

# The Role of the Courts in Strengthening Democracy at the Local Government Level in Nigeria

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## INTRODUCTION

The courts, especially the superior courts<sup>1</sup>, have contributed significantly to the growth of democracy in Nigeria. Nigerian democracy has been variously described as 'nascent' and ought to be nurtured by the political operators and actors to maturity like most advanced democracies of the world taking into consideration local circumstances. However, after several attempts at democracy, it is obvious that the political operators in Nigeria have not yet learnt any lessons from the failures of the past. The democratic laws and institutions in Nigeria instead of promoting the best and demoting the worst, in line with the 'economic model of politics'<sup>2</sup>, have drifted to the reverse thereby raising serious concern about the viability of democracy in Nigeria.

Admittedly, the courts in Nigeria have risen to the occasion by saving the country's burgeoning democracy from total collapse. This is evident from several decisions of the courts reviewing legislative and executive actions that are contrary to the provisions of the Constitution. The courts have made radical pronouncements on some constitutional issues such as conduct of election, impeachment procedures, revenue allocation, division of powers, fundamental rights political parties and local government which have gone a long way in strengthening democracy in Nigeria. We are concerned here with the aspect which deals with the local government system.

## THE ROLE OF THE COURT IN NIGERIA

Section 6 of the 1999 Constitution vested judicial powers of the Federation on Federal Courts and the judicial powers of the states on the state courts established under the Constitution. The judicial powers shall extend to all inherent powers and sanctions of a court of law and shall extend to all matters between persons or between government or authority and to any person in Nigeria and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person. In the case of **Ransome-Kuti v. Attorney General of the Federation**<sup>3</sup>, it was held that by virtue of section 6(6)(b) of the 1979 Constitution (same as 1999 Constitution), the courts established by the Constitution can freely

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<sup>1</sup> The Superior Courts in Nigeria starts from the High Court to Court of appeal and then to the Supreme Court which is the highest court.

<sup>2</sup> See Robert Cooter. "Who Gets on Top in Democracy? Elections as Filters". Supreme Court Economic Review, Vol. 10, The Rule of Law, Freedom, and Prosperity (2003), pp. 127-141 for further details on the economic model of politics.

<sup>3</sup> (1985) 2 NWLR, part 6, 211.

adjudicate on any matter in controversy between a citizen and a government and between governments even where such actions are prohibited under the common law.

The courts in Nigeria are therefore armed with constitutional powers to adjudicate between individuals and between individuals and government and even between government/government agencies. There are also provisions guaranteeing the fundamental rights of individuals and vesting in the courts the powers to protect those rights<sup>4</sup>. Moreover, section 4(8) of the 1999 Constitution which vested legislative powers on National Assembly and States Houses of Assembly forbade the legislative bodies from making laws that would oust the jurisdiction of the courts. The above provisions have strengthened the courts in performing its arbitral role among the various political actors thus contributing in making democracy work in Nigeria.

## **THE LOCAL GOVERNMENT SYSTEM**

Nigeria operates a federal system. The 1999 Constitution was modeled after the American Presidential system which recognized three tiers of government. We have the Federal Government, the State Government and the Local Government. Local Government has a chequered history and it is government at the grass root and is one of man's oldest institutions. The earliest form of Local Governments existed in the form of clan and village meetings. Democracy itself existed, originated and developed along the lines of local governance initiatives in the ancient Greek city states. Local governance was developed along people's culture and expectations.

The 1999 Constitution of Nigeria provided for a full fledged democratic Local Government system. Section 7(1) of the Constitution provides that the system of Local Government by democratically elected Local Government Councils is guaranteed under the Constitution 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 councils. The 1999 Constitution did not only give the numbers of all the local government areas in Nigeria but also clearly stated the names of all the Local Government Areas in all the States in Nigeria. The implication is that all the Local Governments in Nigeria are recognized by name and are vested with juristic personality by the Constitution<sup>5</sup>.

Regrettably, despite the fact that the Local Government system is constitutionally provided for as a third tier and autonomous of the other two, the Federal and State Governments in Nigeria have unwholesomely interfered in the operations of the local government system such that in some states, the local governments are reduced to a department of the state government. In most cases their statutory revenue allocation from the federation accounts are withheld

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<sup>4</sup> See Chapter IV of the 1999 Constitution.

<sup>5</sup> See section 3(6) of the 1999 Constitution. This position may be contrasted with the position under the 1979 Constitution where the areas named as forming the area of each state were not explicitly stated to be local government areas. See also Nwabueze B.O. *Federalism in Nigeria under the Presidential Constitution*. 2<sup>nd</sup> ed. London: C. Hurst and Co. Publishers Ltd, 1980 at 131-132.

unlawfully by the State Governments or Federal Government; Local Government Councils are arbitrarily dissolved without allowing them to serve out their constitutional tenure. All these could result into serious political chaos and the constitute serious threat to democracy in Nigeria.

The courts have intervened severally to declare some of the actions of the Federal Government and State Governments unconstitutional, null and void. This has greatly helped to preserve governance at the grassroots. We can give instances of such judicial intervention-

- The Supreme Court in **Attorney General, Lagos State v. Attorney General of the Federation**<sup>6</sup> declared the Local Government Area Law No 5 of 2002 made by Lagos State Government in which 57 local governments were created by breaking the existing 20 Local Government areas recognized under the 1999 constitution into 57 Local Government Councils as unconstitutional null and void. The Law in effect abolished Local Government Areas created under the 1999 Constitution by altering their names, adjusting their boundaries and dividing them into smaller units. The Law further vested the governor with powers to appoint persons to administer the affairs of the newly created local government areas.
- The Supreme Court also held as null and void the decision of the Federal Government to withhold statutory allocation due and payable to the Lagos State Government in respect of the 20 Local Governments. Before the decision of the Supreme Court on this matter, very serious tension was already generated between the Lagos State Government led, as at that time, by Chief Bola Tinubu and the Federal Government led by President Olusegun Obasanjo. Both were of the same tribe but were in different political parties. Even after the Supreme Court decision, the Federal Government still refused to release the funds to the Local Governments. Therefore, for about 3 years there was no statutory allocation to the Local Governments in that state.
- The Supreme Court declared the Electoral Act made by the National Assembly in 2001 as null and void in the case of **Attorney General of Abia State & 35 Ors v. Attorney General of the Federation**<sup>7</sup>. The Act purported to legislate on the tenure of the Local Governments in Nigeria whereas that power was constitutionally reserved for the states Houses of Assembly.
- The Court of Appeal in **Attorney General Plateau State v. Goyol and Ors**<sup>8</sup> and **Attorney General Benue State v. Umar and Ors**<sup>9</sup> declared the actions of the Plateau State Governor and that of Benue State Governor respectively in dissolving the Local Government Councils in those States as unconstitutional, null and void. The Laws made by the two States Houses of Assembly which authorized the Governors to impede the smooth running of the Local Government Councils were also declared to be

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<sup>6</sup> (2004) 18 NWLR Part 904, 1.

<sup>7</sup> (2002) 6 NWLR part 763, 264.

<sup>8</sup> (2007) 12 NWLR pt 1059, 57

<sup>9</sup> (2008) 1 NWLR pt. 1068, 311

unconstitutional, null and void. The actions of the two state governments led to serious tension between the state governments and the elected council chairmen and councilors who formed themselves into associations to resist the dissolution.

- Moreover, in the case of **Attorney General Abia State & 2 Ors v. Attorney General Federation & Ors**<sup>10</sup>, the Supreme court held that the powers of the National Assembly over funds accruable to the Local Government Councils in Nigeria under sections 7(6) and 162(5) of the 1999 Constitution is only limited to allocation of such funds and it did not extend to monitoring such funds. Monitoring is a post-allocation matter and the National Assembly had no power to make such laws. Therefore, the Monitoring of Revenue Allocation to Local Government Act which sought to monitor the revenue allocation to the local government councils was held to be unconstitutional.
- The Supreme Court also pointed out in **Attorney General, Lagos State v. Attorney General of the Federation**<sup>11</sup> that the creation of additional local government in Nigeria would amount to an amendment of the constitution. Thus no State House of Assembly could on its own create additional local government without involving the National Assembly which would then set the necessary machinery in motion for the amendment of section 3(6) of the 1999 Constitution.

## CONCLUSION

It is seen from the above that the Nigerian Courts have been alive to its constitutional responsibilities as far as the protection of democracy is concerned even at the grass root level. However, there are several impediments to the exercise of the judicial powers by the court. For instance, there are cases of disobedience of the court's orders by the executive and even the legislatures. A good example is the case of **Attorney General, Lagos State v. Attorney General of the Federation**. Other impediments are the lack of independence of the courts and absence of security of tenure.

Nonetheless, the courts in Nigeria have performed more than any other organ or person in protecting citizen's rights and ensuring that the Nigeria politic is not a battle of might but played in accordance to the rule of the game.

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<sup>10</sup> (2006) 7 SCNJ 1.

<sup>11</sup> Supra.