

A wooden gavel with a brass band is positioned diagonally across the frame, resting on a stack of books. The background is a warm, golden-brown gradient. The text is overlaid on the lower half of the image.

**ATTORNEY GENERAL OF RIVERS STATE V. FEDERAL INLAND
REVENUE SERVICE & A.G FEDERATION**
THE COURT'S DECISION

The recent judgement by Justice Stephen Dalyop Pam of the Federal High Court on the 9th day of August 2021 has made waves in the Nigerian Legal space. The Court ruled in this recent case that the constitution does not allow the Federal Government to make tax laws outside the taxation of incomes, profits, and capital gains.

This Decision was made following the determination of the issues brought by the Plaintiff, the Attorney General of Rivers State which include;

- i. whether the Federal Republic of Nigeria and the Federal Government of Nigeria are entitled to make laws for the purpose of taxation other than for taxation of incomes, profits and capital gains and if not whether the 1st Defendant is entitled to enforce and administer laws inconsistent with or in excess of the authority of the Federal Republic of Nigeria of the Federal Government of Nigeria to make laws?

- ii. Whether the power of the National Assembly to impose tax or duties on capital gains, incomes or profits of persons and on documents or transactions by way of stamp duties extends or includes the power to levy or impose any form of Sales Tax including Value Added Tax etc and whether the Federal Republic of Nigeria can delegate the power of collection of such taxes to any other person other than the government of a state or other authority of a state?

- iii. Whether the Taxes and levies (Approved List of Collection) Decree No.21 of 198, now Act in so far as it purports to legislate in respect of the responsibility for collection of taxes and levies, assessment and collection of taxes other than as provided for under item 58 and 59 of the Exclusive Legislative List,(Second Schedule Part 1) and items 7 and 8 of the Concurrent List (Second Schedule, Part 11), is not unconstitutional and void?

THE PLAINTIFF'S ARGUMENT

The Plaintiff (hereinafter referred to as the Attorney General of Rivers State) argued that the Federal Government can only make laws on demand, and collect duties and taxes in relation to the income, profits and capital gains and that the powers of the 1st Defendant (hereinafter referred to as Federal Inland and Revenue Services “FIRS”) is limited to the administration of such taxes only. The imposition of taxes such as Value Added Tax(VAT), withholding tax, education tax and technology tax by the Federal Government were ultra vires the constitutional powers of the Federal Government and thus null and void. The Attorney General of Rivers State further argued that even if in the exercise of its powers to impose any tax or duty on capital gains, incomes or profit of persons other than companies, and on documents or transactions by way of stamp duties, the Federal Government is not permitted to delegate its power to collect such tax or duty on any other person except the Government of the state or any other government authority.

THE 1ST DEFENDANT'S ARGUMENT

FIRS argued that a community reading of sections 4 (1 -4) (A) and (b), 315(1) (a), 318 (1) and items 62,67, and 68 of the second schedule, part 1 of the 1999 Constitution and Section 1,2 (a) part 3 (Supplemental and Interpretation) of the 1999 constitution, the National Assembly has the powers to enact legislations to cover all the referenced taxes in the originating summons. It further argued that the provisions of item 58 and 59 of the Second Schedule of the 1999 constitution cannot override the provisions of the 1999 constitution and that where there is a conflict between the schedule and the section of the 1999 constitution, the section of the 1999 constitution prevails. It also submitted that the Federal Government is constitutionally empowered to delegate to persons other than the State Government and State Government Authorities like individuals, enterprises, incorporated and unincorporated entities to be tax collecting and remitting agents. The VAT “FIRS” argued is centrally administered by the Federal Government through the FIRS in collaboration with the Nigerian Customs Services and various states Inland Revenue Services with about 50% of the accrued tax given to the states, 35 % to the local Government and a meagre 15 % to the Federal Government. FIRS argued that the Attorney General of Rivers State is a major beneficiary of the net VAT proceeds and should not be allowed by the Court to be approbating and reprobating at the same time.

THE 2ND DEFENDANT'S ARGUMENT

The Attorney General of the Federation argued that the Federal Government has not imposed any tax or levies beyond its constitutional powers and that the VAT, withholding tax, education tax and technology tax are within the legislative competence of the National Assembly. The Attorney General of the Federation further argued that by Items 58, 59, 67 and 68 of the Second Schedule, the National Assembly is given the wide powers to enact on Taxation. The Attorney General of the Federation also argued that the National Assembly has the power to delegate administer the referenced taxes even if it delegates such powers to the State Government or any other agency.

THE COURT'S DECISION

ISSUE 1

The Court after looking through sections 4 (1 -4) (A) and (b), 315(1) (a), 318 (1) and items 62,67, and 68 of the second schedule, part 1 of the 1999 Constitution and Section 1,2 (a) part 3 (Supplemental and Interpretation) of the 1999 constitution, stated that nowhere is the Federal Government given the powers to enact tax laws beyond the limit to cover all the referenced taxes captured above and in the Plaintiff's Originating summons. The Court rehashed the "Literal rule of Interpretation" that ordinary words are to be given their ordinary and literally meaning. The Provisions of Items 58 and 59 of Part 1 of the Second Schedule is that the Federal government is only empowered to enact laws in relation to stamp duties, taxation of incomes, profits and capital gains only and as such the provisions of this section must be read to exclude other specific taxes like VAT, withholding tax, education tax and technology tax. The Court resolved this issue in favor of the Attorney General of Rivers State.

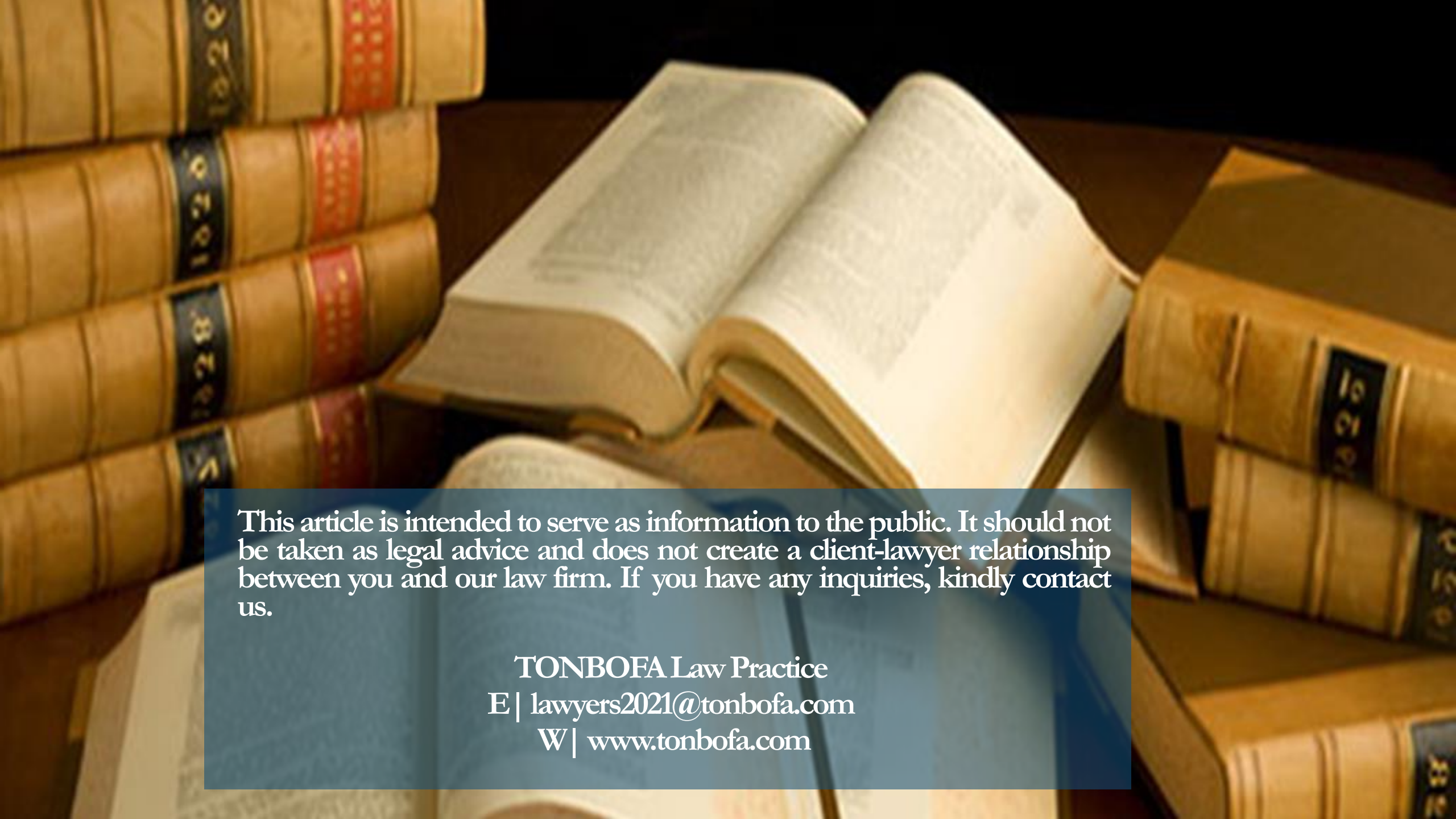
ISSUE 2

The Court stated that the provisions of Item 7 (a) & (b) of Part II Second Schedule are clear that it is not in the exercise of the National Assembly's powers to impose any tax outside capital gains, incomes or profits of persons other than companies; and transactions by way of stamp duties, that the National Assembly may provide for the collection or administration of the tax law shall be carried out by the Government of a state or other authority of the State. Subject to the conditions the National Assembly may prescribe. This provision does not empower the National Assembly to impose any form of sales tax including VAT outside those provided by the section.

ISSUE 3

Relying on the decided case of *Uyo Local Government Council v. Akwa Ibom State Government & Anor* (2020) LPELR-49691 (CA) where the court nullified the Taxes and Levied Act for being inconsistent with the provisions of the 1999 Constitution, following the doctrine of Judicial Precedent, the court stated that the Taxes and Levied Act is unconstitutional. Being unconstitutional, any Act or Levy provided for in the Act is automatically null and void, except such tax is provided for by the 1999 Constitution or any other law validly made by a competent legislature.

The Court resolved all issues in favor of the Attorney General of Rivers State.



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