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Introduction

On the 9th day of July 2013, the Supreme Court of Nigeria delivered its Judgement on the validity or otherwise of the Lagos State Hotel Licensing Law 2003, the 2009 Hotel Occupancy and Restaurant Consumption Tax Law of Lagos State, and the 2010 Hotel Licensing (Amendment) Law of Lagos State (“the Lagos State Hospitality Laws”).

Plaintiff’s Case

It was the contention of the Federal Government of Nigeria, as Plaintiff, that the implementation of the Lagos State Hospitality Laws, alongside those of the Federal Government of Nigeria, namely the Nigerian Tourism Development Corporation Act (“NTDC Act”) 1992, will have adverse and negative implications to the development of the Hospitality industry in Nigeria.

Defendant’s Rebuttal

In rebuttal, the Lagos State Government, as Defendant, contended that the NTDC Act was promulgated during the 1983 Federal Military regime, which regime suspended and subsequently amended the 1979 Constitution of the Federal Republic of Nigeria, under which the Lagos State Hospitality Laws were enacted.

It was also the contention of the Lagos State Government, in this law suit, that the NTDC Act regulates the licensing of Hotels as opposed to its constitutionally permitted regulation of **tourism traffic** which under the 1999 Constitution of the Federal Republic of Nigeria (“1999 Constitution”) (as amended) is an exclusive legislative list matter for the Federal Government and her agencies like the NTDC, to legislate on and regulate.

Supreme Court’s Decision

The Supreme Court, in delivering its final decision in this matter, reiterated the fact that Nigeria operates a Federal system of government, which recognises the separateness and independence of each federating unit, namely the Federal Government, the States, and the Federal Capital Territory.

The Supreme Court therefore held that in accordance with Section 4 (1) to (7), and Item 60 (D) of Part 1 of the Second Schedule of the 1999 Constitution (as amended), the Plaintiff, i.e. the Federal Government of Nigeria, is only authorised to regulate foreign tourist traffic in the entire Federal Republic of Nigeria. The Supreme Court further held that the Plaintiff, i.e. the Federal Government of Nigeria, does not however have the constitutional authority to legislate on the regulation of Hospitality or tourist related establishments as this was a residual matter for the States' Houses of Assembly to legislate on.

In the light of the above legal position, the Supreme Court of Nigeria further held that the provisions of the Nigerian Tourism Development Corporation Act, which regulates tourist or Hospitality related establishments, were null and void, while the Lagos State Hospitality Laws are *intra vires*, i.e. within the scope of the constitutional power of the Lagos State Government to regulate these establishments, but only in Lagos State.

Consumption Tax vs. VAT – Ratio Decidendi or Obiter Dictum?

The submissions of the parties in this case, which formed the basis of the Supreme Court decision, was which of the federating units has the constitutional authority to legislate on matters pertaining to the registration, classification, grading and other regulatory matters that affect tourist related establishments like Hotels, Motels, Restaurants, Fast Food Outlets, Guest Inns, Apartments, Travels Agencies, Tour Operating Outfits, etc.

The constitutionality or otherwise, of the Federal Value Added Tax Act (as amended) and the Lagos State Hotel Occupancy and Restaurant Consumption Tax Law was not canvassed in this matter.

The final decision of the Supreme Court did not therefore address the validity of the Lagos State Hotel Occupancy and Restaurant Consumption Law vis-à-vis the Federal Value Added Tax Act (as amended). The effect of this development is the continuing combined imposition of a State Sales or Consumption Tax and a Federal Value Added Tax on the same transaction or purchases in Lagos and Edo States. This position, it must be said, amounts to double taxation.

As Sales Tax is arguably a residual matter for the States' Houses of Assembly to legislate on, the parties in this suit, and other States that have enacted their Sales or Consumption Tax Laws, like Edo State, will be serving the greater economic development of Nigeria if they return to the Supreme Court of Nigeria to obtain legal validation on State or Federal Sales or Consumption Tax impositions, both in Lagos State and in the rest of the Federal Republic of Nigeria.

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