# THE SUPREME COURT'S DECISION IN ATTORNEY GENERAL OF THE FEDERATION AND ATTORNEY GENERAL OF ABIA STATE & 35 OTHERS: APPRAISING THE FISCAL IMPLICATIONS OF LOCAL GOVERNMENT AUTONOMY


**Key Contacts**

**Oyeyemi Oke**
Partner
oyeyemi.oke@ao2law.com

**Chukwuemeka Ozuzu**
Senior Associate
chukwuemeka.ozuzu@ao2law.com

**David Akpeji**
Associate
david.akpeji@ao2law.com

**Abdulbaqi Jafaar**
Associate
abdulbaqi.jafaar@ao2law.com


## Background

For the past two decades, funds allocated to States of the Federation ("States") and Local Governments from the Federation Account are deposited into a joint account intended for both levels of government. According to Section 162 of the Constitution of the Federal Republic of Nigeria 1999 (the "Constitution"), each Local Government is supposed to receive its rightful share from this account. However, many State Governors have deviated from this system by either withholding these funds entirely or disbursing only a portion. This practice has caused significant hardship for citizens who are deprived of the benefits and services that democracy at the grassroots level should provide.

In addition to withholding funds, some State Governors have unconstitutionally removed democratically elected Local Government Chairmen and replaced them with "Caretaker Committee Chairmen" who are often more accountable to the Governors than to the local populace. This undermines democratic governance and severely disrupts the functioning of Local Governments. Consequently, many of Nigeria's 774 Local Governments have been rendered ineffective, failing to serve their communities and fulfill their intended roles.

## Synopsis of the Supreme Court's Decision

In a landmark decision delivered by the Supreme Court of Nigeria (the "Court") on July 11, 2024, in the case of *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors* (the "Decision"), the Court reinforced the autonomy of Local Governments in Nigeria, affirming their status as a distinct third tier of government. This significant judgment addressed crucial constitutional issues surrounding the financial independence of Local Governments.

The Decision arose from an Originating Summons filed by the Federal Government of Nigeria ("FGN") through the Attorney General of the Federation ("AGF"). The Originating Summons sought to determine several key questions, including whether it was constitutional for State Governors to withhold funds allocated to Local Governments from the Federation Account, and whether Local Governments are entitled to direct payments from the Federation Account given the persistent failure of State Governments to disburse these funds. The Decision upheld the principle that Local Governments are constitutionally entitled to receive their share of funds directly, reinforcing their financial autonomy and independent role within Nigeria's federal structure.

In its considered and purposive decision, the Court upheld the arguments presented by the AGF and concluded that:

a. the retention and use of funds allocated to Local Governments from the Federation Account by State Governments is both unconstitutional and illegal and contravenes the principles intended to ensure that these funds benefit the Local Governments directly;

b. the FGN has the authority to make direct payments of allocations to Local Governments from the Federation Account, but these payments can also be made through State Governments, provided that the funds are fully and promptly transferred to the Local Governments;

c. under Section 7(1) of the Constitution, Local Governments are recognized as the third tier of Government and the leadership of Local Governments must be independent and democratically elected.

In response to the Defendants' argument—presented by the Attorneys General of the States—that Section 162(5) of the Constitution mandates that funds from the Federation Account be paid to States for the benefit of Local Governments, the Court applied a purposive interpretation of this provision. The Court reasoned that the fundamental aim of the law is to ensure that funds allocated to Local Governments reach them. By applying the mischief rule of interpretation, the Court considered historical constitutional provisions that allowed direct payments to Local Governments from the Federation Account. It also noted that the shift in practice, as seen in the current Constitution, was intended to address logistical challenges and reduce the costs associated with Local Government officials traveling to Abuja for fund collection.

In light of its reasoning, the Court directed the FGN to ensure that funds allocated to Local Governments are paid directly into the accounts of democratically elected Local Government Councils. The Decision underscores the necessity of preserving the financial autonomy and operational effectiveness of Local Governments within Nigeria's federal structure.

## Fiscal Implications of the Decision for Local Governments

### A. Direct Payment from the Federal Account Allocation Committee ("FAAC")

The Revenue Mobilization Allocation and Fiscal Commission ("RMAFC") is the federal agency responsible for overseeing the revenues accruing to the Federation Account and ensuring their equitable distribution. RMAFC, through FAAC, manages the allocation of federal revenue to various levels of government. According to the Decision, RMAFC will now be responsible for directly distributing federal revenue to all 36 States and 774 Local Governments in Nigeria each month.

The Decision marks a significant shift with several important implications. First, the direct payment mechanism will reinforce government policies at the local level, allowing Local Governments to have greater control over their financial resources. This change is expected to foster the development of more effective structures within the Local Governments for managing and utilizing the funds allocated to them.

Additionally, the Decision will facilitate the delivery of essential services and infrastructure, such as healthcare and public utilities, directly benefiting local communities. By bypassing State Governments in the disbursement process, Local Governments will be better positioned to ensure that the benefits of federal allocations reach their intended recipients promptly and efficiently.

Furthermore, the Decision will reduce the reliance of Local Governments on State Governments, thus promoting greater financial autonomy. This shift is likely to enhance the operational independence of Local Governments, enabling them to function more effectively and respond more directly to the needs of their communities.

### B. Revenue Generation

As a distinct third tier of government, Local Governments are empowered to collect various types of taxes to fund their operations and provide services to their communities. The specific taxes that Local Governments are authorized to collect are detailed in Part III of the Schedule to the Taxes and Levies (Approved List for Collection) Act, LFN 2004. These include:

I. Shops and Kiosks Rates
II. Tenement Rates
III. Slaughter Slab Fees
IV. Marriage, Birth, and Death Registration Fees
V. Naming of Street Registration Fees
VI. Right of Occupancy Fees on Lands in Rural Areas
VII. Market Taxes and Levies
VIII. Motor Park Levies
IX. Wrong Parking Charges
X. Signboard and Advertisement Permit Fees, etc.

In light of the Decision, Local Governments will now have the authority to collect and manage these taxes independently, without having to remit them to State coffers. This newfound autonomy means that Local Governments can directly utilize the funds they generate to address local needs and implement community projects. Additionally, this change will reduce undue interference from State Governments, allowing Local Governments to operate with greater financial independence and efficiency. This increased control over revenue generation and expenditure will enable Local Governments to better serve their communities and enhance local development.

## What does the future hold on the actualization of "True Autonomy"?

With the Supreme Court Decision in the above case, the 774 Local Governments in Nigeria are now better positioned to enjoy the benefits of fiscal autonomy. This would allow the Local Governments to generate and manage their own revenue, which has the multiplier effect of enhancing their financial independence and reducing reliance on State allocations. That said, as laudable as the Decision clearly is, unless Local Governments urgently put in place clear-cut and functional mechanisms for the generation and management of their revenue, the actualization of true fiscal autonomy may remain a mirage. To that end, it may be useful for the Local Governments to entrench strengthened legal frameworks and governance policies in their practices and procedures to reduce the instances of abuse and ensure that the benefits of a truly fiscally autonomous third tier of government are attained. If Local Governments can effectively manage their finances, they would have strategically positioned themselves to effectively fulfill their constitutional responsibilities and improve the quality of life of their constituents.

Be that as it may, there still exists the lingering issue of how these Local Governments would repay any debts that may have accrued to various State Governments. In order not to stifle their new-found fiscal autonomy, it would be useful for the Local Governments that are indebted to their respective State Governments to devise pragmatic approaches to repay any debt owed to the State Government. To address the issue of owed funds, Local Governments may need to engage in negotiations with their respective State Governments to establish clear repayment schedules and mechanisms. This may entail the affected Local Governments authorizing the RMAFC to deduct a percentage of their monthly allocation as a first line charge and remitting same to the State Governments until the liquidation of the indebtedness of the affected Local Government. Furthermore, the indebted Local Governments may devise a collection mechanism wherein a percentage of the taxes and rates collected by the Local Governments are directly remitted to the coffers of the State Governments in satisfaction of their indebtedness to the State Governments.

It is also necessary to comment on the discontentment that some State Governments and interest groups have expressed with regard to the Decision. In Oyo State for example, the 33 Local Government Chairmen have withdrawn from the Association of Local Governments of Nigeria ("ALGON") in protest of the Decision[1]. This withdrawal from ALGON, is ostensibly in support of the Oyo State governor, Governor Seyi Makinde, who had previously rejected the Decision[2]. While it is conceded that it is within the realm of freedom of expression as enshrined in the Constitution, for individuals and interest groups to comment on the decisions of the courts, the stance of the 33 council chairmen of Oyo State in rejecting the Decision is a flagrant disregard to the Constitution. Rejecting the Decision undermines the lawful authority established by the Constitution. No Nigerian (whether as an individual or an association) has the prerogative to reject any decision of the Supreme Court of Nigeria. The decisions of the Court remain sacrosanct and final. This challenge of the Court's authority must be seen as an affront to the nation and resisted through all legal means. Allowing such actions to persist would set a dangerous precedent and jeopardize our progress in strengthening democratic institutions.

## Conclusion

Financial autonomy for Local Governments in Nigeria is crucial for enhancing their effectiveness and responsiveness to community needs. With greater control over their own revenue, Local Governments can better address local priorities and invest in essential services such as education, healthcare, and infrastructure. This autonomy enables them to

[1] https://dailypost.ng/2024/08/05/supreme-courts-verdict-oyo-council-chairmen-pull-out-of-algon/

[2] Makinde Dismisses Supreme Court's Judgment on Local Government Autonomy As 'Distraction' - Arise News

tailor their initiatives to the specific needs of their communities, fostering more targeted and impactful development efforts. By reducing dependence on Federal and State allocations through enhanced internally generated revenue, Local Governments can achieve a higher level of self-sufficiency and sustainability in their operations.

In conclusion, the move towards financial autonomy for Local Governments in Nigeria is not merely an administrative change but a vital step towards strengthening democratic governance and local development. By empowering Local Governments with the financial resources and authority to manage their own affairs, Nigeria can foster more resilient, responsive, and accountable local institutions. This will enhance the quality of public services, drive sustainable development, and promote greater citizen engagement and satisfaction in local governance.

Please do not treat the foregoing as legal advice as it only represents the public commentary views of the authors. All enquiries on this should please be directed at the key contacts