

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

1285
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SUIT NO: FHC/ABJ/CS/ /2023

BETWEEN

1. John Aikpokpo-Martins Esq.
*(Chairman, Nigerian Bar Association Section
on Public Interest and Development Law)*

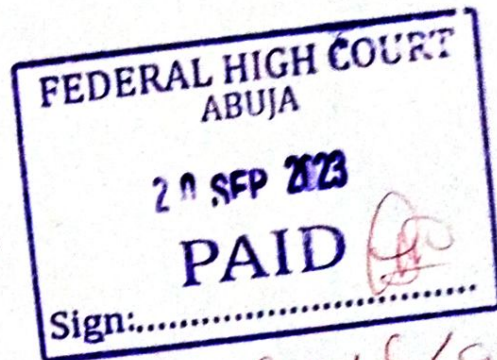
2. Funmilola Adeogun

*(Secretary, Nigerian Bar Association Section
on Public Interest and Development Law)*

3. Francis Ogunbowale Esq.

*(Council Member, Nigerian Bar Association Section
on Public Interest and Development Law)*

Plaintiffs



130901869436

And

1. Federal Government of Nigeria

2. Joint Tax Board

3. Governor of Lagos State

Defendants

ORIGINATING SUMMONS

SUBJECT:

THE LEGALITY OF THE ACTIONS OF THE DEFENDANTS TO IMPOSE ANNUAL FEE FOR CERTIFICATES OF PROOF OF OWNERSHIP OF VEHICLES IN THE FACE OF CLEAR CONSTITUTIONAL PROVISIONS LIMITING THEIR POWERS; AND THE CONSTITUTIONALITY OF SECTION 73(1), (2) & (3) OF THE NATIONAL ROAD TRAFFIC REGULATION NO. 101, VOL. 99 OF 29TH OF DECEMBER 2012

Dated this 20th day of Sept, 2023.

Kunle Edun Legal

Ikeazor Akaraiwe, SAN

Settled By:

Dlukunle Oghene-ovo Edun Esq. (signed)

John Aikpokpo-Martins & Ors. V. Fed. Govt. of Nig. & Ors.

Kunle Edun Legal

Maxwell Opara Esq.

Felix Akpowowo Esq.

Aniagu Mwamu Esq.

Adeola Folarin

Godspower Eroga Esq.



eduovo@yahoo.com 08038695936

For service within jurisdiction:

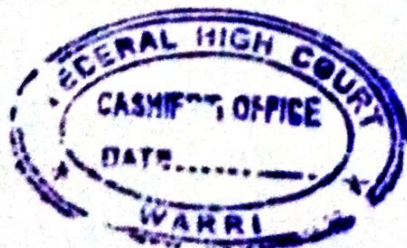
John Aikpokpo-Martins Esq.

Chairman, NBA-SPIDEL

NBA Secretariat

Mohammadu Buhari Way,

Central Alrea, Abuja.



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} Plaintiffs

And

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} Defendants

ORIGINATING SUMMONS

LET THE DEFENDANTS, (1) Federal Government of Nigeria (2) Joint Tax Board (3) Governor of Lagos State, within 30 days after the service of this summons on them inclusive of the day of such service cause an appearance to be entered for them to this summons on the application of the Plaintiffs for the determination of the following questions:

1. Whether by virtue of Section 86 (1) of the Personal Income Tax Act 2004, that created the 2nd Defendant i.e., Joint Tax Board (JTB), the imposition of taxes/levies, particularly the imposition of annual renewal of Proof of

Ownership (POC) Certificates on vehicle owners, is not ultra vires of its statutory powers, which are merely to promote uniformity in personal income tax administration and render general tax advisory.

2. Whether Section 73 of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended), which provides that the Federal Road Safety Commission (FRSC) shall establish, keep and maintain a central data base for vehicles and drivers for the federation, provides sufficient legal basis for 1st, 2nd & 3rd Defendants to impose or direct annual renewal of Proof of Ownership certificates on vehicle owners.
3. Whether the imposition of annual renewal of Proof of Ownership certificates on vehicle owners by the Defendants does not amount to multiple taxation and therefore illegal, in view of the fact that the 1st and 3rd Defendants (and the various State Governments, through their various tax agencies, have already issued certificates or evidence of proof of ownership to vehicle owners at the time of registration.
4. Whether the annual payment for Proof of Ownership Certificate is part of the statutory taxes and levies contained in Parts 1 to 3 of the Tax and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, to be collected by the Federal, State or Local Government.
5. Whether section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 is not in violent breach of item 63 of Part I of the 2nd Schedule to the 1999 Constitution and section 1(1) of the same 1999 Constitution, as amended; and therefore, unconstitutional.
6. Whether, the Joint Tax Board has the vires and authority to make laws on taxation in Nigeria.

AND THE PLAINTIFFS CLAIM AGAINST THE DEFENDANTS JOINTLY AND/OR SEVERALLY AS FOLLOWS:

Ownership (POC) Certificates on vehicle owners, is not ultra vires of its statutory powers, which are merely to promote uniformity in personal income tax administration and render general tax advisory.

2. Whether Section 73 of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended), which provides that the Federal Road Safety Commission (FRSC) shall establish, keep and maintain a central data base for vehicles and drivers for the federation, provides sufficient legal basis for 1st, 2nd & 3rd Defendants to impose or direct annual renewal of Proof of Ownership certificates on vehicle owners.
3. Whether the imposition of annual renewal of Proof of Ownership certificates on vehicle owners by the Defendants does not amount to multiple taxation and therefore illegal, in view of the fact that the 1st and 3rd Defendants (and the various State Governments, through their various tax agencies, have already issued certificates or evidence of proof of ownership to vehicle owners at the time of registration.
4. Whether the annual payment for Proof of Ownership Certificate is part of the statutory taxes and levies contained in Parts 1 to 3 of the Tax and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, to be collected by the Federal, State or Local Government.
5. Whether section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 is not in violent breach of item 63 of Part I of the 2nd Schedule to the 1999 Constitution and section 1(1) of the same 1999 Constitution, as amended; and therefore, unconstitutional.
6. Whether, the Joint Tax Board has the vires and authority to make laws on taxation in Nigeria.

AND THE PLAINTIFFS CLAIM AGAINST THE DEFENDANTS JOINTLY AND/OR SEVERALLY AS FOLLOWS:

1. A DECLARATION that by virtue of Section 86 (1) of the Personal Income Tax Act 2004 that sets up the Joint Tax Board (JTB), the power it purportedly exercised to impose yearly fee for annual renewal of Proof of Ownership (POC) Certificates on vehicle owners, is ultra vires, unlawful and unconstitutional.
2. A DECLARATION that by virtue of Section 73 of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended), which provides that the Federal Road Safety Commission (FRSC) shall establish, keep and maintain a central data base for vehicles and drivers for the federation, the Defendants do not have the power to impose/direct the issuance of annual Proof of Ownership certificates on vehicle owners.
3. A DECLARATION that the imposition of annual renewal of Proof of Ownership certificates on vehicle owners amounts to multiple taxation and therefore, illegal, in view of the fact that tax agencies and other agencies of Governments usually issue certificates of proof of ownership to vehicle owners at the point of registration of vehicles.
4. A DECLARATION that section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 is in violent breach of item 63 of Part 1 of the 2nd Schedule to the 1999 Constitution and section 1(1) of the same 1999 Constitution , as amended; and therefore, unconstitutional.
5. A DECLARATION that Proof of Ownership Certificate is not part of the taxes and levies contained in Parts 1 to 3 of the Tax and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria (LFN), to be collected by the Federal, State or Local Government.
6. A DECLARATION that the 2nd Defendant lacks the vires and powers to make laws on taxation and its purported imposition of tax/levy/fee to be paid for

annual renewal of Proof of Ownership certificates on vehicle owners amounts to legislating on taxation in Nigeria, and therefore, unconstitutional.

7. An order striking down the provisions of section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012, on the ground of being in violent breach of item 63 of Part I of the 2nd Schedule to the 1999 Constitution and section 1(1) of the same 1999 Constitution, as amended; and therefore, unconstitutional.
8. An order of injunction restraining the Defendants, their agents, servants and privies from implementing the purported policy of annual renewal of proof of ownership certificates against vehicle owners, throughout the federation of Nigeria.
9. An order of injunction restraining the Defendants, their agents, servants and privies from harassing, disturbing and/or interfering with the rights to freedom of movement of Nigerians using their vehicles in any part of the federation of Nigeria, on the ground of non-payment and renewal of proof of ownership certificates in respect of their vehicles.
10. The cost of this litigation as the Court may determine.

THIS SUMMONS was taken out by **Olukunle Ogheneovo Edun Esq.** (signed) of the **NBA-SECTION on Public Interest and Development Law (NBA-SPIDEL)** of The Nigerian Bar Association, NBA House, **Mohammadu Buhari Way, Abuja**, for the above - named Plaintiffs.

The Defendants may appear hereto by entering appearance personally or by legal practitioner either by handing in the appropriate forms duly completed, at the Federal High Court Registry or by sending them to that office by post.

Note:

If the Defendants do not enter appearance within the time and at the place above mentioned, such orders will be made and proceedings may be taken as the Judge may think just and expedient.

Dated this day of 2023.

.....
REGISTRAR

FOR SERVICE

1. 1ST DEFENDANT

*The Attorney General and Minister of Justice
Federal Ministry of Justice,
Abuja.*

2. 2ND DEFENDANT

*Joint Tax Board
12 Sakode Crescent
Municipal, 904101
Abuja, FCT.*

3. 3RD DEFENDANT

*The Attorney General and Commissioner for Justice
Lagos State
C/o Lagos State Government Liaison office
Abuja.*



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2. Funmilola Adeogun
*(Secretary, Nigerian Bar Association Section
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3. Francis Ogunbowale Esq.
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on Public Interest and Development Law)*

Plaintiffs

And

1. Federal Government of Nigeria
2. Joint Tax Board
3. Governor of Lagos State

Defendants

AFFIDAVIT SETTING FORTH FACTS RELIED UPON

1. John Aikpokpo-Martins Esq, Male, Christian, Nigerian, Legal Practitioner of Airport Road, Warri, Delta State, do hereby make oath and state as follows that:

1. That I am the 1ST Plaintiff in this Suit, a vehicle owner and the Chairman, Nigerian Bar Association Section on Public Interest and Development Law (NBA-SPIDEL).
2. That I am very conversant with the facts of this Suit and I have the authority of the other Plaintiffs to depose to this affidavit.

3. That the 2nd and 3rd Plaintiffs are the Secretary and Council Member respectively of the Nigerian Bar Association Section on Public Interest and Development, a non-profit-professional association of lawyers in Nigeria, registered under the laws of the Federal Republic of Nigeria with more than 120,000 members, many of whom are owners of registered vehicles nationwide including Lagos State and the Federal Capital Territory, Abuja including the Plaintiffs.
4. That this suit was brought by the Plaintiffs on behalf of themselves, its teeming members all over the country and members of the general public who are registered vehicle owners in Nigeria.
5. The 1st Defendant is a constitutional creation and one of the tiers of Governments in Nigeria that is responsible for all the agencies and activities of the central government of Nigeria. The 2nd Defendant (JTB) is a statutory agency of the 1st Defendant created under Section 86 (1) of the Personal Income Tax Act, 2004 and has its principal place of business at Number 12, Sokode Crescent, Municipal, 904101, Abuja, FCT. The 3rd Defendant is one of the States in Nigeria and is a member of the Joint Tax Board.
6. That all the 36 States in Nigeria and the Federal Capital Territory, Abuja are members of the Joint Tax Board (JTB). The JTB acts on behalf of the various States and the Federal Government in carrying out its statutory functions.
7. That on the 27th day of June 2023, the Permanent Secretary, Lagos State Ministry of Transportation, Engr. Abdulhafiz Toriola, addressed a Joint Press Conference at the behest of the 1st, 2nd and 3rd Defendants and informed members of the public that consequent upon an emergency meeting held on May 9, 2023, the 2nd Defendant (JTB) had resolved to implement a policy of N1,000 annual renewal of Proof of Ownership Certificates of vehicles throughout the federation of Nigeria, effective from 1st of July 2023, particularly in Lagos State.

8. That when a vehicle is bought anew and the owner approaches the licensing authority for registration, it is mandatory for the owner to pay and be issued with the following documents:

- (i) Vehicle License.
- (ii) Insurance Certificate.
- (iii) Certificate of Road worthiness
- (iv) CMR**
- (v) Certificate of Proof of Ownership**
- (vi) Certificate for allocation of plate number.

9. That I was informed by both the 2nd and 3rd Defendants who are resident in Lagos State on the 20th day of August, 2023 at the NBA-SPIDEL Secretariat, Abuja and I verily believe them as follows:

- a. That the **vehicle license** usually contains the particulars of both the vehicle and the owner. The fee for issuance of insurance certificate in Lagos has been increased from N5, 000 to N15, 000. Certificate of road worthiness contains data and the fitness of the vehicle. The **CMR** otherwise known as the Central Motor Registry consists of data of both the vehicle and the owner in the storage of the Federal Road Safety Corps (FRSC). Allocation of Plate Number Certificate contains data regarding the vehicle.
- b. That the Proof of Ownership Certificate which the Defendants want vehicle owners to renew annually already contains data regarding the vehicle and the owner and the data remains extant and not renewable except in cases of change of ownership of the vehicle.
- c. That the 2nd Plaintiff was harassed sometime in September 2023 by officials of the 3rd Defendant while driving her vehicle in Lagos State and **compelled to pay the sum of N1,500 for the new Proof of Ownership Certificate (POC) in respect of her Vehicle Registration No. FUN 777 MI**

with a surprising expiration date of September 2024. Her old and new POC are hereby attached and marked as Exhibits "A" & "B".

- d. That the 3rd Plaintiff was harassed sometime in September 2023 by officials of the 3rd Defendant while driving his vehicle in Lagos State and compelled to pay the sum of N1,500 for the new Proof of Ownership Certificate (POC) in respect of his Toyota Vehicle Registration No. KTU 250 CH with a surprising expiration date of September 2024. His old and new POC are hereby attached and marked as Exhibits "C" & "D".
10. That I know as a fact that the 2nd Defendant (the Joint Tax Board) which made the policy and set out dates for implementation, consists of Boards of Internal Revenues of the 36 States of the Federation and the Federal Capital Territory and does not have the power to make laws or policies in Nigeria. The 3rd Defendant also lacks the vires to make same binding policy.
11. That I know as a fact that proof of ownership certificate of a vehicle is not a company income tax, or petroleum profit tax or personal income tax or capital gains tax or value added tax or stamp duty tax or any other tax that is part of the approved list of Taxes and Levies contained in the legislations to be administered by the 2nd Defendant, under the law or any other agency of any State in the Federation.
12. That I know as a fact that the Registration of vehicles is not an item in both the Exclusive and Concurrent Legislative Lists.
13. That I also know as a fact that the 2nd Defendant was established with the sole aim of promoting uniformity in personal income tax administration and render general tax advisory, and not to impose/legislate on tax or levies or make laws or policies.
14. That the policy and implementation of the issuance and payment for annual renewal of proof of ownership certificate of vehicles is unnecessarily duplicitous and amounts to multiple taxation because vehicle owners are

made to pay for the registration of vehicles at the point of registration of the vehicles before the issuance of Vehicle Plate numbers. At this point, vehicles' proof of ownership certificates are also issued amongst other documents evidencing ownership of the vehicles.

15. That I know as a fact that the information of both the vehicle and the owner originally supplied to the Motor Registry and other relevant agencies do not change except when the vehicle is sold off to a new person, and would therefore require a change of ownership documentation.
16. That I know as a fact that payment for renewal of proof of ownership certificate every year, without any change in the information of both the vehicle and the owner, in the already issued vehicle particulars, is unreasonable, retrogressive, ill conceived, poorly designed and capable of further impoverishing the citizens, including the 2nd and 3rd Plaintiffs.
17. That the 3rd Defendant has already commenced the implementation of the annual renewal policy without any legal basis.
18. That I know as a fact that this new policy is only geared towards aggressive revenue generation over the already heavily-taxed Nigerians.
19. That many prominent Nigerians and experts on taxation have condemned this new tax policy, one of them being Mr. Taiwo Oyedele, Fiscal Policy Partner and Africa Tax Leader, PriceWaterhouseCooper (PwC) who was only recently appointed by the President of Nigeria, Bola Ahmed Tinubu as his Special Adviser on Tax Reforms, issued a public statement prior to his recent appointment, that

"According to the NBS, there are about 12 million vehicles in Nigeria. If we assume that everyone complies and pays to the government, the tax will generate gross receipts of N12 billion annually before taking into account the likely high cost of collection and possible leakages in addition to the unquantifiable time, cost, and burden of compliance by vehicle owners.

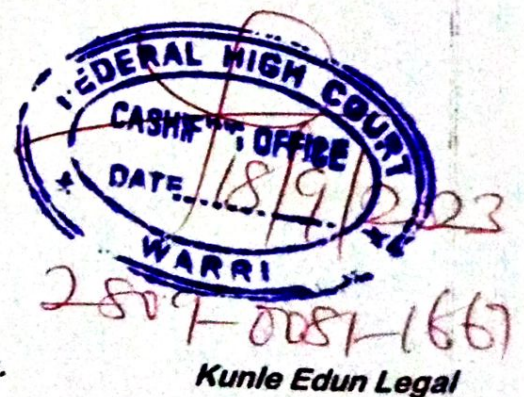
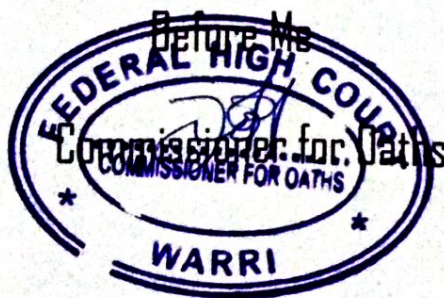
*While this tax will not necessarily stop the earth from rotating, it is wrong both in terms of signalling from a multiple taxation perspective and in terms of timing given the recent fuel subsidy removal. To be sensitive and demonstrate empathy, the government should not impose any new or higher taxes on transportation, energy, or food which are the most impacted by the subsidy removal. The same reasons why the recent attempt to collect VAT on diesel needs to be reconsidered. The tax should be set aside in the interest of good order and to prevent setting a bad precedent. **Who says we cannot be asked to also renew our birth certificates, C of D, etc. on an annual basis if this succeeds?***

20. The ill-motivated policy, if not stopped, will further aggravate the pressure on the already overstretched financial conditions of the citizens, because of the consequential increase in the cost of human basic needs and other soul-saving consumables like petroleum products, electricity tariff and transportation, without any commensurate increase in the annual income and wages of the citizens.

21. AND I DO SOLEMNLY AND SINCERELY DECLARE THAT I MAKE THIS SOLEMN DECLARATION BELIEVING SAME TO BE TRUE AND BY VIRTUE OF THE PROVISIONS OF THE EXTANT OATHS ACT.


Deponent

Sworn to at the Federal High Court Registry
Warri this 18th day of September, 2023.



Del A

Before me

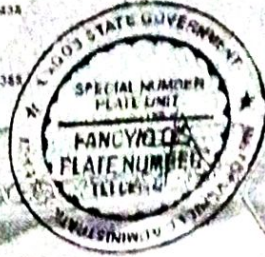
COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
ABUJA

Comm for Oaths
Federal Republic of Nigeria

(Licensing Scheme)
Proof of Ownership Certificate

A 3540999

Plate No	FUN72781	Spec VIN	LA
State	Lagos	Lic Area	MYAA Out of Series
Vehicle Make	Toyota	Model	Highlander
Vehicle Type	Motor Vehicle	Colour	Grey
Chassis No.	5TDDKZPR02002887	Engine No.	20R894032
Purpose	Vehicle Registration	Title	
Name of Owner	FUNMI LOLA OLUVAATOSIN ADEGUN	Telephone No.	0011 4883365
Address	23A, KUNLE DUNNER STREET, LEKKI	Email	
Previous Registration	PHS 1, LAGOS		



This certificate should be kept in a safe place. It must be presented as a proof that you have complied with the road traffic registrations.

SOM

ABUJA

Previous Registration

Cresent
Lekki, Lagos

A 0270632

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Defendants

WRITTEN ADDRESS OF THE PLAINTIFFS

1.0 INTRODUCTION

- 1.1 The Plaintiffs who are citizens of Nigeria and vehicle owners brought this Suit against the Defendants, who are major players in the operation and management of tax, to challenge the introduction of annual payment and renewal of proof of ownership certificate of vehicles, despite the fact that they paid for the same document as at the time of purchase and registration of the vehicle and the information given to the licensing authorities have not changed.

1.2 On the 27th of June 2023, the Permanent Secretary, Lagos State Ministry of Transportation, Engr. Abdulhafiz Toriola, addressed a Joint Press Conference of 2nd Defendant, i.e., the Joint Tax Board and informed the public that a policy of N1, 000 annual renewal of Proof of Ownership Certificates of vehicles has been introduced and will start implementation on 1st of July 2023, in Lagos State and other states of the federation. The Certificate is now issued for N1, 500 annually per vehicle with annual expiration date. **Exhibits A, B, C & D attached to the affidavit refer.**

1.3. **ISSUES FOR DETERMINATION**

The following six (6) issues are distilled for determination in this Suit:

- a. *Whether by virtue of Section 86 (1) of the Personal Income Tax Act 2004, that created the 2nd Defendant i.e., Joint Tax Board (JTB), the imposition of taxes/levies, particularly the imposition of annual payment and issuance of renewal of Proof of Ownership (POC) Certificates on vehicle owners, is not ultra vires of its statutory powers, which are merely to promote uniformity in personal income tax administration and render general tax advisory*
- b. *Whether Section 73 of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended), which provides that the Federal Road Safety Commission (FRSC) shall establish, keep and maintain a central data base for vehicles and drivers for the federation, provides sufficient legal basis for 1st, 2nd & 3rd Defendants to impose or direct payment and issuance of annual Proof of Ownership certificates on vehicle owners; and if same is constitutional.*
- c. *Whether the imposition of annual renewal of Proof of Ownership certificates on vehicle owners by the Defendants does not amount to*

multiple taxation and therefore illegal, in view of the fact that the 1st and 3rd Defendants (and the various State Governments, through their various tax agencies, have already issued certificates or evidence of proof of ownership to vehicle owners at the time of registration.

- d. *Whether the annual payment for Proof of Ownership Certificate is part of the statutory taxes and levies contained in Parts 1 to 3 of the Tax and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, to be collected by the Federal, State or Local Government.*
- e. *Whether section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 29th of December 2012 is not in violent breach of item 63 of Part 1 of the 2nd Schedule to the 1999 Constitution and section 1(1) of the same 1999 Constitution, as amended; and therefore, unconstitutional.*
- f. *Whether, the Joint Tax Board has the vires and authority to make laws on taxation in Nigeria.*

1.4. LEGAL ARGUMENT

On Issue 1.

Whether by virtue of Section 86 (1) of the Personal Income Tax Act 2004, that created the 2nd Defendant i.e., Joint Tax Board (JTB), the imposition of taxes/levies, particularly the imposition of annual payment and issuance of renewal of Proof of Ownership (POC) Certificates on vehicle owners, is not ultra vires of its statutory powers, which are merely to promote uniformity in personal income tax administration and render general tax advisory

2.01. Legal Argument

2.02. The 2nd Defendant is an agency of the 1st Defendant. The JTB is an agency of the Federal Government of Nigeria. Section 86(1) of the Personal Income

Tax Act (PITA) Scap P8, LFN 2010 created the Joint Tax Board and in section 86(2) (a-b) defined the membership of the Board to include the Chairman of the Federal Board of Inland Revenue, as Chairman of the Board; one member from each State of the Federation and a nominee of the Federal Civil Service Commission to act as Secretary of the Board. By Section (8) of the PITA, which prescribes the functions of the Board, nowhere was the Board given the power to legislate or create new heads of taxes. The Board's functions are essentially to act as an advisory and administrative support to tax authorities.

2.03. The statutory mandate of the 2nd Defendant is to create a tax friendly environment by ensuring and promoting uniformity, harmony and efficiency in personal income tax administration in Nigeria.

2.04. We most respectfully submit that acts of the various organs of government and their officials must find source or be in accordance with the *fons et origo* (grundnorm), which is the extant Constitution of the Federal Republic of Nigeria. Any official act of government and/or its officials that cannot find any support in the Constitution is therefore unconstitutional. Sections 1(1), (3) of the CFRN provides that

"This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria"

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

2.05. **Governor of Ebonyi State & Ors v. Hon. Justice Isuama (2003) FWLR (PT. 169) 1210 @ 1227-1228**, the Court of Appeal while stressing the need for public officials to obey rules of law held that:

"Obedience to the rule of law by all citizens but more particularly those who publicly took oath of office to protect and preserve the constitution is a desideratum to good governance and respect for the rule of law. In a democratic society, this is meant to be a norm; it is an apostasy for government to ignore the provisions of the law and the necessary rules made to regulate matters".

2.06. A democratic society is governed by laws, and not by impunity or fiat of the executive or legislative arm of government. The Supreme Court in the case of *A.G. Abia v A.G.Fed* (20020 6 NWLR (Pt.763) 264 held (per Kutiji, JSC) re-emphasized the superiority of the Constitution when it held that

"The Constitution is the mirror upon which our actions or the actions of the National Assembly or any other public institution must be assessed. All actions must reflect the Constitution or else they will be considered as nullity. That being the case, we have to look and see if the said Constitution has made provisions on a particular subject-matter then, no other body can enlarge, alter and curtail the provisions of the Constitution".

2.07. In *Ebitech v Obiki* (1992) 5 NWLR (Pt.243)599 @ 617, Ejiwunmi (JCA (as he then was) held on the issue of supremacy of the Constitution of Nigeria, that

"It is only necessary to restate the well accepted principle accorded to written Constitutions, such as our own Constitution of the Federal Republic of Nigeria 1979, that those Constitution being the Supreme Law of the land stands above any other enactment, statutes or laws, and its provisions cannot be made subject to any other Act or enactment except by direct and clear provisions to the effect that the

provisions of the Constitution of Nigeria 1978 shall not apply to the sub-4th enactment

208. By Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the power to make laws is that of the legislature. The legislature comprises of the National Assembly and the State Houses of Assembly and that any exercise of legislative power, where such power has not been delegated is *ultra vires*.

209. An *ultra vires* act is an invalid act if the act is done in excess of the authority conferred by law. See

(i) *Mr. Eshelomon Ujah Ujigbo v Government of Rivers State & Anor* (2016) LPELR-4012 (CA) and

(ii) *Justice Ekanem F. Ekanem & Ors v Bishop Rowland O. Ihu* (2010) LPELR-4064 (CA).

210. We submit that while legitimate imposition of tax and levies is the source of funding of every government, the matter should not be allowed to degenerate into a desperate extortion, usurpation and illegitimate exploitation of the public. We submit further that the primary function of the 2nd Defendant is to control the imposition of taxes and levies by the appropriate tier of government, ensure that whatever tax is levied is legitimate, has legal backing and ensure that no tax is imposed unless there is express provision in the statute to that effect. See

(i) *Et Ica Local Government v Mr Rufus Jigade & Anor* (2007) LPELR-3464 (CA).

(ii) *E. A. Authority v Regional Tax Board* (1970) LPELR-2967 (SC).

211. We urge this Honourable court to hold that by virtue of Section 86 (1) of the Personal Income Tax Act 2004, the 2nd Defendant has no power to impose annual renewal of Proof of Ownership (POC) Certificate on

vehicle owners and that the imposition which was announced on the 27th of June 2023 and scheduled to commence on the 1st of July 2023, is *ultra vires*.

3.01. **On Issue 2**

Whether Section 73 of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended), which provides that the Federal Road Safety Commission (FRSC) shall establish, keep and maintain a central data base for vehicles and drivers for the federation, provides sufficient legal basis for 1st, 2nd & 3rd Defendants to impose or direct payment and issuance of annual Proof of Ownership certificates on vehicle owners; and if same is constitutional.

3.02. **Legal Argument**

3.03. The Defendants purported to have exercised their power to impose annual renewal of proof of ownership certificate, pursuant to Section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended) which provides:

- (1) *"A commercial vehicle trailer, taxi stage carriage, omnibus or motorcycle for hire shall before being registered or licensed and every six months thereafter be examined by the Vehicle Inspection Officer.*
- (2) *"A private vehicle or motorcycle shall be examined four years after the date of manufacture and every twelve month thereafter.*
- (3) *"Where a vehicle is found to be roadworthy, the Vehicle Inspection Officer shall issue a certificate to that effect as in Form MVA 22 specified in the Third Schedule of these Regulations which shall remain valid in the case of private vehicles and motorcycles for twelve months and in every other case for six months."*

3.04. We submit that a proper reading of this provision does not suggest any conferment of power on the Defendants to make laws or policies or impose annual renewal of POC Certificate. Section 73 (sub-titled Examination of commercial and private vehicles) merely empowers the **Federal Road Safety Commission (FRSC)** to keep records of roadworthiness of vehicles. Nowhere, in the Law were the Defendants authorized to impose levies for Renewal of Proof of Ownership of Certificates.

3.05. **UNCONSTITUTIONALITY OF THE NATIONAL ASSEMBLY LEGISLATING ON MATTERS OUTSIDE THE PURVIEW OF THE EXCLUSIVE/CONCURRENT LEGISLATIVE LISTS**

3.06. We further submit that the provision of section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended) is unconstitutional and should be struck down.

3.07. Respondent respectfully submits that on the basis of the principles of federalism, the Constitution of the Federal Republic of Nigeria 1999, as amended provided for functions and responsibilities that are within the legislative competence of both the National Assembly and the States' Assemblies, to wit: Exclusive Legislative List and Concurrent Legislative List. By virtue of the provisions of item 63 of Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999, as amended, the National Assembly is expressly authorized by the Constitution to make laws only with respect to **TRAFFIC ON FEDERAL TRUNK ROADS.**

3.08. In the entire 30 items in the gamut of Part II of the 2nd Schedule (Concurrent List) nowhere was vehicle inspection, proof of ownership of vehicle or vehicle quality mentioned. It is therefore, ultra vires and in

excess of the legislative competence of the National Assembly to purportedly expand or extend the subject-matter jurisdiction of the **FEDERAL** Road Safety Commission to include vehicle inspection on all roads in Nigeria. These are matters within the exclusive preserve of States' Houses of Assembly.

3.09. It is also trite that matters that are in the Concurrent Legislative List are within the competence of both the National Assembly and States' Houses of Assembly to legislate thereon. However, any matter that is not expressly mentioned in both the Exclusive and Concurrent Lists (like vehicle inspection and proof of ownership of vehicles) falls within the residual functions of the States' Houses of Assembly and competence to make laws on. Only recently, the Court of Appeal, Asaba Division in the **case of Federal Road Safety Commission v. Darlington Ugo Ehikim Reported (2023) LPELR-60749 (CA)** held that the jurisdiction of the Federal Roads Safety Commission is only confined to federal roads as stated in item 63 of the Exclusive List.

3.10. **Section 4(2) of CFRN** provides that

"The National Assembly shall have the power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution"

3.11. We submit that the annual renewal of the proof of ownership certificate's policy was dead on arrival for the above reason and urge the court to hold that Section 73 of the National Road Traffic Regulation No. 101, Vol. 99 of 25th of December 2012 (as amended), under which the Defendants

purported to have derived their power to impose annual renewal of POC on vehicle owners, did not confer it with such power and should be struck down on the ground of being inconsistent with item 63 of the Exclusive List of Part I of the 2nd Schedule to the 1999 Constitution, as amended.

4.01. On Issue 3

Whether the imposition of annual renewal of Proof of Ownership certificates on vehicle owners by the Defendants does not amount to multiple taxation and therefore illegal, in view of the fact that the 1st and 3rd Defendants (and the various State Governments, through their various tax agencies, have already issued certificates or evidence of proof of ownership to vehicle owners at the time of registration.

4.02. Legal Argument

4.03. The Supreme Court in the case of **A.G Lagos State v. Eko Hotels ltd & anor (2017) LPELR-43713(SC) (Pp. 37 paras. D)** defined double taxation thus,

"There is no doubt in my mind that it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumers under two different legislations." Per KEKERE-EKUN, J.S.C.

4.04. When a vehicle is bought anew and the owner approaches the licensing authority for registration, it is mandatory for the owner to pay and be issued with the following:

- a. Vehicle License.
- b. Insurance Certificate.
- c. Certificate of Road worthiness
- d. **CMR**
- e. **Certificate of Proof of Ownership**
- f. Certificate for allocation of plate number.

405. It is worthy to note that **vehicle licenses** that are usually contain the particulars of both the vehicle and the owner. The fee for issuance of insurance certificate in Lagos has been increased from N5, 000 to N15, 000. Certificate of road worthiness contains data and the fitness of the vehicle. The **CMR** otherwise known as the Central Motor Registry consists of data of both the vehicle and the owner in the storage of the Federal Road Safety Corps (FRSC). Allocation of Plate Number Certificate contains data regarding the vehicle. While Proof of Ownership Certificate which the Defendants want vehicle owners to renew annually contains the same data regarding the vehicle and the owner.

406. The question which comes to mind is, of what justification is the annual renewal of proof of ownership certificate, when the information relating to the vehicle and the owner have not changed? The answer is that there is no justification whatsoever. We submit that it is retrogressive, ill conceived, poorly designed and amounts to double or multiple taxation.

407. Double or Multiple taxations occurs when a tax is levied on the same goods, services or items, payable by the same person under two or more different legislations or circumstances. It occurs when individuals are made to pay tax more than once on the same item or subject. It occurs where more than one government department charges tax on the citizens on the same item. Double or Multiple taxation on citizens has negative economic effect on the citizens. It depletes returns on investment and leads to individuals to become bankrupt. This is so in the phase of withdrawal of petroleum subsidy.

increase in the tariff of electricity and increased cost in the price of basic needs like food, clothing and shelter.

4.08. We urge the court to hold that the imposition of annual renewal of POC by the 2nd and 3rd Defendants amount to double or multiple taxations and thus illegal, in view of the fact that the 1st, 2nd and 3rd Defendants, through their various agencies, have already issued certificate of proof of ownership to vehicle owners at the time of registration. We further refer to section 46 (1) of the Constitution which provides that

"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress."

5.01. **Issues 4, 5 & 6.**

Whether the annual payment for Proof of Ownership Certificate is part of the statutory taxes and levies contained in Part 1 to 3 of the Tax and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, to be collected by the Federal, State or Local Government.

Whether section 73(1), (2) & (3) of the National Road Traffic Regulation No. 101, Vol. 99 of 29th of December 2012 is not in violent breach of item 65 of Part 1 of the 2nd Schedule to the 1999 Constitution and section 1(1) of the same 1999 Constitution, as amended, and therefore, unconstitutional.

Whether, the Joint Tax Board has the vires and authority to make laws on taxation in Nigeria.

5.02. **Legal Argument**

5.03. In the case of **Edo State House of Assembly & Ors V. Igbinedion & Ors** (2021) LPELR-55990(CA) (Pp. 93 paras. B) the Court of Appeal while commenting on the exclusivity of the roles assigned to each tier of government held that,

"Under the Nigeria constitutional arrangement, there are three tiers of government, to wit: the Federal, State and Local Governments. With the exception of items on the Concurrent Legislative List in Part II of the Second Schedule to the Constitution, each of the three tiers of government exercises exclusive power over the subject matter under its control. No tier of government is to usurp the function of another. See Knight Frank Rutley v. Attorney-General of Kano State (1988) 58 LRCN 3707, 3728 and 3729." Per EKANEM, J.C.A

5.04. In the case of **Attorney General & Commissioner for Justice, Anambra State v. R.T.C.D.A, L.S (2017) All FWLR (Pt. 876 pg. 1 @ 21**, the Court of Appeal itemised the list of taxes that the Federal and State Governments can collect by virtue of **Section 1, Part 1 of the Taxes and Levies (Approved List for Collection) Act, 1998 Vol. 21, LFN, 2004**. Nowhere in the Act was proof of ownership certificate levy or renewal levy mentioned.

5.05. We submit that proof of ownership certificate is not part of the taxable items contained in the approved list of taxes which the Joint Tax Board or any tax authority in any State can collect under the Taxes and Levies (approved list of Tax collection) Act, Cap T2, Laws of the Federation 2004. The Federal Inland Revenue Service was established under Section 25 of the Federal Inland Revenue Service (Establishment) Act, Cap F 36, Laws of the Federation of Nigeria. Section 25 of the Act confers it with the power

to administer all enactments listed in the First Schedule thereof or any other law on taxation, upon which the National Assembly confer power.

5.06. The legislations administered by the Federal Inland Revenue Service in the aforesaid First Schedule include:

- (i) *Company Income tax, Cap 60, Laws of the Federation, 1990.*
- (ii) *Withholding tax on companies and residents of the FCT.*
- (iii) *Petroleum Profits tax Act, Cap 354, LFN, 1990.*
- (iv) *Personal income Tax Act, No. 104 of 1993.*
- (v) *Capital Gains Tax Act, Cap 42, LFN 1990.*
- (vi) *Value Added Tax Act No. 102, 1993.*
- (vii) *Stamp Duty Act, Cap 411, LFN 1990.*
- (viii) *Taxes and Levies (Approved List for Collection) Act, No. 2, 1998*
- (ix) *Personal income tax in respect of staff of federal government, personal of the armed forces of the federation, residents of the FCT, Abuja and federal agencies and bodies.*

5.07. Annual Renewal of Proof of ownership certificate is not listed as one of the items that can be taxed in any of the legislations in which the Federal Inland Revenue Service or any State is empowered to administer. We urge the court to hold that annual payment of Proof of Ownership Certificate not being part of the taxes and levies contained in Parts 1 to 3 of the Tax and Levies (Approved List for Collection) Act, Cap T2, Laws of the Federation of Nigeria, the purported attempts of the Defendants to impose same on vehicle owners in Nigeria is illegal.

5.08. In the case of **F.R.N. v Chief Adebisi Olafisoye (2004-2007) Vol. 3 LLRN @ 1058, para. 45**, the Supreme Court held defined the term *ultra vires* as follows:

"An Act is ultra vires the National Assembly when is enacted outside the legislative powers of the National Assembly. Where the enactment of an

Act is within the legislative powers or legislative competence of the National Assembly, such an Act is intra vires the National Assembly."

5.09. We therefore, submit that Registration of vehicles in Nigeria, not being an item in the Exclusive and Concurrent Lists, the Federal Government cannot legislate thereon nor have any control thereon. In this wise, the purported policy of Annual Renewal of Proof of Ownership by the Joint Tax Board, an agency of the Federal Government, is unconstitutional.

5.10. The Defendants have a duty not to desecrate and mess-up the Constitution in a "dictatorship-like" manner. We beg to submit that the Defendants have acted ultra vires and outside their remits as adumbrated above. In the case of **Inakoju vs. Adeleke (2007) All FWLR (Pt. 353) 3 @ 123**, paras. B-E, the Supreme Court per **Niki Tobi (Retired)** strongly made this admonition while enjoining legislators to obey the Constitution, thus:

"The Legislature is the custodian of a country's Constitution in the same way that the executive is the custodian of the policy of government and its execution and also in the same way that the judiciary is the custodian of the Constitution or interpreter of the Constitution. One major role of a custodian is to keep under lock and key the property under him so that it is not desecrated or abused. The Legislature is expected to pet the provisions of the Constitution like the way the mother pets the day-old baby. The Legislature is expected to abide by the provisions of the Constitution like the way the clergyman abides by the Bible and the Imam abides by the Koran. And so, when the Legislature, the custodian, is responsible for the desecration and abuse of the provisions of the Constitution in terms of patent violation and breach, the society and its people are the victims and the sufferers"

5.11. We submit that at best the annual renewal of Proof of Ownership certificates is a policy of government. However, policies are not

legislations and have no binding force of law. For a government policy to be binding on the citizenry, it must have the appropriate legislative backing. Having submitted that the both the Federal Government and the State Governments are limited on their powers in this regard, the only appropriate authority to legislate on vehicle registration in Nigeria are the Local Governments b virtue of the fact that it is a Residual List item. In the case of *Comptroller General Of Customs & Ors V. Gusau (2017) LPELR-42081(SC)* (Pp. 12 paras. F) the Supreme Court while relying on the case of

"R.C. Agbo, JCA, in UNION BANK OF NIGERIA PLC & ANOR. v. IFEDLUWA NIG. ENTERPRISES LTD (2007) 7 NWLR (Pt.1032) 71 at 84, had stated, and I agree, that policy documents, commonly referred to as guidelines, are not subsidiary legislations. Per EKD, J.S.C.

6.01. **CONCLUSION**

6.02. In all, we urge the court to answer all the issues gleaned in the affirmative and pursuant thereto, relying on the laws adumbrated;

6.03. We urge the court to grant our prayers as prayed.

Dated this 20th day of September, 2023.

Kunle Edun Legal


Ikeazor Akaraiwe, SAN

Dlukunle Oghene-ovo Edun Esq. (signed)

Maxwell Opara Esq.

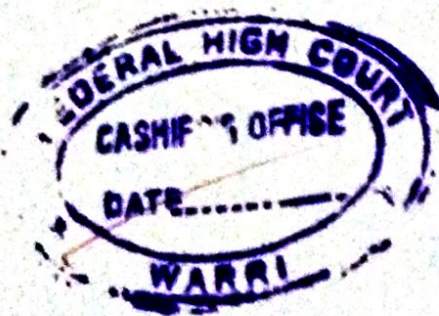
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Adeola Folarin

Godspower Eroga Esq.





IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BETWEEN

SUIT NO: FHC/ABJ/CS/ /2023

1. John Aikpokpo-Martins Esq.
*(Chairman, Nigerian Bar Association Section
on Public Interest and Development Law)*

2. Funmilola Adeogun
*(Secretary, Nigerian Bar Association Section
on Public Interest and Development Law)*

3. Francis Ogunbowale Esq.
*(Council Member, Nigerian Bar Association Section
on Public Interest and Development Law)*

Plaintiffs

And

1. Federal Government of Nigeria

2. Joint Tax Board

3. Governor of Lagos State

Defendants

AFFIDAVIT OF NON-DUPLICITY OF SUIT

I, John Aikpokpo-Martins Esq. Male, Christian and Nigerian, Legal Practitioner of Airport Road, Warri, Delta State, do hereby make oath and state as follows that:

1. That I am the 1st Plaintiff in this Suit and by virtue of my position; I am conversant with the facts of this Suit.
2. That I have the authority of the other Plaintiffs to depose to this affidavit.
3. That to the best of our knowledge, there is no suit filed by the Plaintiffs of same or similar parties, issues and reliefs as the extant Suit.

John Aikpokpo-Martins & Ors. V. Fed. Govt. of Nig. & Ors.

Kunle Edun Legal

4. This action is not a duplication of any other action or Suit, to the best of our knowledge.

5. That I do solemnly and sincerely declare that i make this solemn declaration believing same to be true and by virtue of the provisions of the Oaths Act.


Deponent

Sworn to at the Federal High Court Registry

Warri this ^{15th} day of September, 2023.



2807-0081-1667