

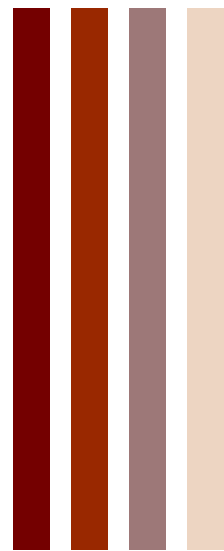
Regulation of  
**Lotteries**  
in **Nigeria**

Review of the Supreme Court's  
Decision and its Implications

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## Introduction

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In a landmark decision delivered on 22 November 2024, the Supreme Court nullified the National Lottery Act 2005 ('NLA'), which established the National Lottery Regulatory Commission ('NLRC') and granted it authority to regulate national lotteries in Nigeria. Prior to this decision, the NLRC's authority often overlapped with state-level regulatory frameworks, particularly Lagos State. The Supreme Court has now resolved this regulatory conflict, holding that the authority to regulate lotteries and games of chance lies exclusively with state governments.

This article explores the Supreme Court's decision and its practical implications and considerations for regulation of lotteries in Nigeria.

## A Historical Perspective: The Dual Regulatory Regime

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The NLA was enacted in March 2005 with the goal of regulating the operation and business of national lottery in Nigeria. The NLA established the NLRC to achieve this objective.<sup>1</sup> Further to this, the NLRC regulated the operation of national lotteries and issued licences which allow operation across Nigeria.

However, concurrently in some states, there existed state-level regulatory frameworks for lotteries, premised on the view that the regulation of lotteries is constitutionally within the preserve of the state governments to the exclusion of the federal government. These state-level regulatory frameworks existed prior to the enactment of the NLA, in Lagos, Akwa Ibom, Anambra, Cross River, Delta, Imo, Ogun, Ondo, Oyo and Rivers States.

Therefore, since the enactment of the NLA, the consequential dual regulatory regime created confusion for operators, who sometimes faced overlapping compliance obligations at both the federal and state levels.

## The Supreme Court's Decision in A.G. Lagos State & Ors v. A.G. Federation & Ors

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In 2008, Lagos State and some other states (the Plaintiffs) commenced Suit No: SC/1/2008 – A.G. Lagos State & Ors v. A.G. Federation & Ors (the 'Suit'), against the Attorney General of the Federation, the National Assembly and some other states (the Defendants).<sup>2</sup> The Suit challenged the constitutionality of the NLA and the validity of its continued applicability and enforcement.

The Plaintiffs' argument in the Suit was premised on the principles of federalism in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the 'Constitution'). The Constitution divides legislative powers between the federal and state governments through the Exclusive and Concurrent Legislative Lists.<sup>3</sup> The Exclusive Legislative List covers matters in respect of which the National Assembly has the power to make laws for the whole of Nigeria while the Concurrent Legislative List specifies matters in respect of which both the National Assembly and the Houses of Assembly of the respective states are concurrently empowered to make laws. All other matters not explicitly included in either the Exclusive or Concurrent Legislative Lists fall within the exclusive residual legislative authority of the states and beyond the National Assembly's jurisdiction, except in relation to the Federal Capital Territory.

Based on this, the Plaintiffs argued that since lotteries and related activities are absent from the Exclusive and Concurrent Legislative Lists, the National Assembly lacked the authority to legislate over same and acted beyond its jurisdiction in enacting the NLA. Consequently, the Plaintiffs sought the nullification of the NLA for being inconsistent with the Constitution. On their part, the Defendants contended that lottery is a facet of trade and commerce which is included under the Exclusive Legislative List,<sup>4</sup> as it involves the exchange of tickets and distribution of prizes across states, usually through electronic means which falls within the National Assembly's purview.

1. Section 7(a) of the NLA.

2. Subsequently, all other states of the federation were joined as parties to the suit.

3. Parts I and II of the Second Schedule to the Constitution.

4. Item 62 of the Exclusive Legislative List

Similarly, the Defendants argued that the federal government has a mandate to promote and enforce economic objectives, which the issuance of national licences aligns with.<sup>5</sup> The Defendants also explained that state-issued licences are inherently limited to their respective jurisdiction; whereas, the NLA governs activities more efficiently on a national level.

In a unanimous judgement delivered by a seven-member panel of the Supreme Court on 22 November 2024, the Court held that the National Assembly lacked the authority to legislate over lottery and games of chance, being outside the scope of the Exclusive and Concurrent Legislative Lists. In addition, the Court found that lottery does not fall within the definition of trade or commerce as contemplated by the Constitution, as it does not entail an assured exchange of value and is rather inherently speculative and risk-based. The Court also held that the economic activities referred to in the Constitution are intended to cover activities that are directly concerned with the production, distribution and exchange of tangible goods and services, which lottery and gaming activities do not constitute.

Consequently, the Court granted the Plaintiffs' reliefs, including the nullification of the NLA for being unconstitutional and declared that the states have the power to make laws to regulate and control the operation of lottery within their territories, to the exclusion of the federal government and the National Assembly.

## Practical Implications and Considerations for Regulation of Lotteries in Nigeria

The Supreme Court's decision resolved a long-standing regulatory conflict and grants exclusive authority to the state governments to regulate lotteries and games of chance in Nigeria. While the decision clarifies the regulatory authority for lottery and gaming in Nigeria, its impact extends beyond jurisdictional matters. The decision is set to have far-reaching implications on the actual regulation and operation of lottery and gaming in Nigeria. Below are the key effects of the decision:

### 1. State empowerment and localised regulation

The judgement empowers states to enact regulatory frameworks tailored to their local realities and socio-economic contexts. The localisation of lottery regulation should also allow for consumer protection measures tailored to local needs, enhancing oversight and addressing issues like underage gambling and fraud. However, due to the varying level of sophistication and administrative structure across the states, the implementation of local lottery laws may pose challenges in less capable states. Therefore, states will have to build institutional capacity, develop comprehensive legislation and establish strict enforcement mechanisms to give effect to the decision and derive benefits therefrom.

### 2. Increased complexity for operators

Decentralisation creates challenges for operators, who must now navigate diverse regulatory regimes across the various states in relation to licensing, varying fees/levies and compliance requirements. Inevitably, this will increase administrative burdens and impose additional operational costs for multi-state businesses. To this end, it would be helpful for states to collaborate towards harmonising certain aspects of their regulations to minimize fragmentation. This would make it easier for operators to comply with requirements in multiple jurisdictions and encourage consistency across the industry.

### 3. Practicality of regulating remote operations

Modern lottery and gaming companies heavily rely on technology to offer services remotely across multiple states. For example, an operator may be licensed in Lagos State but offer services remotely to customers across all other states in Nigeria leveraging technology and the internet. Indeed, this was one of the major advantages of the national licences issued by the NLRC under the NLA, as it enabled operators to function nationally under a single licence.

However, following the Supreme Court's decision, regulating businesses with remote operations may pose significant challenges for state regulators, operators, and third-party stakeholders like advertising platforms, which must ensure compliance with local laws before displaying ads.

5. Section 16 of the Constitution

A few critical questions arise - If an operator is physically based in one state but provides remote services to customers in other states, must it obtain licenses from each state where it has remote customers? How should regulation and compliance be approached for digital operations and advertisements in states where the operator has no physical presence or significant customer base? For example, would an operator be required to obtain a licence or comply with a state's laws simply because its digital ads are accessible to individuals in that state, or because it has a minimal number of customers there??

Addressing these complexities will require innovative solutions for effectively regulating operators offering remote services. As noted earlier, collaboration among states will be crucial to achieving success.

#### 4. Revenue diversification and opportunities for growth

The Supreme Court's decision enables states to fully tap into the revenue potential of the lottery and gaming sectors, creating significant opportunities for local economic growth. However, states must carefully balance regulation to avoid overregulation, which could stifle industry innovation and growth.

With the decentralized regulatory regime, operators will have to adjust to different state laws, which could engender innovation in their business models. States that take a strategic approach to regulation will not only drive industry growth but also open up new revenue streams and contribute to wider economic benefits. State collaboration could also help prevent operators from being charged duplicative licensing fees while ensuring that revenue is equitably distributed among the states.

#### 5. Retroactive Enforcement of Penalties

A significant challenge for operators and state regulators is the enforcement of penalties for non-compliance with existing state lottery and gaming laws. The Supreme Court's decision rendered the NLA ineffective, voiding any actions taken under its regime. In practice, many operators prioritized compliance with the NLA, overlooking state laws that prescribed penalties for non-compliance.

With the NLA now void, it remains uncertain whether states will attempt to impose penalties on businesses that previously operated without the required state licenses. For example, Lagos State has instructed all operators within its jurisdiction to immediately regularize their status or face prosecution. However, the scope of "regularization" is unclear—whether it simply requires obtaining the necessary permits moving forward or addressing compliance from the commencement of operations within the state.

## Conclusion

The Supreme Court's decision nullifying the NLA is a watershed moment for Nigeria's gaming industry. By decentralizing regulatory authority, the judgement reinforces the principles of constitutional federalism and strengthens the autonomy of state governments. In addition to resolving the erstwhile regulatory conflict between states and federal government, the decision presents significant opportunities for innovation, growth, and revenue generation for individual states. However, it also introduces challenges that must be addressed to ensure the industry's sustainability. State governments must rise to the occasion by developing comprehensive regulatory frameworks that strike a balance between economic development, business innovation and consumer protection. Meanwhile, operators should seek to adapt to the new regulatory environment by proactive engagement with regulators and implementing robust compliance mechanisms to meet the increased regulatory demands.

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