

THE SUPREME COURT'S DECISION IN
ATTORNEY GENERAL OF LAGOS STATE &
21 ORS V. ATTORNEY GENERAL OF THE
FEDERATION & 16 ORS:
HOW IT IMPACTS GAMING
OPERATIONS IN NIGERIA



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INTRODUCTION

The gaming and lottery industry is one of the fastest-growing sectors in the economies of several countries, and Nigeria is no exception. This is due to the increased proliferation of technology and the global shift towards digital economies.¹ In Nigeria, the Federal and State Governments have been in a jurisdictional tussle over which body should have regulatory control and oversight of gaming and lottery businesses in Nigeria. There will be significant economic implications for both the winner and the loser, positively or negatively.

The Federal Government enacted the National Lottery Act, 2005 (**NLA**) and subsidiary legislation, which established and empowered the National Lottery Regulatory Commission (**NLRC**) to regulate and license entities in the gaming and lottery industry. Conversely, at the State level, for instance, the Lagos State Lotteries and Gaming Authority Law 2021 established and empowered the Lagos State Lottery Commission to regulate and license gaming and lottery companies operating within Lagos State. This resulted in an overlap and double regulation of entities operating gaming and lottery businesses in Nigeria and who intend to operate in any of the states that have a separate state edict that regulates lottery and gaming operators.

In a significant legal dispute in 2020, the Association of Nigerian Bookmakers challenged the authority of the NLRC in an action filed at the Federal High Court in the case of **Association of Nigerian Bookmakers v NLRC & 5 Ors**², where it urged the Federal High Court (**FHC**) to determine the appropriate regulatory body for lottery in Nigeria. In its judgment, the FHC decided that the NLRC has the power to regulate lotteries in Nigeria given that lotteries fall under the exclusive list of the 1999 Constitution of the Federal Republic of Nigeria (the "**Constitution**") which consist of matters regulated only by the Federal Government. However, this decision was recently overturned by the Supreme Court (**SC**), which determined that the regulation of lotteries fall under the jurisdiction of the various States of the Federation rather than the Federal Government. We have provided a summary of the Supreme Court's ruling and its implications for stakeholders in the gaming and lottery industry.

THE DECISION OF THE SUPREME COURT IN ATTORNEY GENERAL OF LAGOS STATE & 21 ORS v. ATTORNEY GENERAL OF FEDERATION & 16 Ors SC/1/2008

In 2008, the Lagos State Government filed an action, and was subsequently joined by 21 other States in the Federation, before the SC to challenge the Federal Government's control and regulation of the lottery and gaming sector.

¹ THISDAY, 'Paradigm Shifts Driving Nigeria's Evolution from Casual Gaming to eSports': [https://www.thisdaylive.com/index.php/2024/09/12/paradigm-shifts-driving-nigerias-evolution-from-casual-gaming-to-esports/#:~:text=Over%20the%20past%20decade%2C%20video,generation%20of%20gamers%20and%20entrepreneurs.\(25-11-2024\).](https://www.thisdaylive.com/index.php/2024/09/12/paradigm-shifts-driving-nigerias-evolution-from-casual-gaming-to-esports/#:~:text=Over%20the%20past%20decade%2C%20video,generation%20of%20gamers%20and%20entrepreneurs.(25-11-2024).)

² FHC/L/CS/1599/2020



The Plaintiffs requested the SC to determine that lottery and gaming activities do not fall under the items listed in the Exclusive and Concurrent Lists, which grant the National Assembly exclusive and concurrent powers to legislate, respectively.

In the recent judgment of the SC, the Court held that only a State House of Assembly has exclusive jurisdiction over lottery and related activities because lottery and gaming is not included on the Exclusive Legislative List of the Constitution, which would give the National Assembly the exclusive jurisdiction to legislate on them. The SC also held that these activities are not listed on the Concurrent List which both the National and House of Assembly have concurrent powers to make laws on. Consequently, the SC nullified the NLA as a statute of general application within the federation and restricted its application to the Federal Territory, Abuja.

THE IMPLICATION OF THE DECISION

The SC's decision has affirmed that lottery and gaming fall under the Residual List of the Constitution, which can only be legislated by the Houses of Assembly of the various States of Nigeria. As a result, the National Assembly does not have the authority to legislate on such matters for the entire federation. Consequently, the NLA was nullified as being inconsistent with the provision of the Constitution. The NLA will now only apply within the Federal Capital Territory (FCT), Abuja and the NLRC cannot enforce, regulate or issue licenses to entities operating outside the FCT, Abuja. In other words, lottery and gaming companies are now required to obtain their license from the Lottery and Gaming Commission of the State in which they conduct or intend to conduct their business.

HOW DOES THE DECISION AFFECT LICENCES OBTAINED UNDER THE NATIONAL LOTTERY ACT?

The licences obtained from the NLRC by lottery and gaming companies operating outside the FCT, Abuja, will be considered invalid from the date of the SC decision.

As a result, these companies will now be required to obtain a new lottery and gaming licence according to the lottery and gaming laws of the State in which they conduct their business activities. It is a well-established legal principle that when legislation is nullified, any continuing action taken under the legislation will become invalid.



In **P. D. Abaye v. Ikem Uche Ofili & AG. of Rivers State [1986] 1 NWLR (Pt. 15) 134 at 146 – 147**, the SC stated as follows:

“When an Act of Parliament is passed, it is deemed to be valid until such Act of Parliament is repealed or nullified for unconstitutionality. The actions, rights, interests, and detriments, under such act, until its repeal or annulment, must be valid. **Per Uwais JSC, Para C – A**”

CONCLUSION

The decision of SC is pivotal because it has resolved the long-standing dilemma of whether gaming and lottery activities should be regulated by both the Federal Government and state Governments. However, the SC decision will increase the compliance obligations of lottery and gaming companies who operate or intend to operate in more than one state in Nigeria as they will need to apply for licences to conduct these activities in each relevant state that has passed laws regulating lottery and gaming activities.

This regulatory update has been authored by the Employment Law/Business Establishment team of Udo Udoma & Belo-Osagie. For any inquiries on the above regulatory update, please email us at el@uubo.org. For more information about our Employment Law/Business Establishment offerings, please visit our website at www.uubo.org or email us at uubo@uubo.org.

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