

**THE TRUST NATURE OF THE STATE-LOCAL GOVERNMENT JOINT ACCOUNT IN NIGERIA:
LEGAL MATTERS ARISING***

Abstract

Trust has been described as a right enforceable solely in equity for the beneficial enjoyment of property the legal title of which resides with another person; or, a property interest held by one person at 'the request of another for the benefit of a third party'¹. The State Local Government Joint Account (SLGJA) would appear not be a property in the sense of this description. It may apparently be difficult to see how the SLGJA created by section 162(6) of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN) would fit in as an object of trust. This paper sets out to establish the trust status of the SLGJA, discuss states' responsibilities over the SLGJAs and states' violations of trust rules in administering these accounts. This paper also recommends legal enforcement of the rights of beneficiaries of the SLGJAs as a short term remedy and the scrapping of SLGJAs in the long run.

Keywords: Trust, account, joint, constitution and beneficiary.

1. Introduction

The cry over the maladministration of SLGJAs to the hurt of Local Government Councils (LGCs) has remained a subject of lamentations by civil society groups, LGCs officials and even states officials who witness the misdoings of states in their administration of these accounts. For instance, the head of service in Akwa Ibom State had cause to remark about the use by the State of caretaker or transition committees to inappropriately deal with LGCs' funds in the following terms: 'They have no voice of their own... so, when people argue that local government funds should not be channeled through state governments, their argument makes sense'.² States' access to LGCs' funds is perfectly possible because of the existence of the SLGJA and the circumstances of its establishment and operation. States' access to LGCs' funds is vindicated by the provisions of section 162(5) and (6) of the CFRN. To say that states' legal access to funds in this account cannot be denied but the legality of their operation of the account is the point of concern. The legality of states' access to the SLGJA and the wrong mode employed by states to operate these accounts makes an inquiry into the nature of the account, the way it should be operated among other things a crucial subject of study.

2. The Establishment of the SLGJA

The SLGJA is established by section 162(6) of the CFRN. This provision of the law has its predecessor in section 149(5) of the 1979 CFRN. Section 162(6) of the CFRN, which is *in pari materia* with its predecessor, section 149(5) of the 1979 CFRN provides: 'Each State shall maintain a special account to be called 'State Joint Local Government Account' into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State'. From the above provisions, the SLGJAs in states of the Federation of Nigeria exist not at the instance or pleasure of any state but as a constitutional imperative. The SLGJAs maintained by states are to be a pool of resources due to LGCs from the 'Federation Account' and each state's revenue account³.

3. The Role of States in the Administration of the SLGJA

The role of states in the management of the SLGJAs is explicitly provided for by section 162(8) of the CFRN. The section provides: 'The amount standing to the credit of local government councils of a state shall be distributed among local government councils of such state on such terms and in such manner as may be prescribed by the House of Assembly of such State'. The above provision has made the role of a state over SLGJAs within its jurisdiction 'distributary' and nothing more. After receiving funds for their LGCs from the 'Federation Account' and adding their own to it⁴, states are expected to discharge their obligation of distributing these funds to LGCs to perform their functions under section 7(5) of the CFRN. The SLGJAs are, by their constitutional purpose, transit accounts where funds from the 'Federation Account' and states' accounts would be lodged before they are distributed among the beneficiaries (the LGCs).

*By Musa Y. SULEIMAN, LLB (Hons), BL, LLM, PhD, Lecturer, Faculty of Law, Bingham University, Keffi-Abuja Road, Karu Nasarawa State, Nigeria. Tel:+2348029717918. Email: suleimanlaw@gmail.com;

*Naomi E. OKIBE, LLB (Hons), BL, Lawyer, Law Firm of Suleiman M.Y. and Associates, Liberty House (Opp. FCMB), Kuje Abuja with an exceptional interest in legal research and writing. +2348101288266, email- Neyomi99@gmail.com; and

*David D. GOAR, LLB (Hons), BL, LLM, Lecturer, Faculty of Law, Bingham University, Keffi-Abuja Road, Karu Nasarawa State, Nigeria. Tel: +2348038583310. Email: davidgoar664@gmail.com

¹ B. A. Garner, T. Jackson & J. Newman, *Black's Law Dictionary*, 8th end (Dallas: West Group, 1992) P. 1546.

² The News Watch Magazine, April 2nd, 2012, p.16.

³ Section 162(7) of the CFRN.

⁴ Section 162(8) of the CFRN.

4. The Apparent Justification for the SLGJAs

The rationale for the SLGJA may not be unconnected to the 1976 reform of this level of governance. The reform did not only recognise the existence of LGCs but accorded them a place in the Nigerian federal structure. In the words of the number two citizen of Nigeria in 1976, Brigadier Yar'adua: 'The Federal Military Government has therefore decided to recognise local governments as the third tier of governmental activity in the nation. Local Governments should do precisely what the word government implies i.e., governing at the grassroots or local level'⁵. The above elevation of LGCs was not to be without additional financial responsibilities. It was in recognition of this that in 1978, one of the steps taken by the Federal Government of Nigeria was to give each of the LGCs then one hundred million naira grant to enable them perform their functions⁶. It was at a time that LGCs, especially in the northern part of Nigeria, had dire need of qualified persons in the area of financial management. The Federation went on a democratisation process in 1979; a new constitution was to be made for the country. It was the wisdom of the constitution makers to uphold the LGCs' status recognised in the reforms of 1976 as a 'tier' of government. This also meant that their finances had to flow from the 'Federation Account' like those of the States and the Federation. The challenge of lack of competent hands to manage LGCs' resources at this time had apparently led to the concept of the SLGJA provided for in section 149(5) of the 1979 CFRN to enable states supervise the management of LGCs' resources. In any case, whatever the reason for the creation of the SLGJA then was and which has led to the re-enactment of the old regime in section 162(6) of the CFRN, the fact remains that the funds in these accounts belong to LGCs and is meant to be used by them and for their purposes.

5. The Trust Nature of the SLGJA

The trust nature of the SLGJA hasn't any origin in any explicit manifestation of the will of any law maker at the federal or state level of governance in Nigeria. Neither could it be conceived within the perimeters of the wilful action of any human being nor institution as it is with other trusts created. The trust is a constructive one arising from the nature of the account and the interests in it⁷. In *Attorney General of Bendel State and ors v Attorney General of the Federation*⁸ decided under section 149 of the 1979 CFRN⁹; the Federation used funds from the 'Federation Account' to achieve ecological control goals without the consent or permission of states of the Federation and in a manner not in accord with treating such funds so withdrawn for ecological reasons as part of the entitlements of the Federation from the account. In other words, the Federation pulled out the funds as an overlord that could not be questioned thus the action to determine the legality of such withdrawals and use of funds that belong to all tiers of government by the Federation. The Supreme Court, in a unanimous decision, held the action of the Federation to be wrong because it is not the sole owner of funds in the Federation Account. Funds in the Account were held to belong to the three tiers of government. By the nature of the ownership of funds in this account, the Court declared the Federation as holding the funds in the Account in trust for all other beneficiaries with each of the beneficiaries fully entitled to ask the Federation to account for the use of the funds at any time. This decision of the Supreme Court handed down decades ago found a repeat in the latter case of *Attorney General of the Federation v Attorney General of Abia State and 35 ors.*¹⁰ The Supreme Court, affirmed that the 'Federation Account' created by section 162(1) of the CFRN is a trust account thus the Federation holds same as a trustee and not an overlord whose actions in relation to the account cannot be questioned. From these two decisions, the 'Federation Account' is a trust account thus the Federation holds same as a trustee.

It is the contention that the nature of the SLGJA makes it more of a trust than the nature of the 'Federation Account'. The SLGJA houses funds belonging to LGCs of a state alone and for the purpose of distribution by each state in a defined way to its LGCs¹¹. Every state is under obligation to distribute the funds in this account to their owners in accordance with the law establishing the account. No law made by any state of the Federation to govern the administration of the SLGJA that is inconsistent with the provisions of section 162(5), (6) and (8) of the CFRN of Nigeria can be valid¹². This assertion stands unassailable despite the power that States Houses of Assembly have to

⁵ Yar'adua Shehu Musa in his foreword in: *Guidelines for Local Government Reform* (Lagos: Government, 1976) p. I & ii. This position was repeated by Admiral Augustine A. Aikhomu in his foreword in Oyelakin O Oladosu (ed), *Handbook on Local Government Administration* (Lagos: Ultimate Press Ltd., 1992) p. ii.

⁶ *Local Government Reforms, 1976* in Geoffrey Umeh (ed), *Nigeria 25 Years of Local Government Reforms and Democratization: 1976-2001* (Lagos: Manson and Company 2003) p. 8-29.

⁷ See J.O. Fabunmi, *Equity and Trusts in Nigeria* (Ile-Ife: Obafemi Awolowo University Printing Press Ltd., 2006) p. 269.

⁸ (2001) FWLR (Part 65) 448,548 and 549, (1981) 3 NCLR 1, (1981) All NLR 85. Note that this case is suit SC17/1981 decided on the 2nd day of October, 1981; there is a later case involving the same parties in suit SC108/1982 decided on the 3rd day of June, 1983, reported in (1983) All NLR 208.

⁹ In pari material with section 162 of the CFRN.

¹⁰ [2002] FWLR (Part 102) 1; [2002] 10 NSCQR 163.

¹¹ See section 162(5) on the mode of distribution.

¹² Section 1(1) of the CFRN. See also *Governor of Ekiti State v Olubunmo* [2017] All FWLR (Part 873) 1592 at 1631-1632, paragraph E-C.

make laws on the finances of LGCs by virtue of section 7(1) of the CFRN¹³. In *Attorney-General of Lagos State v Attorney-General of the Federation*¹⁴ his Lordship Kutigi JSC hit the nail on the head when he remarked that:

Dealing with the plaintiff's claim, I believe the right and title of a State Government to amounts payable pursuant to section 162(5) of the Constitution is indisputable. The subsection expressly and unequivocally stipulate that such amount-
'shall also be allocated to the state for the benefit of their Local Government Councils.'
The words *above plainly confer legal title to the amount in question on the states subject to a trust in favour of their Local Government Councils.* (Emphasis supplied)

The position of his Lordship, Kutigi JSC above has removed even the slightest doubt that may be hovering over the trust status of SLGJAs and the trusteeship of states over funds in these accounts.

6. The Implications of the Trust Nature of the SLGJA

The first implication of the trust nature of the SLGJAs is that each state of the Federation of Nigeria is a trustee over the account and its LGCs are the beneficiaries. A state manages the account for the benefit of its LGCs and no more. Flowing from this trust nature of the SLGJAs, there are rules that guide states as they operate these accounts. First, a state is not supposed to put itself in a position that its interest would conflict with its trust responsibility¹⁵. In *Peyton v Robinson*¹⁶, a trustee that had made payment to a beneficiary was held to be incapable of recovering his debt from the beneficiary from the said trust money. This remains so whether the trustee is an appointee of the beneficiary, of somebody for the beneficiary or is a trustee by virtue of circumstances. In *Prothere v Prothere*¹⁷, a husband that held a leasehold interest belonging to him and his wife was held to hold the freehold interest that crystallised from the previous interest in trust for the two of them i.e. husband and wife. In the second place, the trust nature of the SLGJA gives the beneficiaries the right to call for accountability from the proprietor (the State) of the account. The proprietor has an obligation to account for his conducts over the account whenever he is called upon to do so. This was settled in the decisions of the Court in *Attorney General of Bendel State and ors. v Attorney General of the Federation*¹⁸ and *Attorney General of the Federation v Attorney General of Abia State and 35 ors.*¹⁹ Furthermore, to put it beyond dispute that LGCs' funds belong to them and are under the control of state governments for their councils' use only his Lordship Tobi JSC of blessed memory remarked in *Attorney General Abia State and 2 ors. v Attorney General of the Federation and 35 ors.*²⁰ that:

I should say finally that any person who is at the corridors of Local Government finances or funds or in some proximity with such finances or funds or sleeping with them and sees this judgment as a victory in the sense that he had the freedom of the air to steal from the finances or funds, should think twice and quickly remind himself that the two anti-corruption bodies, the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), are watching him very closely and will, without notice, pounce on him for incarceration after due process. But this is not as serious as God's law which says he will go to hell and he will certainly make hell. This is not a curse. God's law does not lie because God is not a liar.

His Lordship went spiritual to underscore the burden of the trust that is upon operators of the SLGJAs that must be discharged with the fear of God.

The third implication of the trust nature of the SLGJAs is that states are not clothed with powers over these accounts. If this were so, states could then be equally clothed with authority to deal with the SLGJAs as they wish²¹. Trust does not confer power on a trustee over property or a subject matter of trust, rather it saddles a trustee with an obligation. Thus the discharge of the obligation of a trustee is imperative and not discretionary as it would have been if a trustee were to have power over a trust property. In the words of Fabunmi: 'A trust is imperative, power is discretionary. The essence of a trust is an intention to impose an obligation that of power is to confer discretion.'²² The imperative nature of trust is at variance with states' exercise of power over proceeds of SLGJAs. LGCs need not go pleading for the release of

¹³ Same section of the 1979 CFRN.

¹⁴ [2005] All FWLR (Part 244) 805 at 868-869, paragraph H- A.

¹⁵ O. F. Emiri, *Law of Trusts and Trustees* (Lagos: Jeroilromah Publishers, 1999) p. 417.

¹⁶ [1823] 1 LJ CH 191.

¹⁷ [1968] 1 WLR 519.

¹⁸ *Supra*.

¹⁹ *Supra*.

²⁰ [2006] 28 NSCQR 161 at 260.

²¹ See the definition of power in *Freme v Clement* [1881] 18 Ch.D 499.

²² J.O. Fabunmi, *Equity and Trusts in Nigeria* (Ile-Ife: Obafemi Awolowo University Printing Press Ltd., 2006)p. 209.

funds from these accounts to them by states. It is legally established that by the end of every month the Federation, States and LGCs share from the 'Federation Account'. The LGCs shares from the Federation Account are lodged in the SLGJAs which are supposed to be maintained as transit accounts. States are under obligation to pay into the SLGJAs revenue due to LGCs from their own share of revenue in addition to the various sums standing to the credit of these councils from the Federation Account²³; and release to each LGC of their respective states what its share is without any formal demand at the end of every month.

7. States' operation of the SLGJA and the trust burden question

States have long settled the problem of the management of the Federation Account with the Federation and the Federation has been ordered to its limits by the Court²⁴. That is, however, far from being the same with the SLGJA that the states are the proprietors. It has been demonstrated how that the SLGJAs are trust accounts and the consequences of such trust. This notwithstanding, states attitudes towards the management of the SLGJAs have been far from being constitutional and in tandem with the trust nature of the account. The unwholesome attitudes of states led the President Obasanjo's administration to put in place a Technical Committee on the Reform of the Structure of Local Government (TCRSLGC) in 2003. This Committee recommended for the abolition of the SLGJAs²⁵. A state was found by the TCRSLGC to have made available to its LGCs only 24 per cent of the total revenue due to them at one time!²⁶ States' interference in the financial affairs of LGCs has been lamented upon at several fora²⁷. It is the contention that the attitudes of states towards LGCs funds in the SLGJAs makes it unmistakable to say that LGCs exist to make it 'legal' for governors of states to use LGCs' funds for the purpose of campaigns, settling friends that need rehabilitation and hiring of crowds to welcome the president whenever he is on a visit to their states. The practices of states in relation to the SLGJAs should be the honest management of LGCs' funds entrusted to them according to the rules. They see these funds as an extension of their states' treasury and not as something they hold in trust for LGCs. The 'terrific' powers of the states to make laws on the finances and the structure of LGCs which has long been illegally translated by states to include the indiscriminate dissolution of LGCs and the institutionalisation of care-taker committees at the local level of governance²⁸ is one major weapon at the disposal of states. They dissolve elected council members with impunity and institute outlawed care-taker committees in wholesale violation of section 7(1) of the CFRN. For instance, the Governor of Ondo State sacked his elected council members by text messages and instituted care-taker committee members consisting of his loyalists in his political party²⁹. In a very blatant manner, a member of the Kaduna State House of Assembly once described the process of illegally removing elected LGC members from office as a procedure that is easier than removing one's cap from the head! The illegal dissolution of LGCs and the illegal institution of the caretaker committees have been employed by governors of states to achieve the purpose of the violation of the 'sacred' trust duties of states over the SLGJAs under them. Their surrogates, care-taker committee chairmen, are used to siphon LGCs' funds as their bosses direct.

8. Conclusion and Recommendation(s)

The Supreme Court's position in *Attorney General of Ogun State and ors v Attorney General of the Federation*³⁰ has become a sedan chair that states sit on and, of course, the ones that bear the chair on their shoulders with sweat streaming down their brows are council members. In this case it was the decision of the Apex Court that the Federation's action

²³ Section 162(8) of the CFRN.

²⁴ *AG of Bendel State v AG of the Federation* (supra), *AG Abia State v AG of the Federation and Ors.* (supra).

²⁵ The Report of the TCRSLGC, op cit.

²⁶ Ibid, p. 40. See also Obinna D 'Akinjide bombs governors', DAILYSUN Newspaper, Monday August 3rd, 2015, p. 5. A former Attorney General of the Federation and Minister of Justice referred to governors of states as '...biggest thieves. What does one expect from this crop of people when local government funds are entrusted to them?'

²⁷ *The Leadership Newspaper*, Wednesday, 12th October, 2011, p. 16; *The New Nigeria News Paper*, Thursday 13th October, 2011. *The Vanguard Newspaper*, Wednesday 12th October, 2011, p. 42. See also Obinna D Op. cit.; the several fruitless efforts of the National Assembly to secure two-thirds states' votes in support of its Constitutional amendment drive to grant local government councils' financial autonomy and more are testimonies of states' manipulation of local government funds.

²⁸ *Governor of Kaduna State v House of Assembly of Kaduna State* [1982] 3 NCLR 635, decided under section 7(1) of the 1979 Constitution, *Ummah and ors. v Akpan and ors.* [2002] 23 WRN 52; [2002] 7 NWLR (Part 767) 70, *Akinkpelu v Attorney General of Oyo State* [1985] 5 NCLR 557, decided under section 7(1) of the 1979 Constitution, *Amodu v Governor of Oyo State* [1983] 4 NCLR 426 decided under section 7(1) the 1979 Constitution; and *Atoshi v Governor of Taraba State*(Supra), *Auta Maisamari v Governor of Kaduna State* [Unreported] Suit No. KDH/KAD/616/2011, the caretaker committees of the 23 local government councils of Kaduna State in December, 2014 were instituted in violation of an order of the Kaduna State High Court given on the 11/8/2011 and *Attorney General of Benue State v Umar* [2008] 1 NWLR (Part 1068) 311; *Attorney General of Plateau State v Goyol* [2007] 16 NWLR (Part 1059) 57.

²⁹ Abdul Babajide, 'Weeks after Gov. Akeredolu bribery allegation, Ondo Assembly dissolves LG caretaker committees' Daily Post, dailypost.ng/2019/06/13/weeks-gov-akeredolus-bribery-allegation-ondo-assembly-dissolves-lg-caretaker-committees/go visited 14/06/2019

³⁰[2003] FWLR (Part 143) 206, 244, paragraph C-D (SC).

in paying LGCs' funds directly to them from the 'Federation Account' in by-pass of the SLGJAs was illegal. Most unfortunately, there was no counter claim from the Federation asking states to be entitled to the relief on the condition of compliance with Constitutional provisions on LGCs. It is likely that the Supreme Court would have been reluctant to support states' malpractices in relation to LGCs' financial matters especially that it employed moral suasion in *Attorney General of Abia State and 35 ors. v Attorney General of the Federation*³¹ to discourage states from such malpractices. It is evidently becoming impossible for the Federation to have its way to alter the provisions of sections 7(1)³², 8(3)³³, 162(5)³⁴ and (6)³⁵, 197³⁶ that confer powers on states to legislate on LGCs' affairs. The reason for this is that the power of states over LGCs' funds among other things would be lost. Thus, for the several times the bills for the alteration of the relevant provisions of the Constitution affecting LGCs were passed by the National Assembly, states' assemblies overwhelmingly vetoed them³⁷. On the other hand, the remedy at the disposal of the LGCs is that of litigation for the interpretation of section 162(5) and (6) of the Constitution. Unfortunately, LGC members, for the fear of the terrific powers of the states to dissolve them, would not dare the governors. The following ways are, in spite of the above, recommended for better local governance. There should be instituted a suit by the Association of Local Government Chairmen of Nigeria (ALGON). Since ALGON is an incorporated body, it can maintain an action for an order of court to compel states to make funds available to councils to the tune each of them is entitled to and to restrained states from keeping funds for councils within their jurisdictions. The Nigeria Union of Local Government Employees (NULGE) can equally do the same or a relevant NGO. Civil society groups and the electorates can bring lawful pressure to bear upon States' Assembly members to give their 'yes' vote to any such future proposal by the National Assembly to amend section 7(1), 8(3), 162(5) and (6) and 197 of the CFRN.

³¹ *Supra*.

³² Power of states to make laws on the structure and finances of local government councils.

³³ Power of states to make laws on the 'creation of new local government areas.

³⁴ Power of states to maintain the SJLGAs.

³⁵ Power of states to distribute among local government council's funds in the SJLGAs.

³⁶ Power of states to make laws establish State Independent Electoral Commissions.

³⁷ Section 9(2) of the CFRN.