-Law, and has assumed the role of a Magistrate or Area Court in sentencing the plaintiff to a totally fine N25M for contravention of the Bye-Law, and he urged the court to resolve this issue in favour of the plaintiff.

It is the contention of the defendant that what it did was simply written a letter acquainting the plaintiff with the provision of the Bye-Law, and that it was magnimous to inform the plaintiff of its duties and obligation as it relates to that of taxes and this was done in full compliance with the provisions of the Bye-Law. he submitted further that the defendant first of all requested for access to the plaintiff's database of its customers for the purposes of transparent and equitable levying and collection of revenue, and the defendant refused to oblige, and the defendant had no

option but to approximate such levy from insight knowledge of the plaintiff's client base and income from its transport service business using Uber App.

Thus, part of the purport of section 1 (6) (b) of the Bye-Law is that any person operating commercial motor vehicle within Abuja Municipal Area Council including a motor vehicle used for car hire services or for interstate transport shall at any time before 10:00am (Mondays to Saturdays) or on demand pay to the attendant or any duly authorised officer of the council fee which is equivalent to the earning per loading. By this, it could be inferred to mean that, such persons can on their own, alternatively, on demand pay fee to the attendant or any duly authorised officer of the council.

To my mind, the demand may be oral or in writing and it may be made instant or later.

Thus, by the Demand Notice dated the 16th September, 2020, the document to which it is attached to the affidavit in support, it can be seen that it is a demand notice requesting the plaintiff to pay the sum of ₦25,000,000 as ₦25,000 per vehicle covering 1000 vehicles which is requested to be paid within 14 days from the date of the notice. This is in form of a bill.

Now, can the notice be regarded as a bill or a fine imposed by the defendant on the plaintiff?

By the first paragraph of the notice it can be inferred that it is a notice of demand of a bill for operating a commercial motor vehicles/logistics and car hire services business within the area council, and to my mind, this was in pursuance of section 1(6) (b) of the Bye-Law (No. 3) 2012, and to this, I so hold.

If that is the correct position, then the defendant is said not to have acted ultra vires. The defendant contends that

due to refusal to be given the database of all the passengers of the plaintiff by the plaintiff, it approximated the bill. To my mind, this is wrong because billing was not done in accordance with the provisions of section 1(6) (b) of the Bye-Law, that is to say, it was not done on the basis of the fee which is equivalent to the earning per loading, as the defendant did not know the number of the passengers per loading and the number of the driver partners, and this the defendant should not have speculated.

Thus, the said part of the provisions of section 1(6) (b) of the Bye-Law is that failure to obtain a ticket after 10:00am shall attract a fine of N25,000 – N35,000 depending on the attitude of the offender and to whether he is a first offender and remorseful. Therefore, by the community reading of section 1(6) (b), 2(l) and 3(l) of the Bye-Law, it can be inferred that the fine of N25,000= to N35,000= can only be imposed by either a Magistrate or Area Court of whatever grade upon conviction, and not to be imposed by the defendant.

In the circumstances of this case, I have not seen on the 2020 Demand Notice where the sum of ₦25,000,000.00 (Twenty – Five Million Naira) was described as a fine, rather it is a bill which was approximated by the defendant. However, where it is meant to be a fine by the defendant, then it acted ultra vires because it is only a Magistrate or Area Court can impose such fine of ₦25,000 – ₦35,000 on a person who violate the provisions of the Bye-Law, and to this, I therefore so hold.

Where the 2020 Demand Notice was done in satisfaction of the requirement for the fulfillment of the condition precedent in demanding for payment of fee, then it cannot be said that the defendant had acted ultra vires, and to this, I therefore so hold.

As it is now, the 2020 Demand Notice is construed to be in satisfaction of the requirement of the condition precedent of making a demand for the payment of the fee under section 1(6) (b) of the Bye-Law, and it is a demand for payment of fine.

The plaintiff made a complaint of the breach of his right to fair hearing for the fact that he was imposed a fine by the defendant without a proper trial and that he has not been prosecuted, tried and convicted by any court of law to which it was demanded that it should pay the sum of ₦25,000,000.00, and to this, as I have said earlier, the stand of the court is that the 2020 Demand Notice is a mere bill and not fine which was made in satisfaction of the requirement for the fulfillment of the condition precedent to payment of fee on demand, and this is not in contradiction of the rule of fair hearing as is enshrined in sections 36(l) and 36(4) of the 1999 constitution, and to this, I therefore so hold. This issue No. 4 is also answered that the defendant has no power to unilaterally impose on the plaintiff a fine of ₦25,000 per vehicle for operating a commercial motor vehicle/logistics and car hire services business within the council without the plaintiff first being charged with any offence and convicted by a court of competent jurisdiction, this is answered in the negative, and where the defendant does, it is ultra vires the defendant.

I also hold that the 2020 Demand Notice was a bill of fee and not a fine in satisfaction of the requirement for the fulfillment of the condition precedent of making a demand, and the bill was ultra vires the defendant having not done in accordance with the provisions of section 1(6) (b) of the Bye-Law (No. 3) 2012.

It is hereby declared that the provision of the Bye-Law (No. 3) 2012 is to some extent inconsistent with the provisions

of the constitution, Local Government Act and Taxes and Levies Act and is therefore null and void to the extent of its inconsistency.

It is hereby declared that the Demand Notice dated the 16th September, 2020, the bill having not done in accordance with the provisions of section 1 (6) (b) of the Bye-Law (No. 3) 2012, issued by the defendant to the plaintiff is unlawful, null and void.

The Demand Notice dated 16th September, 2020 issued by the defendant to the plaintiff is hereby set aside.

An order is hereby given restraining the defendant whether by itself, staff, agents or officers howsoever called from in any manner whatsoever, enforcing, giving effect to or continuing to enforce or give effect to the Demand Notice dated the 16th September, 2020 issued by the defendant to the plaintiff.

The rest of the reliefs are hereby refused.

Signed
Hon. Judge
11/1/2022

Appearances:

Eustace Nwaozuzu Esq appearing with Vale Ojukwu Esq (Mrs.) for the plaintiff.

O. O. Igbayilola Esq holding the brief of P.B. Daudu Esq appearing with B.N. Dibiah Esq and O.N. Sule Esq for the defendant.