



## **SUPREME COURT JUDGMENT IN ATTORNEY GENERAL OF FEDERATION v ATTORNEY GENERAL OF ABIA STATE AND ORS IN 2024: THE LOCAL GOVERNMENT AUTONOMY**

**Prof. Linus O. Nwauzi\***  
**Dr. Soibi George-Ibikiri\*\***

### **ABSTRACT**

The Supreme Court's 2024 judgment in Attorney General of the Federation and Attorney General of Abia State granted financial autonomy to local governments in Nigeria. This landmark decision reinforced Section 7(1) of the Constitution, recognizing local governments as the third tier of government. The judgment has significant implications for enhanced local governance, improved service delivery, and reduced dependence on state governments. Implementation of the judgment is expected to promote greater autonomy and self-sufficiency for local governments. This study examines the Supreme Court's 2024 judgment on local government autonomy in Nigeria, aiming to understand its implications for local governance and service delivery using the doctrinal methodology, a critical analysis of the Supreme Court judgment, relevant constitutional provisions, and existing literature on local government autonomy in Nigeria was utilized in the research. The research reveals that the Supreme Court judgment granted financial autonomy to local governments, reinforcing Section 7(1) of the Constitution. The judgment has significant implications for enhanced local governance, improved service delivery, and reduced dependence on state governments. The paper concluded that the Supreme Court judgment is a landmark decision that promotes local government autonomy and self-sufficiency. However, effective implementation of the judgment requires collaboration between federal, state, and local governments and therefore makes recommendations that to ensure the successful implementation of the judgment, there is need to establish an Inter-Ministerial Committee to oversee the implementation process, provide training and capacity-building programs for local government officials; and conduct regular monitoring and evaluation to assess the impact of the judgment on local governance and service delivery.

**KEYWORDS:** Supreme Court, Attorney General, Government, Local Government, Autonomy

### **1. INTRODUCTION**

The Constitution of the Federal Republic of Nigeria 1999 as amended provides in Section 7 for the establishment of a democratically elected and guaranteed Local Government Council as a third tier of Government under the Federal system of Government as practiced in Nigeria. The said section 7 also provides that the Government of every State shall subject to the provisions of section 8 of the Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of the said councils. Section 8 of



the Constitution provides for the creation of new Local Governments and boundary adjustment of existing local Governments.<sup>1</sup>

Pursuant to the provisions of the said section 7 of the Constitution of the Federal Republic of Nigeria, most States through their Houses of Assembly have enacted laws for the regulation of the activities of Local Government Council with particular reference to the establishment structure, composition, finance and to fulfill those responsibilities. Thus, the Local Government Laws of the States empower the Governor of the State to exercise some form of discipline against the chairman, and vice chairman, councilors and other elected or appointed council officers which discipline include, removal and suspension of the aforementioned officers. For example, the Rivers State Government Law 2018 provides:

- (2) Where the Governor is satisfied that any Local Government Council is in default of the provisions of the Law or the Council engages in any activity that is detrimental to the corporate existence of the State of Local Government, He shall submit details of the default to the Rivers State House of Assembly with a request for the dissolution of that Council,

Provided that where the House of Assembly is not in session, the Governor may where he is satisfied that the issues raised in this subsection are of serious nature and likely to cause a breach of the peace or public order, dissolve the affected local government council and within 7 days of the resumption of sitting of the House send the notice of dissolution of council to the House of assembly for approval and ratification.

- (3) Where the issues in subsection (2) against a Local Government Council are of serious nature but not likely to result to a breach of the peace or public order, the Governor may suspend the affected Local Government Council or the Chairman or any other erring official of the Council and send the notice of suspension to the House of Assembly for approval and ratification, pending when the substantive issues against the Council or erring official are finally determined by the House.

Based on the provisions of the above mentioned law, the Governor of the State exercises powers of control, supervision and discipline over principal officers of the Local Government Councils. The action of the State Governor in carrying out those functions granted him under the provisions of the Local Government Law of Rivers State have attracted a lot of comments,

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<sup>1</sup> The Constitution of the Federal Republic of Nigeria 1999 as amended S.8(3)(4)



criticisms and reactions from citizens. To some, the Governor has usurped the powers of the Local Government Councils, to others he has derogated upon the autonomy of the Local Government Councils as granted to it by the 1999 Constitution, while to some the Governor is just a busy body and exhibiting unnecessary show power, while to some the entire action of the Governor is illegal unconstitutional and therefore null and void.

## **2. CONSTITUTIONAL PROVISIONS ON LOCAL GOVERNMENT:**

The Constitution of the Federal Republic of Nigeria 1999 provides for Local Government Council as a third tier of government, under our federal system. This can be garnered from the various provisions of the 1999 Constitution, Section 3 subsection 6 provides that

“there shall be seven hundred and sixty-eight Local Government Areas in Nigeria as shown in the second column of Part 1 of the first schedule to this constitution and six area councils as shown in Part II of that schedule.”

### **Section 7(1)**

- (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.
- (2) The person authorised by law to prescribe the area over which a local government council may exercise authority shall—
  - (a) define such area as clearly as practicable; and
  - (b) ensure, to the extent to which it may be reasonably Justifiable, that in defining such area regard is paid to—
    - (i) the common interest of the community in the area, (ii) traditional association of the community, and
    - (iii) administrative convenience.
- (3) It shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the State.
- (4) The Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted for at an election to a local government council.
- (5) The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule to this Constitution.
- (6) Subject to the provisions of this Constitution—
  - (a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation; and
  - (b) the House of Assembly of a State shall make provisions for statutory allocation of public revenue to local government councils within the State.



Again section 162(5)(6)(7) provides as follows:

- (3) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.
- (4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.
- (5) Any amount standing to the credit of local governments in the Federation Account shall be allocated directly to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.
- (6) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid such allocations to the local government councils of the State from the Federation Account and from the Government of the State.
- (7) Each State shall pay to the local governments in its area of jurisdiction such proportion of its revenue on such terms and in such manner as may be prescribed by the National Assembly.

The fourth schedule provides for the functions of the Local Government Councils. However, Section 7(2) empowers the State Government to confer more powers on the Local Government Areas.

### **Control by the State Government**

There exists ample evidence of statutory policies introduced by successive state governments over the years to curb local government autonomy in spite of the fact that the Constitution officially recognizes local government regardless of the confusion as to the third tier of government. These measures make it impossible for local government to operate independent of both federal and state governments. These measures no doubt have their force or authority from the provisions of the Constitution and the various Local Government Laws. The policies are the institution of Ministry of Local Government, Local Government Service Commission, Caretaker Committee and appointment of a Sole Administrator to oversee the activities of local government. The State Legislature, being responsible for law-making for the Local Government, has overall supervisory power on the councils. The Constitution that guarantees that Local Government system vests the power of its supervision on the State Government as can be seen in section 7(1) of the 1999 Constitution cited above.

The system of Local Government be democratically elected Local Government Council is under this constitution guaranteed; and accordingly, the Government of every state shall subject to section 8 of this constitution,



ensure their existence under a law which provides for the establishment's structure, composition, finance and functions of such councils.

The state supervisory role over Local Government Council can be seen in the following areas:

1. The State Government allocates funds to the Local Governments by virtue of section 7(6) (b) of the 1999 Constitution which provides that “the House of Assembly of a State shall make provisions for statutory allocation of public revenue to Local Government Councils within the State.”

In addition, section 162 of the Constitution provides that:

- (5) The amount standing to the credit of Local Government councils in the Federation account shall be also be allocated to the state for the benefit their Local Government councils (though) on such terms and in such manner as may be prescribed by the National Assembly.
- (6) Each state shall maintain a 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 credit of Local Government.
- (7) The amount standing to the credit of Local Government councils of a state shall be distributed among the Local Government councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the state.

These provisions are express bondage and appendage of the autonomy of the Local Government Areas to the State Governments. It is very predictable and expected that the state governments will do everything in order to control the finance of the LGA, so it can use the local government as a tool whenever it suits her. However, State governors may not be totally blamed, as they have been able to leverage on the ambiguity of the constitutional provisions relating to local government autonomy and using it as a leeway to exact seemingly undue influence and political control over the local governments.

It appears that the financial source or supposed autonomy of the Local Government are guaranteed in sections 7 (6) and 162 of the constitution. This does not take the Local Governments out of the supervision of the state. What has actually emerged is not a Local Government system free of State supervision and direction. The State still have to make the law which will not only establish them but also confer on them the functions which they will perform and finance.



In spite of the provision of Section 7(1) of the Constitution, guaranteeing democratically elected Local Government Council, State Governors have always resorted to appointing caretaker committees to manage local governments in their states. This is done by the respective local government laws enacted by the Houses of Assembly. The Constitution specifically assigns to the States specific area of legislative competence to make laws on. The State House of Assembly shall have power to make laws for the peace, order and good government of the state or any part thereof with the respect to the following matters that is to say:

- a) any matter not included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution;
- b) any matter included in the Concurrent Legislative List set out in the first column of Part 11 of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
- c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.<sup>2</sup>

The power granted to the State House of Assembly by the Constitution certainly does not include the power to make laws to truncate a democratically elected local government council, nor can they by any law appoint a caretaker committee or transition committee to take over the function of a democratically elected local government council, as this would be a derogation from the provisions of the Constitution,<sup>3</sup> and so such laws would be null and void to the extent of their inconsistency.

In the case of *Akpan v Umah*,<sup>4</sup> the court held that any law made by the House of Assembly which provides for nomination of membership of a council or appointment of an administrator or caretaker committee to replace a democratically elected council is inconsistent with the clear and unambiguous provisions of section 7(1) of the Constitution which guarantees democratically elected Local Government Councils and is therefore unconstitutional to the extent of the inconsistency. Also in *Attorney-General of Plateau State & Ors. v. Hon. Chief*

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<sup>2</sup> The Constitution of the Federal Republic of Nigeria 1999 as amended, Section 4(7)

<sup>3</sup> The Constitution of the Federal Republic of Nigeria 1999 as amended, Sections 7(1), 1(2)

<sup>4</sup> (2002) 7 NWLR (Pt. 767) 701



*Anthony Goyol & Ors*,<sup>5</sup> the court was of the view that although the House of Assembly has power to make laws, such laws must be in accordance with the provisions of the Constitution. The House of Assembly has no power to make any law giving the Governor power to truncate a democratically elected Local Government Council.

The practice of appointing caretaker committees had also been condemned in the cases of *Akan v Attorney General, Cross River State*.<sup>6</sup> In spite of this obvious illegality, the system of caretaker committees running the affairs of local government in Nigeria has been the common practice in the local governments.

**Supreme Court Decision in *Attorney General of the Federation v Attorney General of Abia State & Ors*.**

In this case, the Plaintiff filed an originating summons commencing Suit No. SC/CV/343/2024 for the determination of the questions, *inter alia*

Whether by the combined reading of sections 1(1), (2) and (3), 4(7), 5(2)(a) and (3) and 14(1), 2(a), (c) and (4) of the Constitution, the 36 State of Nigeria, or anyone of them, acting through their/its respective State Governors and or State House of Assembly, are/is not under obligation to ensure democratic governance at the third tier of government, namely, at the Local Government?

Whether by virtue of section 162(3) and (5) of the Constitution, the amount standing to the credit of a local government Council in the Federation account should be distributed to it, and if so whether it can be paid directly to it?

The Plaintiffs allege that States have for decades persistently refused to pay local government councils the money standing to the credit of their local governments in the Federation Account in violation of Section 162(4)(5) and (6) of the Constitution. The Plaintiff argues that by virtue of the foregoing, the Federation can validly pay the money directly to the Local Government Councils to protect the intention or objective of the Constitution. However, the Defendants contend that the Federation cannot validly pay the money standing to the credit of the local government councils in the Federation Account directly to the Local Government Councils, as

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<sup>5</sup> (2002) LPELR – 623 (SC)

<sup>6</sup> (1982) 3 NCLR 881



that would be in violation of Section 162(5) and (6) of the Constitution, that require that it be paid to the States for the benefit of the Local Government Councils.

In resolving the issue whether the money standing to the credit of local government councils can be paid directly to local government councils, the Supreme Court found that since States have for over two decades persisted in their refusal to pay the money to the Local Government Councils under the claim of the right to retain and use same for the benefit of the Local Government Councils by virtue of S. 162(5) and (6) of the 1999 Constitution. The Supreme Court also made reference to section 162(3) of the Constitution which provides that "Any amount standing to the credit of the Federation Account shall be distributed among the Federal, State government and the Local government a separate owner of the part distributed to it. And that the same Constitution that had Council, could not have intended that the amount should not be paid to the Local Government Council and should be retained and used by the States for the benefit of the Local Government the benefit of their Local Government Councils" could not have intended that States should retain, manage, expend or disburse the money for the benefit of Local Government Councils who are the owners of the money. The Constitution could not have intended to confer any discretion on how to use the money for the benefit of the Local Government Councils. The words merely prescribe the procedure for distributing the money to the Local Government Councils. The State Government not being a democratically elected local government council cannot exercise the power of such Account. The Supreme Court therefore held that the States' retention and use of money standing to the credit of local governments from Federation Account paid to it for the benefit of Local Government Councils is unconstitutional and illegal.

The Supreme Court also determined if the Federation can pay the amount distributed to a Local Government Council as standing to its credit in the Federation Account directly to the local government council since the States that have been receiving the money for the benefit of the Local Government Councils have continued to refuse to pay the moneys to their owners, the Local Government Councils. In determining this issue, the Supreme Court made reference to Section 162 (5) and (6) of the Constitution, and held that the said section merely provide for a method or procedure of getting the amount distributed to the Local Government Councils under Section 162(3). The Supreme Court reasoned that Section 162(5) of the Constitution provides



that it should be given to the States to take to them and Section 162 (6) of the Constitution provides that for this purpose the States shall maintain a special account called State Joint Local Government Account into which the State shall pay the allocation to Local Government Councils from the Federation Accounts and revenue from the Government of the State.

The Supreme Court held that Section 162 (5) and (6) merely appointed the States agent of the Federation to collect local government allocations from the Federation account and pay to local government councils and did not give the State any right or interest in the said allocations to the Local Government Councils from the Federation Account. The duty of the State is to simply convey to the Local Government Council their allocations from the Federation Account. As the States, after collecting the Local Government Councils allocation from the Federation Account, have refused to pay the allocation to their owners, the Local Government Councils under a claim of right to keep and use the money purportedly for the benefit of the Local Government Councils. The Constitution did not give the States any right or interest in the allocations to a Local Government Council from Federation Account. In the light of the provisions of Section 162(5)(6) conceptual tools that should be used in Constitutional and fundamental rights adjudications and in proceed. Just as the criteria for the interpretation of statutes differ between statutes according to must be different from those for the interpretation of the Constitution because of its sui generis political document. Therefore, it must be interpreted in line with principles suitable to its spirit and character and not necessarily according to the general rules of interpretation of statutes and benevolent, broad, liberal and purposive interpretation and a narrow, strict, technical and legalistic that in interpreting the part of the Constitution providing for governance in a constitutionally established democratic culture, the court must do so on the basis of principles that give the provision a meaning that promotes the values that underlie and are inherent characteristics of an open democratic society.

The Supreme Court further held that the Constitution must be applied in such a manner as not to defeat its intention or purpose. Where the application of the Constitution in a particular manner would defeat or work against the intention or purpose of the Constitution, the court is bound not to apply it in such a manner and rather adopt an application that would result in the



achievement of that intention or purpose.<sup>7</sup> This principle that underlies the constitution interpretation technique is that the Legislature would legislate only for the purpose of bringing about an effective result.<sup>8</sup>

This approach is consistent with the 'living tree' doctrine of constitutional interpretation enunciated in *Edward v Canada*<sup>9</sup> which postulates that the Constitution must be capable of growth to meet the future. In that case, the Supreme Court of Canada had ruled that women were not "persons" according to the British North America Act of 1867<sup>10</sup> and therefore were ineligible for appointment to the Senate. However, the women appealed to the Privy Council of England, Canada's highest court at that time, which in 1929 reversed the Supreme Court's decision. According to the Act, only "qualified persons" could be appointed to the Senate. The Act provided thus: "The governor general shall from time to time, in the Queen's name, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and, subject to the provisions of this Act, every person so summoned shall become and be a member of the Senate and a senator."<sup>11</sup>In 1867, "person" was legally understood to refer only to men. Consequently, the Canadian government had since that time interpreted "persons" as including men only. The Privy Council reversed the decision of the Supreme Court on 18 October 1929, concluding that "the word 'persons' in sec. 24 does include women, and that women are eligible to be summoned to and become members of the Senate of Canada."

In the light of the above, the Supreme Court reasoned that the approach of a direct payment to the accord with the smooth running of the system of paying Local Government Councils their allocations from the Federation Account. The demands of justice require a progressive application of interpretative criteria in the interpretation and application of the Constitution or other statutes. So that where the use of a literal and narrow criterion in the application of the provisions would result in an absurdity, injustice, impracticality or work against the objective of the Constitution, the court should employ a purposive or teleological approach or criterion that would meet the intention and objective of the Constitution. The purposive or teleological approach requires the court not to remain fixated on the literal and narrow meaning of the

<sup>7</sup> *Kalu v. State* (1998) 13 NWLR (Pt. 583) 531 at 586; *FRN v. Nganjiwa* (2022) 17 NWLR (Pt. 1860) 407 at 458.

<sup>8</sup> *Kalu v. State* (1998) 13 NWLR (Pt. 583) 531 at 586; and *FRN v. Nganjiwa* (2022) 17 NWLR (Pt. 1860) 407 at 458

<sup>9</sup> (1932) AC 124

<sup>10</sup> Also called the Constitution Act, 1867, this was the law that created and governed the Dominion of Canada.

<sup>11</sup> British North America Act, 1867, s 24



words used in the Constitution or statute in the situations mentioned above in disregard of the intention or purpose of the provisions, but go on to give the words a meaning that accords with the purpose and intention behind the words.

There is no doubt that a literal and narrow construction of the word “shall” in Subsection (5) of Section 162 as imposing a mandatory duty on the Federation to pay Local Government Councils allocation from the Federation Account, only through the States, would mean that the Federation must pay it to the States only. Such a literal application would work against the intention and purpose of the Constitution and create an unconstitutional *status quo*, unworkable and oppressive situations. To apply that word “shall” as making it mandatory for the Federation to pay Local Government allocations from the Federation Account through the States would make a constitutional provision prescribing the procedure to facilitate the enjoyment of a right created by the same constitution to override and even extinguish the very right created by the Constitution, whose enjoyment it is meant to facilitate.

The Supreme Court reasoned that the law is long settled that it is not always that the word “shall” in a statute is ordinarily literally read as mandatory and that in situations where such literal reading would defeat the intention of the statute and reading it as permissive or discretionary would meet the intention of the statute it would be read as permissive.<sup>12</sup> The Court then held that in this case it is glaring that giving the word “Shall” a literal meaning would defeat the objective of the Constitution, result in unconstitutionality or illegalities or cause injustice or unworkable situations. It should be purposively read as permissive or discretionary.

By virtue of the Supreme Court decision, local governments in Nigeria now enjoy financial autonomy, an independent tier of government. The Constitution defines government to include the government of the Federation, or of any State, or of a local government council or any person who exercises power or authority on its behalf.<sup>13</sup> This is unlike the situation in the United States of America where Local Governments are creation of State laws. The Supreme Court decision has granted financial to local governments.

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<sup>12</sup> *Amokeodo v. IGP* (1999) 6 NWLR (Pt. 607) 467 at 481, *Evong v. Messrs Obono Obono & Ass.* (2012) 6 NWLR (Pt. 1296) and *Okorocho v. UBA* (2011) 1 NWLR (Pt. 1228) 348.

<sup>13</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended) Section 318



### 3. IMPACT

As elegant and far-reaching as the decision of the Supreme in the said decision, may appear to be, one would want to make the following observations which have direct impact on the citizens or residents of the Local Governments which are the direct beneficiaries of the judgment:

- 1) the Supreme Court should have considered that there was a time Local Government Areas were owing Primary School Teachers salaries for over six to twelve months, reason being that allocation they were getting was not sufficient to pay salaries of teachers, payment of primary school teachers salaries being primarily the responsibility of Local Government Areas;
- 2) there was also a time Local Government Areas were owing primary health care workers or paying them different amount from those being received by their State or Federal Governments Counter – parts; the above gave rise to the state taking over the payment of salaries of primary health workers in the Local Government Areas. I hope this will not re-occur with this judgment and its consequences;
- 3) let us believe that the chairmen of Local Government Areas will not become supermen and emperors in their various Local Government Areas;
- 4) on the issue of autonomy, it is hoped that this judgment is not an indirect way of handing over Local Government Areas to the Federal Government to control; and
- 5) Finally, let the Federal Government not use this judgment as a means of using Local Government Areas to suffocate and strangulate State Governments and State Governors who are in opposition or who are not in their support and good books considering the peculiar nature of our democratic system.
- 6) Local Government will receive their allocations directly from Federation Account.

### 4. CONCLUDING REMARKS

There is no doubt that the decision of the Supreme Court in the case *AG Federation v. AG Abia State and Ors.* is remarkable and laudable as it tries to whittle down the excesses of the Governors in the application the powers given to the State Governments by the provisions of Sections 7 and 162 of the Constitution of the Federation Republic of Nigeria 1999 as amended. It is however the view of this paper that the Court was too political and sentimental than legal without considering the consequences of the judgment as we noted earlier. It is ridiculous for the Court to abandon some express sections of the Constitution in favour of some other



provisions or sections without properly reconciling the said provisions or sections, moreso when the Court have decided on such provisions or sections before. Politics and sentiments in Nigeria are too dangerous chameleons that must be treated with caution. The paper is of the view that what the Supreme Court would have done is to recommend to the National Assembly (the Legislature) an urgent amendment of Sections 7 and 162 in line with their thinking to reduce the excess of powers given to the State Government and reconcile what appeared to be conflicting subsections especially of section 162. The Supreme shouldn't have entered into the arena of the legislature in the said judgment. The Supreme Court can only get into such interpretation if the Constitution is silent on the issue. There is no doubt that if you give the Federal Government opportunity they may do more than some of the State Governments. The Legislature does not need the assistance of the judiciary to do their legitimate and constitutional duties, if the legislature is sleeping over her duties then it is unfortunate and democracy is in comma.