



DOMES ASSOCIATES

(Management, Finance, Research,
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158 Murtala Mohammed Highway
Calabar, Cross River State

Workshop on

Impeachment Process and Procedures, Group
Dynamics and Achievement Motivation in the
Local Government Administration.

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LOCAL GOVERNMENT LAWS: INTERPRETATION
AND IMPLEMENTATION.*

INTRODUCTION

In a democratic set-up of civilian government where there is separation of power and the three organs of government¹ assume their proper roles, the task of law-making is essentially² that of the Legislature. However, in a polity practising presidential democracy such as Nigeria, the law-making process assumes a complex dimension due to the plurality of legislative houses. For instance, we have, at the bottom, the local government legislative council, at the middle is the State House of Assembly, and at the apex is the National Assembly, which comprises the House of Representatives and the Senate. The situation calls for caution by each legislative house so as to ensure that in carrying out its legislative business, it confines itself to the ambit of its prescribed legislative competence. This point becomes more germane when it is remembered that the local government legislature is at the lowest rung of the legislative ladder. It should be mindful of the legal character of the laws it makes and also of the subject matter of such laws.

It may here be mentioned that the laws made by local legislature are called Bye-Laws, and those made by State House of Assembly are called Laws. The one made by National Assembly are called Acts.

THE LAWS: In considering the areas or subject matters on which the local legislatures can legislate, it is necessary

to have recourse to Section 7(5) and to the Fourth Schedule of the 1979 Constitution of Nigeria, which spell out the functions of a local government council³. There is no gain saying that the local government council can only legislate on matters that have a direct bearing on its constitutionally assigned functions, such matters include collection of rates, radio and television licenses; establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm; licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts; establishment, maintenance and registration of markets, motor parks and public conveniences; construction and maintenance of roads, streets, drains and other public highways, parks, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State; naming of roads and streets and numbering of houses; provision and maintenance of public conveniences and refuse disposal; registration of all births and deaths and marriages. Where the local government legislature makes a law which is outside or beyond its prescribed limit, such law is void to that extent, for the reason that it is beyond the power of the local government to make such a law (ultra vires doctrine)⁴.

It is a known fact that during civilian regimes, the constitution is the grundnorm, the supreme law of the land. It is therefore the touchstone for all laws, and so any law which is repugnant to or inconsistent with the constitution is void to the extent of such inconsistency. For instance,

where by the constitution a right is vested in a person or a body, the local government law must not in any way divest such a right from the person or body. If it does, the law would be void. An instructive case in this regard is that of Senator Victor Akan and Another V. Attorney General of Cross River State and 7 others.⁵ In that case, by section 1 of the Dissolution of Local Government Law of Cross River State, all Local Government Councils were dissolved, and by Section 2 of the same Law the Governor was invested with the power to constitute a Committee of Management for each Local Government. Consequently, the Governor appointed members into the various Management Committees in all the Local Government Councils in the State. His power to do so was challenged in respect of Oron Local Government. After interpreting the State Law vis-a-vis the constitution, the Court held, inter alia, that the Governor has no constitutional power to appoint any person or body of persons into a Local Government Council because under Section 7 sub-section 1 of the 1979 Constitution, a State Government can only constitute Local Government Councils under a law made by the State House of Assembly which provides for Local Government Councils that are democratically elected and not otherwise. The Court held further that the "Dissolution of the Local Government Law" was unconstitutional in that it violated Section 7 sub-section 1 of the Constitution. A similar decision was also reached in the case of Adeniji-Adele and others V. Governor of Lagos State and Others.⁶

From the discussion so far, the conclusion may be reached that in embarking on the interpretation of the Local Government Bye-Laws, the purpose is not always merely to discover the intention of the legislature or law-maker, but at times the object is also to determine the validity or otherwise of such bye-law. Whatever the purpose or object, would however not appear to matter much; what matters is the approach, the rules or principles that are adopted and the presumptions that are made in such interpretation of the bye-laws.

INTERPRETATION OF LOCAL GOVERNMENT BYE-LAWS

(i) PRESUMPTIONS IN INTERPRETATION: The eminent Lord Denning an English Judge is credited as saying that "English language is not an instrument of mathematical precision; our literature would be the much poorer if it were."⁷ Thus, a word may be capable of two or more different meanings. In that event, the first approach to interpretation as to the correct (or intended) meaning of the word is to look at the definition section of the bye-law⁸ to see if the word is therein defined, that word shall not only be applied in the statute in accordance with the definition, but also shall be so applied throughout or wherever the word is used in the bye-law.⁹ This arises from the presumption that in the construction or interpretation of statutes generally, the same words or phrases are used in the same meaning in the same statute, and if the word or phrase has been judicially interpreted, that interpretation will apply to the same word or phrase used in another part of the same statute¹⁰;

if the legislator had intended a different meaning he would have used a different word.¹¹ After all, the legislature is deemed to know the importance of words, particularly the right words. Accordingly, in interpreting bye-laws, there is a presumption that every word used therein has a meaning. This derives from the cardinal rule of statutory interpretation that tautology should not be attributed to the legislature. In Savannah Bank V. Ajilo,¹² the Supreme Court explained that "the rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if the words were left out." And so the Court leans against treating the words as surplusage and give effect to all the words of the section if that is possible. This presumption of law should inform our local government law-makers to take every care to ensure that they use the right word at the right place in their bye-laws. You may perhaps have heard or read about the case of Gustave Flaubert, the great novelist, who spent as long as a whole day in struggling over a single expression because he was not satisfied that it rightly conveyed the sense of what he wished to write. No wonder he earned for himself the soubriquet of "the impeccable perfectionist", and his book Madame Bovary is an immortal, literary gem.¹³

There is also a further presumption that when a bye-law uses the word "he", then "she" is included, since by the general rule of interpretation the masculine includes the feminine.

(ii) RULES OF INTERPRETATION:

There is the literal rule which requires that the words in any law should be given their ordinary meaning no matter how absurd the consequences of such interpretation may be. In *African Newspaper V. Nigeria*¹⁴ the Court held that where the words used in a statute (or any law)¹⁵ are direct and straight forward and unambiguous, the construction of those words must be based on the ordinary plain meaning of the words. It does therefore mean that the literal approach to bye-law interpretation would only be adopted where the meaning of the words are clear and capable of only one interpretation.

In flat opposition to the literal rule of interpretation is the Golden Rule, which is otherwise called the liberal or logical approach, which enjoins that words be interpreted liberally and with such modifications as to prevent absurd results. By this rule of interpretation, a word in a bye-law may be given a very restrictive meaning in the interest of justice so as to exclude certain persons who would ordinarily have been included. For instance, in *Re Sigsworth*¹⁶, the law allowed the "issues" of a parent to inherit the parent's intestate estate. But here the son had killed the mother, and so the word "issue" was interpreted restrictively so as to exclude children who killed the parent and so the son could not benefit from the mother's death.

The liberal approach to interpretation is most useful in construing revenue based or revenue oriented bye-laws. In such bye-laws the law requires that the provisions

thereof be construed liberally in favour of revenue or in favour of deriving revenue by the local government, unless there is clear provision to the contrary. This is because it is in the interest of the generality of the public and to the common good and welfare of the citizenry for the local government to be in revenue and affluence to cater for the people.¹⁷

Closely related to the liberal approach is the one called the beneficial or most lenient interpretation. By this approach, where there exists two possible reasonable interpretations of a bye-law, the more lenient or beneficial of the two is adopted so as to carry out more fully the object of the legislative council.¹⁸ This is a kind of purposive interpretation which seeks to achieve the manifest purpose or aim of the bye-law. This approach was adopted by the Supreme Court in interpreting the Land Use Act 1978 in the case of Savannah Bank V. Ajilo.¹⁹ Here the Court held that in interpreting provisions of Statutes, where the choice is between two interpretations the narrower of which would fail to achieve the manifest purpose of the legislation, the Court should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that the legislature would legislate only for the purpose of bringing about an effective result.

Just like a man may be known by the company it keeps, so too the meaning of a word may be known by the company it keeps. This is often expressed in the Laconic Latin

Maxim: noscitur a sociis, which literally means "known from associates". Thus, where the meaning of the words in a bye-law are not clear, the words should be interpreted by reference to the context in which it is used because as stated in Bourne V. Norwich Crematorium Ltd,²⁰

"English words derive colour from those which surround them."

Another notable rule of interpretation is the mischief rule, otherwise called the rule in Heydon's Case.²¹ Here, recourse is had to the historical antecedents of the law: the state of the law before the bye-law came into force and the mischief or defect which the law came to remedy or prevent. The duty of the Court therefore is to adopt such interpretation that will enable the suppression of the mischief and promote the remedy.²² In Re Mayfair Property Co.,²³ Lindley M. R. stated that:

"In order properly to interpret any statute ... it is as necessary now as it was when Lord Coke reported Heydon's Case to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the Statute to cure that mischief."

One may also mention the ejusdem generis rule of interpretation by which, when a series of particular words in a law is followed by general words, the general words are confined by being read as of the same scope or genus as the particular words. For instance, where a Law provided

that "no tradesmen, artificer, workman, labourer or other person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day". "Or other person whatsoever" was interpreted such that it only included persons in the same genus or class as tradesmen, artificers, workmen and labourers, with the result that professional men such as estate agents, accountants, were not covered.²⁴ On the other hand, where specific provisions of a law are subsequent to general provisions, the specific provisions of the statute will prevail.²⁵

There are a few other rules of interpretation²⁶ but the foregoing shall suffice for the purpose of this conference. But whatever rule, principle or approach is adopted in interpreting a law (or more properly, a bye-law) the Nigerian Court should resist the temptation to adopt foreign standards. In this regard, it may well pay to heed the advice of the Nigerian Supreme Court in the recent case of Kalu V. Odili²⁷ when it said: It is not a correct approach to construe our local provisions, constitutional or otherwise, by reference to decisions of courts in England, America or elsewhere and end up by simply applying them to the situation in hand. The correct approach is to construe our own provisions and if, in the process, an English statute in pari materia with our own is found, the construction given to it by a competent English Court will be a useful persuasive guide to the interpretation of our own law.

IMPLEMENTATION OF LOCAL GOVERNMENT LAWS

The implementation of local government laws has proved a lot more problematic than interpretation. The reason for this is not unconnected with the pattern of life of local government dwellers. Let us take revenue laws for example. Most villagers evade payment of rates imposed under local government laws, and where they pay, they do so most grudgingly and most often under duress. It is not uncommon to find local government agents mounting road blocks just to collect rate and check bicycle licences. This should not be the case if the people are properly educated as to the ideals of good citizenship. With proper enlightenment the people would comply with the law as a matter of duty and without compulsion. On the part of the local government authorities too they should execute some visible developments in their areas to justify the people's obedience to revenue laws.

Generally, local government laws are enforced by supervisory agents appointed by the local government, e.g. we have sanitary inspectors who go on house to house inspection in the villages, and defaulters are prosecuted/fined.

CONCLUSION:

So far, the Local Government Legislatures have kept to their specified limits in making bye-laws. This is commendable. What is however worrying is the snail pace at which bye-laws are made. The legislatures should be alert enough to foresee problem areas and enact bye-laws to cater for it, rather than wait till the event actually occurs before a

frantic attempt is made at legislation. Besides, the bye-laws, when made, should be accompanied by antecedent and subsequent publicity. It does not augur well to make bye-laws that nobody knows about. This is why the bye-law should be publicized so that the people for whom it is made become aware of its existence and import. It is not enough to rely on the maxim that ignorance of the law is no excuse, especially in some local communities where the vast majority of the people are predominantly illiterate or at best semi-literate.

On interpretation, a combination of the Golden Rule and the Purposive Approach to interpretation is strongly advocate. This would ensure that the object and intent of the bye-laws are effectuated for the general good of the populace. On implementation, the local governments appear to be doing very well particularly in the area of revenue laws. More attention is however needed in the implementation of sanitary laws.

Thank you.

FOOTNOTES

1. i.e., the Executive, the Legislative and the Judicial arms of government; See: Montesquieu, L'Esprit des Lois, Chapter xi, PP. 3 - 6.
2. The intricacies and ramifications of modern government are such that the legislature has neither the time nor the expertise to make all the laws needed to order the affairs of modern society. It has accordingly become the usual practice for the legislature to delegate power to government ministers, commissioners, chief justices, chief judges and other government officials as well as government departments, public authorities and local governments to enact subsidiary legislation. Subsidiary legislation goes under a variety of names like delegated legislation, subsidiary or statutory instruments, regulations, rules, orders and bye-laws. For example, the Chief Judge of the state makes Rules of Court, and in 1974 the Federal Commissioner for Internal Affairs made the citizenship Regulations of 1974.
3. See also: S.7(7) and Part I of the Fourth Schedule of the 1989 Constitution of Nigeria.
4. By this doctrine, the exercise of power by a person or body beyond conferred on him or it explicitly or implicitly, is void.
5. (1982) 3 NCLR 881
6. (1982) 3 NCLR 698

7. per Lord Denning in Seaford Court Estates Ltd V. Asher (1949) 2 KB 498
8. The last section of the bye-law normally contains definition of terms, words and phrases.
9. Abioye V. Yakubu (1991) 5 NWLR (Pt. 190) 130 at 219, 230; Ejoh V. I. G. P. (1963) 1 SCNLR 102.
10. Edet Akpan V. State (1986) 3 NWLR (Pt.27) 225 held 21.
11. Kolawole V. Alberto (1989) 1 NWLR (Pt.98) 382, held 14.
12. (1989) 1 NWLR (Pt. 97) 405
13. See: Richard McMillan, O.B.E.: Make Yourself A Master of Good English, at pp. 4 - 5.
14. (1985) 2 NWLR (Pt. 6) 137.
15. Brackets mine.
16. (1935) Chapter 89
17. Phoenix Motors Ltd. V. N.P.F.M.B (1993) 1 NWLR (Pt. 272) 718, held 3.
18. Wilson V. Attorney General of Bendel State and 2 Others. (1985) 1 NWLR (Pt. 4) 572; Savannah Bank V. Ajilo, op. cit., held 36.
19. Ibid, held 10, 32.
20. (1967) 2 All E.R. 576. See also: Hunter V. Wright (1830) 10 B & C. 714; Pengelly V. Bell Punch Co. Ltd (1964) 2 All ER 945; Orubu V. N.E.C. (1988) 5 NWLR (Pt. 94) 323 held 29; Savannah Bank V. Ajilo, op. cit, held 35.
21. (1584) 3 Co. Rep. at 7b; 76 E.R. at 638

22. See: Savannah Bank V. Ajilo, op. cit., held 39; Ifezue V. Mbadugha (1984) 5 SC 79; Kalawole V. Alberto (1989) 1 NWLR (Pt. 98) 382, 416; Maxwell, On Interpretation of Statutes, 12th ed., at page 40.
23. (1898) 2 Chapter 28 at 35
24. Gregory V. Fearn (1953) 1 WLR 974
25. Orubu V. NEC. (1988) 5 NWLR (Pt. 94) 323, held 1.
26. Such as expressio unius est exclusio alterius: the express mention of one person or thing is the exclusion of another.
27. (1992) 5 NWLR (Pt. 240) 130, held 29.

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