

**UNDERSTANDING THE BASIS OF TAXING POWERS OF LOCAL  
GOVERNMENTS - A REVIEW OF ETI-OSA LOCAL  
GOVERNMENT v JEGEDE**

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**ABSTRACT**

*The extent of the taxing powers of local governments have been of great concern to stakeholders in the Nigerian tax system. It is generally believed that an unbridled exercise of taxing powers by the various local governments in Nigeria is largely responsible for the spate of multiplicity of taxes and levies usually targeted at corporate bodies. In a recent decision of the Court of Appeal in Eti-Osa Local Government v Jegede [2007] 10 NWLR (Pt.1043) 537, a bye-law which prohibits the establishment or operation of any corporate outfit for the purpose of carrying on a trade, business or occupation within the Local Government without a permit was voided.*

*This article examines the basis of this decision and its possible contributions to the fiscal jurisprudence in Nigeria. The writer is of the view that the court reached the right decision, albeit, through doubtful conceptual reasoning. The writer contends that the levy in question is not a tax but a regulatory fee, hence it was wrong to have determined its validity or otherwise based on the provisions of Taxes and Levies (Approved List) for Collection Act, No 21 of 1998. Rather, the bye-law should have been voided on the basis that it has not been made pursuant to any enabling state law based on the principle that the legislative power of the local government is derived from the state laws. The court also attributed certain powers to the Joint Tax Board (JTB) which the body does not statutorily possess.*

**INTRODUCTION**

Local government tax administration in Nigeria is characterised by confusion, lawlessness and extortion of taxpayers. The Study Group on the Review of the Nigerian Tax System<sup>1</sup> noted in its report, the existence of over 120 types of 'taxes and levies' being collected in a particular local government<sup>2</sup>, a trend which is common virtually to all local government councils in Nigeria<sup>3</sup>. The problem of multiplicity of taxes and levies was so grave that the Study Group<sup>4</sup> considered the abolition of the local government

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<sup>1</sup>The Study Group was inaugurated on 6 August, 2002. See *Nigerian Tax Reform* in 2003 and Beyond. The Main Report of the Study Group on the Nigerian Tax System (2003) 1

<sup>2</sup>Oshimili South Local Government Council of Delta. Ibid, at page 286.

<sup>3</sup>The enormity of the problem across the country is better imagined than real if each local government has an average of 120 taxes and levies. Section 3(6) of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) Cap C23, Laws of Federation of Nigeria, 2004 ('LFN, 2004') provides that 'there shall be 768 local government areas in Nigeria as shown in the second column of Part I to the First Schedule to this Constitution and 6 area councils as shown in part 2 of that Schedule'.

<sup>4</sup>According to the Study Group, "Given the constitutional provisions and laws available, the state of lawlessness characterising tax administration at the Local Government level appears insoluble. We would have therefore recommended the outright scrapping of Local Governments or revocation of their taxing powers in the circumstances. We have instead suggested measures that would improve the situation if rigorously

system in its entirety as a panacea. Notwithstanding a number of interventions by the Federal Government to arrest the trend<sup>5</sup>, the problems have remained intractable. It was against this background that the case of *Eti-Osa Local Government v Jegede*<sup>6</sup>, (*Jegede's case*) was decided. The Court of Appeal held that the payment required under The Corporate Outfit Bye-Law of Eti-Osa Local Government was invalid not being listed in the Fourth Schedule to the 1999 Constitution and the Taxes and Levies (Approved List for Collection) Act<sup>7</sup> (Taxes and Levies Act). The writer is of the view that the court reached the right decision, although, through the wrong reasoning. The payment required under the Corporate Outfit Bye- Law is not a tax but a regulatory fee, hence it was wrong to have determined its validity or otherwise based on the provisions of Taxes and Levies Act. Rather, the Corporate Outfit Bye-Law should have been voided on the basis that it was not made pursuant to any enabling Law of Lagos State. The court also attributed certain powers to the Joint Tax Board (JTB) which the body does not possess. This article examines the basis of these decisions and their possible implications.

This paper is divided into five parts. Part one introduces the paper, while part two is devoted to the facts of *Jegede's case*, issues arising for determination, argument of parties and decision of the court. Part three focuses on the analysis of the reasons for the decision. Part four examines what the writer considers to be the crux of the case but which escaped the attention of counsel to both parties and the court. The paper is concluded in part five with suggestions on how to avoid the conceptual pitfall which accounts for the error in future decisions.

## FACTS OF THE CASE

The Appellant served Demand Notices on two shops owned by the Respondents at Ikota Shopping Complex, within the jurisdiction of Eti-Osa Local Government, Lagos State for the payment of Corporate Outfit levy under the Corporate Outfit Bye-Law of the Appellant. The Respondents instituted an action at the Lagos High Court praying the court to set aside the Demand Notices on the basis that the Appellant lacked jurisdiction to impose and collect the levy. The following four issues were placed before the trial court for determination:

- a) *Whether Eti-Osa Local Government can collect taxes and levies outside the area specified in Part III taxes and levies. to be collected by the Local Government, Taxes and Levies (Approved list For Collection) Decree No. 21 1998;*
- b) *Whether the Respondent's (now Appellant) Demand Notice dated 3rd July 2001 served on the Applicant (now Respondent) shops B - 106 and B 107, Ikota Shopping Complex, Lagos is not in conflict with the provisions of Part III taxes and levies to be collected by the Local Government Taxes and Levies (Approved list for Collection) Decree No. 21 1998;*
- c) *Whether Eti-Osa Local Government has the power and capacity to legislate, determine and demand whatever taxes and levies it deems fit from time to time outside the provisions of Part III taxes and levies to be collected by the Local Government Taxes Levies (Approved list for collection) Decree No. 21 1998;*

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implemented. These measures are structural and functional" See The Main Report of the Study Group, *Supra* note 1, at page 313.

<sup>5</sup>The measures include the establishment of State Board on Internal Revenue in section 87 of the Personal Income Tax Act, Cap P8, Laws of Federation of Nigeria, 2004, enactment of the Taxes and Levies (Approved List for Collection) Act, T2, Laws of Federation of Nigeria, 2004 and publication of a number of notices and Communiqués of the JTB in the newspapers directing the States to abide by the decision of the JTB to no avail.

<sup>6</sup>[2007]10 NWLR (Pt.1043)537.

<sup>7</sup>Above at note 5.

- d) *Whether Eti-Osa Local Government Bye-Laws No. 10 1998 (Corporate Outfit Bye-Laws) is inconsistent with the provisions of Part III Taxes and Levies to be collected by the Local Government Taxes and (Approved List for Collection) Decree No. 21 1998.*

The Appellant did not defend the suit at the trial court. In a considered ruling, the trial judge granted all the reliefs sought by the Respondents.

Being dissatisfied with the decision of the trial court, the Appellant appealed to the Court of Appeal. Five issues were formulated by the Appellants for determination. The Respondents based their arguments on the issues formulated by the Appellant. The Court of Appeal however held the view that there are only two issues on appeal thus:-

- a) *whether the suit of the Respondents was competent, in view of the fact that no pre-action notice was issued pursuant to the provisions of the Local Government (Consequential Amendments and Repeals) Edict No.7 of 1985 and*
- b) *whether the Local Government can impose taxes outside the provisions of Taxes and Levies (Approved List For Collection) Act No. 21 of 1998 without reference to the Joint Tax Board and under the Fourth Schedule of the 1999 Constitution of the Federal Republic of Nigeria.*

The Appellant contended that the trial court lacked jurisdiction to entertain the suit on the basis that the Respondents failed to give a one month pre-action notice required under sections 168 and 169 of the Local Government Laws (No. 16) of 1976 as amended by the Local Government (Consequential Amendments and Repeals) Edicts No.7 of 1985. The Appellant submitted that non-compliance with this condition precedent robbed the trial court of jurisdiction to hear and determine the suit.<sup>8</sup>

In response, the Respondents argued that the lack of pre-action notice was of no consequence for two reasons. First, the Appellant did not raise the point at the trial court. Second, the Local Government Law (No. 16) of 1976 which the Appellant relied upon had been repealed while the new Law does not have a pre-action Notice<sup>9</sup>. The Appellant in its reply pointed out that the objection to jurisdiction was not raised at the trial court because it did not participate in the proceedings. The Appellant expressed the view that the trial judge should have raised the issue of jurisdiction *suo moto* in its absence. On the second issue, the Appellant contended that the Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 was not the exclusive source of the power of the Appellant to create and impose taxes and levies. Rather, the Appellant's power to impose tax or levy derived from the provisions of the Constitution of the Federal Republic of Nigeria, 1999. It was submitted that the Corporate Trade Permit Levy was within its power to the extent that they were not conferred on either the State or the Federal Government by the Constitution. Furthermore, that 'the general principle is that what is not expressly prohibited is deemed to be allowed'. The Appellant maintained that the fact that a particular type of tax was not contained in the Taxes and Levies Act did not mean that such a tax cannot be imposed by it. Rather, the power to impose taxes is inherent in every government and that government was 'free to make laws

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<sup>8</sup>It was further argued that judicial proceedings no matter how well and beautifully decided or conducted becomes a nullity if decided without jurisdiction.. See *Attorney-General of Anambra State & 13 Ors v Attorney-General of the Federation & 16 Ors* [1993]6 NWLR (PU02) 692, *Madukolu vNkemdilim* [1962] 2 SCNLR 341, and *Ajao v Alao* [1986] 5NWLR(Pt.45)802.

<sup>9</sup> The Respondent did not refer to the name of the specific statute which repealed the Local Government Laws (No. 16) of 1976 as amended by the Local Government (Consequential Amendments and Repeals) Edicts No.7 of 1985. It is possible that the Respondent must have had in *mind the Local Government Administration Law No. 7 of 1999*, Cap L73, Laws of Lagos State, 2003 which does not contain any provision on pre action notice.

imposing any form of tax it desires at any time'. Hence, the Taxes and Levies Act was not exhaustive of all taxes chargeable and collectable by the different levels of and tiers of government in Nigeria.

The Respondents relying on the case of *Shell Petroleum Development Company v Burutu Local Government*<sup>10</sup> submitted that a Local Government can only impose a tax to the extent that it is 'explicitly mandated' by the Fourth Schedule of the 1999 Constitution. Furthermore, by the provisions of section 1(1) of the Taxes and Levies Act couched in the terms 'Notwithstanding anything to the contrary in any other law ...'the Act has covered the field. The corporate levy was invalid to the extent that the bye-law through which it was imposed does not come within the Fourth Schedule and Part III of the Schedule to Taxes and Levies Act.

The Court of Appeal unanimously dismissed the appeal. It was held that although the issue of jurisdiction can be raised for the first time on appeal or even at the Supreme Court, the circumstances were different in the instant case. Although it is proper for the court to raise an issue of jurisdiction *suo moto*, it is in circumstances where its lack of jurisdiction is so manifest on the face of the processes before the court, which is not so in the instant case. Since the Appellant elected to stay away from the court after being served with the court processes, it was presumed to have waived its right.<sup>11</sup>

On the second issue which is more relevant to this paper, the Court of Appeal upheld the decision of the trial court that the Appellant has no power to impose taxes outside the provisions of the Taxes and Levies Act and the Fourth Schedule of the 1999 Constitution.

#### **EXAMINATION OF THE REASONS FOR THE DECISION**

This section focuses on the reasons for the decision (*ratio decidendi*) in *Jegade's case* with the aim of revealing its soundness or otherwise. It is this writer's position that the learned Justices arrived at the right decision, although through wrong reasoning.

#### **POWER OF THE LOCAL GOVERNMENT TO IMPOSE TAXES OUTSIDE THE PROVISIONS OF TAXES AND LEVIES ACT.**

The learned Justices of the Court of Appeal adopted the reasoning of the trial judge that the Corporate Bye-Law Levy was invalid on the basis that it was not one of the taxes listed in the Taxes and Levies Act. Dongban- Mensem, JCA in delivering the judgment held:

*"The crux of the matter is whether the Appellant has the authority to impose the said tax outside the items in Schedule III of the 1999 Constitution and Part III of Decree No. 21 of 1998 and without reference to the Joint Tax Board as provided for in section 1 (2) of Decree No. 21 of 1998. Section 4 of the Decree established the Joint Tax Board. In a well considered ruling, the learned trial Judge held that the Appellant as Defendant has no power to legislate and impose the said tax. Part of the ruling is reproduced for the ease of reference (at page 21 of the records for this appeal) ...*

*The Respondents in this case which is the Eti-Osa Local Government has no legislative power of their own to impose or determine taxes and levies, outside the enabling Law, Decree No. 21 of 1998 which is of general application and which was promulgated to check indiscriminate levies*

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<sup>10</sup>[1998] 9 NWLR (Pt. 565) 318

<sup>11</sup>The court drew a distinction between a procedural requirement and an issue of substantive law in relation to the jurisdictional competence of a court and noted that a pre-action notice which is for the benefit of the person or agency 'on whom or on which it should be served is not to be equated with processes that are an integral part of the proceedings. See above, note 6 at page 555 Paras B-F.

*and taxes imposed on the citizens by the of Government. Where such residual power to collect taxes is given by the State Government, to the Local Government, it must be in conformity with the provisions of the enabling law. Thus the power of the Local Government to make bye laws are subject to the enabling law which gives the Local Government Power to collect taxes. Any attempt to act outside the ambit of Part III of Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 will be futile. I therefore hold that the Respondent has no power to legislate and demand whatever taxes and levies it deems fit outside the provisions of Taxes and Levies Approved List for Collection Decree No. 21 1998. "*

The import of the above decision is that the Taxes and Levies Act is the basis or fountain of division of taxing powers in Nigeria. The question is whether the court's reliance on the Taxes and Levies Act is correct. This will require an analysis of the division of taxing powers in Nigeria.

The extent of the power of each level of government to impose taxes in a federal system is usually a constitutional matter<sup>12</sup>. The Constitution being the fundamental laws of the land usually delimits the extent of the jurisdiction and powers of each level of government, including which level can tax what. The basis of taxing power in Nigeria is section 4 and the Second Schedule of the 1999 Constitution which set out the extent of the legislative powers of both the Federal and State Governments<sup>13</sup>. In *Attorney-General of Ogun State v Alhaja Ayinke Aberuagba & 7 Ors*<sup>14</sup>, the Supreme Court noted that the principle of division of legislative powers of Government enshrined in the Constitution of the Federal Republic of Nigeria, 1979 is 'the base of the dispute' in the case<sup>15</sup>. In evaluating the submissions of counsel, the court went further to state that 'it follows from the foregoing that for the correct determination of the issue, all the provisions of the Constitution which have bearing on the taxing power and trade and commerce power of the federation should be read together with those provisions relating to the taxing power and trade and commerce powers of the State'<sup>16</sup>. Accordingly, the division of taxing powers is determined or controlled by the provisions of the 1999 Constitution.

What then is the extent of the taxing powers of the Local Government under the 1999 Constitution? As a matter of strict conceptual analysis, Nigerian federalism is a partnership between the federal government and the states.

Hence, section 2(2) of the 1999 Constitution provides that 'Nigeria shall be a federation consisting of states and a federal capital territory'.

Consequently, the division of legislative powers including taxing powers under section 4 of the Constitution involves only the federal and state governments. Local governments are established under

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<sup>12</sup>Akanle, O, "The Government, The Constitution and The Taxpayer" Ajoma M.A ( ed.) Tax Law and Tax Administration in Nigeria (199 I, Nigerian Institute of Advanced Legal Studies,) page 8.

<sup>13</sup>Unlike the Constitution of the United States and Canada which contain substantive provisions on the taxing powers of the Federal and States, the 1999 Constitution does not have any direct substantive provision on taxing powers. Rather, the technique adopted is to subsume taxing powers under legislative powers by itemising some taxes or tax bases in the Exclusive Legislative List of the Federal Government. Hence, a determination of the extent of the taxing powers of a level of government has to begin with the determination of its legislative power. In other words, a consideration of taxing powers under the Constitution necessarily requires an examination of the scope of division of legislative powers in section 4 of the Constitution. Okorodudu was apt when she posited that 'a discussion of federal/state taxing power cannot be effectively discussed without first discussing briefly the division of Legislative Powers under it'. See Okorodudu, M.T"Analysis of Federal and State Taxing Powers" Ajoma M.A., (ed.) *ibid* at page 62-63.

<sup>14</sup> [1997] 1 NRLR(Pt. 1)51

<sup>15</sup>*Ibid* at 58

<sup>16</sup>*Ibid*, at 67.

the laws of each state. Section 7(5) of the 1999 Constitution mandates each State to confer a minimum set of functions on the local government council by its own law, including those set out in the Fourth Schedule to the Constitution. A perusal of the nature of the subject matter in the Fourth Schedule will reveal that they are matters within the residual power of the states. Thus, the provisions of Schedule 4 of the Constitution do not directly vest on the local government councils with the power to either impose or collect any tax whatsoever or perform any of the functions itemised in the Schedule.

Rather, a state government must first enact appropriate enabling law, which will determine the taxable persons, assessment procedure, and method of collection, recovery and penalties for tax delinquency. In the absence of any enabling law, any exercise of power by the local government will be *ultra vires*, *null and void*.

Thus, even if the Corporate Outfit Levy were to be included in the Taxes and Levies Act, a State Law will still be required to establish the legal framework for its collection by local government council. In the absence of any such enabling State Law, a local government cannot lawfully enact a Bye-Law imposing a Corporate Bye Law as done by Eti- Osa Local Government Council since to do so will amount to by-passing or overreaching the State. Elsewhere, this writer has this to say on the need for an enabling State Law to provide a legal framework for the local government councils to collect taxes and levies listed in Part III of the Schedule to the Taxes and Levies Act:

*"The fact that the list has vested the State and Local Government with the power to collect taxes does not mean that they can do so without much ado. Since the law of taxation is mainly statutory, the State or Local government will have to enact appropriate enabling statute which will determine the taxable person, assessment procedure and method of collection, recovery and penalty for tax delinquency".<sup>17</sup>*

What is more, it will be recalled that the Taxes and Levies Act was enacted under a military regime when the validity of all other laws including the unsuspended parts of the constitution were subjected to the provisions of Decrees.<sup>18</sup> However, following the enthronement of a civilian rule under the 1999 Constitution, a new constitutional order is based on the provisions of that Constitution. Henceforth, the provisions of any other law will be valid only to the extent of its consistency with the provisions of the Constitution. Accordingly, the provisions of section 1(2) of the Taxes and Levies Act which seeks to override the provisions of the Constitution and any other law stands the risks of being declared null and void. Based on the foregoing, the learned Justices therefore erred in law by determining the extent of the taxing powers of the Appellant on the Taxes and Levies Act rather than the Constitution.

#### **THE CORPORATE BYE-LAW AND LACK OF REFERENCE TO THE JOINT TAX BOARD.**

The Court of Appeal made remarkable statements which demonstrated a keen awareness of the menace of multiple taxes in Nigeria and the need to have a co-ordinating mechanism to stem its tide. In doing so however, the Court ascribed certain powers and functions to the Joint Tax Board (JTB) which are inaccurate and have no basis in law. According to the Court:

*"While I agree with the learned counsel to the Appellant that the purpose of Decree No. 21 of 1998 is to delineate the respective sphere of authority for each of the three tiers of Government in the Federal Republic of Nigeria, I differ on the point that such is the sole purpose of the said Decree, now Act in the democratic dispensation..... The crux of the matter is whether the Appellant has the authority to impose the said tax outside the items in Schedule III of the 1999*

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<sup>17</sup>Sanni, A.O., 'The Approved List of Taxes: A Commentary' (1998) 2 MPJFIL No.2 at page 74

<sup>18</sup>See Constitution (Suspension and Modification) Decree No 107 of 1993.

*Constitution and Part III of the Decree No. 21 of 1998 and without reference to the Joint Tax Board as provided for in section 1 (2) of Decree No. 21 of 1998. Section 4 of the Decree established the Joint Tax Board ".<sup>19</sup>*

These statements erroneously suggest that Local Governments have the power to impose a tax other than those listed in Part III of the Schedule to the Taxes and Levies Act provided the consent of the JTB is sought and obtained.

It is instructive to note that the JTB was not established under section 4 of the Taxes and Levies Act as stated by the learned Justice. Rather, the JTB is established under Section 86(1) of the Personal Income Tax<sup>20</sup> Act to exercise powers and perform duties conferred on it or which may be agreed by the Minister to be exercised or performed by it under the FIRS Act, mainly in respect of double taxation arrangement and the Personal Income Tax Act generally. While the JTB is an advisory body for the development of the law and administration of income tax throughout Nigeria, there is no statutory basis for the suggestion in the statement by the Court of Appeal that the States are obliged to make reference to the JTB before imposing taxes and levies outside those listed in Part III of the Schedule to the Taxes and Levies Act.

Also, there is a suggestion in the judgement that the Federal Government has the inherent power to determine what taxes and levies can be imposed by each level of government based on the recommendation of the JTB.

According to the Court:

*"No doubt, government, especially of a nation and taxation are essential bed fellows. Indeed, it is said that the government has two sources of funding viz:- taxation and loan. (Refer per Harvey S. Rosen, "Taxation." An article 2005). It follows therefore that the government has the inherent power to legislate on and impose tax. However, this inherent power cannot be left at large in a huge federating union like our great nation Nigeria. The Central Government has the controlling machinery. It is the orbit around which all the States of the Federation are anchored. Distribution of the mass resources of the nation reposes with the Central Government which alone necessarily has the inherent power to determine and legislate as to what kind and quantum of taxes and levies should be imposed by each tier of government. The other tiers of government however form part of the body which makes the recommendation. The Joint Tax Board is the said body. To leave taxation at large at the whim and caprice of the different tiers of government would expose the entire citizenry to unduly multiple and over lapping taxes and levies."<sup>21</sup>(Emphasis mine).*

The Court went further to state as follows:

*'Taxation should be a tool of social engineering, of societal class structural adjustment in the hands of a responsive and sensitive government. This method can however be effective only in an economy where good records are kept, where the government is only responsible and answerable for the welfare of the people. In a situation where the Constitution of the Federal Republic of Nigeria renders basic societal services non-justiciable (Chapter Two of the 1999 Constitution, the government must be wary of over burdening the citizens with all manners of levies and taxes. It accordingly accords, with the spirit and principle of the Constitution that taxation should be controlled and vetted by the Joint Tax Board. While taxation is the life wire of*

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<sup>19</sup> Per Domgban-Mensem, JCA, at page 557-558. Paras F-G.

<sup>20</sup>Cap P8, LFN, 2004.

<sup>21</sup>Per Dompghan-Mensem, JCA, at page.557-558. Paras G-H and A.

*government expenses, from which a responsible government provides for the welfare of its people, over taxation resulting from lessez-affaire (sic!) tax doctrine could be counterproductive. The establishment of a Joint Tax Board is therefore a good attempt at coordinating the types and nature of taxations allowable within the peculiar circumstances of each unit of the Federation. It is therefore, in furtherance of the Federal nature that of the 1999 Constitution that all taxes chargeable be channelled through the Joint Tax Board. Accordingly, I find nothing unconstitutional with the requirement of the local Government, the Third tier of Government to root (sic) its taxes through the Joint Tax Board."*<sup>22</sup> (Emphasis provided)

The above statement ignores the fact that both the Federal and State Governments are created by the Constitution and assigned their respective functions and responsibilities. In so far as each level keeps within its assigned sphere it cannot be controlled or dictated to by the other level of government. To suggest that the exercise of taxing powers by the states on matters within their competence have to be vetted or screened by the Joint Tax Board is alien to a federal system and a throwback to a unitary system. It has been shown above, that the JTB, as a statutory body is bereft of such power.

From the foregoing analysis, it is submitted that the Court of Appeal missed the point when it held that 'the crux of the matter is whether the Appellant has the authority to impose the said tax outside the items in Schedule IV of the 1999 Constitution and Part III of the Decree No. 21 of 1998 and without reference to the Joint Tax Board as provided for in section 1 (2) of Decree No. 21 of 1998.'<sup>23</sup> This erroneous point was sustained at the trial court and Court of Appeal due to lack of proper analysis of the real issue arising from the facts of the case. What then is the real crux of the matter?

## THE CRUX OF THE MATTER

The starting point in the determination of *Jegede's case* should have been to determine the nature of the payment being demanded under the Eti-Osa Local Government (Corporate Outfit) Bye-Law. The resolution of this question would have revealed the inappropriateness of invoking the Taxes and Levies Act as the basis of invalidating the demand notices. Sections 1,2 and 3 of the *Eti-Osa Local Government (Corporate Outfit) Bye-Law*<sup>24</sup> are reproduced hereunder in extenso because of their significance to the analysis that follows.

- (1) *As from the commencement of this Bye-Law no person shall establish or operate a corporate Outfit to carry on any business, Trade or occupation without a permit issued by the Eti-Osa Local Government.*
- (2) *(a) Any person who wishes to establish or operate a Corporate Outfit to carry on any trade or occupation shall obtain a permit from the Eti-Osa Local Government before the premises is put into use.*  
*(b) A permit may be obtained on application and upon payment of the fee prescribed in the first schedule.*
- (3) *(a) Any permit issued shall expire on the 31st day of December of the year of issue.*

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<sup>22</sup>Ibid at page 559, paras C-F.

<sup>23</sup> Per Dongban-Mensem, JCA, at page 557, paras G-H

<sup>24</sup> No.15, 2002. (Hereinafter referred to as "Bye-Law")



*(b) Any permit issued under paragraph (a) of this Bye- Law shall be renewed annually on payment of prescribed fee*

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## **FIRST SCHEDULE**

### **CATEGORY A**

*Headquarters of Banking and Financial Institution including Merchant Banks, including Oil Companies wherever it is situated within the Eti-Osa Local Government. - N 1,000,000*

*Branches of Banking, Insurance and Financial Institution including Merchant Bank, including Oil Companies- N 500,000*

*Financial House, Bureau de change, Construction Companies, Petrol Chemical Companies, Stock Exchange- N300,000*

### **CATEGORY B – N100, 000.00**

*Textile/Fabric Companies, Equipment Leasing Companies, Automobile/Motor Factories Engineering Companies, Packaging Companies, Cement Companies, Technical Equipment and machinery Companies, Security Companies, Pharmaceutical Companies, Investment Companies, Architectural/Consultancy Companies, Computer Services .*

*Generally, Manufacturing Companies, High Class Hotels, Airline/Travel Agencies, Courier Services Companies, Petrol Filling Station, Haulage and lighthouse Companies, Marine, Oceanographic and Inter maritime companies, Telecommunication Companies, Agro Allied Companies, Manufacturing Companies Generally, Supermarkets, Boutique, Gas Companies.*

In summary, the Corporate Outfit Bye-Law prohibits the establishment or operation of any corporate outfit for the purpose of carrying on a trade, business or occupation within the Local Government without a permit. The permit shall be issued upon the payment of prescribed fees which range from N100, 000.00.00 - N1, 000,000.00.00 (One Hundred Thousand Naira Only to One Million Naira Only) depending on the category of usage. For example, the headquarters of financial institutions and oil companies attract N1, 000,000.00 while their branches attract N500, 000, 00. The permit shall be displayed in a conspicuous place within the commercial premises.<sup>25</sup>A premise shall be sealed up on account of failure to obtain a permit until the payment of the prescribed fee.<sup>26</sup> The permit shall be renewed annually upon the payment of the prescribed fee.

Going by the above provisions, the payment required under the Corporate Bye-Law is for the issuance of a permit for the privilege of carrying on a trade, business or occupation within the Local Government. According to the Black's Law Dictionary<sup>27</sup>, a permit is a certificate evidencing permission, a license.<sup>28</sup>Since the payment is being required for the enjoyment of a direct benefit, such a payment is

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<sup>25</sup>*Ibid.* section 5.

<sup>26</sup>*Ibid.* section 6.

<sup>27</sup>*Black's Law Dictionary*, ed Bryan A. G., (8th ed. 2004, West Group, St. Paul, Minn.,) 1176

<sup>28</sup>According to the *Oxford Advanced Learner's Dictionary*, a permit is an official document that gives somebody the right to do something, especially for a limited period of time.

technically neither a tax nor a levy<sup>29</sup>. In other words, to the extent that the annual corporate permit purports to confer direct advantage or privilege on the Respondent, it falls short of a basic characteristic of a tax that payment is for public purpose.

The main issue, in our view, is whether a Local Government Council can lawfully prohibit the establishment or operation of any corporate outfit for the purpose of carrying on a trade, business or occupation within its jurisdiction without a permit. The answer, to our mind, will depend on whether there is a State Law that confers such a power on the Local Government Councils in the first instance. In the absence of any such State Law, it is submitted that a Local Government Council cannot impose such a constraint on the establishment of corporate outfit. This position is reinforced by the provisions of section 7 of the 1999 Constitution which mandates States to ensure the existence of local government under a law which provides for the establishment, structure, composition, finance and functions of such councils. In furtherance of this provision, the Lagos State Government has enacted the *Local Government (Administration) Law of Lagos State*,<sup>30</sup> 30 section 36 of which virtually reproduces the provisions of the Fourth Schedule, the relevant portion of which reads thus:

*"The functions of the Local Government shall be as follows:*

- (j) control and regulation of-
- (iii) shops and kiosks,
- (iv) restaurants, bakeries and other places for sale of food to the public,
- (v) Laundries, and
- (vi) licensing, regulation and control of the sale of liquor".

It is this writer's view that the above provisions clearly seek to limit the regulatory power of the local government to 'shops' and 'kiosks'. Although these words are not defined in the Law, they definitely have a restrictive meaning when compared to 'corporate outfit' which is defined as 'any building, tenements, shop or stall where certain business, trade or occupation is carried on. It includes selling water, factory, banking, a store, dairy, eating house, mobile eating house, food preservation establishment, etc.' under section 11 of the Corporate Outfit Bye-Law of Eti-Osa Local Government Council. The Advanced Learner's Dictionary defines a shop as 'a building or part of a building where things are sold to the public'<sup>31</sup> while kiosk is defined as 'a small building in the street where newspapers, sweets etc are sold'. It is therefore submitted that the wordings of the provisions of section 36(1)(j) of the Local Government (Administration) Law of Lagos State<sup>32</sup> is not wide enough to confer power on local government councils to regulate corporate outfits as defined under the Corporate Bye Law of Eti-Osa Local Government. This, in our view ought to be the *ratio decidendi* in *Jegede's case*.

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<sup>29</sup>The word 'levy' is synonymous with a tax. The Oxford English Dictionary defines a levy as 'an extra amount of money that has to be paid, especially as a tax to government'. Usually, levy is used to describe a tax of a fixed amount regardless of the status and circumstances of the taxpayer. See Oxford Advanced Learner's Dictionary, S. Wehmeir (ed.) (6th ed. 2001 Oxford University) 68

<sup>30</sup>Cap L 73 Laws of Lagos State, 2003.

<sup>31</sup>*Supra* note 45, at page 1320.

<sup>32</sup>*Supra* note 31.

## CONCLUSION

*Jegade's* case offered an opportunity to deepen the jurisprudence on the nature of taxes and the distinction between taxes and related terms, which neither the parties nor the court seemed to appreciate. It is remarkable that neither of the parties made reference to the specific provisions of the Eti- Osa Local Government (Corporate Outfit) Bye-Law which would have guided the Court in determining the nature of the payment being demanded pursuant to the -Law. The Respondent contended that it was a tax and this line of argument was adopted hook line and sinker by the Trial court, the Appellant and Court of Appeal. This line of reasoning inexorably led to the mortal error of determining the validity or otherwise of the Eti-Osa Corporate Bye-Law based on the provisions of the Fourth Schedule to the 1999 Constitution and the Taxes and Levies Act. The decision has the potential of circumscribing the taxing powers of the States (and by necessary implication that of the local government) to only the taxes and levies itemised in the Taxes and Levies Act and the Fourth Schedule. It is submitted that even if a corporate bye-law or permit were to be included in either the Fourth Schedule to the 1999 Constitution or the Taxes and Levies Act, a state law would still have been required to establish a proper legal framework for its collection by the local government. In the absence of any - such state law, a local government cannot lawfully enact a corporate bye-law. If it is considered desirable to introduce any tax or levy, the appropriate thing to do is to ensure that a proper legislative framework exists at the state level in pursuance of which a bye-law can then be made. Where no such state law exists, a new law will first have to be made, otherwise any bye-law made would have no legal foundation to stand.