

**Inspector-General of Police v All Nigeria Peoples Party and Others (2007) AHRLR 179 (NgCA 2007)**

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*Inspector-General of Police v All Nigeria Peoples Party, National Conscience Party, Peoples Redemption Party, National Democratic Party, Democratic Alternative, All Progressives Grand Alliance, Peoples Salvation Party, Nigerian Peoples Congress, Movement for Democracy and Justice, Communist Party of Nigeria*

Court of Appeal of Nigeria in the Abuja Judicial Division, appeal no CA/A/193/M/05, 11 December 2007

Judges: Mohammad, Adekeye, Aboki

Extracts.

*Whether the requirement to obtain a police permit for holding a rally or procession violated the freedom of assembly*

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**Interpretation** (status of African Charter, 7, 37; relevance of foreign law, 15, 36; constitutional interpretation, 18, 19, 21; intention of the law maker, 20, 22; constitution to be interpreted as a whole, 29, 35; presumption that legislature does not intend to breach an international obligation, 37)

**Expression** (necessary for democracy, 12, 34)

**Assembly** (necessary for democracy, 12, 25, 34; permit not required, 16, 23, 25, 28, 31, 32, 35)

**Limitations on rights** (reasonably justifiable in a democratic society, 13, 23, 25, 27, 28, 33)

**Constitutional supremacy** (17, 35)

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[1.] This is an appeal against the judgment of the Federal High Court Abuja delivered on 24 June 2005. The respondents before this court are twelve political parties registered in Nigeria . They commenced this suit by way of an originating summons dated 9 February 2004

as follows:

(1) Whether the police permit or any authority is required for holding a rally or procession in any part of the Federal Republic of Nigeria.

(2) Whether the provisions of the Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990, which prohibit the holding of rallies or processions without a police permit are not illegal and unconstitutional having regard to section 40 of the 1999 Constitution and article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act (Cap 10) Laws of the Federation of Nigeria 1990.

[2.] The plaintiffs/respondents also claimed as follows:

(I) A declaration that the requirement of police permit or other authority for the holding of rallies or processions in Nigeria is illegal and unconstitutional as it violates section 40 of the 1999 Constitution and article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) laws of the Federation of Nigeria (1990).

(II) A declaration that the provisions of the Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990 which require police permit or any other authority for the holding of: rallies or processions in any part of Nigeria is illegal and unconstitutional as they contravene section 40 of the 1999 Constitution and article 7 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (Cap 10) Laws of the Federation of Nigeria 1990.

(III) A declaration that the defendant is not competent under the Public Order Act (Cap 382) Laws of the Federation of Nigeria 1990 or under any law whatsoever to issue or grant permit for the holding of raffles or processions in any part of Nigeria.

(IV) An order of perpetual injunction restraining the defendant whether by himself, his agents, privies and servants from further preventing the plaintiffs and other aggrieved citizens of Nigeria from organizing or convening peaceful assemblies, meetings and rallies against unpopular government measures and policies.

...

[3.] I have painstakingly considered the submission of the learned counsel to both parties in this appeal. I am intrigued by the brilliant and elucidating submission of the learned counsel and especially that of the learned counsel for the respondents Mr Femi Falana on the core aspect of this appeal which by all means is the interpretation of sections 39 and 40 of the 1999 Constitution touching on the fundamental rights of the citizens of this country to freedom of expression and right to peaceful assembly and association and the application and the effect of the Public Order Act Cap 382 Laws of the Federation of Nigeria 1990 on same. This court appreciates the level of research put into the preparation of his brief particularly the opinion of courts on contemporary issues from other parts of the world. It is the conclusion of the lower court in the ruling now being challenged in this appeal that:

I hold the view that the Public Order Act does not only impose limitation on the right to assemble freely and associate with others, which right is guaranteed under section 40 of the 1999 constitution, it leaves unfettered the discretion on the whims of certain officials, including the police. The Public Order Act so far as it affects the right of citizens to assemble freely and associate with others, the sum of which is the right to hold rallies or processions or demonstration is an aberration to a democratic society, it is inconsistency with the provisions of the 1999 Constitution. The result is that it is void to the extent of its inconsistency with the provisions of the 1999 Constitution. In particular section 1(2),(3)(4)(5) and (6), 2, 3 and 4 are inconsistent with the fundamental rights provisions in the 1999 Constitution and to the extent of their inconsistency they are void - I hereby so declare.

The court proceeded to answer the first question raised in the originating summons in the affirmative and the second question in the negative and accordingly granted all the reliefs claimed by the plaintiffs/respondents.

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### **Issue number one**

#### **Whether in view of section 45(1) of the 1999 Constitution the provisions of the Public Order Act are not inconsistent with the said 1999 Constitution.**

[4.] As rightly observed by the learned counsel to the appellant this issue seeks to determine the validity of the Public Order Act against the background of the provision of section 40, 45 of the 1999 Constitution and article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 laws of the Federation of Nigeria 1990.

It is imperative to give insight into the relevant provisions of the Constitution and the Public Order Act.

[5.] Section 40 of the 1999 Constitution reads:

Every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

Provided that the provisions of this section shall not derogate from the powers conferred by the Constitution on the Independent National Electoral Commission does not accord recognition.

[6.] Section 45(1) reads:

Nothing in section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

(a) In the interest of defence, public safety, public order public morality or public health or for the purpose of protecting the rights and freedom of other persons

(b) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking during periods of emergency of measures that derogate from the provisions of section 33 or 35 of this Constitution but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exist during that period of emergency.

Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 36(8) of this Constitution.

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[7.] By article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990, the African Charter is an understanding between concerned African states to protect the human rights of their citizens within the territorial jurisdiction of their countries. It is now part of the domestic laws of Nigeria and like all other laws courts must uphold it. These rights are already enshrined in our Constitution.

[8.] The Public Order Act Cap 382 Laws of the Federation of Nigeria 1990. The preamble to the Act reads:

An act to repeal all public order laws in the states of the Federation and to replace them with a Federal Act for the purpose of maintaining public order and to prohibit the formation of quasi-military organisations, regulate the use of uniforms and other matters ancillary thereto.

[9.] The sections under searchlight in this appeal are section 1, subsections 2, 3, 4, 5 and 6, and sections 2, 3 and 4 of the Act which read as follows:

Section (1): For the purpose of the proper and peaceful conduct of public assemblies, meetings and processions and subject to section 11 of this Act, the governor of each state is hereby empowered to direct the conduct of all assemblies, meetings and processions on public roads or places of public resort in the state and prescribe the route by which and the times at which any procession may pass.

□

Subsection 2: Any person who is desirous of convening or collecting any assembly or meeting or of forming any procession in any public road or place of public resort, shall unless such assembly meeting or procession is permitted by general licence granted under subsection (3) of this section, first make application for a licence to the Governor not less than 48 hours thereto, and if such Governor is satisfied that the assembly, meeting or procession is not likely to cause a breach of the peace he shall direct any superior police officer to issue a licence, not less than 24 hours thereto, specifying the name of the licence and defining the conditions on which the assembly, meeting or procession is permitted to take place, and if he is not so satisfied, he shall convey his refusal in like manner to the applicant within the time herein before stipulated.

Subsection 3: The Governor may authorise the issue of general licences by any superior police officer mentioned in subsection (4) of this section setting out the conditions under which and by whom and the place where any particular kind or description of assembly meeting or procession may be convened, collected or formed.

Subsection 4: The Governor may delegate his powers under this section

(a) In relation to the whole state or part thereof to the commissioner of police of the state or any superior police officer of a rank not below that of a chief superintendent of police and (b) In

relation to any local government area or part thereof, but subject to any delegation made under paragraph (a) above to any superior police officer or any police officer for the time being acting as the district police officer.

□

[10.] Subsection 5 makes provision for airing of grievances against the decision of the Commissioner of Police to the Governor, or from the decision of any police officer to the Commissioner of Police and from there ultimately to the Governor. The decision of the Governor on the issue shall be final.

This issue to my mind deals with the interpretation of the constitutional provisions embodied in sections 40 and 45 of the 1999 Constitution and article 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990. The interpretation of the statutory provision of the Public Order Act Cap 382 Laws of the Federation 1990 is also brought into focus.

[11.] It is however noteworthy that the Public Order Act is an Act of National Assembly. There is no gainsaying about it that the 1999 Constitution empowers the National Assembly to make laws among other things for public safety and public order — in short any law that is reasonably justifiable in a democratic society for the maintenance of public order and for protecting the rights and freedom of persons in short the Public Order Act can be adjudged as a creation of the Constitution. The Public Order Act is also an existing law by virtue of section 315 of the 1999 Constitution.

[12.] The rights to freedom of assembly and freedom of expression are the bone of any democratic form of government. Besides their embodiment in the supreme law of the land — the 1999 Constitution and the African Charter on Human and People's Rights locally adopted as Ratification and Enforcement Act Cap 10 Laws of the Federation of Nigeria 1990, a plethora of decisions of our courts have endorsed same.



[13.] Section 45(1) of the 1999 Constitution provides that nothing in sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society.

[14.] There is no doubt about it that by virtue of chapter 11 of the 1999 Constitution and particularly section 14(1), the Federal Republic of Nigeria is a sovereign state based on the principles of democracy and justice outlined in section 14(2). The question which now arises for the determination of this court is whether the provisions of the Public Order Act, particularly that which requires conveners of meetings or political rallies to obtain police permit in the exercise of their constitutional rights to freedom of assembly and expression guaranteed by sections 39 and 40 of the Constitution be held to be a law reasonably justifiable in a democratic society as maintained by the appellant or that they are inconsistent with the constitution and such provisions are illegal and unconstitutional and void in the opinion of the respondent. The learned counsel to the respondents held that the requirement of a permit under the Public Order Act is not being just administrative or procedural but has assumed the part of a substantial conditionality for the exercise of freedom of assembly and association.

[15.] The two counsel for the parties furnished this court with an array of local, and particularly the respondents' counsel, foreign authorities in defence of their stand. I must explain at this stage that a document such as the Nigerian Constitution, which is written, cannot be interpreted following judicial decisions based on principles of common law or judicial decisions that interpreted statutes or constitutions which are not in *materia* with the provisions of the Constitution. However judicial decisions based on foreign statutes and constitutions with similar or identical provisions as the Nigerian Constitution carry some measure of weight and persuasive effect, but they lack binding effect on Nigerian principle of *stare decisis*

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*Nigerian Ports Authority v Ali Akar & Sons*

1965

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All

NLR 526;

*Obadara v President Ibadan West District Council Grade B Customary Court*

1964 1 All NLR 336;

*Alhi v Okulaja*

1972 2 All NLR 351;

*A-G Ondo State v A-G Federation*

2002 9 WLR pt 772

222; *Olafisoye v Federal Republic of Nigeria* (2004) 4 NWLR

pt 804 580; *Adigun v A-G Oyo State* (no 2) 1987 2 NWLR pt 56 197.

[16.] The scenario leading to instituting the action before the lower court was that the respondents being registered political parties requested the defendant/appellant, the Inspector-General by a letter dated 21 May 2004 to issue police permits to their members to hold unity rallies throughout the country to protest the rigging of the 2003 elections. The request was refused. There was a violent disruption of the rally organised in Kano on 22 September 2003 on the ground that no police permit was obtained.

In the circumstance the police based the reason for the performance as violence and breach of the peace which may occur at the holding of the rally.

[17.] The constitution of any country is the embodiment of what the people desire to be their guiding light in governance, their supreme law the *grundnorm* of all their laws. All actions of the government in Nigeria are governed by the Constitution and it is the Constitution as the organic law of a country that declares in a format, emphatic and binding principles the rights, liberties, powers and responsibilities of the people both the governed and the government.

*FRN v Ifegwu*

(2003) 15 NWLR pt 842 113;

*A-G Abia v A-G Federation* (2002) 6 NWLR pt 763 264;

*Abacha v Fawehinmi* (2000) 6 NWLR pt 660 228.

□

[18.] I agree with the reasoning of my Lord Pat Acholonu JSC (of blessed memory) in the case of *FRN v Osahon* that

in the interpretation of the Constitution, beneficial interpretation which would give meaning and life to the society should always be adopted in order to enthrone peace, justice and

egalitarianism in the society.

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[19.] The duty of the courts is to simply interpret the law or Constitution as made by the legislators or framers of the Constitution. It is not the constitutional responsibility of the judiciary to make laws already made by the legislature.

[20.] Courts cannot through its interpretation amend the Constitution, neither can they change the words used. Where saddled with the obligation of interpreting the Constitution the primary concern is the ascertainment of the intention of the legislature or law makers.

[21.] The Constitution cannot be strictly interpreted like an act of the National Assembly and it must be construed without ambiguity as it is not supposed to be ambiguous.

[22.] All its provisions must be given meaning and interpretation even with the imperfection of the legal draftsman. All cannons of Constitution must he employed with great caution. A liberal approach must be adopted. Where the provisions of a statute are clear and unambiguous, effect should be given to them as such unless it would be absurd to do so, having regard to the nature and circumstance of the case. The court of law is without power to import into the meaning of a word, clause or section of the Constitution or statute what it does not say. Indeed it is a corollary to the general rule of construction that nothing is added to a statute and nothing is taken from it unless there are grounds to justify the inference that the legislature intended something which it omitted to express. The court must not or is not concerned with the result of its interpretation that is it is not the court's province to pronounce on the wisdom or otherwise of the statute but to determine its meaning. The court must not amend any legislation to achieve a particular object or result.

*Awolowo v Shagari* (1979) 6-9 SC 51; *Alamiyeseigha v FRN* (2006) 16 NWLR pt 1004 1;

*State*

*Rabiu v*  
(1980)

8-11 SC 130;

*A-G*

*Bendel State*

*v A-G Federation*

(1981) 10 SC 1;

*Owena v NSE Ltd*

(1997) 8 NWLR pt 515;  
*Bronik Motors Ltd v Wema Bank Ltd* (1983) 1 SCNLR  
296.

[23.] The relevant question to consider in the determination of the poser before this court as to issuance of a permit under the Public Order Act under relatively calm and peaceful demonstration as opposed to periods of emergency and eruption of political violence, is in short what is the mischief the legislators envisage and are determined to arrest? The underlying factor in the peculiar circumstance of this case is the possibility of violence and breach of the peace while the rally is in progress. This first and foremost I regard as an indictment on our police force and their inadequacy to discharge their statutory duties under the Police Act Cap 439 Laws of the Federation to maintain law and order. Secondly, the reason is not only untenable but highly speculative and I am of the impression that it is not pungent enough to deprive a citizen of a right enjoyed by virtue of the Constitution. The learned trial judge relied on two cases considered in other jurisdictions

— the Supreme Court of Ghana in the case of *New Patriotic Party v Inspector General of Police* 1992-93 GLR 585 - (2000) 2 HRLRA 1 where the learned trial judge held that:

Police permit has outlived its usefulness, statutes requiring such permits for peaceful demonstrations, processions and rallies are things of the past. Police permit is the brain child of the colonial era and ought not to remain in our statute books.

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[24.] The case of *A-G Botswana v Dow* (1998) 1 HRLRA 1 was aptly considered where the Court of Appeal of Botswana declared the Citizenship Act of Botswana 1984 unconstitutional.

[25.] I am persuaded by the incident cited by the learned counsel for the respondent that Nigerian society is ripe and ready to be liberated from our oppressive past. The incident captured by the *Guardian Newspaper* edition of 1 October 2005 where the federal government had in the broadcast made by the immediate past President of Nigeria, General

Olusegun Obasanjo, publicly conceded the right of Nigerians to hold public meetings or protest peacefully against the government against the increase in the price of petroleum products. The honourable President realised that democracy admits

*of* dissent, protest, marches, rallies and demonstrations. True democracy ensures that these are done responsibly and peacefully without violence, destruction or even unduly disturbing any citizen and with the guidance and control of law enforcement agencies. Peaceful rallies are replacing strikes and violence demonstrations of the past.

[26.] If this is the situation, how long shall we continue with the present attitude of allowing our society to be haunted by the memories of oppression and gagging meted out to us by our colonial masters through the enforcement of issuance of permit to enforce our rights under the Constitution.

[27.] I hold in unison with the reasoning in the case of *Shetton v Tucker* 364 US 479 488 (1960) where the United States Supreme Court observed that:

Even though the government's purpose may be legitimate and substantial that purpose cannot be pursued by means that broadly stifle fundamental personal liberties.

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[28.] The Police Order Act relating to the issuance of police permit cannot be used as a camouflage to stifle the citizens' fundamental rights in the course of maintaining law and order.

[29.] The same observation was made by our Apex Court in the case of *A-G Federation v Abubakar* (2007) 10 NWLR pt. 1041 1 that:

One of the basic principles of interpretation of the Constitution and statutes is that the legislature will not be presumed to have given a right in one section of a statute and then take it in another.

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*Osadebay v A-G Bendel State* 1991 1 NWLR pt 169 pg 525.

[30.] The constitutional power given to legislature to make laws cannot be used by way of condition to attain unconstitutional result.

[31.] The power given to the governor of a state to issue permit under Public Order Act cannot be used to attain the unconstitutional result of deprivation of right to freedom of speech and freedom of assembly.

[32.] The right to demonstrate and the right to protest on matters of public concern are rights which are in the public interest and that which individuals must possess, and which they should exercise without impediment as long as no wrongful act is done.

[33.] If as speculated by law enforcement agents that breach of the peace would occur our criminal code has made adequate provisions for sanctions against breakdown of law and order so that the requirement of permit as a conditionality to holding meetings and rallies can no longer be justified in a democratic society.

[34.] Finally freedom of speech and freedom of assembly are part of democratic rights of every citizen of the Republic; our legislature must guard these rights jealously as they are part of the foundation upon which the government itself rests.

[35.] The Constitution should be interpreted in such a manner as to satisfy the yearnings of the Nigerian society. The 1999 Constitution is superior to other legislations in the country and any legislation which is inconsistent with the Constitution would be rendered inoperative to the extent of such inconsistency. Section 1 subsections (2), (3), (4), (5), (6), and sections 2, 3, 4 of the Public Order Act are inconsistent with the Constitution — they are null and void to the extent of their inconsistency. *Osho v Phillips* (1972) 4 SC 259; *A-G Abia State v A-G Federation* (2002) 6 NWLR pt 763 264; *Ifegwu v FRN* (2001) 13 NWLR pt 229 103; *Ikine v Edjerode* (2001) 18 NWLR pt 725 446.

□

[36.] Public Order Act should be promulgated to compliment sections 39 and 40 of the Constitution in context and not to stifle or cripple it. A rally or placard-carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a trend recognised and deeply entrenched in the system of governance in civilised countries. It will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally. We must borrow a leaf from those who have trekked the rugged path of democracy and are now reaping the dividend of their experience.

[37.] The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990 is a statute with international flavour. Being so, therefore, if there is a conflict between it and another statute its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. *Abacha v Fawehinmi* (2000) 6 NWLR pt 660 228.

[38.] Issues one and two having been considered together are resolved in favour of the respondents.

**Issue number 3**

**Whether the defendant is competent under the Public Order Act or any other law whatsoever to stop the holding of any assembly, meeting, procession or rally without permit or licence.**

[39.] I have restated the relevant provisions of Public Order Act earlier on in this judgment. On a proper perusal of the provisions, particularly section one, subsections 1-6, and sections 2-4, there is no place where the name of the Inspector-General is mentioned in connection with the issuance of permit for the purpose of conducting peaceful public assemblies. Such application is to be forwarded to the Governor within 48 hours of holding such. The Governor may delegate his powers under the Act to the Commissioner of Police of the state or any superior police officer of a rank not below that of a Chief Superintendent of Police as applicable to this case in hand.

[40.] The Act makes it a matter to be handled at state level and not federal level. Protocol will not allow the Commissioner of Police to delegate such power to a more superior officer. It is the stand of the appellant that under section 215 of the Constitution the Commissioner of Police is under the command of the Inspector-General of police and is therefore not under any obligation to take instructions from the Governor. Further that the function of the police under the Police Act and the Public Order Act are interwoven. The appellant is sued under section one of the Public Order Act. The foregoing submission of the appellant is not only rebuttable but it is equally untenable. It is the cardinal principle of interpretation of statute that where the language of a statute is clear and unambiguous, the court must give meaning to it as such, for in that case the words of the statute speak the intention of the legislature. It is not the constitutional responsibility of the judiciary to make laws or to amend the laws made by the legislature, but to declare the laws accordingly.

[41.] The name of the appellant has been omitted from the Public Order Act. Where there is a gap in a statute the proper remedy is an amendment of the statute by the legislature. The Court can not add to or subtract from the law as enacted by the legislature under the guise of interpretation of a statute which the appellant is quietly asking this court to do. *Global Excellence Comm Ltd v Duke*



(2007)

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NWLR pt 1059 22;

*A-G Federation v Abubakar*

(2007) 10 NWLR pt 1041 1.

[42.] This issue is resolved in favour of the respondents.

[43.] In the final analysis this court has no legally justifiable reason to deem it necessary to interfere with the decision of the lower court. The appeal lacks merit and is accordingly dismissed. N20 000 costs of this appeal is awarded in favour of the respondents.