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Authors



**Obinna
Akpuchukwu**
Senior Partner



**Chisom
Anthony Amalu**
Associate

info@allen-marylebone.com
www.allen-marylebone.com

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INTRODUCTION

On the 22nd of November 2024, the Supreme Court of Nigeria delivered a landmark judgment nullifying the National Lottery Act, Cap N145, Laws of the Federation of Nigeria and declared that the power to legislate on lottery and gaming rests with the State Houses of Assembly. In essence, the apex court held that lottery and other related activities are matters within the residual list in the constitution and therefore can only be regulated by the respective states that make up the federation. The case is reported as Attorney General of Lagos State & Ors v. Attorney General of the Federation & Ors (2025) 5 NWLR (Pt. 1984) 43.

BACKGROUND FACTS

Nigeria operates a federal system of government. Thus, legislative powers are devolved between the national law-making body (The National Assembly) and the Houses of Assembly of each 36 state that make up the country. Additionally, the National Assembly acts as the domestic law making body for the Federal Capital Territory (FCT) with respect to matters which the State Houses of Assembly have powers to legislate on. These legislative powers are clearly delineated and enshrined in the Constitution of the Federal Republic of Nigeria. By section 4(1) of the Constitution¹, the legislative powers of Nigeria are vested in the National Assembly. Section 4(6) of the Constitution states that the legislative powers of a state of the Federation is vested in the House of Assembly of the state.

In 2005, the National Assembly enacted the National Lottery Act (the "Act") which sought to regulate lottery and lottery related activities (Sports Betting, Pools Betting, etc.) throughout the federation. The Act also established the National Lottery Regulatory Commission (NLRC) as the federal regulatory body in charge of lottery and related activities. The NLRC issued national and regional licenses for the operation of lottery, Sports Betting, Pools Betting and related activities throughout the country or a section of the country.

Prior to the enactment of the National Lottery Act of 2005, some states in Nigeria had already enacted their domestic laws to regulate Gaming in their respective states². These state laws also established regulatory bodies for gaming and lottery activities in their respective states.

¹ Constitution of the Federal Republic of Nigeria 1999, as amended

² Examples, The Lagos State Lotteries Law 2004, The Anambra State Gaming Law No 7 of 2005, The Cross Rivers State Lotteries and Gaming Agency Law

In 2008, Lagos State sued the Federal Government and the National Assembly at the Supreme Court in Suit No SC/1/2008 -The Attorney-General of Lagos State & Ors v The Attorney-General of the Federation & Ors,³ challenging the constitutionality of the National Lottery Act 2005. The contention of the Plaintiffs in the suit was that Lottery is not within the legislative competence of the National Assembly; rather it is within the residual legislative powers of the various State Houses of Assembly as provided in the Constitution of Nigeria. Thus, the National Lottery Act 2005 enacted by the National Assembly for the purpose of regulating lottery throughout the country is unconstitutional, null and void. On the 22nd of November 2024, the Supreme Court of Nigeria upheld the argument of the Plaintiffs and nullified the National Lottery Act, 2005 on grounds that it was enacted ultra vires the constitutional powers of the National Assembly.

However, in an attempt to circumvent the decision of the Supreme Court above, the National Assembly now seeks to enact the Central Gaming Bill, 2025 into law. The Bill has been passed by the Nigeria Federal House of Representatives and has undergone its third reading at the Senate of the Federal Republic of Nigeria. If passed by the Senate, it will be presented to the President for assent. The proponents of the bill are arguing that the proposed law is different in scope from the nullified National Lottery Act and that the bill when passed into law will not violate the constitution or go contrary to the Supreme Court decision that nullified the National Lottery Act.

In this article, we seek to review the Central Gaming Bill to determine if its provisions are likely to violate the Nigerian Constitution in the light of the subsisting decision of the Supreme Court on the subject matter.

CONSTITUTIONALITY OR OTHERWISE OF THE CENTRAL GAMING BILL

The Bill proposes the establishment of a federal regulatory framework for gaming activities, including both online and remote gaming in Nigeria, which will cut across all online games and lotteries. It will also register and certify all online and remote gaming, technology vendors, suppliers and service providers doing business in Nigeria. The Bill also seeks to establish the Central Gaming Commission to replace the National Lottery Regulatory Commission that was struck down by the Supreme Court decision. The Bill further permits the Commission to issue licences and permits to qualified operators to carry out the business of online and remote gaming in Nigeria.

The argument of the proponents of the Bill is that it seeks to regulate online/remote gaming activities in Nigeria and that the repealed National Lottery Act did not provide for the regulation of online/remote gaming activities. In essence, the

³ The suit was brought under the original jurisdiction of the Supreme Court of Nigeria

proponents of the bill are arguing that the decision of the Supreme Court did not say that States have the exclusive power to legislate on and regulate online/remote gaming activities in Nigeria.

Section 7(1)(a) of the Central Gaming Bill provides for the powers of the Central Gaming Commission to “regulate and administer the operation and business of both online and remote gaming in Nigeria”. Comparatively, Section 7(1)(a) of the nullified National Lottery Act provided for the powers of the National Lottery Regulatory Commission to “regulate and administer the operation and business of lottery in Nigeria”. Section 57 of the same nullified National Lottery Act defined “lottery or Lotteries” to include “any game, scheme, arrangement, system, plan, promotional competition, or device for the distribution of prizes by lot or chance, or as a result of the exercise of skill and chance or based on the outcome of sporting events or any other device which the president may by a notice in the gazette declare to be lottery and which shall be operated according to a license.”

By section 24(1) of the Central Gaming Bill, a body corporate may submit an application for licence to the Commission in the prescribed form for a licence for the operation of the following online gaming businesses—

- (a) online parimutuel;
- (b) online fixed odds (lotto);
- (c) online sports betting;
- (d) online casino games; and
- (e) any other online game.

Furthermore, by section 25(1) of the Central Gaming Bill, a body corporate may submit an application for a permit to the Commission in the prescribed form and pay the prescribed fees to the Commission for—

- (a) online consumer sales promotion;
- (b) online interactive games;
- (c) online scratch card games;
- (d) online mobile value-added service games; and

any other online promotional lottery as the Commission may determine

Clearly, all the forms of gaming activities stated in sections 24(1) and 25(1) of the Central Gaming Bill are accommodated within the definition of “lottery” as provided in section 57 of the nullified National Lottery Act. The provisions of the nullified National Lottery Act covered both land based, online and remote gaming activities and the Supreme Court did not make any distinction between land based gaming and online/remote gaming activities. In the decision of the Supreme Court, the Court emphatically declared that lottery and gaming are not matters listed in either the

Exclusive or Concurrent Legislative Lists of the 1999 Constitution (as amended). Rather, Gaming and Lottery are items within the Residual Matters, meaning only State Governments have the Constitutional authority to legislate and regulate such activities within their territories. At pages 57-58 of the judgment reported as Attorney General of Lagos State & Ors v Attorney General of the Federation & Ors (2025) 5 NWLR (Pt 1984) 57-58, the apex Court held as follows:

"By virtue of section 4(6) and (7) of the 1999 Constitution (as amended), the legislative powers of a state of the Federation shall be vested in the House of Assembly of a State. The House of Assembly of a state shall have power to make laws for..."

a) Any matter not included in the Legislative List set out in Part I of the Second Schedule to the Constitution

b) Any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto

c) Any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.

Neither the Exclusive Legislative list nor the Concurrent Legislative List contains "online gaming". It is important to note that the Defendants (Federal Government and others) in the cited Supreme Court case had argued that online gaming which cuts across different states of the federation could be accommodated under Item 62 (Trade and Commerce) or Item 68 (ancillary), of the Exclusive Legislative List of the 1999 Constitution. This argument was rejected by the Supreme Court. The Court went further to nullify the National Lottery Act and issued perpetual injunctions restraining the Federal Government of Nigeria and its agencies from attempting to regulate or control the gaming industry within the States. In other words, the Supreme Court closed the door firmly and finally on the National Assembly's intrusion into the gaming space, except within the Federal Capital Territory. The verdict of the Supreme Court is clear and unambiguous. The court declared as follows:

- 1. A DECLARATION is made that lottery or game of chance is not one of the 68 items in the Exclusive Legislative List in Part I to the Second Schedule to the Constitution of the federal republic of Nigeria 1999 (as amended) ("the 1999 Constitution") in respect of which the National Assembly has the vires to make laws for the whole of Nigeria and not incidental or supplementary to any matter mentioned in the list.*
- 2. A DECLARATION is made that having regard to the clear provisions of Section 4(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution") the National Assembly lacks the*

vires to legally and Constitutionally make any law to regulate and control the operation of lottery in Nigeria.

- 3. A DECLARATION is made that having regard to the clear provisions of Section 4(4)(a), (b) and Part II of the Second Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), matters relating to lottery do not fall within items which the National Assembly and the state house of assembly are concurrently empowered to make laws with regard thereto.*
- 4. A DECLARATION is made that having regard to the clear provisions of Section 4(7)(a) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution"), the Lagos State Government (represented by the 1st Plaintiff) and the 2nd – 22nd Plaintiffs' State, have the power, to the exclusion of the 1st and 2nd Defendants, to make laws to regulate and control the operation of lottery within their States.*
- 5. A DECLARATION is made that having regard to the clear provisions of Section 4(4)(b), (7)(a) and Section 299(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("the 1999 Constitution", the power of the National Assembly to make laws to regulate and control the operations of lottery is limited by the 1999 Constitution to only the Federal Capital Territory.*
- 6. A DECLARATION is made that Sections 17, 18, 19, 20 and 21 of the National Lottery Act N145, Laws of the Federation of Nigeria, made by the National Assembly are inconsistent with the provisions of the 1999 Constitution.*
- 7. A DECLARATION is made that the National Lottery Act, N145, Laws of the Federation of Nigeria is inconsistent with the provisions of the 1999 Constitution.*
- 8. AN ORDER is made nullifying the entirety of the National Lottery Act CAP N145, Laws of the federation of Nigeria.*
- 9. AN ORDER of perpetual injunction is made restraining the 1st Defendant either by himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from implementing the provisions of Sections 17, 18, 19, 20 and 21 of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the States of the Plaintiffs.*
- 10. AN ORDER of perpetual injunction is made restraining the 1st Defendant either by Himself, agents, privies, agencies of the Federal Government of Nigeria or Federation of Nigeria, or through anybody acting on their behalf from taking any step or actions aimed at enforcing or continuing to enforce any/or all of the provisions of the National Lottery Act CAP N145, Laws of the Federation of Nigeria, within the territory of the states of the plaintiffs."*

Furthermore, the argument that the various states of the federation do not have the capacity to effectively regulate online gaming as a justification for the Central Gaming Bill that seeks to establish the Central Gaming Commission, does not hold water. It is rather a lame excuse to disobey clear provisions of the constitution on legislative powers. Also lame is the argument that allowing the bill would lead to promotion of economic uniformity and anti-illegality measures and that a centralized Central Gaming Commission would streamline compliance (e.g., single national licenses), reduce duplication, boost tax collection, and combat illegal betting challenges states handle unevenly. In any event, it is important to note that states are already taking steps towards an effective harmonized regulation of both online and offline gaming activities through the formation of the Federation of State Gaming Regulators (FSGR) which has introduced a Centralized Gaming License proposed to take effect from January 2026.

CONCLUSION

If the National Assembly feels strongly about the need to have a central regulatory body for online/remote gaming, the best approach would be to commence a process of amending the constitution to include online gaming in the Exclusive Legislative List. The current attempt to enact the Central Gaming Bill into law will only be a wasted effort as the Supreme Court is most likely to nullify it, just as it did the National Lottery Act.

Authors:



Obinna Akpuchukwu

Senior Partner

Allen & Marylebone

o.akpuchukwu@allen-marylebone.com



Chisom Anthony Amalu

Associate