

# Innovations

## The Supreme Court Judgment on Financial Autonomy for Local Governments and Good Governance at the Grassroots

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**Abstract:** *The paper examines the structure of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and established that Nigeria is explicitly a federation of two levels of government in accordance with section 2(2) of the constitution. But the constitution at the same provided for a third tier or third order government; the local government, with explicit and constitutionally guaranteed or approved exclusively and concurrent responsibilities and sources of revenue, whose officials are also like the federal and state governments constitutionally and democratically elected. Although the local government is a third tier government, there is a general view that the local government are abysmally failing in providing services as prescribed in the constitution effectively and efficiently to the people. Some of the principal reasons adduced for this state of affairs are the strangulating meddlesomeness of the state government, exemplified in their tendency to deny local governments of the constitutionally guaranteed revenue from federation account, coupled with the intimidating practice of arbitrary removal of democratically elected local government chairmen from office by State Governors at their fancy. It is in light of this that this paper views the Supreme Court judgment ordering direct remittances of revenue to local government account from the federation account and barring Governors from arbitrarily removing democratically elected local government from office as a veritable and sustainable action towards guaranteeing good governance to local government councils as developmental democratically and most importantly an efficient and effective governance institution in service delivery to its people. The paper relies on content analysis and doctrinal approaches using relevant literatures such as books, journals, case laws, statutes, the constitution and internet sources. The theoretical model adopted for this paper is the Efficiency School of Thought. The whole essence of this paper is to high light the responsibilities of local government as a governmental agent of service to the people and the impediments for its failure to do so. The paper is supportive of the judgment of the Supreme Court and recommends that the judgment should be enforced.*

**Keywords:** *Federation, Supreme Court, constitution efficiency, autonomy*

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## **Introduction**

In May, 2004, the federal Government, through the Attorney General of the Federation and Minister of Justice, Lateef Fagbemi, filed a suit; Attorney General of the Federation, Attorney General of Abia State and 35 ors at the Supreme Court, which he brought under the original jurisdiction of the Supreme Court, by virtue of section 232 of the Constitution of the Federal Republic of Nigeria 1999. He accused state governments of not remitting to local governments the monthly revenues accruing to them from the Federation Account Allocation Committee (FAAC). In the Suit, the Federal Government sought an order preventing the Governors from arbitrarily dissolving democratically elected councils. The suit by the Attorney General of the Federation was on 27 grounds.

The Governors through their State Attorney General and Commissioner for Justice opposed the Federal Governments action and requested the Supreme Court to dismiss the suit.

## **The Judgment of the Supreme Court**

On July 11, a seven member panel of the Supreme Court, presided over by Justice Mohammed Garba, disagreed with the position of the State Governments and allotted merit to the case of the plaintiff, the Federal Government.

In a landmark judgment, the apex court granted financial autonomy to Nigeria's 774 local governments and also vehemently condemned the arbitrary dissolution of elected local government councils by state Governors. In its ruling, Justice Agbim stated:

It is the position of this court that federation can pay local governments allocation directly to the local governments or through the states. In this case since paying them through states has not worked, Justice demands that local government allocation from the federation account should henceforth be paid directly to the local governments... I hold that the State's retention of Local Government funds is unconstitutional.

The usual practice, which the Supreme Court now stopped was that both the States' and local government monthly revenue from the Federation Account Allocation Committee (FAAC) were remitted to a State Joint Account and from this account, each local government was to collect what it deserves in accordance with section 162 of the Constitution of the Federal Republic of Nigeria (as amended). Section 162(b) of the constitution states as follows:

Each state shall maintain special account to be called "State Joint Local Government Account" into which shall

be paid all allocations to the local government councils of the state from the Federation Account and from the Government of the State.

Section 162(7) of the constitution went further to direct State Governments:

... to pay local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

The contention of the Attorney General of the Federation is that these constitutional provisions are not properly adhered to and for over two decades, local governments have been crippled in most states, because of failure of State Governments to remit funds properly due to local governments from the federation account. The Supreme Court per Agbim agreed with the AG of the Federation and went further to make the following pronouncements:

As it is, the state, after collecting the local governments from the federation account have continued to refuse to pay it to its owners.

The States' refusal to pay this money to the local governments has gone on for over two decades now. This has deprived the local governments of their rights and defeated the intention of the 1999 constitution.

The Supreme Court consequently ruled that it is illegal and unconstitutional for Governors to receive and withhold funds allocated to local governments areas (LGAs) in their states, and therefore, affirmed the financial autonomy of Nigeria's 774 Local Government Areas.

To ensure that its decision is effectively implemented the Supreme Court made an order of injunction that "henceforth no State Government should be paid monies standing to the local government councils; an order restraining State Government from collecting funds belonging to Local Government Councils when no democratically elected local government councils are in place; an order for immediate enforcement and compliance with these orders by the State Governments and successive governments henceforth" The new arrangement in accordance with the Supreme Court's decisions empowers the Accountant General of the Federation to bypass the State Government in the monthly disbursement of Federation Allocation to the Local Governments. In other words, the Local Government funds should be paid to them directly. In agreeing with the position of the Supreme Court on direct payment to the Local Governments, a commentator, Okejimi, in (LGAutonomy:LG...nairametrics.com) who described the Supreme Court as a policy

court, said, “even if the 1999 constitution has not specifically said that the money should go directly to these local government councils; when you now consider other provisions of the constitution that the allocations is for the benefits of the local governments... That is where the powers of the Supreme Court as a policy court comes in” If there is a mischief to be cured in applying section 162 of the constitution in remitting funds to local government councils it is within the powers of the Supreme Court to so do. There is nothing sacrosanct about remitting money to local government councils through the State Governments after the two levels of governments were all democratically elected.

It has to be noted that with the decision of the Supreme Court for direct remittance of funds to local government councils in Nigeria; history is just repeating itself. (Obi Emeka et al: 2009) had noted that Ibrahim Babangida on assumption of office as the Military President of Nigeria had set up the Dasuki Panel to look into the problems of local governments and advise the government on the appropriate step to take and the key features of Dasuki’s recommendation were geared towards “trying to free the local governments from the clutches of the State governments. To realize these objectives President Babangida approved among others the following measures;

- (i) Direct disbursement of funds to the account of local governments rather than passing it through the state governments
- (ii) Abolition of State ministries of local governments
- (iii) Subsequently the introduction of presidential system of government in the local governments in 1991.

In the words of President Babangida, while presenting his 1991 budget address:

Local Government Councils will be accorded full administrative autonomy and allowed to operate in accordance with the spirit and letter of the constitution. The councils will not be subject to the control and direction of the state or federal government in the discharge of their constitutional responsibilities of providing basic needs... Local Government Councils will also enjoy their full financial autonomy. In this regard, all forms of control overt or covert, which have hitherto been exercised by the State Government must cease forthwith.

Why these measures were eventually reversed is not within the competence of this attitude to discuss.

### **Theoretical Framework**

There have been several theoretical perspectives in local governments, ranging from the democratic - participation theory to efficiency – services theory, development theory, localist theory etc. The various theories “either venture to justify the existence of local governments” or venture into explicating what should be the functional responsibilities of local governments (Ezeani: 2023). All these theories, however in one way or the other contribute to the better understanding of local politics (Stoper 1990 in Ezeani). For instance, the democratic-participatory theory argues that local governments exist to promote democracy at the grass root level and ensure political participation. As Chukwuemeka et al, cited by Ajulo et al (2016)” the concept of local government involves philosophical commitment to democratic participation in the politics and governing process at the grass root level”. But as Sharpe 1970:168, cited in Ajulo et al (2016) “Things can go on since even with the absence of democratic participation in the governance process as long as the local or grass root people get efficient services from the local government”. What this portends is that local government being a veritable instrument for efficient service delivery to the people the dominant paradigm to analyze local politics as the efficiency theory, local government has no universally acceptable definition as many scholars have defined from different perspectives. Rather than attempting to x-ray the different definitions, it could serve better to identify the attributes or characteristics that are contained in each government. It is a sub-system playing its part with the large national political system; it is the lowest level of government; it is usually elected/selected and representative; it is established by law and has certain responsibilities. It includes a population living within the confines of a defined territory; and it is a legal entity of its own and so can sue or be sued: Oni, 1984:18; Olisa et al 1990:101; Ola 1988:59, Oni, 1984:18, Ozor 2003:18; Odenigwe:99; Agu, 2002:109, Clarke 1960:1. The efficiency school therefore argues that of their closeness to the people they can provide certain services more efficiently than governments that are more distant to the people, especially in providing services that are local in character. William Mackenzie and Sharpe are the leading advocates of this school (Ezeani 2023). They hold that since local governments are closest to the people it should be able to provide services of local character like roads, maintenance of law and order, provision of water etc. Efficiency implies that there be no waste in the use of resources and requires a rational use of resources Tiebout, 1956; Musgrave 1959; Oates, 1972. So efficiency refers to the efficiency achieved by local governments in the provision or production of public services (Julian Milan Garcia, Nuria Ruedo-Lopez 2021). In summary the whole concern of the efficiency services theory is that the main purpose for the existence of local government is to provide services to the people at the grass root and provide the services efficiently

and effectively. It is in the sense would the judgment of the Supreme Court of Nigeria be understood and appreciated.

The decision of the Supreme Court on financial autonomy of Local Governments has raised a number of pertinent issues. The first is whether local governments as provided for in the Constitution can be regarded as a federating unit under the 1999 Constitution (as amended). The second is whether the Supreme Court as a separate organ of government under the Constitution engage in judicial legislation to extent to issuing an order of direct remittance to the Local Governments from the federation account contrary to section 162(2) of the 1999 Constitution (as amended).

### **The Issue of Nigerian Federalism and the Text**

The Supreme Court decision on financial autonomy for Local Governments raised the issue of federalism. Critics have said that the decision of the Supreme Court is a violation of the 1999 constitution (as amended) which stipulates in section 2(2) that “Nigeria shall be a federation consisting of states and a federal capital Territory”. This implies that local governments are not entitled to direct remittances as they are or supposed to be under the control of the state government as an inferior level of government. However, pertinent questions have been raised by any discussion or debate on the principles of federalism thus: What is federalism; is there an ideal federalism; is it not possible to ascertain principles of federalism from the provisions of the constitution.

Traditionally a federal system of government has been defined as a structure of two levels of government; a central government and other state or provisional government with shared powers and each level exercising authority within its area of competence. KC Wheare; 1953, Nwabueze (1983), Kapur (1961). The categorization of a federal structure as a dual structure of a center and states and regions or provinces is now being challenged as local government is gradually being recognized as an order of government and the third one (Watts 2008). Justice Nike Tobi in (learningnigerianlaw.com) there is no universally acknowledged definition of federalism and that generally the concept relates to the division of power between a national and other regional or state governments and sometimes, local governments. A federal government he said, means what the constitution says it means. In *Olafisoye v Federal Republic of Nigeria*, the Supreme Court held that a federal government will mean what the constitution writer say it means and this can be procured within the four walls of the constitution and the four walls only. Therefore, a general definition of federalism or federal government may not be the answer to the peculiar provisions of a nation's constitution which is the font ET origo. If we go beyond section 2(2) of the 1999 constitution as amended and search through the entire body and walls of the constitution to seek answers to the question of whether Local Government in Nigeria is a part of the Nigerian federal structure, it



becomes crystal clear that local governments are not only integral part of the Nigeria federation, it is infact the third order of government in Nigeria.

Drawing from the intellectual contributions of Styler, Nco (2009) in [hppts://www.egaroime.com](https://www.egaroime.com)) we pose the following four questions: Is the local government included in the division of powers and competences that are exclusive to it, is local government part of the structure and practice of fiscal federalism; is the local government part of Nigeria's inter-governmental relations; Inter-governmental relations is the term commonly used to describe the interactions between the different levels of government within a state (Ademolekun 2002:60 in Ezeani, 2003:168). It "provides a platform for series of legal, political and administrative relationships between levels of government with varying degrees of autonomy. It is generally referred to as the transaction between levels of government of either national or regional or among federal, state and local governments (Ajulor and Okewale 2011, cited in Ijimakinwa Samuel et al) Is there such relationships between the federal, state and local government in Nigeria. Is local government fulfilling or has powers to fulfill importance governance role by providing essential services. Does it take part in service delivery to the people?

The Constitution of the Federal Republic of Nigeria (as amended) clearly and explicitly recognized local governments in Nigeria as an order of governments along the federal and state governments' accompanied with a measure of independence and autonomy in its own sphere of influence and competence. The irrefutable fact is that either by omission or commission the constitution made local government in Nigeria part of the federating unit and an order of government.

The history of local governments in Nigeria is the history of two eras: pre 1976 and post 1976 local government system. Ugwuozor (2003) local government as a tier of government was established in 1976. The 1976 Local Government reform accorded local governments a third tier status. The 1976 Local Government Reform guidelines defined local government as "Government at the local level exercised through representative council established by law to exercise specific power within definite area. These powers should give the council's substantive control over local affairs, as well as the staff and institutional and financial powers to initiate and direct the provision of services to determine and implement projects, so as to complement activities of the state and federal governments in their areas and to ensure through active participation of the people and their traditional institutions, that local initiatives and responses to local needs are maximized".

The third tier status of the local governments was now referred in the 1979 constitution of the Federal Republic of Nigeria under section 7(1) of the constitution which states that "The system of local government by democratically elected local government councils is under this constitution guaranteed and accordingly, the government of every state shall ensure their existence under a law which provides for the establishment structure, composition, finance and functions of such council.

The 1999 constitution (as amended) which is the current constitution contains similar provision in its section 7. Other sections of the constitution that explicitly recognized local governments as a separate, corporate and independent third order of government include; section 2(6) which states that there shall be seven hundred and sixty local government areas in Nigeria". The constitution in part I of the first schedule mentioned the names of the local governments and their Headquarters. Section 7(3) Local Governments are members of the state economic planning board to be established by a State House of Assembly and along with the state participate in economic planning and development of the state. Section 7(5) states that any function to be conferred by law upon local government shall include those set out in the fourth schedule of the constitution. In this schedule 7(5) the constitutional responsibility of local governments are clearly stated. While some of the responsibilities are exclusive to them, and in some it has concurrent powers with the state governments. Section 7(6) (a) & (b) makes provisions for statutory allocation of public revenue to local government councils in the federation and for the House of Assembly to make statutory allocations of public revenue to local government councils within the state respectively. The present vertical Revenue Allocation formula is: Federal Government 52.68%; State Governments 26.77%; Local Governments 20.60% and Derivation formula 13% (<https://www.vanguardngr.com>). Section 162(1) of the constitution stipulates that "the federation shall maintain a special account into which shall be paid all revenue collected by the government of the federation ..." Section 162(3) provides that "any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government council in each on such terms and in such manner as may be prescribed by the National Assembly. Section 162(5) prescribes that "the amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the states for the benefit of their local government council on such terms and in such manner as may be prescribed by the National Assembly. Section 162(6) provides that states shall maintain "Special account" into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the government of the State. Section 162(7) further stipulates that each state shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

The case before the Supreme Court is largely the non-compliance of the state government with section 162(7) of the Constitution and the alleged to tampering, interfering, shortchanging and even out rightly failing to remit the revenue entitlements of local government and councils; prompting the Supreme Court's decision to cure this mischief ordered the circumvention of section 162(2) of the constitution in paying the entitlements of local government councils and the direct and unimpeded payment to their accounts.



Apart from the aforementioned numerous provisions cited to show that local government as provided by the constitution is a third tier or third order governments in a Nigerian federation, numerous judicial judgments or pronouncements have been made to support this assertion.

For want of space two decided cases out of numerous cases would be discussed. In *Knight Frank and Rutley (Nig) and Anor v AG Kano State*, Kano State encroached or dabbled into revenue collection constitutionally assigned to local government sources of revenue. The issue was on which government, state or local government should collect hereditaments and assessment of rates on privately owned houses. The government of Kano State entered into contract with the appellant to compile valuation lists for the purpose of assessment and collect rates on properties in Kano. Local Governments challenged this action and the Supreme Court ruled that the State Government had no power to award the contract and it acted ultra vires in doing so. In the notable pronouncement of Ogwuegbe J.S.C the court held that:

There is everything wrong in the State Government entering into the contract with the appellants. Given the circumstances of this case, I would say that the Kano State Government was meddling in the affairs of the Local Government Councils. It was not exercising supervisory powers over the activities of the Local Government Councils. It has no power to prepare a Valuation List of the properties let alone enter into an agreement for that purpose. I agree with the Court of Appeal when it held as follows:

Since the Kano State Government has no power over assessment of tenements (sic) rates, it goes without saying that it has no jurisdiction to enter into any agreement with anybody or person for the valuation of ratable hereditaments.

I must here emphasize that Local Government Councils should be spared this type of illegitimate intrusion or interference by State Government functions specifically

Again there have been cases where State Governments removed or sacked elected Council Chairmen and Councilors at the will and caprices of the Governor. This is an act the Courts in Nigeria had consistently condemned as a violation of the rule of law.

In *Eze and ORS V Governor of Abia State and ors.*

The appellants were elected by the people of Abia

State to serve as Chairmen, Vice-Chairmen and Councilors in the State's Local Government Councils. The tenure was for a fixed term of three years (3 years). The appellants assumed office and commence the work for which they were elected. On the 16<sup>th</sup> day of June, 2006, the Governor (ie the 1<sup>st</sup> respondent) dissolved all the Local Government Councils and appointed Caretaker Committees. The action was vigorously pursued all through to the Supreme Court.

ISSUE: Whether by the provisions of Section 7 of the 1999 Constitution and the provisions of the Abia State Local Government Law as amended, the 1<sup>st</sup> defendant has the legal competence to dissolve the Local Government Councils of Abia State and appoint Caretaker Committees to replace elected members of the said Local Government Council.

The Supreme Court as per Rhodes Vivors JSC, held that:

- (a) It is duty of the Governor to ensure that the system of Local Government continues unhindered. Dissolving Local Government Councils and replacing them with Caretaker Committee amounts to the Governor acting on his whims and fancies, unknown to our laws, clearly illegal. It is the duty of the Governor to ensure their existence rather than being responsible for destroying them. It amounts to executive recklessness for the 1<sup>st</sup> respondent to remove from office democratically elected Chairmen and Councilors and replace them with unelected Chairmen and Councilors under whatever guise.
- (b) If such a person is removed from office in a manner the Court finds to be wrong, he shall be entitled to all his entitlement, to wit: salaries, allowances etc. A Court of equity will not allow the executive to get away with wrongful acts rather it would call the executive to order and

### **The Supreme Court Judgment as Judicial Legislation**

Another area of criticism raised against the Supreme Court decision on direct remittance to the account of Local Government Councils is that it is a judicial legislation and a violation of the principles of separation of powers. By Section 4 of the 1999 constitution (as amended) the function of law making is vested in the legislature, while that of judicial adjudication is conferred by section 6 of the constitution. This sharing of powers or functions accords with the hallowed practice of separation of powers (see *Tende and ors v Attorney General of the Federation* (1988)).

However, generally speaking, Judges always maintain that they do not make law and that they are under strict duty to apply the law as it is even where it would inflict injustice. However in the words of Lord Denning, in the *Reform of Equity* “The Judges do every day make law, though it is almost heresy to say so” (Do Judges make Law...law teacherwet). It is realistic to accept that by the nature of their function the Supreme Court invariably makes law, which they do through interpretation, filling in the gaps. It is the prerogatives of parliament to make law but it is obvious that Judges declare law and create law also even though the scope of the law making may be limited and in the case of the Supreme Court, it is a policy court. After all the fundamental role of a Judge is to do justice and may not be expected to apply it mechanically. In the words of denning again;

My root belief is that the proper role of a Judge is to do justice between the parties before him. If there is any rule of law which impairs the doing of justice then it is the provision of the judge to do all he legitimately can do to avoid that rule or even change it so as to do justice in the instant case before him. He need not wait for the legislature to intervene because that can never be of help in the instant case... (cited in John Ademola Yakubu 2000:P.12

### **Conclusion**

The Constitution of Federal Republic of Nigeria explicitly provided in section 2(2) of the Constitution (as amended) that Nigeria is a federation “consisting of States and a Federal Capital Territory” This implies a federal structure of two levels of government – the center and the states; meaning that Local Government is not part of the federation and therefore, a competence of the State Government. However a community reading of the Constitution has shown that Local Government in view of the responsibilities granted to it exclusively and concurrently, has a third tier or third order status and therefore is a level of government. It is the nearest government to the people – a grass root government established and created to provide services to the people.

The general agreement however that is, Local Governments in Nigeria have failed people in not effectively and efficiently providing services and are not justifying their existence. A lot of reasons have been advanced for this abysmal failure of Local Governments one of which is the interference and meddlesomeness of State Governments, especially in denying local governments their legitimate revenue from the Federation Account. It is in the light of this that this article is supportive of the Supreme Court decision and its orders that monies due to Local Governments from the Federation Account should be remitted to Local Governments account directly. The article further supports the decision that it is a violation of the 1999 constitution (as amended) for any government Federal or State to remove a democratically elected Local Government Chairman or Councilor.

Finally, the article postulates that Local Government in Nigeria constitutionally is incontrovertibly a third tier or third order government in the Nigeria Federalism.

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