

IN THE FEDERAL HIGH COURT OF NIGERIA,
IN THE ABUJA JUDICIAL DIVISION,
HOLDEN AT ABUJA
ON THURSDAY, THE 5TH DAY OF FEBRUARY 2026
BEFORE HIS LORDSHIP, HON. JUSTICE R.N OFILI AJUMOGOBIA

SUIT NO: FHC/ABJ/CS/2022

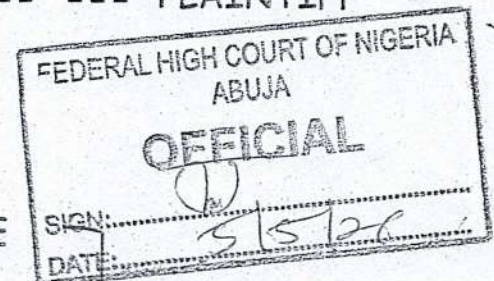
BETWEEN:

THE HON. ATTORNEY-GENERAL

OF THE FEDERATION

AND

=== === === PLAINTIFF



1. THE GOVERNMENT OF KATSINA STATE

2. THE HONOURABLE ATTORNEY GENERAL OF
KATSINA STATE

DEFENDANTS

JUDGMENT

The Plaintiff commenced this action vide an Originating Summons seeking the determination of the following questions:

1. Whether the National Assembly is not the rightful Legislative Authority to make Laws in respect of matters in the exclusive

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- legislative list as reflected in Part 1 of the Second Schedule of the 1999 Constitution?
2. Whether mining as listed in item 39 in Part 1 of the Second Schedule of the Constitution is not under the exclusive legislative purview of the National Assembly?
 3. Whether mining regulation and administration in Nigeria are not the sole responsibility of the Federal Government pursuant to Section 1 (1-3) of the Minerals and Mining Act, 2007?
 4. Whether the Executive Order 18, 2021 and the Katsina State (Designation of Mining & Quarry Land) Order 2021 is not ultra vires the powers of the Katsina State Governor, Alhaji Aminu Bello Masari to make?
 5. Whether the Executive Governor of Katsina State can rightly in law make an Executive Order purporting to actualize the provisions of the Minerals and Mining Act, 2007?
 6. Whether the prescription of fees and other charges to be paid to the State under the Katsina State Executive Order 18, Katsina State (Designation of Mining and Quarry Land) does not amount to double taxation?
 7. Whether the Katsina State Government for all intents and purposes in law can prosecute any person on issues related to Mining in Nigeria?

Upon the determination of the foregoing questions, the Plaintiff sought the following reliefs:

1. A Declaration of this Honourable Court that it is only the National Assembly that has the Legislative Authority to make laws on items listed under the Exclusive Legislative List.
2. A Declaration of this Honourable Court that mining as an item 39 of Part 1 of the Second Schedule of the 1999 Constitution is solely under the Legislative competence of the National Assembly.
3. A Declaration of this Honourable Court that the Minerals and Mining Act, 2007 is the appropriate Law that Regulates Mining in Nigeria.
4. A Declaration of this Honourable Court that pursuant to Section 1(1-3) of the Minerals and Mining Act, the entire property and control of all mineral resources in, under or upon any land in Nigeria is vested in the government of the federation for & on behalf of the people of Nigeria.
5. A Declaration of this Honourable Court that the Katsina State Government lacks the power to issue any Executive Order regulating the activities in the mining sector in Nigeria under any guise whatsoever.
6. A Declaration of this Honourable Court that the Executive Order 18, Katsina State (Designation of Mining and Quarry

Land) 2021 is an intrusion into the Legislative powers of the National assembly and thus, in breach of Section 4(3) of the 1999 Constitution.

7. A Declaration of this Honourable Court that all funds charged as fees and other charges by Katsina State Government should be paid into the consolidated revenue account of the federal government or any such designated account for that purpose.
8. An Order of this Honourable Court nullifying the entire provisions of the Executive Order 18 of Katsina State (Designation of Mining and Quarry Land) 2021 for being ultra vires the powers of the Executive Governor of Katsina State and inconsistent with Section 4(2) of the extant provisions of the 1999 Constitution.
9. An Order of Perpetual Injunction of this Honourable Court restraining the Defendants from further enforcing, implementing, or giving effect whatsoever to the provisions of Executive Order 19, Katsina State (Designation of Mining and Quarry land) 2021 nor making any other similar orders as it relates to mining in Nigeria.
10. And such further or other orders of this Honourable Court can deem fit to make in the circumstances.

The Plaintiff's Originating Summons is supported by a 29 paragraph affidavit deposed to by one Uche Haraachi, a Litigation Officer in the

In addressing Issue One, Counsel for the Plaintiff began by asserting the supremacy of the Constitution of the Federal Republic of Nigeria. Emphasizing that the Constitution is the grundnorm the foundational law upon which all other laws derive their validity, he referred me to the case of *Umaru & Anor v. Nggilari & Ors* (2015) LPELR-25612 (CA).

The Plaintiff further relied on the doctrine of separation of powers, highlighting the distinct roles assigned to the Executive, Legislative, and Judicial arms of government. It is the Plaintiff's firm contention that Executive Order No. 18 of 2021 and the Katsina State (Designation of Mining and Quarry Land) Order 2021, issued by the Defendants, constitute an unlawful encroachment upon the legislative powers of the National Assembly, as well as the statutory duties of the Federal Ministry of Mines and Steel Development.

Specifically, the Plaintiff argued that the subject matter of mining falls squarely within the exclusive legislative competence of the National Assembly under Item 39 of Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and is governed by the provisions of the Minerals and Mining Act, 2007. Accordingly, the Plaintiff submitted that the Defendants' actions amount to an unconstitutional usurpation of powers reserved for the Federal Government and its agencies.

Learned Counsel further addressed the Court on the nature and legal character of Executive Orders. While acknowledging that there is no universally accepted or codified definition of an Executive Order, Counsel referred this Honourable Court to the opinion of Mayers, an

American author, who defined an Executive Order as a "Presidential directive that requires or authorizes some action within the executive branch."

Building on this position, the Plaintiff submitted that an Executive Order must derive its legitimacy from powers lawfully exercisable by the authority issuing it. In other words, such an Order must be rooted in existing statutory or constitutional authority and can only be valid where it seeks to implement or operationalize a power that the issuing body is legally empowered to exercise. The Plaintiff therefore contended that Executive Orders cannot create new powers or override the functions and competencies assigned to other arms or tiers of government under the law.

On the foregoing premise, learned Counsel forcefully argued that Executive Order No. 18 of 2021 and the Katsina State (Designation of Mining and Quarry Land) Order 2021 are incompetent and legally unsustainable, having no foundation in law. Counsel submitted that the subject matter of the said Orders does not fall within the legislative competence of the Katsina State House of Assembly, nor within the executive powers of the Governor of Katsina State, as prescribed by the Constitution.

Accordingly, it was the Plaintiff's firm position that the Orders are ultra vires, having been issued without lawful authority, and are therefore null and void for want of legal backing. The court was referred to the case of *INEC v. Musa* (2003) 3 NWLR (Pt. 806) P 72 at 157 para. E.

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The Plaintiff further contended that the actions of the 1st Defendant amount to a violation of the constitutional principle of federalism, by seeking to issue an Executive Order in respect of a matter that is exclusively within the legislative domain of the Federal Government. Specifically, the Plaintiff argued that mining is a matter reserved under the Exclusive Legislative List, and as such, falls solely within the competence of the National Assembly. The Plaintiff referred the court to Section 1 of the Minerals and Mining Act, 2007

Learned Counsel for the Plaintiff also challenged the validity of the Executive Order on the ground that it constitutes an unlawful duplication of the provisions of the Minerals and Mining Act, 2007. In advancing this argument, Counsel submitted that Sections 1 to 12 of the Katsina State Executive Order 18 of 2021 effectively replicate the responsibilities already vested in the Minister of Mines and Steel Development under Section 4 of the Minerals and Mining Act, 2007.

It is the Plaintiff's contention that Sections 17 and 18 of the Katsina State (Designation of Mining & Quarry Land) Order 2021 impose additional financial obligations on quarry operators, thereby resulting in double taxation in respect of matters already regulated under the Minerals and Mining Act. He further contended that Section 14 of Executive Order 18 of 2021 is inconsistent with the Minerals and Mining Act, 2007, and that the Governor lacked the requisite constitutional and statutory authority to issue the said Order, rendering it unlawful, and liable to be struck out. On the strength of

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the above, the Plaintiff urged this Honourable Court to resolve issue one in its favour.

Learned counsel further submitted that the reliefs sought were declaratory and that the Plaintiff had satisfied all the settled legal conditions for the grant of such reliefs. In support of this position, Counsel relied on the decision in *Central Bank of Nigeria v. Jacob Oladele Amao & 2 Ors.* (2011) Vol. 201 LRCN.

He argued that the suit raised substantial and live constitutional issues, including an alleged breach of the Constitution and an unlawful encroachment on Federal powers by the Katsina State Governor through Executive Order 18 of 2021. Counsel contended that the Plaintiff had established a clear legal right, demonstrated an existing breach. He therefore urged the Court to accordingly, grant the injunctive reliefs sought to restrain the Defendants from further enforcing or acting upon the impugned Executive Order.

Learned Senior Counsel for the Defendants, in response to the Plaintiff's submissions, adopted the issues for determination as formulated by the Plaintiff in its Written Address opposing the Plaintiff's Originating Summons.

In addressing issue one, the Defendants, as a preliminary point, contended that Katsina State Executive Order No. 18 does not constitute a law in the strict legal sense. Consequently, Learned Counsel submitted that the Plaintiff's invocation of the doctrine of

separation of powers is fundamentally misconceived and irrelevant to the proper determination of the instant suit.

On the substantive aspect of the issue, the Defendants' principal contention is that the Plaintiff, having conceded that the Governor of Katsina State is empowered under the Constitution and relevant statutes to issue Executive Orders, cannot validly challenge the issuance of Executive Order No. 18.

Learned Counsel for the Defendants argued that the said Executive Order was made pursuant to the powers conferred on the Governor by Section 3 of the Land Use Act, Cap L5, Laws of the Federation of Nigeria, 2004 (originally enacted as the Land Use Act, 1978).

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Counsel submitted that Executive Order No. 18, having been duly published in the Katsina State Gazette and made in exercise of the powers conferred by the Land Use Act, is valid and binding. The Defendants urged the Court to uphold the Order as a lawful administrative instrument issued within the ambit of the Governor's statutory mandate. In support of this position, Counsel referred to the provision of Section 3 of the Land Use Act.

It was accordingly argued by the Learned Senior Counsel to the Defendants that Executive Order No. 18, having been published in the State Gazette and made within the contemplation of the powers vested in the Governor under the Land Use Act, is a valid and enforceable

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directive, and does not offend the principle of separation of powers or any provision of the Constitution.

Relying heavily on the Land Use Act, 1978, and the Supreme Court decision in *Abioye v. Yakubu* (1991) 5 NWLR (Pt. 190) 130, the Defendants submit that all land in Katsina State is vested in the Governor, who holds radical title as trustee for the people and enjoys wide powers of control, management, designation, compensation, and revocation of rights of occupancy for mining purposes. They maintained that, in exercising these powers, the Governor was not acting as a delegate of the Federal Minister of Mines and Steel Development, but in his own right under the law.

The Defendants further contended that the combined provisions of Section 3 of the Minerals and Mining Act, 2007 and Section 3 of the Land Use Act, empower the Governor of Katsina State to issue an Executive Order delineating specific areas within the various Local Government Areas of the State where mining activities may be permitted.

Learned Senior Counsel for the Defendants acknowledged the statutory priority accorded to the use of land for mining purposes under Section 22 of the Minerals and Mining Act, 2007, but contended that the section mandates the Governor of a State within the Federation to revoke any existing right of occupancy or certificate of occupancy over land within the State, within sixty (60) days of the grant of a small-scale mining lease, mining lease, or quarry lease affecting such land.

The Defendants maintain that Section 22 of the Minerals and Mining Act, 2007 vests exclusive authority in the Governor of Katsina State to revoke any existing right of occupancy over land designated for mining activities. They argued that this revocatory power is solely exercisable by the Governor and does not require the involvement or concurrence of the Minister of Mines and Steel Development.

The Defendants further contended that their issuance of prescribed consent forms is in accordance with Section 100 of the Minerals and Mining Act, 2007 and forms falls squarely within their statutory mandate.

In response to the Plaintiff's assertion that Sections 1 to 12 of the Executive Order amount to a duplication of Section 4 of the Minerals and Mining Act, 2007, the Defendants argued that the said provisions merely seek to complement and collaborate with the functions of the Minister of Mines and Steel Development towards ensuring a harmonious relationship among all stakeholders in the mining sector within Katsina State.

The Defendants also briefly raised the issue of non-compliance with a condition precedent, as stipulated under Section 141(1) of the Minerals and Mining Act, 2007, which mandates that disputes between mineral title holders and the government must first be subjected to amicable

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settlement. It is only upon the failure of such efforts that recourse may be had to a Court of Law.

On issue 2, Learned counsel argued that the Plaintiff was not entitled to the declaratory reliefs sought, as such reliefs are granted only upon the establishment of a strong and cogent case supported by credible evidence. Relying on *Akinbade v. Babatunde* (2018) 7 NWLR (Pt. 1618) 366, counsel submitted that declaratory reliefs are not granted as of course and that the burden lies squarely on the Plaintiff to prove entitlement.

Counsel contended that the Plaintiff merely made bare assertions in its affidavit such as alleged complaints by investors and purported loss of investments arising from Executive Order 18 of 2021 without adducing any evidence to substantiate those claims. He submitted that unproven averments do not constitute proof under Sections 135-140 of the Evidence Act, and that pleadings unsupported by evidence must fail. On this basis, counsel urged the Court to dismiss the Plaintiff's claims in their entirety for want of merit.

RESOLUTION

Having carefully examined the originating process, affidavits, written addresses, and issues formulated and adopted by learned counsel for the respective parties, I am mindful of the settled principle of law that a court is not bound by the issues as framed by the parties. The court possesses the inherent jurisdiction to reframe or reformulate issues where such an exercise will bring the real questions in controversy into sharper focus and ensure a just and effective

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determination of the dispute. See *Okwuosa v. Obiora* (2009) 9 NWLR (Pt. 1147) 593.

In the exercise of that power, and having due regard to the nature of the claims before the Court as well as the arguments canvassed by learned counsel, I am of the considered view that the entire dispute in this suit can be conveniently and conclusively resolved by the determination of a single, overarching issue, to wit:

"Whether, having regard to the facts and circumstances of this suit, the Plaintiff is entitled to the declaratory and injunctive reliefs sought."

The resolution of this issue necessarily entails an examination of the constitutional and statutory competence of the Defendants to issue and enforce Executive Order No. 18 of 2021 and the Katsina State (Designation of Mining and Quarry Land) Order, 2021.

This Court must commence its consideration of the issue with the supremacy of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). By virtue of Section 1(1) and (3) thereof, the Constitution is supreme, and its provisions shall prevail over all other laws, policies, acts, or instruments. Any law or executive act that is inconsistent with the provisions of the Constitution is void to the extent of its inconsistency. This principle is elementary and firmly

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settled in our jurisprudence.. See *Igbinedion v. E.S.B.i.R* (2017) 13 NWLR (Pt. 1583) 503, *Kanawa v. Maikaset* (2007) 10 NWLR (Pt. 1042).

Mining is expressly provided for under Item 39, Part I of the Second Schedule to the Constitution and is firmly situated on the Exclusive Legislative List. The legal implication of this constitutional allocation is clear and unambiguous: legislative authority over mines and minerals is vested exclusively in the National Assembly, to the complete exclusion of State Houses of Assembly.

This exclusivity is further reinforced by Section 44(3) of the Constitution, which vests the ownership and control of all minerals, mineral oils, and natural gas in, under, or upon any land in Nigeria in the Federal Government. In furtherance of this constitutional mandate, the National Assembly enacted the Minerals and Mining Act, 2007, which establishes a comprehensive legal and regulatory framework for mining operations in Nigeria. Sections 1(1)-(3) and 4 of the Act vest the control, administration, and regulation of mineral resources in the Federal Government, acting through the Minister of Mines and Steel Development.

It is against this constitutional and statutory background that Executive Order No. 18 of 2021 must be examined. Although the Defendants have characterised the instrument as a mere administrative or land-use directive, a careful examination of the

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provisions of Executive Order No. 18 of 2021 reveals that the Order goes far beyond the mere designation of land. It prescribes procedures, supervisory mechanisms, and regulatory controls governing mining and quarrying activities within Katsina State. In substance and effect, therefore, the Order purports to regulate mining operations in Katsina State, a subject matter constitutionally reserved exclusively for the Federal Government.

In effect, the Executive Order establishes a parallel regulatory regime in respect of mining activities one that operates alongside, and indeed competes with, the Minerals and Mining Act. Such an arrangement is constitutionally impermissible. By duplicating, qualifying, or supplementing the powers vested exclusively in the Minister under Section 4 of the Minerals and Mining Act, the Executive Order offends the doctrine of covering the field. As explained in *C. G. de Geophysique v. Etuk* (2004) 1 NWLR (Pt. 853) 20, the doctrine precludes any subordinate authority from enacting or enforcing laws or policies in an area where the National Assembly has enacted a comprehensive and exhaustive regulatory framework.

The Defendants' reliance on Section 3 of the Land Use Act is equally misconceived. While it is correct that a Governor holds land within the State in trust for the use and common benefit of the people, such trusteeship is neither absolute nor unfettered. The Land Use Act itself is subject to the Constitution, and the powers conferred on a Governor thereunder must be exercised in conformity with valid Federal legislation.



Where land is required for mining purposes, the applicable and overriding legal regime is the Minerals and Mining Act. Accordingly, the Land Use Act cannot be invoked as a backdoor means of conferring regulatory authority on States in respect of mining activities I so hold.

Furthermore, Section 22 of the Minerals and Mining Act, which obliges a Governor to revoke existing rights of occupancy upon the grant of a mining title, does not confer any regulatory or supervisory authority on the State. Rather, it imposes a mandatory administrative obligation designed solely to give effect to Federally issued mining titles. It cannot, by any stretch of interpretation, be construed as authorizing States to independently regulate mining operations or impose additional conditions outside the Federal framework. This Court therefore holds that Executive Order No. 18 of 2021 and the Katsina State (Designation of Mining and Quarry Land) Order, 2021 amount to an unconstitutional usurpation of Federal Legislative and Executive powers. They are ultra vires the powers of the Governor, inconsistent with the Constitution and the Minerals and Mining Act, and consequently null and void. See *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72.

The law is firmly settled that a claimant seeking declaratory reliefs must succeed on the strength of its own case. See *Dumez Nig. Ltd v. Nwakhoba* (2008) 18 NWLR (Pt. 1119) 361.

In the present case, the Plaintiff has clearly demonstrated that mining falls within the exclusive legislative and administrative competence of the Federal Government and that the impugned Executive Order constitutes a direct, continuing, and unlawful encroachment upon that competence. The continued enforcement of the Order poses a real and substantial threat to the constitutional allocation of powers and undermines the supremacy of Federal Legislation in a matter reserved exclusively for the National Assembly.

The Defendants' objection founded on Section 141(1) of the Minerals and Mining Act is without merit. That provision contemplates private or commercial disputes between mineral title holders and government agencies. It does not extend to actions challenging the constitutionality or vires of a state instrument. Constitutional questions are matters of public law and are not subject to mandatory pre-litigation settlement.

Having found that the Executive Order is unconstitutional and void, this Court is under a constitutional duty to grant the declaratory and injunctive reliefs sought in order to arrest further violations of the Constitution and to preserve the Federal structure ordained therein.

I answer the questions submitted for determination as follows:

Question 1: Yes, the National Assembly is the rightful Legislative Authority to make Laws in respect of matters in the exclusive legislative list as reflected in Part 1 of the Second Schedule of the 1999 Constitution.

Question 2: Yes, mining as listed in item 39 in Part 1 of the Second Schedule of the Constitution is under the exclusive legislative purview of the National Assembly.

Question 3: Yes, mining regulation and administration in Nigeria are the sole responsibility of the Federal Government pursuant to Section 1 (1-3) of the Minerals and Mining Act, 2007.

Question 4: Yes, the Executive Order 18, 2021 and the Katsina State (Designation of Mining & Quarry Land) Order 2021 is ultra vires the powers of the Katsina State Governor, Alhaji Aminu Bello Masari to make.

Question 5: Yes, the Executive Governor of Katsina State can rightly in law make an Executive Order purporting to actualize the provisions of the Minerals and Mining Act, 2007.

Question 6: Yes, the prescription of fees and other charges to be paid to the State under the Katsina State Executive Order 18, Katsina State (Designation of Mining and Quarry Land) does amount to double taxation.

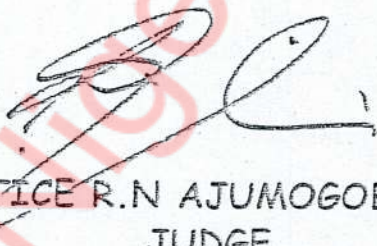
Question 7: No, the Katsina State Government for all intents and purposes in law can prosecute any person on issues related to Mining in Nigeria.

For all the reasons given above, I hereby declare and make the following orders jointly and severally against the Defendants:

1. It is hereby declared that only the National Assembly that has the Legislative Authority to make laws on items listed under the Exclusive Legislative List.
2. It is further declared that mining as an item 39 of Part 1 of the Second Schedule of the 1999 Constitution is solely under the Legislative competence of the National Assembly.
3. It is hereby declared that the Minerals and Mining Act, 2007 is the appropriate Law that Regulates Mining in Nigeria.
4. It is also declared that pursuant to Section 1(1-3) of the Minerals and Mining Act, the entire property and control of all mineral resources in, under or upon any land in Nigeria is vested in the government of the federation for & on behalf of the people of Nigeria.
5. It is hereby declared that the Katsina State Government lacks the power to issue any Executive Order regulating the activities in the mining sector in Nigeria under any guise whatsoever.
6. It is hereby declared that the Executive Order 18, Katsina State (Designation of Mining and Quarry Land) 2021 is an intrusion into the Legislative powers of the National assembly and thus, in breach of Section 4(3) of the 1999 Constitution.
7. It is further declared that all funds charged as fees and other charges by Katsina State Government should be paid into the consolidated revenue account of the Federal Government or any such designated account for that purpose.

8. An order is hereby made nullifying the entire provisions of the Executive Order 18 of Katsina State (Designation of Mining and Quarry Land) 2021 for being ultra vires the powers of the Executive Governor of Katsina State and inconsistent with Section 4(2) of the extant provisions of the 1999 Constitution.
9. An order of perpetual injunction is hereby granted restraining the Defendants from further enforcing, implementing, or giving effect whatsoever to the provisions of Executive Order 19, Katsina State (Designation of Mining and Quarry land) 2021 nor making any other similar orders as it relates to mining in Nigeria.

This is my Judgment as delivered in the Open Court.



HON. JUSTICE R.N AJUMOGOBIA (FCI.Arb)
JUDGE

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APPEARANCES

Ngosoo Uchegbu for the Plaintiff

Abdul Mohammed SAN with Khalifa I. Shuaibu, Abusufyanu Abubakar
and M.O Anteyi for the Defendants

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