

LIMITATIONS TO THE EXERCISE OF TAXING POWERS BY LOCAL GOVERNMENTS IN NIGERIA: A CRITIQUE*

Abstract

The exercise of taxing powers by Local government in Nigeria has been bedeviled with a lot of issues or challenges. The challenges range from an inherently built in bottlenecks to impose taxes on its own, to lack of the necessary vires to make bye-laws or regulations for the enforcement of their constitutionally granted powers. Every act or attempt to the exercise of this power to either impose tax or collect tax is met with stiff resistance and sometimes ultimately declared ultra vires. This has led to unhealthy rivalries between the local governments and state governments. In effect, most of the state governments sometimes unnecessarily interfere with the powers constitutionally left for the local governments in Nigeria. This is a slap on the Constitution and has seriously affected the operations of the local governments in Nigeria. It also accounts for the inability of the local governments to meet up with its expectations to the people. This work appraises the limitations to the exercise of taxing powers of the local government in Nigeria and its attendant consequences. The doctrinal method of data collection was adopted and analytical approach used in examining the research materials like the Constitution, taxing statutes, judicial decisions, textbooks, journal articles and internet sources. The work discovered that the challenges of the local government in their exercise of powers in tax matters in Nigeria are as a result of constitutional bottlenecks inbuilt in the system. The work recommended the amendment of section 7(1) & (6)(b) and 162(5), (6), (7) and (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This will necessarily grant the required vires to the local governments in Nigeria to become a taxing power properly so called.

Keywords: Limitations, taxing powers, Local Governments, bye-laws, Revenue Committee, State Joint Local Government Account

1. Introduction

The tax structure in Nigeria as stipulated in the constitution made attempt to uphold the concept of federalism.¹ It purports to reflect the three-tier system of government at the Federal, State and Local Government levels. Under the Constitution² each tier of government was granted powers and responsibility in respect of the imposition and collection of taxes. The Constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN 1999 as amended) places the responsibility for legislating on taxation of income, capital gains, and stamp duties on the Federal Government.³ The powers to collect taxes have their basis on the concurrent legislative list of the delegation of the administration or collection of taxes or duties as it pertains to capital gains, incomes of persons other than companies and documents or transactions to the state governments.⁴ At the same time, the CFRN, 1999 as amended places the responsibility for legislating on the collection of taxes, fees and charges that could be collected by the local government on the legislative powers of the state government.⁵ It also appears that the inbuilt checks and balances on issues of taxation of the state governments are placed on the federal government and that of the local governments placed in the hands of the State Government.⁶ There is no tangible role to be played by the local government. Ultimately, the constitution granted the latitude to the state government to introduce taxes, fees and charges collectible by the local governments and this had led to a lot of conflict between the two levels of government. Following the above, the suppression of the local government or the lopsidedness in the structure of the Nigerian tax system is obvious. It is the failure of the local government to contribute to the well being of the tax payers and the visibly non-impact on their lives that the paper is set out to examine.

2. Local government as the Third Tier Government in the Nigerian Federation

The legal framework of the governments in Nigeria does not see local governments as a third tier of government but merely recognized their existence.⁷ Despite their creation and recognition, local governments were made

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¹However, the reverse is the case under section 2(2) of the Constitution of the Federal Republic of Nigeria where the constitution created a special type of federation in Nigeria. The component of the federation of Nigeria is the Federal, State and the Federal Capital Territory. The local government is not a component part of the Nigeria federation.

². Constitution of the Federal Republic of Nigeria, 1999 as amended (CFRN, 1999 as amended), S.4 (2), (7) and 7(1).

³. CFRN, 1999 as amended, concurrent legislative list, paragraph 7(a), item D.

⁴. Ibid, paragraph 7(b), item D.

⁵. Ibid, paragraph 7(b); item D.

⁶. Ibid, S 7(1).

⁷Ibid, S 3(6) and second column of part I of the first schedule to the constitution and six area councils as shown in part II of the schedule. Note that the federal arrangement in Nigeria is premised on a distinctive division of powers of the federation between the central (federal) and the states.

appendages of the state government, where the later enjoys absolute discretion over the former. The constitutional status of the Federal and State Government are not in doubt, it is clear and unmistakable. Nigeria is believed to operate a three-tier federal structure comprising the Federal, State and Local Governments. The main objective of this three-tier structure is to ensure a freestanding local government system that is capable of doing what a government actually does, that is, governing at the local or grassroots level. The provisions of the Constitution, however, sings different tunes; it started with the following guiding provisions, that Nigeria shall be a federation consisting of Federal, States and a Federal capital territory;⁸ further, it provided, ‘There shall be seven hundred and sixty-eight local government areas in Nigeria as shown in the second column of part I of the first schedule to this constitution and six area councils as shown in part II of that schedule’.⁹ Interesting as though the above may seem that the same constitution denied local governments already created and in existence legislative powers.¹⁰ But worrisome is the following constitutional provisions, thus;¹¹

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.

An ordinary interpretation of the above provision is that section 7(1) CFRN being subject to section 8 CFRN means that the application of section 8 would come before that of section 7(1). The term ‘subject to’ used in section 7(1) makes the provisions of section 7(1) subservient to the provisions of section 8 CFRN as held in *Olorunfoba-Oju v Abdulkaheem*¹² thus:

whenever the phrase ‘subject to’ is used in statute, the intention, purpose and legal effect is to make the provisions by the section inferior, dependent or limited and restricted in application to the section to which they are made subject to. In other words, the provision of the later section shall govern, control and prevail over the provision of section made subject to it. It renders the provision of the section subservient, liable, subordinate and inferior to the provision of the other enactment.

Following the above citation, the lingering conflicts that had arisen between the Federal government and the state on the quest to control the local government has been laid to rest by the court in *A.G, Abia state v A.G, federation*¹³ that by the combined effect of section 7(1) and 197 and item 22 of the second schedule, part I, the constitution intends that everything relating to local government be in the province of the state government rather than that of the federation. The minor exception is to be found in item II of the concurrent legislative list where power is given to the National Assembly with respect to the registration of voters and the procedure regulating elections to local government councils. There is also pursuant to section 7(6)(a), power to make provisions for statutory allocation of public revenue to local government councils in the federation. Other than the above, there is no provision in the constitution empowering the National Assembly to make laws affecting local government. While section 7(6)(a) anticipates allocation of public revenue to the local government councils enumerated in part I, first schedule to the constitution, section 7(6)(b) enjoins or empowers the House of Assembly of a state to make such allocation to the councils within the state. The third-tier status of the local government in Nigeria was finally and unnecessarily whittled down by the provisions of section 162. It provides that each state shall maintain 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 government of the state.¹⁴ Finally, the local government was subordinated to the authority, whims and caprices of the state government with the following provisions: ‘The amount standing to the credit of local government council of the 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’.¹⁵ The provisions quoted above cannot be any stretch of imagination translate to anything other than that the local government should only play the role of errand boy and do not enjoy independent, not being able to exercise its own will in the conduct of its affairs, free from direction of the state government.

⁸. Ibid, S 2(2).

⁹. Ibid, S 3(6).

¹⁰The principle of power sharing between federating units ordinarily relates to the legislative power of the federation which is vested in the legislature.

¹¹CFRN *op cit*, S. 7(1). See also S. 7(5) which provides that the functions to be conferred by law upon local government councils shall include those set out in the fourth schedule to this constitution.

¹². (2009) 13 NWLR (pt. 1157) 83.

¹³. (2006) 16 NWLR (pt. 1000) 265.

¹⁴. CFRN, *op cit*. S. 162(6).

¹⁵. Ibid, 5. 162(8).

Be that as it may, it is not in doubt that there is recognition of local government by the constitution as constituting a distinct level of government in Nigeria with defined boundaries, clearly stated functions and provisions for ensuring adequate human and financial resources for the development at the grassroots. The Supreme court in *AG, Lagos state v AG Federation*¹⁶ has lend credence to this view wherein the Lagos state government being aggrieved by the directive of the then President filed an action to challenge same, the court considered the provisions of sections 3,7,8 and 162 of the Constitution of the Federal Republic of Nigeria and held amongst others;

I therefore come to the conclusion that the passing of the Local Government Area law, No 5 of 2002 by the Lagos State House of Assembly was not sufficient to give life to the new Local Government Area until the National Assembly passes the consequential Act amending section 3 subsection (6) and part I of the first schedule to the constitution.

In *Akpan v Umah*¹⁷, the court further highlighted that although it is within the legislative power of a State House of Assembly to make a law to regulate a local government council in the state plagued with crisis or to make a law to prescribe for an event upon which happening a local government is dissolved or the chairman or vice chairman of a local government council is removed or vacate his office, 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 1999 constitution which guarantees democratically elected Local Government Council and is therefore unconstitutional to the extent of the inconsistency. It is noteworthy that the Constitution of the Federal Republic of Nigeria, 1999 as amended recognized to a great extent the third-tier status of the local government in Nigeria, thus;

- i. Local government was made a legal entity distinct from the state.¹⁸
- ii. Local government should be administered by democratically elected officials;¹⁹
- iii. Local government should have specific powers to perform a range of functions assigned to it by law²⁰
- iv. Local government should enjoy substantial autonomy to perform functions, plan, formulate and execute its own policies, programmes and projects.

Unfortunately, the cherished principles may be difficult to materialize in practice due to some other bottlenecks in the Constitution.

3. Local Government as a Taxing Power in Nigeria

The Constitution distributed the taxing powers to the Federal, States and Local Governments in Nigeria.²¹ In the distribution, it has been observed that the Constitution has not done much to improve the lot of the states in terms of allocation of financial sovereignty with the consequences that the Federal Government maintains its strong position.²²

Local government is the third-tier level of government in the country. The local government unlike the Federal Capital Territory Abuja exercises power to levy tax. The local government exercises the power reserved for them by the Federal and State governments in the subject matter of taxation. In *MFCT v SPRD*²³, the court held:

The ministry of the federal capital territory is an agency of the federal government while the other defendants who are its senior management staff are agents of a disclosed principal. This view is supported by the provisions of section 5(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 which stipulates that the executive powers of the federation is vested in the President and may be exercised by him either directly or through the Vice-President and Ministers of the government of the Federation or officers in the public service of the federation.

The constitution did not directly assign legislative powers in the subject matter of taxation to the local government; this is a surprise with regards to the status of the local government as the third tier in the hierarchy of government in Nigeria. But the states are mandated to confer on the local government through legislation for their

¹⁶. (2005) All FWLR (pt. 244) 805.

¹⁷. (2002) 7 NWLR (pt 767) 701.

¹⁸. CFRN, 1999 as amended, S 3(6).

¹⁹. Ibid, S. 7(1).

²⁰. Ibid, S 7(3) (5).

²¹. Ibid, S. 4(2), (7) and 7(1), 4th schedule to the Constitution.

²²M.N. Umenweke, *Tax law and its implications for foreign Investments in Nigeria* (Enugu; Nolix Educational Publications (Nig); 2008) p. 39, I.A. Agua, *Nigeria Tax Law* (Ibadan: spectrum law publishing, 1999) p.30.

²³(2010) All FWLR (pt 505) 1706. The Federal Capital Territory Abuja lacks this power despite it's inclusion as a component part or unit in the federation of Nigeria under section 2(2) of the Constitution.

establishment, structure, composition, finance and functions.²⁴ The functions to be assigned to the local governments by the state shall include those set out in the fourth schedule to the constitution. Hence, the functions to be conferred by the state on the local government shall be in addition to the ones specified under the fourth schedule to the Constitution. Again, the functions to be conferred on the local government must be in accordance or within the limits of the powers of the state to legislate, which is termed 'residual list.'²⁵ The National Assembly cannot exercise legislative powers in matters in the residual list, that is, matters not included in the Exclusive and Concurrent legislative lists. In *AG Abia state v AG Federation*²⁶, the Supreme Court held that the National Assembly cannot validly make a law permitting direct allocation to local government councils. It further held that the extensive powers granted the National Assembly to legislate in respect of allocation of Federation Account is limited strictly to the process of allocating the funds and cannot extend to anything to be done after the funds have been so allocated and paid into the State Joint Local Government Account. It definitely does not extend to establishment of a state joint local government account allocation committee by prescribing its membership and functions. In *Attorney – General Ogun State v Aberuagba*²⁷ the court held that a careful perusal and proper construction of section 4 would reveal that the residual legislative powers of government were vested in the states. By residual legislative powers within the context of section 4, is meant what was left after the matters in the Exclusive and Concurrent legislative lists and those matters which the constitution expressly empowered the federal and the states to legislate upon, had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature.

Despite the view that the constitution granted the legislative powers in tax matters to the state, there is no such express provision in the constitution. The legislative competence of the state is perhaps a delegated one.²⁸ The state government does not enjoy any concurrent legislative power rather the Constitution spelt out delegation of the function to the states. There is no doubt that by a combined reading of the provisions of item D paragraphs 7 and 8 of the Concurrent legislative list in the second schedule to the Constitution, the powers for the collection of taxes are delegated to the state by the federal government. The provision reads;²⁹

In the exercise of its powers to impose any taxes or duty on –

- (a) Capital gains, incomes or profits of persons other than companies; and
- (b) Documents or transaction by way of stamp duties; the National Assembly may subject to such conditions as it may be prescribed, provided that the collection on any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a state or other authority of the state.

This is a negation and contrary to the meaning and intendment of the principle of concurrent legislative powers in a federation. The court captured this position quoting with approval the definition by Professor Nwabueze in his book on federalism in Nigeria at page 59 in *Olafisoye v FRN*³⁰ as follows;

The word 'concurrent' means existing together. What is meant therefore when a matter is said to be in concurrent to federal and states governments is that their powers in respect of it exist side by side together. In other words, the powers of both governments in respect of the matter are co-existent not mutually exclusive; the power of one does not exclude that of the other. Both governments can, in theory at least, act on the matter. But their powers need not necessarily be co-existence in the sense of extending over the entire field of the matter. They may co-exist only in respect of some aspects of it.

In other words, both the state and local governments were not directly assigned legislative functions in tax matters, while the state legislate on the residual items, after the Federal has exhausted their powers, the local governments are left with what remains after the state government had legislated.

²⁴. CFRN 1999 as amended, S.7(1).

²⁵Ibid, S. 4(7) (a) & (c); Although the constitution did not expressly mention a list known as residual legislative list, it however refers to matters which are not covered by the Exclusive legislative list and the Concurrent legislative list, upon which only the state governments can legislate to the exclusion of the Federal Government. This list consists of items that remain after the items in the Exclusive and Concurrent list are taken out. The states are empowered to make law on residual matters not specifically enumerated in the two lists.

²⁶. Supra.

²⁷. (1985) 1 NWLR (pt. 3) 395 at 413.

²⁸M. Okorodudu, Analysis of Federal and State Taxing powers in M.A Ojomo et al (ed) Tax Law Administration in Nigeria, NIALS, 1991, p64.

²⁹CFRN 1999 as amended, S 4(3), second schedule, part II, Concurrent Legislative List, paragraph 7 (a) & (b) item D.

³⁰. (2004) 4 NWLR (pt. 864) 580.

4. Taxes administered by the local Government in Nigeria

By virtue of the Taxes and Levies, the following are to be collect at the local government level;³¹

- a. Shops and kiosks rates;
- b. Tenement rates;
- c. On and off liquor license fee
- d. Slaughter and slab fees;
- e. Marriage, birth and death registration fees;
- f. Naming of street registration fee, excluding any street in the state capital.
- g. Right of occupancy fees on lands in rural areas, excluding those collectible by the federal and state governments.
- h. Market taxes and levies excluding any market where state finance is involved;
- i. Motor park levies
- j. Domestic animal license fees
- k. Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck;
- l. Cattle tax payable by cattle farmers only,
- m. Merriment and road closure levy;
- n. Radio and television license fee (other than radio and television transmitter);
- o. Vehicle radio license fee (to be imposed by the local government of the state in which the car is registered)
- p. Wrong parking charge,
- q. Public convenience, sewage and refuse disposal fees;
- r. Customary burial ground permit fees;
- s. Religious places establishment permit fees;
- t. Signboard and advertisement permit fees; and
- u. Wharf landing charge, where applicable.³²

The drafters of the Act seem not to understand the distinction between a tax and other related items such as fees, levies and charges. There are a lot of user charges and licensing fees contained in the Act as well as the fourth schedule to the Constitution. The Act gave room or leverage to the local government to see these fees as tax and upon that see the basis for serving assessment notices on corporate bodies as parking fees³³ and mounting of road blocks.³⁴

5. Challenges to the Exercise of Taxing Power by the Local Government

Prior to the promulgation of the Personal Income Tax Decree 1993 (now Act), the local governments were not statutorily recognized as a tax authority. The revenue departments were bodies in charge and responsible for the collection of taxes, rates and levies. Presently, local government revenue committee created under the Personal Income Tax Act³⁵ is the authority in charge of collection of taxes and levies. The committee comprises of the following:³⁶

- a. Supervisor for finance as chairman
- b. three local government councilors as members, and
- c. two other persons experienced in revenue matters to be nominated by the chairman of the local government on their personal merits.

The committee shall be responsible for the assessment and collection of all taxes, fines and rates under the jurisdiction of the local government and accounting for all amounts so collected in a manner to be prescribed by the chairman of the local government.³⁷ The Revenue Committee has not performed optimally due to challenges of conflicting constitutional provisions, political instability and financial/fiscal problems. These underscores the constant whittling down of the local government powers in tax matters. First, in an attempt to cripple the local

³¹ Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004.

³² Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) order 2015, Federal Republic of Nigeria Official gazette, No 77 vol. 102.

³³ *Eti-Osa Local Government v Jegede & Anor* (2007) 10 NWLR (pt. 1043) 537.

³⁴ *Mobil Producing Nig. Unlimited v Tai Local Government Council* (2004) 10 CLRN 99 at 109.

³⁵ Personal Income Tax Act, 2011, (PITA); S. 90(1).

³⁶ PITA 2011, S. 90 (2).

³⁷ The controversy trailing the activities of the Local Government Revenue Committee is the question about their autonomy from the local government administrators especially the Executive Chairman of the local government. The Act under section 91(2) provides that the revenue committee shall be autonomous of the local government treasury and shall be responsible for the day-to-day administration of the department which forms its operational arm.

governments some state government created Development Centres,³⁸ which is contrary to the provisions of the Constitution. In *AG Lagos State v AG Federation*,³⁹ Lagos state like some other states mentioned pursuant to the provisions of the constitution proceeded to create new Local Government Areas. The President viewed that the provisions of section 8(5) of the constitution which required the National Assembly to make consequential provisions by an Act with respect to the names and headquarters of the new local government areas had not been complied with. Consequently, the President directed that no allocation from the Federation Account should henceforth be released to the local government councils until they revert to the constituent local government councils specified in part I of the first schedule to the Constitution. The Supreme Court considered the provisions of section 3,7,8 and 162 of the Constitution of the Federal Republic of Nigeria, 1999 and held thus;

I therefore come to the conclusion that the passing of the Local Government Area law, No 5 of 2002 by the Lagos State House of Assembly was not sufficient to give life to the new local government areas until the National Assembly passes the consequential Act amending section 3 subsection (6) and part I of the first schedule to the constitution.

Under this atmosphere in the Local Government, Local Government can hardly realize its potential as a taxing power in Nigeria. Another serious abuse of the constitutional provisions was reliance on the provisions of section 7(1) to whittle down the taxing powers by creating instability in the establishment, structure and composition of the local government. Many states have not bothered to establish democratically elected councils as stipulated under section 7 of the Constitution. Some states merely pretend to conduct elections in the Local governments the Governors merely select and inaugurate their loyalists that will always do their bidden. Others appoint Management or Caretaker committees in disregard to the constitutionally guaranteed democratically elected local governments. For instance, in Anambra state, the former State Governor, Mr Peter Obi refused to conduct Local Government elections from 2004 to 2014. There is no way the Local Governments in the state will realize their potentials where the constitutionally guaranteed enabling environment under section 7(1) CFRN 1999 as amended were not made available. In *Government of Akwa Ibom State v Umah*⁴⁰ due to the crisis in the running of Ini Local Government Council of Akwa Ibom State, the Governor of the state through the Secretary to the State Government issued a press release dissolving the local government council and set up a caretaker committee to replace the elected officers. In an action challenging it, the Court of Appeal, held that although the word dissolution is not in the section 7(1) of the Constitution, the House of Assembly which has the powers to make laws to regulate the affairs of a local government council, can make a law for the dissolution of an erring local government council and for bye election to prevent chaos and disorder. Guaranteeing the system of local government council must be democratically elected one and it is in order if a local government council is dissolved and a bye election is ordered. It will be otherwise if the council is dissolved and a caretaker committee is appointed in its place.

Apparently, most states refuse to transfer financial allocations meant for the local governments to them and even exploit their sources of internal generated revenue. Statutory allocations from the Federation Account to local governments paid into the state – joint Local Government Account were often diverted by some state governments. The State Governors either misappropriate the funds of Local Governments or reduce them to perform other functions meant for the state government. This is contrary to the intents of the law and the Supreme Court had in *AG. Abia State v AG Federation*⁴¹ held: that Section 162(6) of the Constitution enjoins each State to 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 Government of the state. The subsection is designed to enforce the provisions of section 162 (3). That apart, the second leg of the subsection enjoins the state to also pay into the ‘State Joint Local Government Account’ contribution for Local Government Councils from the Government of the State. Section 162(6) of the constitution is a mandatory provision which all State Governments must comply with in connection with financial allocations in favour of local government councils within the state.

Now the inconsistencies in the provisions of the constitution and unpatriotic attitude of the State Governments has led the State Governments and Local Governments to be immersed in the tussle and struggle of who should impose or collect which tax or the other. This has continued despite that the taxes collectible by each of the State

³⁸States such as Lagos, Akwa Ibom, Bayelsa, Enugu, Ebonyi and Kastina created Local Government or Development centre relying on the provisions of section 7(1) of the Constitution.

³⁹(2005) All FWLR (pt. 244) 805.

⁴⁰(2002) FWLR (pt 110) 1793, *Doga V AG. Taraba State* (2011). All fWLR (pt 603) 1786.

⁴¹. Supra.

Government and local governments were enumerated.⁴² The Court in *ABE DC PLC v Abuja Municipal*⁴³ tacitly recognized the power of the local government to make bye-laws for the collection of taxes. In a considered judgment, on the taxing power of States and Local Government Council, the court held: 'In this regard, there are specific legislations enacted by the National Assembly or the House of Assembly of a state on matters falling within their respective legislative competence which empower local Government councils to enact bye-laws for the collection of one form of tax/levy or the other'. In *Knight, Frank & Rutley v AG. Kano State*⁴⁴, the matter was whether the state government had concurrent competence with local Government Councils on property assessment designed eventually for rate collections. The Kano state government signed a contract with two firms of accountants and the agreement was retrospective to cover from 1980 and required the accountants to provide consultancy and training services for the evaluation of specified tenements in and around Kano metropolis. The court held that by virtue of section 7(5) CFRN1999 as amended and the fourth schedule to the 1979 constitution and the provisions of the 1977 Local Government Edict of Kano State⁴⁵, taxation of tenements is within the authority of the local government. Achara⁴⁶ criticized this decision. It is submitted that, the Kano State House of Assembly is only expected by the constitution to make a law prescribing the taxes to be collected by local government but the state government went beyond their powers by appointing a different body to take over the functions of local government.

In *Bamidele v Commissioner for Local Government and Community Development (Lagos State) and Anor*⁴⁷, the state government imposition of market stallage fees was held to be a usurpation of allegedly exclusive local government functions. In *Shell Petroleum v Burutu Local Government Council*,⁴⁸ the Court of Appeal, held, that having regard to item D9 of the Concurrent Legislative list the local government council's rating power (not for imposition of tax) was merely for collection of rates. In *Thompson & Grace Investment Ltd v Government of Akwa-Ibom State & 2 Ors*⁴⁹, the imposition of N50,000.00 for the registration of Business premises by the law⁵⁰ of Akwa Ibom state against the N10,000 stipulated by Taxes and levies (Approved list for Collection) Act was held to be *ultra vires*. In *Idowu v Attorney-General & Commissioner for Justice Lagos State & Ors*⁵¹, the Land Use Charge Law⁵² of Lagos State was declared not inconsistent with the provisions of the Constitution⁵³ of the Federal Republic of Nigeria. However, in *Attorney-General Cross River State & Anor v Matthew Ojua*⁵⁴, wherein, the Respondent a property owner in Cross River State was served with four notices of assessment for payment of Urban Development Tax, Tenement Rate, Sanitation levy and Refuse collection charges. The court held that a close look at the Urban Development law shows that it is the function assigned to the local government and same was declared unconstitutional, null and void and of no effect. Here the state government usurped the function of assessment of privately-owned houses or tenements for the purpose of levying the rates and collection of same by the Commissioner of finance. In *Fast Forward Sport v Port Harcourt Local Council*⁵⁵ it is more of embarrassment and abuse of the powers. The PortHarcourt Local Government issued demand notices in respect of the following;

(i)	Sewage levy	-N50,000
(ii)	Sign posts/bill boards/advertisement	-N50,000.00
(iii)	Local government support levy	-N100,000.00
(iv)	Operational permit	-N100,000.00
(v)	Stickers	-N50,000.00
(vi)	Agricultural Development levy for 2008	-N35,000.00

⁴²Taxes and Levies (Approved List for Collection) Act, Cap T2 LFN 2004, S. 1(1) Part III of the Schedule to the Act. But in *ABEDC PLC v Abuja Municipal* (2018) 35 TLRN 35 the court held that Taxes and Levies Act is inconsistent with the Constitution to the extent that it purports to regulate residual matters within the legislative competence of the House of Assembly of a state

⁴³. Supra at 42.

⁴⁴. (1998) 7 NWLR (pt. 556) 1-37.

⁴⁵. Edict No 5 of 1977 of Kano State.

⁴⁶Race Achara, Can Nigerian Local Government Council autonomously impose rate?, *Journal of African Law*, Volume 47 No 2, 2003 p 224. He criticized the decision on the ground that the issue of power to impose levy was not canvassed by the parties.

⁴⁷ (1994) 2NWLR [Pt 328]568

⁴⁸. Suit No BEK/MISC 95/2009.

⁴⁹. Registration of Business Premises Law Cap 107, Laws of Akwa Ibom State 2000.

⁵⁰However, see the item 7 part II of the schedule to the Taxes and Levies (Approved List for Collection) (Act Amendment) Order, 2015 where it stated Business premises registration fees in respect of urban and rural areas which includes registration fee and per annum renewals as fixed by each state.

⁵¹. (2011)5 TLRN 86.

⁵². Cap. L61L (2001) of Lagos State

⁵³. CFRN, 1999 as amended, S.7 and the fourth schedule, item 1(j).

⁵⁴. FHC/PH/CS/220/2008.

⁵⁵. (2011) 5 TLRN 01.

Suddenly, the respondent was yet issued with another demand notices from the Rivers State Board of Internal Revenue, on Economic Development levy of N350,000.00. The imposition of another Agricultural levy outside the one collected by the Rivers State Government was held to amounts to double taxation. In *UAC of Nigeria Plc v Att. Gen., Lagos State*⁵⁶, whether the House of Assembly can prescribe for Local Governments in Lagos State, functions and derogate from or lesser or fewer than prescribed by the Constitution in its section 7(5) and spelt out in the 4th schedule to the constitution was the issue. The trial court held that the constitution of the Federal Republic of Nigeria, 1999 did not give the local government the function of controlling the structures for signage and advertisement. However, on appeal, the Court of Appeal held;

The provision of section 7(5) of the Constitution of the Federal Republic of Nigeria, 1999 is not exhaustive. The section says that the functions to be conferred by law upon local government councils shall include those set out in the 4th schedule to this Constitution. This clearly shows that the state can give more functions to the local government councils and these powers could include even the ones being handled by the state. If the Constitution had intended to prohibit the state from performing these functions enumerated under schedule four of the constitution, it could have clearly say so, as it will be dangerous to import into Constitution that which is not included.

From the extract above, it does appear that the court tacitly stated that both the State and Local Governments in Lagos State have concurrent powers to legislate under the 4th schedule to the Constitution of the Federal Republic of Nigeria, 1999. Now that the court has recognized the power of the Local Government to impose and collect tax, the coast is now clear for strengthening the Local Government for the task ahead. Even the schedule to the Taxes and Levies (Approved list for Collection) Act (amendment) order 2015, stipulated the concurrent powers of both the state and local government on certain tax matters. Despite the conflicting nature of local government powers as a result of the contradictory provisions in the Constitution, it has been shown that there cannot be total exclusion of the local government in the subject matter of taxation in Nigeria.

6. Conclusion and Recommendations

Local government existence and their taxing status are guaranteed by the Constitution. However, Local Government do not enjoy the status of a federating unit in Nigeria, hence, the legislative powers in the constitution are shared between the Federal Government and State Government. This work has revealed that although the Constitution did not expressly allocate legislative functions to the local government, local governments enjoys concurrent powers with the state government while the state government operates within the left over in the list termed 'residual list; the local government can make bye laws on what is left undone by the state government. The conflicting and lopsidedness of the provisions of the Constitution under sections 2(2), 3(6), 7(1), 8(5) and 162 (6) has been the bane of the Local Governments exercise of their taxing powers. In addition to the conflict in the provisions of the Constitution concerning taxing powers of the local governments, the arbitrary actions of state governments has also helped to whittle down the powers of the local government. The attempt by State House of Assembly to usurp the taxing powers of the local government councils should also be checked. The work having analyzed the limitation to the exercise of taxing powers by the local governments suggests the following remedies: There is need for the amendment of the provision of section the 2(2), 7(1), (6)(b) and 162(5)(6), (7), (8) of the Constitution of the Federal Republic of Nigeria. The provisions conflict and run contrary to the intendment of the provisions of section 3(6) that created the local government as a third tier and the provisions of 7(5) and the fourth schedule to the Constitution. An inclusion of a new subsection 7 to section 4 of the constitution is imperative. The present section 4(7) should now be re-arranged to be section 4(9) and *vice-versa*. The new subsection is to read: 'The legislative powers of the local government in every state shall be vested in the local government legislative council'. Again, there should be an inclusion of a new subsection 8 to provide for the limitation of the legislative powers of the Local Government. The existing subsection 8 of section 4 will now read;

- (8) The legislative council of a local government council shall have power to make laws for the peace, order and good government of the local government area that is to say:
- (a) any matter not included in the Exclusive legislative list set out in part I of the second schedule to this Constitution and Concurrent legislative list set out in part II of the second schedule to this Constitution.

Any subsidiary legislation on the taxing powers of the different tiers of government in Nigeria must emphasize on the dictum of the Court of Appeal in *UAC of Nigeria v Att. Gen., Lagos State* (supra) that both the State and Local Government in Nigeria have concurrent powers to legislate on the functions enumerated under the 4th schedule to the Constitution of the Federal Republic of Nigeria, 1999 as amended. Both Governments should exercise powers under the residual list but when there is conflict that of the state shall prevail.

⁵⁶. (2011) All FWLR (pt. 591) 1540.