



DUALE, OVVIA &
ALEX-ADEDIPE



**Reflections on the Supreme Court’s Judgement in National
Inland Waterways Authority & 3 Ors v. Lagos State
Waterways Authority & 5 Ors delivered on 5th January 2024**

The Apex Court on Friday, 5th January 2024, delivered judgment on the sensational case between **National Inland Waterways Authority & 3 Ors v. Lagos State Waterways Authority & 5 Ors** in **Appeal No. SC. 17/2018**.

The case had the National Inland Waterways Authority ("**NIWA**"), the Nigerian Maritime Standard and Safety Agency ("**NIMASSA**"), Hon. Minister of Mines and Steel Development, and Hon. Minister for Transportation (*the parties will hereinafter be referred to as The "**Federal Government**" or "**FG**"*) as the 1st, 2nd, 3rd and 4th Appellants, respectively and the Lagos State Waterways Authority ("**LASWA**"), Hon. Commissioner, Ministry of Waterfront Infrastructural Development, Hon. Attorney-General of Lagos State, Governor of Lagos State (*the parties will hereinafter be referred to as The "**Lagos State Government**"*); The Incorporated Trustees of Association of Tourist Boat Operators and Water Transportation of Nigeria (**the "Boat Operators"**), and the Incorporated Trustees of Dredgers Association of Nigeria (**the "Dredgers"**) as the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents, respectively.

Brief Summary of Facts

The Boat Operators and Dredgers respectively sometime in 2014, had taken out an Originating Summons by way of an interpleader at the Lagos Division of the Federal High Court (**The "FHC"**) against NIWA, NIMASSA, Hon. Minister of Mines and Steel Development, Hon. Minister for Transportation, LASWA, Hon. Commissioner, Ministry of Waterfront Infrastructural Development, Hon. Attorney-General of Lagos State and Governor of Lagos State as defendants respectively, in protest against and challenging the multiple levies and taxation by both the Federal and Lagos State Government Agencies on their operations¹ and sought the Court directions as to which of the agencies is entitled to issue operational permit/licenses, imposed taxes, issue regulations and generally administer the inland waterways of Lagos State. Specifically, amongst other issues raised for the determination by the FHC was the competence of the Lagos State Government to make any law in respect of mining operations within Nigeria and whether the State and Federal Government enjoyed concurrent jurisdiction to make laws with respect to inland waterways, being an item under the exclusive list of the 1999 constitution of the Federal Republic of Nigeria, as amended (**The "Constitution"**).

Positions through the Courts

At the conclusion of trial at the FHC, the Court found in favour of the Federal Government, and directed the Boat Operators and Dredgers to defer to the Federal Government in their operations and payment of the necessary taxes and fees as may be prescribed. The Lagos State government, being dissatisfied by the decision, appealed to the Court of Appeal sitting in Lagos (**The "CA"**). The CA in their wisdom, seemingly upturned and set aside in part the decision of the FHC and directed that deference be had to the Lagos State Government for operations carried out on all other intrastate and inland waterways within Lagos State that are not declared as navigable water under the NIWA Act, including payment of taxes, fees etc. The decision of the CA which was greeted with dissatisfaction from the Federal Government, spurred the institution of the appeal to the Supreme Court in exercise of its constitutional right of appeal. The said appeal to the Apex Court is the focus of this newsletter. The central issues presented for the Apex Court's determination by the Federal Government was whether Waterways in Lagos State is within the exclusive legislative list and whether the constitution

¹ The issue of multiple taxation in the inland waterways mostly takes the form of different authorities issuing various licenses which are usually treated as illegal licenses by the enforcement team of other authorities during enforcement drive, who would in turn issue their licenses to operators all for a fee.

having provided for Maritime, Shipping and Navigation as items on the exclusive legislative list, the Lagos State House of Assembly can make laws or legislate on those matters.

The Apex Court in their considered ruling, found that the subject of inland waterways whether in Lagos State or any part of the Country is an item under the exclusive legislative list, thus the activities of the Boat Operators and Dredgers should be licensed and regulated by the Federal Government, particularly agency, NIWA. The Supreme Court further held that although the constitution did not make express provisions for dredging activities, the National Assembly relying on item 36 and 64 of the Second Schedule to the constitution, validly enacted the National Inland Waterways Authority Act,² (“**NIWA ACT**”) which gives NIWA the power to license and regulate dredging activities in the inland waterways.³ The Court went further to hold that by the Second schedule to the NIWA Act, referred to in Section 10 of the Act, declared that all the waterways in Lagos State are navigable waterways for which NIWA has the power to regulate. Thus, the Court held that NIWA Act having covered the field on inland waterways, the Lagos State Waterways Authority Law⁴ (“**LASWA Law**”), being an inferior enactment, which is inconsistent with NIWA Act, becomes null and void to the extent of its inconsistency. The central issues were therefore resolved in favour of the Federal Government by the Apex Court.

Our Reflections on the Position of the Apex Court

The position of the Apex Court with particular reference to the subject of inland waterways being an item under the exclusive legislative list, thus forming a matter for only the National Assembly to legislate upon, is well founded and in line with popular decisions of the Courts over the years such as in **Suit No: FHC/PH/CS/142/2022** between **Bright Waters Energy Limited v. the Honourable Attorney-General and Commissioner for Justice, River State & Anor** and many others. It has thus finally resolved the niggling and protracted issues surrounding the regulation and licensing of operation on the inland waterways in Nigeria and has brought an end to the challenges of multiple levies and taxation the operators of inland waterways hitherto faced especially in Lagos State since the enactment of LASWA Law in 2008 by the Lagos State House of Assembly. The law which is curiously inundated by provisions which conflicts with certain provisions of the NIWA Act, and is believed to have necessarily repealed those provisions of the NIWA Act by implication⁵; an Act of the National Assembly. It is beyond peradventure that and the law is long settled that an Act of the National Assembly can only be altered, modified or repealed by a legislation of the National Assembly. See **NPF & Ors v. Police Service Commission**.⁶

It bears noting that the Apex Court in holding that inland waterways is an item under the exclusive legislative list for which the National Assembly enjoys the exclusive preserve to legislate on, denotes the fact that the legislative power exercised by the Lagos State House of Assembly to enact the LASWA Law contradict established principles of law and such power was exercised in breach of the constitution. It is the law that where legislative power is exercised in breach of the constitution, such exercise is void. See **Marwa & Ors v. Nyako & Ors**.⁷ Furthermore, and in line with the doctrine of covering the field as underscored in the case of **AG Lagos v. Eko Hotels Ltd & Anor**,⁸ the NIWA Act, having covered the field as far

² NIWA Act, 2004

³ See section 28 of the NIWA Act, 2004

⁴ The Lagos State Waterways Authority Law, 2008

⁵ This was part of the argument canvassed by the Counsel to Lagos State Government in Court

⁶ (2023)LPELR – 60782 (SC)

⁷ (2012)LPELR – 7837

⁸ (2017) LPELR – 43713 (SC)

as the regulation of inland waterways in Nigeria is concerned and enjoys the exalted status as an Act of the National Assembly, the provisions of the LASWA law which are inconsistent with the NIWA Act becomes null and void to the extent of its inconsistency.⁹

As delightfully relieving as this decision of the Apex Court maybe, it is not yet uhuru with all the cacophony of issues on the inland waterways, as even amongst the Federal Government agencies, there exist palpable tension on control of certain aspect of the waterways, this can be seen in the dispute between NIWA and the Miners Association of Nigeria (“**MAON**”) under the Ministry of Mines and Steel Development, with regards to the regulation and control of dredging activities in the inland waterways. This tension was not helped by the Apex Court's holding that NIWA is the statutorily empowered agency to make regulations and issue licenses for every activity on the inland waterways including sand dredging despite the clear provision of S. 76 and 78 of the Nigerian Minerals & Mining Act¹⁰ (the “**NMM Act**”).

In April 2022, the Akwa Ibom State chapter of MAON dragged NIWA before the Federal High Court sitting at Uyo over harassment of dredgers licensed by MAON to carry out dredging activities in the inland waterways in Eket, Akwa Ibom State. By the provisions of the NMM Act, and its Regulations 2011, mining, quarrying and dredging operations is taken away from the regulatory oversight of NIWA, and reposed in the Minister of Mines and Steel Development.¹¹ The section provides as follows:

76(1) “Notwithstanding the provisions of any other enactment, consent or approval provided for under an enactment and in particular, sections 9 (1), 29 (1), 10, 11, 12 and 13 of the National Inland Waterway Authority Act, every operation for the purpose of extracting any quarriable mineral from a quarry including sand dredging in the navigable waterways or elsewhere, for industrial use (in this Part referred to as a "quarrying operation") shall be conducted under a lease or licence granted by the Minister under this Act.”

It is expedient to note that NIWA Act and NMM Act are both valid enactments and Acts of the National Assembly, though NMM Act is a later enactment. The NMM Act unlike NIWA Act bears specific provisions on sand dredging on the inland waterways and expressly precludes the application of provisions of the NIWA Act. It is hornbook rule of construction of statute that where a later enactment of equal status makes provisions which tends to contradict or are inconsistent with the provisions of an earlier enactment, the provisions of the later enactment will be deemed as impliedly repealing the provisions of the earlier enactment and will be followed. The case of **Governor of Kaduna State v. Kagoma**¹² is instructive on this point. Similarly, it is the law that where there exist a general and specific law on a subject matter, deference is to be had to the specific law as against the general law. See the case of **Ibrustankov v. Stankov**.¹³ In light of the foregoing, it is our respectful view that while the activities of NIWA are extensive and far-reaching as it pertains to inland waterways, sand dredging on the inland waterways is within the regulatory competence of the Ministry of Mines and Steel by virtue of the provisions of the NMM Act. Furthermore, we note that there was no issue presented before the Apex Court as to whether sand dredging on the inland waterways was within the control or preserve of the NMM or NIWA, thus depriving both NIWA, NMM and by extension, the populace, the opportunity to settle this quagmire. Be that as it may, it is our

⁹ See section 1(3) of the Constitution.

¹⁰ Nigerian Minerals & Mining Act, 2007

¹¹ See section 76 and 78 of the Nigerian Minerals & Mining Act, 2007

¹² (1982) LPELR – 3176 (SC)

¹³ (2016) LPELR – 40981 (CA)

respectful and humble view that until the NMM Act is repealed, the Ministry of Mines and Steel will continue to be responsible for regulating dredging in the inland waterways.

The Status of LASWA

The decision of the Apex Court on this matter is to the greatest detriment of LASWA which has effectively been prohibited from exercising power of regulation and control of the inland waterways in Lagos State, issuance of licenses and taxation of operators, being the main issues submitted for the Apex Court's determination. It bears stating that the Apex Court made no pronouncement on the legality or otherwise of the existence of LASWA as a body. Nonetheless, the law is that where any act is declared null and void, the implication is that the act was never done and every action and/or inaction, establishment or appointment purported to be made by the void act are unlawful. See the case of **Adefulu & Ors. v. Okulaja & Ors.**¹⁴ Premise on the foregoing, it is parenthetically noted that the Apex Court's decision that the Lagos State House of Assembly cannot validly make a law bordering on the regulation, management and control of the inland waterways as same is an item under the exclusive legislative list of the constitution, means that LASWA law was made ultra vires and amounts to a nullity and whatever body purported to have been established by that law becomes unlawful. However, if LASWA were to be allowed to still exist in the present realities, the body will essentially become redundant and will encounter difficulties in generating resources to finance its legitimate affairs, if any.

The downside of this reality, however, is the economic implications of this decision on the Lagos State government and other 27 States with inland waterways routes, who followed the developments in courts with keen interest. On this score, it must be noted that LASWA since its establishment, has through its activities, provided a viable platform for the generation of revenue for the Lagos State Government.¹⁵ Also, beyond the 7 salary-earning members of the Management Board of the body,¹⁶ the authority has served as a veritable institution for the employment of labour; from professional and non-professional staff attached to the authority to countless numbers of ticket and/or license issuing and enforcement officers, earning their living from the existence of LASWA as a regulatory body for inland waterways in Lagos State. Where LASWA becomes redundant and ceases to exist, as it predictably will, the teaming population forming its members of staff will be out of jobs. The reactionary dispositions of these persons may lead to chaos as was seen in Cross River State when the Cross River State Inland Waterways Agency ("**CRSIWA**") in May 2016, seemingly bowing to pressure from NIWA, dissolved her Special Taskforce on Revenue and stopped the generation of revenue from the inland waterways in the State.

NIWA as an institution on the other hand, it does not seem, will be bothered by the continuous existence of LASWA, so far as the body makes no claim to a right to regulate and administer the inland waterways in Lagos or generate resources from the operations of stakeholders in the inland waterways in Lagos. It has been emphasized that NIWA always welcomes the collaboration of stakeholders in the inland waterways, and regularly holds joint meetings with LASWA. The attitude of other States with inland waterways is to cooperate and assist NIWA in carrying out its functions of administering the inland waterways across those States. This could be seen in the Akwa Ibom State Government's donation of 14 gunboats to NIWA in December 2023 to assist in the protection and security of the inland waterways in the State. The Lagos State government may want to borrow a leaf from this.

¹⁴ (1996) LPELR – 24853 (SC)

¹⁵ See section 4 and 5 of the LASWA Law, 2008

¹⁶ See section 3 and 6 of the LASWA Law, 2008



This article is for general information purposes only and does not constitute legal advice. For further questions, assistance or clarifications, you may contact us at info@doa-law.com or contact any of the contributors herein listed. To request reproduction permission for any of our publications, please use our contact form which can be found on our website at www.doa-law.com.

LAGOS

Plot 1B, Block 129
Jide Sawyerr Drive
Lekki Phase I
Lagos State, Nigeria

ABUJA

4th Floor, Abia House
Plot 979, 1st Avenue
Off Ahmadu Bello Way
Central Business District
Abuja FCT, Nigeria

Tel.: 0700 DOALAW (0700 362529)
Email: info@doa-law.com
www.doa-law.com