

LOTTERY REGULATION SHIFTED FROM FEDERAL TO STATE CONTROL

INTRODUCTION

In November 2024, the Nigerian Supreme Court (the “Supreme Court” or the “Court”) delivered a landmark judgment in **Suit SC/1/2008**, involving the **Attorney General of Lagos State and 21 other Attorneys General** as “Plaintiffs”, AND the **Attorney General of the Federation and 15 others** as “Defendants”. The case centered on the issue of which legislative body—the National Assembly or the State Houses of Assembly—has the power to regulate lottery activities in Nigeria. The Court’s ruling clarified the scope of federalism in Nigeria, particularly in terms of the powers vested in the States versus the Federal Government.

BRIEF SUMMARY OF THE JUDGMENT

The case fell under the original jurisdiction of the Supreme Court, meaning it was directly brought before the Supreme Court and did not involve an appeal from the Court of Appeal.

The Supreme Court’s original jurisdiction is exercised in certain cases, such as disputes between the Federal Government and the States or issues of national importance.[1] In this particular case, the matter of which legislative body—whether the National Assembly or the State assemblies—has the power to regulate lotteries was one that required the Supreme Court’s direct involvement.

The Plaintiffs, led by the Attorney General of Lagos State, sought a declaration that the National Lottery Act (as amended) (**NLA**) was inconsistent with the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (Constitution). Specifically, they argued that the regulation of lotteries should fall under the jurisdiction of State Governments, as lotteries are not listed in the legislative lists (“Exclusive Legislative List” and “Concurrent Legislative List”). Under Nigerian constitutional law, matters that do not fall within the Exclusive and Concurrent Legislative List fall under the Residual matters which is exclusive for State Governments. The Court agreed with the Plaintiffs, ruling that lotteries do not fall under matters governed by the Exclusive or Concurrent Legislative Lists.

The Defendants had argued that lottery falls within the domain of “trade” and “commerce,” as defined in the Exclusive Legislative List.[2] The Supreme Court, however, referred to Indian jurisprudence, where lotteries were considered a form of gambling and thus under the States’ jurisdiction.[3] The Court adopted the reasoning of Indian courts, which ruled that lotteries do

[1] Section 232(1) of the Constitution of the Federal Republic of Nigeria 1999, as amended.

[2] Part I of the Second Schedule to the Constitution.

[3] *BR Enterprises V. State of Uttar Pradesh* (1999) 9 SCC 700; and *State of Haryana v Suman Enterprises & Ors* (1994) 4 SCC 217.

not constitute "trade" or "commerce" under their constitution. The Court found these foreign decisions persuasive in guiding its own interpretation.

The Court declared the NLA to be unconstitutional, granting a perpetual injunction against the NLRC's enforcement of its provisions in the Plaintiff States.[4] The NLA and the NLRC will however continue to have regulatory authority in the Federal Capital Territory (FCT), Abuja. This judgment empowers the Plaintiff States to enact their own laws for regulating lottery activities within their jurisdictions.

This creates a potential legal gap for the Defendant States leaving uncertainty about whether they can continue to rely on the NLA or if they are at liberty to enact their own laws to regulate lotteries within their borders.[5]

To resolve this ambiguity, further legal clarification may be needed, especially as States begin to exercise their power to regulate lottery activities within their jurisdictions. The development of consistent State-level frameworks for lottery regulation would likely become a crucial next step in this legal landscape.

IMPLICATIONS OF THE JUDGMENT

Status of Licenses from the NLA

Operators who had previously obtained licenses from the NLRC will need to acquire new licenses from the State governments where they operate. This change will likely cause some disruption, as operators will have to navigate the new State-level regulatory landscape while continuing to comply with the NLRC's oversight in the FCT.

Higher Costs for Operators

The Supreme Court's decision may lead to an increase in operational costs for lottery operators. As businesses will now need to obtain State-specific licenses in addition to those from the NLRC (for the purpose of FCT), this could complicate compliance and increase the cost of doing business, potentially stifling the ease of conducting lottery operations across multiple States. Under the NLA, companies involved in the lottery business are required to remit a percentage of their net proceeds to the Federal Government, this may now be required to be paid to different State Governments where such companies operate their lottery business.

Lack of Clarity for Online Gaming

As online lottery operations span multiple States, the regulatory framework for such activities remains unclear. The Supreme Court's judgment, while addressing the regulation of traditional lotteries within States, did not offer specific guidance on the regulation of online lotteries, which may require licensing across various States. This regulatory gap presents both challenges and opportunities for States to establish comprehensive laws for the growing online gaming industry.

[4] The States whose Attorneys General were Plaintiffs in the case under review are Lagos, Ekiti, Abia, Akwa Ibom, Anambra, Bayelsa, Benue, Cross River, Delta, Ebonyi, Edo, Enugu, Imo, Kogi, Nasarawa, Ogun, Ondo, Osun, Oyo, Plateau, Rivers and Taraba States.

[5] States whose Attorneys General are Defendants in the case under review are Adamawa, Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Kastina, Kebbi and Kwara.



The rise of online gaming and betting platforms like 1xbet, Bet9ja, NairaBet, SportyBet, SureBet 247, BetKing etc presents a new regulatory challenge in Nigeria. With more than 65 million Nigerians actively participating in these activities and spending an average of USD 15 daily, the online gaming sector has seen rapid growth. On average, 14 million bets are placed each day, with payments processed online.[6] These figures highlight the significant role online lottery activities now play in the country.

An example of a jurisdiction where State Governments regulate lottery is India. However, the Central Government still maintains oversight over lottery activities in India. The Central Government of India issued the Lottery (Regulation) Rules 2010, made pursuant to the Lotteries (Regulation) Act 1998 (Act 19 of 1998), which provides a framework for the organization of both paper and online lotteries by State Governments.[7] While this framework may be effective in India, it may not be applicable in Nigeria, since the regulation of lottery falls solely within the jurisdiction of State Governments. It is likely that each State in Nigeria will need to enact its own laws to regulate lotteries, including provisions for online lotteries, as seen in Lagos State.

CONCLUSION

The Supreme Court's decision mirrors similar frameworks in other federal jurisdictions, such as the United States and India, where States, rather than the federal government, are responsible for regulating lotteries. This decentralized approach contrasts with countries like the United Kingdom, South Africa, and Canada, where federal governments typically oversee lottery regulations. In the United States, lotteries are managed independently by 48 jurisdictions, 45 states plus the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Lotteries are subject to the laws of, and operated independently by each jurisdiction, and there is no national lottery organization, each state is subject to its own laws.[8]

This judgment reaffirms the principles of Nigeria's federalism, delineating the boundaries of legislative powers between the Federal and State governments. By clarifying that States possess the authority to regulate lotteries within their borders, the Supreme Court has reinforced the constitutional division of powers in Nigeria.

However, the decision raises practical concerns regarding the regulatory frameworks for online gaming and the potential administrative burdens on lottery operators, especially those doing business across multiple States. As the decision becomes entrenched in Nigerian law, State governments will need to establish effective frameworks to regulate lottery activities, which could provide an avenue for increased internally generated revenue for States.

[6] <https://businessday.ng/news/article/amid-economic-hardship-nigerians-spend-millions-on-betting/> (last accessed 14th January 2025).

[7] Section 3 of the Lottery (Regulation) Rules 2010.

[8] https://en.wikipedia.org/wiki/Lotteries_in_the_United_States (last accessed 14th January 2025).

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