

LEGALITY OF TRANSFER OF POWER TO COLLECT TAXES MEANT FOR LOCAL GOVERNMENTS TO THE STATE GOVERNMENTS IN NIGERIA

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Abstract

Taxing power is the capability of one level of government level to impose taxes through its laws and establish standards for their proper collection and administration through its agencies. Taxing powers in Nigeria are derived from the Constitution and are divided between the Federal, State, and Local governments. Tax administration and enforcement within its jurisdiction is the responsibility of each level of government. The Constitution of the Federal Republic of Nigeria 1999(As amended) and The Taxes and Levies (Approved List for Collection) Act¹ clearly stipulated the taxes that can be collected by each tier of government in Nigeria. The aim of this research is to examine the taxing powers of the State and Local Governments in Nigeria and the legality of any written agreement transferring the powers to collect taxes from Local Government to the State Government in Nigeria. The Constitution of the Federal Republic of Nigeria 1999(As amended) and The Taxes and Levies (Approved List for Collection) Act² clearly stipulated the taxes that are collected by each tier of government in Nigeria. The essence of the Act is to streamline the collection of these listed taxes to avoid double taxation and multiple tax collection from the taxpayers. In order words, no tier of government is allowed to collect taxes meant to be collected by another. By the provisions of the 1999 Constitution and the Taxes and Levies (Approved List for Collection) Act,³ both the State and Local Governments are expected to strictly collect the taxes they are meant to collect and not to encroach on each other's taxing powers but ultimately, you observe the state government collecting taxes that are meant to be collected by the local government hereby breaching the provisions of the Constitution. However, where there is a state law permitting the local government to donate its powers to collect any tax to the State government then the State government can collect these taxes and levies on behalf of the local government. In the light of the findings mentioned above, this research work hereby recommends as follows: Legal framework for enactment of a Law by the State Houses of Assembly permitting the local government to donate its powers to the State government, adequate funding of tax authority, legal framework for enactment of law to provide for the harmonization and collection of all revenues including taxes, levies, rates, fees, charges etc. due to the State and Local government in all the States, creation of synergy between the States and Local governments to ensures that these taxes are collected effectively and need for a synergy between the State, local and tax authority in order to achieve an effective enforcement mechanisms for collection of taxes due for the state and local governments in Nigeria.

KEYWORDS: TAXES AND LEVIES, TAXING POWER, TRANSFER OF POWER TO COLLECT TAXES STATE GOVERNMENT AND LOCAL GOVERNMENT,

1.0 Introduction

Taxing power can be described as the ability of one level of government to impose taxes through its laws and set requirements for the proper collection and administration of the tax by either its

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¹ Cap T 2 LFN, 2994.

² *Ibid*

³ *Ibid*

own agency or by another level of government.⁴ In Nigeria, the taxing powers of the government are rooted in the Constitution⁵ and are divided between the Federal, State and the Local Government. Each level of government is independently responsible for the administration and enforcement of taxes within its jurisdiction.

The Constitution of the Federal Republic of Nigeria⁶ and The Taxes and Levies (Approved List for Collection) Act⁷ clearly stipulated the taxes that are collectable by each tier of government in Nigeria. The essence of the Act is to streamline the collection of these taxes to avoid double taxation and/or multiple tax collection from the taxpayers. In other words, no tier of government is allowed to collect taxes meant to be collected by another. The aim of this paper is to examine the legality of any instrument transferring the powers of local government to collect certain taxes to state governments for the benefit of the local governments. Despite the clear provisions of the Constitution and The Taxes and Levies (Approved List for Collection) Act⁸, some state governments are still collecting the taxes that are meant to be collected by the local governments. However, the state government are empowered under the Constitution to collect taxes and levies on items contained on the concurrent legislative list, items not contained in the exclusive legislative list and also on the items contained in Part II of The Taxes and Levies (Approved List for Collection) Act⁹.

Moreso, the Constitution¹⁰ in section 7 empowers the local government through its Local Government Council to impose and collect taxes on items as contained in the Fourth Schedule of the Constitution and also Part III of the Taxes and Levies (Approved List for Collection) Act¹¹. The local governments can only collect these taxes where there is an enabling state law empowering them to collect these taxes.

From the above provisions of the Constitution and the Taxes and Levies (Approved List for Collection) Act¹², it is clear that both the state and local governments are expected to strictly collect the taxes they are meant to collect and not to encroach on each other's taxing powers but ultimately, you observe the state government collecting taxes that were meant to be collected by the local government.

However, where there is a state law enacted to permit the local government exercise the discretion to allow or authorize the state government to perform its functions by way of written agreement or instrument and such agreement or instrument when entered voluntarily becomes binding on both the state and local government.

2.0 Taxing Powers of the State Government in Nigeria

Taxing powers of the State Governments in Nigeria. The Constitution of the Federal Republic of Nigeria 1999 (As Amended)¹³ vested the legislative powers of a state on the House of Assembly of the State. The Constitution¹⁴ further provided that the House of Assembly of the State shall have

⁴ OM Atoyebi; 'An examination of the taxing powers of the Federal Government of Nigeria, available at <https://omaplex.com.ng/an-examination> of the taxing powers of the Federal Government of Nigeria assessed on the 2nd January 2024.

⁵ Constitution of the Federal Republic of Nigeria 1999(as amended).

⁶ 1999(As amended)

⁷ *Op. cit*

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Constitution of the Federal Republic of Nigeria 1999(As amended) s.7.

¹¹ 1998

¹² *op cit*

¹³ Constitution of the Federal Republic of Nigeria 1999 (As amended) s.4 (6).

¹⁴ *Ibid* s.4 (7).

powers to make laws for the peace, order and good government of the State or any part thereof with 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 II 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.¹⁵

From the above provisions of the Constitution¹⁶, it is clearly stated that the legislative powers of the state is vested on the House of Assembly of a State. The Constitution¹⁷ further gave the House of Assembly of a State the powers to make laws for the State government on matter not included in the Exclusive Legislature list set out in part 1 of the second schedule to this Constitution, any matter included in the concurrent legislative list and any other matter in which the state government is empowered to make laws in accordance with the provisions of the Constitution.

Section 4 (7) of the 1999 Constitution makes it clear that the powers of the House of Assembly of a State to make Law has limitations. The power to make Law conferred on the House of Assembly of States must conform to the provisions of the Constitution. The House of Assembly of a State has no powers to make laws on any matter in the exclusive legislative list, but has power to make law on matters in the concurrent legislative list, By sub-section (b) of the section, even in the matters within the concurrent legislative list, the power of the House of Assemble of a State to make Law is on matters within or set out in the first column of the Second Schedule to the Constitution only to the extent prescribed in the second column opposite to the first column. And where the Law made by the House of Assembly of a State conflict with the law made by the National Assembly on matters on the concurrent legislative List, the law made by the National Assembly prevails. Further, sub-section (c) of the Section makes it clear that no House of Assembly of a State can arrogate to itself power to make law outside the provisions of the Constitution. So, the Constitution clearly restrict the power of the House of Assembly of Lagos State to make law to what is prescribed in the second column of part II of the Second Schedule to the Constitution.¹⁸

The doctrine covering the field is essentially that where the main, principal or superior law has covered a given field or area, any other subsidiary law made in that area or field cannot operate side by side with the main, principal law, it has to be declared void to the extent of its inconsistency. But where it is consistent with the principal law, it has to be left in abeyance that is, inoperative pending when the principal law may give way. This was the decision of the court in the case of *Saraki v. F.R.N.*¹⁹

Thus, where a matter legislated upon is in the concurrent list and the Federal Government has enacted a legislation in respect thereof, and the legislation enacted by the State is inconsistent with the legislation of the Federal Government, it is indeed void and of no effect for inconsistency. Where, however, the legislation of the Federal Government are in *pari materia* with the law enacted by the State legislation is in abeyance and becomes inoperative for the period the Federal legislation is in force. This is as held in the case of *A.-G. Ogun State v. A.-G. Federation.*²⁰ The State

¹⁵ *Ibid.*

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *A.-G. Lagos State v. Eko Hotels Ltd. (infra).*

¹⁹ (2016) 3 NWLR (Pt. 1500) 531.

²⁰ [1982] NSCC 1., see also *A.-G. Abia State v. Federation* [2002] 6 NWLRR (Pt. 763) 264.

Legislation is not void, per se- if for any reason the Federal legislation is repealed, the State legislation, which is in abeyance, is revived and becomes operative until there is another Federal legislation that covers the field..²¹ A State Law may be inconsistent with a Federal Law by the Federal Law dealing exhaustively with the subject matter so as to manifest an intention to exclude any other legislation thereon and that is the doctrine of covering the field..²²

The above means that the taxing powers and powers to collect the taxes are clearly provided in the Constitution and the Taxes and Levies (Approved List for Collection) Act and any attempt to legislate or create any type of taxes or levies outside the powers created by the two enabling statutes will be declared null and void on the face of the seeming inconsistencies.

In *Thompson & Grace v Government of Akwa Ibom*²³ the court held that the state government has power to make laws in tax matters and is subject to the enabling law which gives it the power to collect taxes and any attempt to act outside the ambit of Part II of the Taxes and Levies (Approved List for Collection) Act makes such an act a nullity. This decision was earlier given by the court in the case of *Etiosa LGA v Jegede*²⁴

Also, in the case of *Oluwabukola v A.G Lagos State*,²⁵ the Court of Appeal held on the extent and scope of legislative powers of the House of Assembly of a state, that section 4 (7) of the 1999 Constitution makes it clear that the powers of the House of Assembly of a State to make law has limitations. The power to make law conferred on the House of Assembly of a State must conform to the provisions of the Constitution²⁶. The House of Assembly of a State has no powers to make laws on any matter in the exclusive legislative list, but has power to make laws on matters in the concurrent legislative list. By sub-section (b) of the section, even in the matters within the concurrent legislative list, the powers of the House of Assembly of a State to make laws is on matters within or set out in the first column of the Second Schedule to the Constitution only to the extent prescribed in the second column opposite to the first column. However, where the law made by the House of Assembly of a State conflicts with the law made by the National Assembly on matters on the concurrent legislative list, the law made by the National Assembly prevails. Further, sub-section (c) of the section makes it clear that no House of Assembly of a State can arrogate to itself power to make law outside the provisions of the Constitution.²⁷ Local Governments do not have the power to legislate and impose taxes and levies outside the enabling law- i.e. Taxes and Levies (Approved List for Collection) Act.²⁸ Any exercise outside the ambit of the above law is a nullity.

However, section 1 (1) of the Taxes and Levies Act begins with “Notwithstanding anything contained in the constitution....” In *Eti-osa Local Government v. Jegede*²⁹, the court of appeal held that the power of the Local Government to make Bye-Laws are subjects to the enabling law which gives the Local Government power to collect taxes. In other words, the Local Government has no inherent powers to legislate nor create and impose taxes outside the scope of Taxes and Levies (Approved List for Collection) Act³⁰ nor outside the 4th Schedule of the 1999 constitution³¹. The Court held that there was nothing unconstitutional with the requirement of the Local Government,

²¹ *A.-G. Lagos State v. Eko Hotels Ltd* [2018] 7 NWLR (Pt. 1619) 518.

²² See *Environmental Health Officers Registration Council of Nigeria v. LAWMA* [2012] LPELR-15418 (CA).

²³ [2010] 3 TLRN 110

²⁴ (2007) 10 NWLR (Pt. 1043)

²⁵ [2022] 2 NWLR (pt 1815) 499.

²⁶ Constitution of the Federal Republic of Nigeria 1999 (As amended)

²⁷ *A.G Lagos State v Eko Hotel Ltd* [2006] 18 NWLR (pt 1011) 378.

²⁸ *Act No. 21, 1998.*

²⁹ *Supra*

³⁰ *Op. cit*

³¹ *Op. cit*

the 3rd tier of Government to root its taxes through the Joint Tax Board. In *Uyo Local Government v. Akwa Ibom State Governmen*,³² the issue was whether in view of the supremacy of the Constitution, the provisions of the Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 which commenced with the phrase “Notwithstanding anything contained in the constitution” was void by reason of section 1(3) of the 1999 Constitution?³³ The court held that:

When the term “notwithstanding” is used in a section of a statute, it is meant to exclude an impinging or impending effect of any other provision of the statute or other subordinate legislation so that the said Section may fulfil itself. The use of the word “Notwithstanding” means that no provision of that constitution or statute shall be capable of undermining the said section. The opening phrase “notwithstanding anything” in a statute is a phrase of exclusion which accords the said statutory provision pre-eminence and having a precedence over and above other provisions of any other enactments.

Having seen the provisions of Constitution and the Taxes and Levies (Approved list for collection) Act³⁴, it is clear that the State governments have powers to make laws on matters in the concurrent legislative list. They also have plenary powers to make laws on any subject matter that is not on either the exclusive or concurrent legislative list. They also have powers to make laws on any subject matter contained in part II of the Taxes and Levies (Approved list for collection) Act³⁵. It is also worthy to note that a Federal Law on the matters listed in the concurrent Legislative List does not necessary preclude state laws on the same matter; however the state power to make law with respect to those items on the concurrent legislative list is subject to the doctrine of inconsistency and covering the field. Meaning that the state law must not be in conflict with the Federal Law on the same item. Where there is a conflict between the legislation of a state and that of the Federal on a matter in the concurrent list, an inconsistency arises as between the two laws so enacted, the law passed by the National Assembly will prevail and that of the state is rendered *null* and *void* to the extent of its inconsistency during the life time of the Federal Law.³⁶

3.0 Taxing Powers of the Local Government in Nigeria

Local Government is the third tier of government in Nigeria. It is the structure of government that addresses the affairs of the people at the grassroots³⁷.

The Taxes and Levies (Approved list for collection) Act³⁸ clearly stated the taxes and levies to be collected by the local government and they are:

1. Shops and kiosks rates;
2. Tenement rates;
3. On and off liquor licence;
4. Slaughter slab fees;
5. Marriage, birth and death registration fees;
6. Naming of street registration fee (excluding state capitals);
7. Right of occupancy fees (excluding state capitals);
8. Market/motor park fees (excluding market where state finance are involved);

³² *Uyo Local Government v. Akwa Ibom State Government* [2021] 11 NWLR (Pt. 1786) 1; See also *N. D. I. C. v. Okem Enterprises Ltd.* (2004) 10 NWLR (Pt. 8080) 107; *Fescum & Co. Ltd. v. F.A.A.N* (2015) 14 NWLR (Pt. 1480) 491 referred to.] (P. 39, paras. B-E)

³³ *DIN v. Federal Attorney-General* [1988] 4 NWLR (Pt. 87) 151

³⁴ *Op cit*

³⁵ Act

³⁶ Constitution of the Federal Republic of Nigeria 1999 (As Amended) S.4 (5); *INEC v MUSA* (2003) 3 NWLR (pt 806) 72; *Saraki v FRN* (2016) LPELR 40013 (SC).

³⁷ OM Atoyebi, *op cit*.

³⁸ Taxes and Levies (Approved list for collection) Act 1998 s.1 part III of the First Schedule.

9. Domestic animal license;
10. Bicycle, truck, canoe, wheelbarrow and cart fees;
11. Cattle tax;
12. Merriment and road closure fees;
13. Radio/television (other than radio/tv transmitter) licenses and vehicle radio license
14. (to be imposed by the local government in which the car is registered);
15. Wrong parking charges;
16. Public convenience, sewage and refuse disposal fees;
17. Customary, burial ground and religious places permits; and
18. Signboard/advertisement permit³⁹.

Furthermore, paragraph 9 of part II of the second schedule of the Constitution⁴⁰ allows the House of Assembly of a State to make laws for the Local Government Council to collect such taxes⁴¹. From the above provisions it is worthy to note that the local governments have no power to impose any tax whatsoever by their own bye-law. Section 7(1) (5) recognizes the local government council and they have the power to collect taxes and rates. However, their powers under section 7 and the Fourth Scheduled of the 1999 Constitution are limited to mere collection and administration of taxes and rates as maybe prescribed by the enabling State law.

The Constitution in section 7 empowers the local government through the local government council to impose and collect taxes on items as contained in the fourth schedule of the constitution. The local government is also empowered to impose and collect taxes on items contained in part III of the Taxes and Levies (Approved List for Collection) Act⁴² The powers of Local Government to collect those taxes are limited to mere collection and administration of taxes and rates as may be prescribed by the enabling state law. This is because the Constitution empowers the State House of Assembly to enact laws for the local government to collect such taxes⁴³.

In *Fast Forward Sports Marketing Limited v. The Port –Harcourt City Local Government*⁴⁴ the court held that the local government has the power to demand and collect taxes outside the area specified in Part III of the Taxes and Levies (Approved List for Collection) Act⁴⁵ and no taxes may be imposed by any authority in Nigeria except as set out in the schedule to the Act.

4.0 Usurpation of Powers of the Local Government to collect its taxes by the State

To usurp power implies that the power belonging to someone is taken away from him temporarily or even permanently. In the case of *Oluwabukola.v. A.G, Lagos State*,⁴⁶ the Court of Appeal held on What usurpation of power entails –

To usurp power” implies that the power belonging to someone is taken away from him temporarily or even permanently. In this case, section 1 (3) Of the Land Use Charge

³⁹ *Ibid*

⁴⁰ Constitution of the Federal Republic of Nigeria 1999(As amended)

⁴¹ *Ibid* para 9 part II second schedule.

⁴² 1998

⁴³ Constitution of the Federal Republic of Nigeria 1999(As Amended) paragraph 9 part II of the second schedule.

⁴⁴ [2011] 3 TLRN 110; *AG Cross-River State v Matthew Ojua* [2011] 5TLRN 08; *AG Ondo v AG of the Federation* [2002] 9NWLR (Pt 772) 222; *AG Abia v AG of the Federation* [2002] 6 NWLR (Pt 764) 542.

⁴⁵ 1998

⁴⁶[2022]2 NWLR (PT. 1815) 523 . See also [*Bilante Int'l Ltd. v. NDIC* (2011) 15 NWLR (Pt. 1270) 407; *Sodipo v. Lemminkainen OY* (1985) 2 NWLR (Pt.8) 547; *Corporate Ideal Ins. Ltd. v. Ajaokuta Steel Co. Ltd.* (2014) 7 NWLR (Pt. 1405) 165 referred to.] (P. 571, paras. G-H)

Law of Lagos State is skillfully worded that there is no compulsion on the Local Government Council to donate its constitutional function to the State Government. The provision of section 1 (3) of the Law leaves it at the discretion of the Local Government Council concerned to call upon the State Government to assist it to carry out the constitutional function. The skillful draftsmanship of the provision takes the relationship between the Local Government Council and the State Government from the realm of delegation, subordinate and superior, master and servant relationship to a contractual relationship. In the circumstances, the respondents rightly argued that the provision of section 1 (3) of the Law cannot be said to usurp the powers of the Local Government Council on the issues of taxes or levies on privately owned properties.

“Delegation” means the act of entrusting another with authority or empowering another to act as an agent or representative. It implies that powers are committed to another person or body which are as rule, always subject to resumption by the power delegating. So, delegation does not imply a denudation of power and authority. In this case, the provisions of section 1 (3) of the Land Use Charge Law of Lagos State only allows a Local Government Council in Lagos State to freely decide or take the decision to either exercise its power and function of assessment, levying and collection of rates on privately owned houses or tenements on its own or to delegate such power to the Lagos State Government by way of a written agreement or contract. The provisions of the sub-section do not usurp the power or function of the Local Government Councils in Lagos State to assess, levy and collect rates on privately owned houses or tenements. In the circumstance, the provisions of the sub-section do not derogate from or constitute an infraction or infringement of the provisions of section 7 (5) and Paragraph 1 (j) of the 1999 Constitution to attract the penalty of being unconstitutional, null and void. Further, it was not the complaint of the appellant that the 6th respondent did not, in accordance with the provision of section 1 (3) of the Law, delegate to the Lagos State Government in a written agreement, its power or function to assess, levy and collect the land charge rate as prescribed by the law in its area of jurisdiction.⁴⁷

In the case of *Oluwabukola.v. A.G, Lagos State*,⁴⁸ the Court of Appeal held that: Generally, a person to whom power is delegated cannot delegate that power. But when there is an enabling provision under a law, such delegation can be done. In this case, section 3(2) of the Land Use Charge Law of Lagos State gives the authority to the Commissioner for Finance (the 3rd respondent) to delegate the powers under section 1(3) of the Law to identification officers, qualified assessors and other persons as he considers necessary. There is nothing that limits the 3rd respondent from delegating that power to private person. Therefore, the 3rd respondent did no wrong by delegating the power to the 4th 5th respondents since such delegation is expressly provided for under the Law⁴⁹.

Delegata potesta non potest delegari means delegated power or authority cannot be re-delegated by the delegate. In this case, the 3rd respondent did not delegate the assessment, levying and collection of the rates in question to the 4th and 5th respondents, but because he cannot be expected to personally and directly carry out the function or power to do so delegated to the State Government

⁴⁷ *Anakwenze v. Aneke* (1985) 1 NWLR (pt. 4) 771 referred to] (pp. 591-592, paras. A-A; 594, paras. C-D).

⁴⁸ [2022]2 NWLR (PT. 1815) 523 . See also [*Bilante Int'l Ltd. v. NDIC* (2011) 15 NWLR (Pt. 1270) 407; *Sodipo v. Lemminkainen OY* (1985) 2 NWLR (Pt.8) 547; *Corporate Ideal Ins. Ltd. v. Ajaokuta Steel Co. Ltd.* (2014) 7 NWLR (Pt. 1405) 165 referred to.] (P. 571, paras. G-H)

⁴⁹

by the 6th respondent, he only assigned the 4th and 5th respondents to carry out the function for and on behalf of the State Government which can only act through its officials that include the 3rd respondent. It is not a case of delegation of delegated authority or power by the Lagos State Government to which the initial delegation by the 6th respondent was made.⁵⁰

The Constitution of the Federal Republic of Nigeria⁵¹ and The Taxes and Levies (Approved List for Collection) Act⁵² clearly stipulated the taxes that should be collected by each tier of government in Nigeria. The reason for this is to prevent one tier of government from collecting taxes that are meant to be collected by another tier of government. Despite the clear provisions of the Constitution and The Taxes and Levies (Approved List for Collection)⁵³ most state governments are encroaching on the taxes that are meant to be collected by the local government. The usurpation of the local government's power to collect taxes by the state government in Nigeria contradicts the provisions of the Constitution. The state government has no power to collect the taxes meant to be collected by the local government and if the state government encroaches on the taxing powers of the local government, such an act becomes a nullity⁵⁴.

to collect Levy and taxes over private houses on the Local Government Council. The Court further states that the intendment of a section 1(3) of The Land Use Charge of Lagos State (now s.2 (3) of The Land Use Charge of Lagos State 2020) is clearly not to take away the function constitutionally donated to the Local Government Council but permits a contractual relationship between the local government and the State Government on the issue of collection of taxes which is clearly within the responsibility of the Local Government Council without breaching any Law or Constitutional provision.

5.0 Legality of Agreement Transferring Powers of Local Government to collect Taxes to State Government

Once there is an agreement by parties, the court will honor the agreement. The Court however, will not enforce a contract which is illegal. The local government can legally by way of agreement transfer some of its taxing powers to the State Government, provided there is a Law enacted by the State House of Assembly empowering the Local Government to transfer its taxing powers.⁵⁵ Such state law must recognize the constitutional powers of the Local Government to levy and to collect the taxes, rate and fees through its local government council and shall not take away the function constitutionally donated to the Local Government Council. However, such state law shall give powers to the Local Government Council to permit a contractual relationship between it and the State Government on the issue of collection of taxes which is clearly within the responsibility of the Local Government Council without breaching the provision of the Constitution. Moreso, such state laws should be couched in such a way that permits the Local Government Council exercise the discretion to allow or authorize the state government, any person, institution or organization to perform that function for it by way of agreement and such agreement or contract should be entered voluntarily by the local government.

⁵⁰ See also *Okoro v. Delta Steel Co. Ltd.* (1990) 2 NWLR (pt. 130) 87; *N.N.P.C. v. Trinity Mills Ins. Brothers* (2003) 9 NWLR (pt. 825) 384; *Nasiru v. Bindawa* (2006) 1 NWLR (Pt. 961) 355; *Bamgboye v. University of Ilorin* (1990) 10 NWLR (pt. 622) 290 referred to. (pp.594-595, paras. F-B).

⁵¹ 1999 as amended.

⁵² *Ibid*

⁵³ Act

⁵⁴ *Ezenwa Bros (Nig.) Ltd. v. Ona-Jones (Nig.) Ltd.* (2012) LPELR 9789; *Omatseye v F.R.N.* (2017) LPELR 42719; *Shema v F.R.N* (2018) 9 NWLR (pt. 1624) 337 referred to.] (p.580, paras. A-D).

⁵⁵ *Bitante Int;l Ltd .v. NDIC* (2011) 15 NWLR (Pt. 1270) 407; *Sodipo .v. Lemminkainen OY* (1985)2NWLR (Pt. 8) 547; *Corporate Ideal Ins Ltd.v. Ajaokuta Steel Co. Ltd* [2014] 7NWLR (Pt. 1405) 165

However, where a local government which is empowered by a state law enters into such a written agreement or contract with the state government or anyone else, the contract is not illegal, it is legal by law and it binds the both parties. This is because parties are bound by their agreements and the court does not interfere with such agreements, pursuant to the doctrine of autonomy of parties in a contractual relationship. Where the intention of the parties to a contract are clearly expressed in a document, the court cannot go outside the document in search of other documents not forming part of the intention of the parties⁵⁶. Parties are bound by the terms of their contracts. Consequently, they are also bound by errors and mistakes in the contract, which they have condoned and waived. *Mekkwunye v Imoukhuede*⁵⁷

The cardinal principle of interpretation of documents is that parties are presumed to have intended what is contained in a document to which they have subscribed. *Maximum Insurance Co. Ltd. v. Owoniyi*⁵⁸ It is also not the function of the court to make a contract between the two parties or to rewrite the one already made by them, but it is the court's duty to construe the surrounding circumstances including written and oral statements to effectuate the intention of the parties. *Omega Bank (Nig.) Plc. v. O.B.C. Ltd*⁵⁹

In the case of *Oluwabukola.v. A.G, Lagos State*,⁶⁰ the Court of Appeal held that once there is an agreement, the court will honour the agreement. The court, however will not enforce a contract which is illegal. The purport of the above is that where a local government willingly donates some of its taxing powers to the state government, then the state government can collect such taxes on behalf of the local government. For instance, some state government, such as Lagos State have skillfully drafted their Land Use Charge Law, empowering the Local Government to willingly donate some of its taxing power like collection of tenement rates to the Lagos State government. The Lagos State Government through its State House of Assembly enacted The Land use Charge Law of Lagos State⁶¹ for collection of tenement rate in Lagos State. The Land Use Charge Law of Lagos State⁶² recognizes the constitutional provision of paragraph1 (J) of the fourth schedule to the 1999 Constitution empowering the Local Government to collect tenement rate and it provided as follows:

For the purpose of this Law, each Local Government Area in the state shall be the Collecting Authority and it shall be the only body empowered to levy and collect tenement rates for its area of Jurisdiction⁶³

Moreso, the Land Use Charge Law of Lagos State further provides as follows:

Each collecting authority may delegate to the state, by a written agreement, its functions with respect to the assessment of privately owned houses or tenement for the purpose of levying and collection of such rate as may be prescribed under this Law⁶⁴.

According to the Court of Appeal in *Oluwabukola.v. A.G, Lagos State*,⁶⁵ There is nothing in the provisions of section 7 (5) and paragraph 1 (j) of the Fourth Schedule to the 1999 Constitution,

⁵⁶ *Nneji v. Zakhem Con. (Nig) Ltd.* [2006] 12 NWLR (Pt. 994) 297

⁵⁷ [2019] 13 NWLR (Pt. 1690) 439.

⁵⁸ *Maximum Insurance Co. Ltd. v. Owoniyi* [1996] 1 NCLC (Nigerian Commercial Law Cases) (Pt.1) 141 @ 145.

⁵⁹ *Omega Bank (Nig.) Plc. v. O.B.C Ltd* [2005] All FWLR (Pt. 249) 1965 @ 1967.

⁶⁰[2022]2 NWLR (PT. 1815) 523 . See also [*Bilante Int'l Ltd. v. NDIC* (2011) 15 NWLR (Pt. 1270) 407; *Sodipo v. Lemminkainen OY* (1985) 2 NWLR (Pt.8) 547; *Corporate Ideal Ins. Ltd. v. Ajaokuta Steel Co. Ltd.* (2014) 7 NWLR (Pt. 1405) 165 referred to.] (P. 571, paras. G-H)

⁶¹ 2020

⁶² 2020

⁶³ Land Use Charge of Lagos States 2020, s. 2 (2)

⁶⁴ Ibid s. 2 (3)

⁶⁵[2022]2 NWLR (PT. 1815) 523

which suggest that the assessment, levying and collection of the tax, fee or rate on privately owned houses or tenements must be done or carried out by the Local Government Council itself and no other. It would be absurd and unreasonable to canvass such a position since the law recognizes that a person or body who/which unquestionably possess statutory power and authority can, in proper and appropriate cases, either exercise it himself /itself or through other persons/bodies either as agents or representatives, except expressly prohibited by the statute.⁶⁶

In the case of *Oluwabukola.v. A.G, Lagos State*,⁶⁷ the Court of Appeal held that the Land Use Charge Law of Lagos State recognizes the constitution provision of paragraph 1 (j) of the Fourth Schedule to the 1999 Constitution because section 1 (2) of the Law gives the Local Government Council the exclusive power to collect levy and taxes over private houses on the Local Government Council.

In the case of *Oluwabukola.v. A.G, Lagos State*,⁶⁸ the Court of Appeal held that Section 1 (3) of the Land Use Charge Law of Lagos State provides that each collecting authority may delegate to the State, by written agreement, its function with respect to the collection of rates and the assessment of privately owned houses or tenement for the purpose of levying such rates as may be prescribed under the Law. The provision of the subsection acknowledgment and recognizes the Local Government Council as the collecting authority. The provision does not entitle the State Commissioner of Finance or the Lagos State Government to usurp the power which belongs to the Local Government Council by the provision of paragraph 1 (j) of the Fourth Schedule to the 1999 Constitution. To usurp power implies that power belonging to someone is taken away from him temporarily or even permanently. The subsection is, however, skillfully worded that there is no compulsion on the Local Government Council to donate that constitutional function to the State Government. It leaves it at the discretion of the Local Government Council concerned to call upon the State Government to assist it to carry out the constitutional function. The skillful draftsmanship of the provision has taken the relationship between the Local Government Council and the State Government from the realm of delegation, subordinate and superior, master and servant relationship to a contractual relationship. In the circumstances, the respondents rightly argued that the provision of section 1 (3) of the Land Use Charge Law of Lagos State cannot be said to usurp the powers of the Local Government Council on the issues of taxes and levies on privately owned properties.⁶⁹

What the above means is that, the Local Government is not delegating its powers or function to the State but rather, the law is enabling any Local Government council if it so desires to assign its constitutional function to the State on contractual terms agreed between them to collect taxes for it.

As mentioned above, there is no compulsion on any Local Government to make the State collect the said taxes for it. Just like, the Constitution in my opinion does not foreclose the Local Government from contracting any person, institution and organization from assisting it to carry out their constitutional function, I do not think, it forecloses the Local Government if it chooses, to ask the State to do that for it. In a contractual relationship, the terminologies ‘superior and subordinate’ does not arise.”

6.0 Conclusion

⁶⁶ *Bamidele v. Comm. For Local Govt., Lagos State* (1994) 2 NWLR State (Pt. 328) 568; *Knight Frank & Rutley v. A. - G., Kano State* (1998) 7 NWLR (Pt. 556) 1; *Shema v. F. R. N.* (2018) 9 NWLR (Pt. 1624) 337 referred to.] (P. 593/ paras. B-E)

⁶⁷[2022]2 NWLR (PT. 1815) 523

⁶⁸[2022]2 NWLR (PT. 1815) 523

⁶⁹ *Oluwabukola.v. A.G, Lagos State, supra* (Pp. 570-571, paras. E-D)
Per TOBI, J. C. A. at page 571, paras. D-G:

The Constitution of the Federal Republic of Nigeria⁷⁰ and the Taxes and Levies (Approved list for collection) Act⁷¹ clearly stipulated the taxes that are collected by the Federal, State and Local Government in Nigeria. The reason is to prevent one tier of Governments encroaching by collecting taxes that are meant to be collected by another tier of government. The state government are empowered under the constitution to collect taxes and levies on items that are contained in the concurrent legislature lists and also items on part II of the Taxes and Levy (Approved list for collection) Act. While the Constitution in Section 7 empowers the Local Government through the Local Government Council to impose and collect taxes on items as Contained in the Fourth Schedule of the Constitution and they are also empowered to impose and collect taxes on items contained in Part III of the Taxes and Levies (Approved list for collection) Act.

The Local Government can only collect these taxes where there is an enabling state law empowering them to collect those taxes. The State Government can only collect the taxes meant to be collected by them likewise the Local Government, Where the State Government encroaches by collecting the taxes meant to be collected by the local government, such act becomes a nullity. However, a state law may permit or give the local government power to enter into a contract with the state government by way of written agreement to donate their taxing power to the state government, such written agreement becomes binding on the parties. In that case, the state government can collect such taxes on behalf of the local government as stipulated on the written agreement. This practice of Local Government donating its powers to collect taxes, rates and levies have been challenged as an affront to the Constitution. This seeming challenge to the practice of donating its powers to impose and collect taxes to State Government by Local Government have been sanctioned by the court of Appeal in the case of *Oluwa Bukola v AG, Lagos State*⁷². The decision of the court of Appeal on this issue is yet to receive the sanction of the supreme court of Nigeria. Therefore, it is not sufficient to legalize the practice which hitherto was seen as usurpation of Constitutional taxing powers of Local Government by State Government⁷³

6.0 Recommendations

This research work hereby recommends as follows:

1. Enactment of a law permitting the local government to donate its powers to the State government by the State Houses of Assembly.
There is need for the enactment of the state law by the State Houses of Assembly in Nigeria. This state law will enable the local government voluntarily donate some of its taxing powers to the State government.
2. Adequate funding of Tax Authority. There is need for the state government to effectively support the tax authority with adequate funding to help in the collection of these taxes.
3. Enactment of law to provide for the harmonization and collection of all revenues including taxes, levies, rates, fees, charges etc. due to the State and Local government in all the States.
4. Creation of synergy between the State and Local government to ensures that these taxes are collected effectively.
5. There is need for a synergy between the State, Local and Tax authority in order to achieve an effective enforcement mechanism for collection of taxes due for the state and local government.

⁷⁰ 1999 (As Amended)

⁷¹ 1998

⁷² *Oluwa Bukola v AG, Lagos State*

⁷³ *Supra*