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## Client Alert

# Supreme Court Declares National Lottery Act Invalid: Implications on Lottery Businesses in Nigeria

### Introduction

On 22 November 2024 the Nigerian Supreme Court delivered a landmark judgement in the case of **Attorney General of Lagos State v Attorney General of the Federation & Ors**<sup>1</sup> that nullified the National Lottery Act<sup>2</sup> which hitherto established the National Lottery Regulatory Commission and regulated lottery businesses in Nigeria. Indeed, the implications of this judgment are far-reaching as it has effectively redefined the Nigerian lottery industry. This client alert highlights the implications of the Supreme Court's judgement for States and lottery businesses in Nigeria.

### Background

The Lagos State Government approached the Supreme Court of Nigeria in 2008 (in its original jurisdiction) to seek amongst other things, a declaration that 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) (**CFRN**) – *which vest States' legislative assemblies with powers to legislate on subject matters outside the exclusive list* – the National Assembly lacks the power to make any law to regulate or control lottery operations in Nigeria as a whole because 'lottery' is a residual matter.

<sup>1</sup> Appeal No. SC/01/2008.

<sup>2</sup> National Lottery Act, 2005



2008:

*Lagos State challenges the National Lottery Act, arguing that "lottery" is a residual matter under the 1999 Constitution.*

On that basis, the Lagos State Government asked that the National Lottery Act ("**Lottery Act**") be nullified for reason that it is inconsistent with the provisions of the CFRN. It also prayed the Supreme Court to issue a perpetual injunction to restrain the Federal Government of Nigeria and its agents or agencies acting on its behalf, from taking any step towards enforcing the provisions of the Lottery Act within the territory of Lagos.

In a unanimous judgement delivered by a seven-member panel on 22 November 2024, the Supreme Court agreed with the position of the Lagos State Government and granted all the reliefs sought in the suit. The Judgement effectively proscribed the application of the Lottery Act in all States except the Federal Capital Territory, Abuja (**FCT**) which is ordinarily within the legislative remit of the National Assembly.

### Remarks on the judgement

By Nigerian constitutional arrangement, both the National Assembly and the State Houses of Assembly have different spheres of legislative competence i.e., distinct subject matters for which they can legislate upon. Primarily, under the CFRN there are two basic legislative lists, namely: exclusive list<sup>3</sup> and concurrent list.<sup>4</sup> The exclusive list which has a total of 68 items contains subject matters that are exclusively reserved for the National Assembly to legislate upon<sup>5</sup>, while the concurrent list which has 30 items contains subject matters that both the National and State Houses of Assembly can legislate upon.<sup>6</sup>

However, there are subject matters that are not contained in the exclusive or concurrent list but are loosely referred to as *matters not included in the exclusive legislative list*<sup>7</sup>. These matters have over time and by judicial pronouncements, come to be known as "**residual matters**" or put differently, matters in the residual list.

Etymologically, 'residual' means that which remains. In legislative or parliamentary context, therefore, residual matters are those that are neither in the exclusive or concurrent legislative list; that is, matters that are outside or are not covered by the exclusive and concurrent legislative lists.<sup>8</sup> What this means is that the residual list contains matters that *remain* after the subject matters in the exclusive and concurrent legislative lists were specified.



### National Assembly Exclusion

*The National Assembly lacks jurisdiction to regulate lotteries outside the FCT.*

<sup>3</sup> Part I, second schedule to the CFRN.

<sup>4</sup> *Ibid*, Part II.

<sup>5</sup> Section 4(2) & (3) CFRN.

<sup>6</sup> Sections 4(4)(a) & 4(7) (b) CFRN. Note however that where both houses legislate on an item in the list, that of the state will be inoperative while that of the National Assembly will stand as the law. This is based on the doctrine of covering the filed. See section 4(5) CFRN.

<sup>7</sup> See section 4(7)(a) CFRN

<sup>8</sup> A.-G., Abia State v. A.-G., Fed. (2006) 16 NWLR (Pt. 1005) 265.

In the case of **Attorney-General of Abia State v. Attorney-General Federation**<sup>9</sup> the Supreme Court held that the constitutional silence on certain subject matters having not stated them under the exclusive or concurrent lists, implies that they are residual matters. The Court went on to add that by virtue of section 4(7)(a) of the CFRN it is the State and not the Federal Government that is empowered to legislate on matters that are not included in the exclusive legislative list.

Also, in **AG Ogun State v. Aberuagba**<sup>10</sup> where the Supreme Court was called upon to interpret section 4(7)(a) of the CFRN which relates to 'residual matters', the Court held that residual legislative powers of government are vested in States Houses of Assembly, and the Federation has no power to make laws on residual matters.<sup>11</sup> Similarly, in a matter between the **A.-G., Lagos State v. A.-G., Federation**<sup>12</sup> where an issue was raised as to whether the Federal Government could enact planning laws for States of the Federation, the Court held that the Federal Government cannot be allowed to enact any Act or make any regulation under any guise in competition with any State in respect of residual matters no matter the salutary nature of such a law.

Against the backdrop of these decisions, it is difficult, if not impossible to fault the recent judgement of the Supreme Court in AG Lagos State v. AG Federation, considering that lottery is not a subject matter that is listed in the exclusive or the concurrent lists. That said, our view is that the judgment is legally sound.

### Implications of the decision

The first implication of the decision is that the judgement of the Court of Appeal in the case of **Nigeria Employers Consultative Association (NECA) & Anor vs. A.G. Federation & Ors**<sup>13</sup> (the NECA Case), where the Court of Appeal had upheld the validity of the National Lottery Act, no longer represents the law<sup>14</sup>. Consequently, the decision of the Supreme Court in the AG Lagos v. AG Federation is immediately enforceable throughout the Federal Republic of Nigeria based on to section 287(1) of the CFRN which provides that *"The decisions of the Supreme court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the supreme Court."*

The second implication of the Supreme Court's decision is that the National Lottery Act can no longer operate generally throughout the Federal Republic of Nigeria as it previously did. The Act will now only apply to the FCT, which is ordinarily within the legislative remit of the National Assembly.

<sup>9</sup> (2002) 6 NWLR (Pt. 763) 264.

<sup>10</sup> (2002) Vol.2 WRN 52, (1985) 1 NWLR (Pt.3) 395 at 405.

<sup>11</sup> *Ibid*, Page 77.

<sup>12</sup> (2003) 2 NWLR (Pt. 833) 195-196 H-A.

<sup>13</sup> (2021) LPELR-. 54042 (CA)

<sup>14</sup> In that case, the Court of Appeal held that *item 62* of the exclusive list which mentions "trade and commerce" contemplates lottery.



## Immediate Implications

- *The National Lottery Regulatory Commission's (NLRC) jurisdiction is now limited to the FCT.*
- *States can legislate and regulate lottery businesses.*
- *Companies operating outside the FCT must adhere to state laws and licensing requirements.*

Third, National Lottery Regulatory Commission (“**NLRC**”) which is an institution established further to the Lottery Act<sup>15</sup> can no longer exercise powers beyond the FCT or on entities/businesses operating outside the FCT. Going forward, the NLRC can only issue licenses to lottery companies/businesses that operate or intend to operate in FCT, and all other licenses issued to lottery companies that operate outside FCT now stand annulled.

Fourth, the various States of the Federation that are entitled to legislate on residual matters and which hitherto could not regulate lottery businesses within their territories, can now enact laws to regulate lottery businesses operating within their territories.

Fifth, lottery businesses/ companies shall be required to obtain licenses and permits from the States in which they operate except for companies that are operating within the FCT and had previously obtained licenses from the NLRC to operate in the FCT.

Further, companies involved in lottery business will no longer be required to pay 7% of their net proceeds as lottery tax to the Federal Government stipulated under the Lottery Act<sup>16</sup>, except those operating within the FCT. Effectively, they will be required to pay taxes relating to lottery businesses stipulated by the respective laws of the States where they operate and to the State Governments.

Sixth, the decision of the Supreme Court now stands as the absolute position on the subject which cannot be appealed. This therefore means that the only obligation left is to have the decision enforced by all authorities and persons except or until the National Assembly amends the CFRN to expressly include lottery as a subject under the exclusive or concurrent legislative lists.<sup>17</sup>

### Fate of lottery businesses in States that do not have a lottery law

As for States that do not have lottery laws or who may fail to enact laws to regulate lottery business in their territories following this judgement by the Supreme Court, the implication is that lottery is not and will not be regulated in such States. Consequently, lottery businesses located within such States will not be required to obtain national lottery licenses as they were required to do under the Lottery Act.

<sup>15</sup> See section 1 of the Act

<sup>16</sup> Section 35A of the National Lottery (Amendment) Act 2017

<sup>17</sup> In **Boye v. Adeyeye** (2012) 12 NWLR (Pt. 1314) 357, it was held that “The finality of the decision of the Supreme Court in civil proceedings is absolute unless specifically set aside by a later legislation

## Conclusion

In sum, it is safe to say that the decision of the Supreme Court is the current position of the law, the regulation of lottery business in Nigeria has been significantly redefined and only the National Assembly can change the position by a constitutional amendment. Furthermore, while the decision is legally sound, we note that it may yet usher difficulties for lottery businesses/companies that operate in multiple States across Nigeria as they may be required to do multiple registrations in the various States where they operate.