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INTRODUCTION

Welcome to our Q4 newsletter! This quarter has seen a series of impactful decisions that solidify recent legislative changes and introduce new principles on nuanced legal issues.

This edition contains novel decisions on various areas including gaming, fiscal autonomy, privacy and intellectual property.



Appeal No. SC/01/2008 – Attorney General of Lagos State v. Attorney General of the Federation & Ors. (delivered on 22 November 2024) – Lottery and Gaming are matters which exclusively falls under the residual powers of states

Summary of Facts

The Lagos State Government instituted a suit at the Supreme Court in 2008 challenging the National Lottery Act, on the ground that lottery and gaming is a residual matter under the Constitution of the Federal Republic of Nigeria 1999 (as amended). Lagos State was later joined by other states and they jointly argued that lottery and gaming should be within the purview of states' lottery and gaming authorities and not regulated by the Nigerian Regulatory Commission.

Notable Issue for Determination

One of the issues considered for determination was whether, based on the express provisions of sections 4 (2), (3), and 4(7)(a) & (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Assembly lacks the power to make any law to regulate or control lottery operations in Nigeria as a whole.

Arguments

The Attorney-General of Lagos State argued that lottery is not one of the 68 items on the Exclusive Legislative List captured under Part 1 of the Second Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended) over which the National Assembly has exclusive power to make laws for.

He further argued that by virtue of sections 4(4)(b), (7)(a) and 299(a) of the Constitution, the power of the National Assembly to make laws to regulate and control the operation of lottery is limited to only the Federal Capital Territory.

In conclusion, he urged the court to declare sections 17, 18, 19, 20 and 21 of the National Lottery Act 2005, made by the National Assembly, as being inconsistent with the provisions of the Constitution.

Responding to the action, the Attorney-General of the Federation argued that the subject of lottery could be classified as issues of trade and commerce between the States, which fall within item 62 of Exclusive Legislative List.

They contended that given the nature of lottery transactions which could be remotely undertaken within different states through electronic means, the issue of lottery ought to be classified as trade and commerce between states.

Decision of the court

In resolving this issue, the Court held that lottery is a residual matter and the National Assembly does not have the power to legislate on it.

The Supreme Court agreed with the position of the Lagos State Government and granted all the reliefs sought in the suit. The court ordered that the National Lottery Act 2005 is not to be applied in the thirty-six (36) states of the country and to only be applicable in the Federal Capital Territory.

Comments

The judgment delivered by the Supreme Court puts a positive end to the long-drawn battle between the Federal Government and State Governments over the regulation of lottery. It also puts an end to double licensing wherein gaming companies had to register with both the Nigerian Lottery Commission and the states gaming regulation authorities which caused a lot of confusion, uncertainty, and huge financial cost. The landmark judgment gives states the opportunity to provide more clarity and stability to companies operating in the lottery sector and an avenue to generate revenue.
However, this decision has created challenges to as bookmakers are now to deal separately with each of the states of the federation states. It is expected that these states will also have to make their own lottery laws and establish agencies for enforcement of the new laws.

While this could impose additional burdens on lottery operators, it is still the result of a proper application of the Constitution. Additionally, while the situation is still developing, we understand that some states are discussing toward establishing a single licensing system which will allow bookmakers to operate under a license issued through the system in states that have subscribed to the system.

Suit No: FHC/KD/CS/34/2024 – Frank Ijege (trading under the name and style of Springfield Law Practice) v. Nigeria Data Protection Commission (delivered on 27 November 2024) – It is compulsory for the Nigeria Data Protection Commission to state what entities or categories of entities are exempt from registration as data controllers/processors of major importance.

Summary of Facts

In February 2024, Nigeria Data Protection Commission (NDPC) issued a guidance notice NDPC/HQ/GN/Vol.2/2024 on the classification of data controllers and processors of major importance. In this notice, they stated the applicable fees for the registration of some data controllers and processors of major importance and outlined some sectors where operators will be regarded as data controllers and processors of major importance due to the sensitive nature of the data that they process.

Following this issuance, Frank Ijege, in his capacity as the data protection officer of his law firm, brought a fundamental right action by way of an originating motion at the Federal High Court, Kaduna on the basis that the guidance notice is not clear on data controllers and processors that are not of major importance. He claimed that this has led to an instance where he will be forced to register as a data controller of major importance which will negatively impact his privacy due to the fact that he will be required to provide certain personal information, which in the ordinary course should not be provided.

Notable Issue for Determination

One of the issues considered for determination was whether or not the guidance notice on Registration of Data Controllers and Data Processors of Major importance NDPC/H-Q/GN/VOL.2/24 interferes and is likely to further interfere with the Mr Ijege's right to privacy guaranteed by section 37 of the Constitution of the Federal Republic of Nigeria 1999.

Arguments

Mr Ijege argued that with reference to the provision of Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the fundamental right enforcement procedure rules, he had the right to institute the suit as the Guidance Notice affected his right to privacy.

The Counsel to NDPC argued that the suit is speculative as Mr Ijege did not state or demonstrate any injury or damage, he may suffer by the enforcement of the guidance notice.

In response, Mr Ijege argued that the guidance notice has a deadline and threatens sanctions for failure to comply, whereas the guidance notice does not provide for exemptions on entities that are to register as data controllers/processors of major importance. He concluded by stating that that the guidance notice is an unlawful attempt to force everyone to register with NDPC, and that the attempt will negatively impact privacy.

Decision of the court

In resolving this issue, the Federal High Court held that the term "exemption" as defined under Section 44(6) of the Nigeria Data Protection Act 2023 necessitates explicit clarification and is not the same or similar to "exclusion".

It further stated that the responsibility to resolve any confusion lies with the relevant authority, namely the NDPC. Accordingly, the court ordered NDPC to release a Guidance Notice stating which entities or categories of entities are exempt from registration as data controllers/processors of major importance.

Comments

The Federal High Court's decision clarifies that the term "exemption" under Section 44(6) of the NDPA requires explicit interpretation and should not be conflated with "exclusion." The decision places the responsibility on the Nigeria Data Protection Commission (NDPC) to eliminate any ambiguity by issuing an updated Guidance Notice. This ensures that entities understand whether they fall within the exempt category concerning registration as data controllers or processors of major importance.

Suit No: SC/343/2024 – Attorney General of the Federation v. Attorney General of Abia State & 35 Ors. (delivered on 11 July 2024) – Revenue allocations are to be paid directly into Local Governments accounts

Summary of Facts

Since the inception of the Constitution of the Federal Republic of Nigeria 1999 (as amended), funds intended for the local government councils were deposited into a joint account which was administered by the respective state governments and local governments. This was said to have led to hardship in the administration of local governments as state governments politicised the disbursement of these funds by occasionally withholding the payment of the funds or disbursing only a portion of the revenue allocation.

In light of this, the Attorney General of the Federation instituted a suit at the Supreme Court against the 36 states of the federation, urging the court to determine the autonomy of the local governments.

Notable Issue for Determination

One of the issues considered for determination was whether local governments are entitled to direct payments from the Federation Account given the persistent failure of State Governments to disburse these funds.

Arguments

The Attorney General of the Federation argued that it was unconstitutional for state governors to withhold funds allocated to local governments from the Federation Account and urged the court to determine whether local governments are entitled to direct payments from the Federation Account.

In response, the Attorneys-General of the States argued that Section 162(5) of the Constitution mandates that funds from the Federation Account be paid to states for the benefit of local governments, thus it will be contrary to the provisions of the Constitution to pay the revenue allocation directly to the local governments' accounts.

Decision of the court

The Supreme Court in delivering the judgment held that section 7(1) of the Constitution provides that local governments are to be recognized as the third tier of government and the leadership of local governments must be independent and democratically elected.

The Supreme Court further held that the retention and use of funds allocated to local governments from the federation account by state governments is both unconstitutional and illegal and contravenes the principles intended to ensure that these funds benefit the Local Governments directly.

In conclusion, the Court stated that the Federal Government of Nigeria has the authority to make direct payments of allocations to local governments from the Federation Account, but these payments can also be made through state governments, provided that the funds are fully and promptly transferred to the local governments.

Comments

The court's judgment provides a significant framework for ensuring the efficient allocation of funds to local governments. By facilitating direct access to these funds, the decision has the potential to enhance local government development and strengthen grassroots governance. However, effective oversight and transparency measures will be essential to ensure that the funds are utilised appropriately and in accordance with their intended purpose.

Suit No: SC/343/2024 – Attorney General of the Federation v. Attorney General of Abia State & 35 Ors. (delivered on 11 July 2024) – Revenue allocations are to be paid directly into Local Governments accounts

Summary of Facts

Sir Ifeanyi Ekwueme retained the services of Charles Ezeagu Esq. as a legal practitioner to manage three of his properties from 2006 to 2015.

Sir Ekwueme alleged that Mr Ezeagu refused to account for the income from the properties entrusted to his care and had misappropriated the rent monies amounting to NGN16 million.

Ekwueme filed a report with the Nigerian Police which led to the arrest and subsequent prosecution of Mr Ezeagu on a three-count complaint before the Legal Practitioners Disciplinary Committee (LPDC).

Notable Issue for Determination

One of the issues raised for determination was whether Mr Ezeagu acted in an unprofessional manner by acting as the solicitor and property manager to the complainant simultaneously.

Arguments

Sir Ekwueme argued that Mr Ezeagu in his capacity as a legal practitioner managed his property for which he collected 10% of the rental income as his fees.

Mr Ezeagu responded that he did not act for Sir Ekwueme in a professional capacity but rather stated that he was assisting him as a brother and not in his professional capacity as a legal practitioner.

Decision of the court

In resolving the issue, the Legal Practitioners Disciplinary Committee (LPDC) held that the service provided by Mr Ezeagu cannot be legitimately provided by a lawyer in the normal course of business.

The LPDC further held that lawyers are not estate agents/property managers neither can they act as commission agents as it is a service incompatible with the legal profession. The stated that this is prohibited and any lawyer engaging in incompatible and prohibited activity in the name of legal services is certainly guilty of infamous conduct and deserving of sanction for bringing the profession into disrepute.

As such, the committee ordered that Mr Ezeagu be suspended from the Roll of Legal Practitioners for 2 years in accordance with Rule 22(b) of the LPDC Rules 2020.

Comments

The Rules of Professional Conduct frown upon a legal practitioner being involved in a business that is incompatible with the legal profession. It is worthy of note that a legal practitioner can still act as a property manager, however he must not act in his official capacity as a legal practitioner at the same time.

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