

The Legal Significance and Framework for the Registration of Births and Deaths in Nigeria

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Abstract: This paper is essentially about the legal regime on and the authority empowered to register births and deaths in Nigeria. However, and in order to appreciate the depth and importance of its theme, the paper as a prelude discusses some of the significance of the registration of births and deaths in the country. Specifically, it discusses the significance of the biological age of a person viz-a-viz retirement from public service and court proceedings. The paper then opines that there is a discordant among some provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which has led to the usurpation of the functions of the Local Government Councils by the National Population Commission in relation to the power of registration of births and deaths and concludes by positing that because of the significance of the registration of births and deaths as enunciated in the paper, the power to register same should reside in a single authority. The doctrinal research methodology was adopted in the writing of this paper.

Introduction

Registration of births and deaths provide necessary statistics for planning and policy formulation in a country. The collation of this statistical data becomes more clinical where there is a constantly updated record of births and deaths in the country. This is because conscientious planning cannot be subjective as same should be based on the availability of reliable data.

As evidence of the registration of births or deaths, a certificate is issued and this is commonly required in various spheres of human activities. For example, a birth certificate may be required for the enrollment of a child in school to ascertain whether he or she is of the required enrollment age or for documentation purposes and a Death Certificate is one of the documents required in processing Probate and Letters of Administration of Estates.² It is also required in the processing of death benefits of deceased persons by their next-of-kin.

This importance of vital statistics vis-à-vis the registration of births and deaths to National Planning is aptly captured by the Editorial of the Guardian Newspaper³ thus:

However, the advantages far outweigh the perceived challenges, for as the NPC boss stated: “Vital statistics provide government with information on measure, trend/patterns of fertility and mortality, data on education, health, social security, insurance, etc. All help in policy interventions to improve the quality and standard of life of the citizenry.” Despite the benefits of civic registration to a well-run polity, it is saddening that in this age of rapid dissemination of, and seamless barriers to information, Nigeria still wobbles in the management of vital statistics.

The theme of this paper will be discussed in relation to retirement from public service, court proceedings and the legal framework for the registration of births and deaths.

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² See for example Order 64 Rule II Sub Rule 25(2) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rule, 2018, which provides: “Upon the death of a testator any person may request for the opening of the Will by an application to the Probate Registrar supported with a death certificate”. The theme of this discourse also has a bearing on whom may be termed a citizen by birth of Nigeria. The Constitution of Nigeria 1999 (as amended) provides for persons that are citizens of Nigeria by birth. They are: Every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria. Provided that a person shall not become a citizen of Nigeria in this instance if neither of his parents nor any of his grandparents was born in Nigeria; Every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria and every person born outside Nigeria either of whose parents is a citizen of Nigeria. The Constitution reiterates the fact that the date of independence of Nigeria in relation to this provision is 1st day of October 1960. See Section 25(1) (a) – (c) and (2) CFRN, 1999.

³ Editorial, ‘Low Birth and Death Registration’, *The Guardian* (Lagos, Tuesday, 18 November, 2014) 20

The Significance of the Date of Birth of A Person and His Biological Age

There is a direct nexus between the date of birth of a person and his biological age as the registration of his birth as evidenced by a birth certificate is a proof of his age at any material time.

The age of a person at any given time determines whether he is a child or a minor which entitles or disentitles him to some privileges or advantages.

The age at which a person may be considered a child does not have a universal definition for all time, seasons and purposes. Age in this context would depend on the definition ascribed to it by a local legislation or under the received English law applicable to any issue, crime or transaction in which age is central. Akintola and Taiwo capture this point thus:

For the purposes of the Children and Young Persons' Act of England 1933, a child is a person under the age of fourteen(14) years. Similarly, under the Children and Young Persons Law, Laws of Oyo State, a child is a person under the age of fourteen (14) years. However, under the Children Act, 1975 and Adoption Law, 1976, a child is a person under the age of eighteen (18) years. The United Nations' Convention on the Rights of the Child defines as a child, any human being below the age of eighteen(18) years unless under the law applicable to the child, majority is attained earlier. Similarly in Nigeria, various Electoral laws fix the voting age at 18 years. But the Nigerian Labour Act considers as a child, any person below fifteen years of age.⁴

The Child Rights Act, 2003, for example, contains provisions detailing what age the law considers a person a minor. Among other provisions, it provides that no person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever.⁵ The Act also forbids a parent, guardian or any other person from betrothing a child to any person.⁶ A person who marries a child, to whom a child is betrothed, or who promotes the marriage of a child, or who betroths a child, commits an offence and is liable on conviction to a fine of N500,000: or imprisonment for a term of five years or to both such fine and imprisonment.⁷

A person who has not yet attained majority is referred to as a Minor. Contracts entered into by Minors are usually not enforceable against them until it is ratified by them upon attaining the age of majority. The age of majority confers on an individual generally the right to administer his affairs and the entitlement to certain rights like the right to vote, marry, to be issued with a Driver's License etc. On the flip side, he also loses some immunities which he hitherto enjoyed as a minor. For example, he could be sentenced to a term of imprisonment if he commits and is convicted of an offence.

It is to this latter issue of trial and conviction for offences committed by minors and the relevance of age in civil cases that this discourse now turns.

Age in Relation to Court Proceedings

The discourse here would be treated under two heads viz: Criminal and Civil cases.

a. Criminal Cases.

In Criminal cases, some principles of law in relation to age have been laid down by a plethora of judicial authorities. For example, in *Guobadia v The State*,⁸ it was held that:

where the age of the accused person is material for the purpose of conviction or relevant in the determination of the nature of the sentence and evidence of such age is not conclusive, the trial judge is obliged to make due inquiry as to the age of that person by taking evidence of such age. Where there is evidence before the trial judge that the appellant was 17 years old at the time of commission of the offence, the need to resolve the issue of appellant's age no longer arises. There

⁴ Akintola & Taiwo, *The Nigerian Woman and her Child: The remaining challenges*(Demyaxs Books. Ltd, Ibadan 2004) 17-18

⁵ Child Rights Act 2003 s.21

⁶ Child Rights Act 2003 s.22(1) – (2)

⁷ Child Rights Act 2003 s.23

⁸(2004) 2 SCNJ 55 at 69, the appellant was tried in the Edo State High Court on a charge alleging the murder of his 2-year old half-sister whose death he caused by hitting her with a machet while she was sleeping in their family house on 5/2/87. She died the same day shortly after the incident while she was being rushed to the hospital.

was on the evidence available in this case a discrepancy as to the true age of the appellant. This ought to have prompted the learned trial judge to conduct an enquiry to ascertain the actual age of the appellant at the material time as envisaged by section 208 of the Criminal Procedure Law. The doubt is resolved in favour of the appellant.

In *Modupe v The State*⁹, the appellant, who was charged with murder, was tried and convicted along with two others, in the Ondo State High Court. The learned trial judge, having found him guilty sentenced him to death. The appellant appealed to the Court of Appeal, against the sentence. The appeal was however dismissed, and the appellant, aggrieved by this decision, further appealed to the Supreme Court. The appellant filed only one ground of appeal, the Omnibus ground, that the decision was altogether unwarranted, unreasonable, and cannot be supported, having regard to evidence. At the hearing of the appeal, the appellant contended inter-alia that the learned trial judge erred in rejecting the evidence adduced in court, which was un-contradicted, as the appellant's age, and substituting his own estimation of the appellant's age. It was also contended that the Court of Appeal erred in upholding the trial court's death sentence on the appellant. The evidence before the trial court, was that the accused was born on November 3rd 1967, and at the time of trial, he was 18 years old. The murder for which the accused was charged was committed two years earlier, on the 20th December 1983. There was no evidence adduced to contradict the appellant's evidence on oath. No due enquiry was made to ascertain the appellant's age, neither was any medical aid called to determine the age of the appellant. The learned trial judge merely relied on his own estimation of the age of the appellant, and therefore sentenced him to death. It was held that:

[A] trial court which had the opportunity of seeing the witness, hearing them and watching their demeanour, enjoys the special privilege of believing or disbelieving their evidence. But belief or disbelief only becomes an issue when and only when there are two conflicting versions of an essential fact. When there is only one version of an essential fact, and that version is patently and obviously improbable, a trial court is left without any option than to believe that which has not been controverted or contradicted in any way. To reject the positive assertion by the appellant that he was born on 3rd November 1967 without any contrary evidence at all – either in cross-examination or in rebuttal is much more than the court is allowed to do.

The Supreme Court further held that:

A statement of an appellant, made to the police, is not proof of the age of the appellant. It suffers from a radical defect, as the portion giving the age of the appellant is probably written by the recording police officer, before the words of caution. The entry of the appellant's age as 20 years is not therefore part of the statement of the appellant. It would have been wrong of the learned trial judge to have used it to contradict the appellant's direct, positive and un-contradicted oral evidence as to his age.

In *Ode v The State*¹⁰, it was held that once the learned trial judge found on the basis of the evidence of the accused, her father and the medical doctor, that she was below the age of 17 at the material time, he should not have continued her trial as an accused person, but should have thereafter treated her as a young person under the Children and Young Persons Law Cap.21 Laws of Northern States of Nigeria 1963. That on the ground of her non-age, she could not in any case be convicted of murder.

⁹(1988) N.S.C.C (pt. II) 437

¹⁰ (1974) ALL NLR 900 at 905 to 906. The appellant was charged and convicted by a Makurdi High Court with the murder of her child contrary to S.221 Penal Code. Accused was alleged by the prosecution to have delivered a child in a bathroom. On the day in question, three women were sitting outside the entrance of the house when they heard the crying of a child and one of them went inside to check if it was her sleeping child but found that it was not so.

In *R v Bangaza*¹¹, the court in the case applied section 368(3) of the Criminal Procedure Act (CPA) and came to the conclusion that the age at the time of conviction was the deciding factor. If it can be proved that the offender was below the age of 17 then the capital punishment would not be carried out.

Likewise, in *Commissioner of The Colony v Olufemi Jones*¹², the Juvenile Court, Lagos, committed one Adepeju Akanke, a child, to the care of Simbiatu Ashake by means of a corrective order made under section 25(2)(a)(ii) of the Children and Young Persons Ordinance, 1943, and made an order under section 27 for payment by the appellant, who was the father of the child, of contributions towards the maintenance of the child. The appellant sought to appeal. It was held per Baker, Senior Puisne Judge that there was no right of appeal against such order.

In any proceeding in which a child who has not attained the age of 14 years is called as a witness, such child shall not be sworn and shall give evidence otherwise than on oath or affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth.¹³ A child who has attained the age of 14 years shall, subject to sections 175 and 208 of the Evidence Act, 2011 give sworn evidence in all cases.¹⁴ In *Sambo v State*¹⁵, the Supreme Court of Nigeria held that by virtue of sections 180 and 183 of the Evidence Act, Cap. 112, LFN, 1990 (now sections 205 and 209 of the Evidence Act, 2011), the Court before receiving the evidence of a child must be satisfied that the child: (a) Understands the nature of the oath; (b) Knows the duty of telling the truth as well as the consequence of telling a lie; and possess sufficient intelligence to be able to understand the questions put to him to satisfy the reception of his evidence. In taking evidence of a child on oath, it is not only necessary for the trial court to state on the record of proceedings the conclusion as to whether the child knows the nature of an oath, or possess enough intelligence to give rational answers to questions put to him before receiving the evidence of a child, the trial court must also state in its record how it came to the conclusion.

Aguda on this issue opines that:

Where it is essential for the age of a person to be proved for purposes of proving a criminal offence, evidence of the mother or of the father or of a person who was present at his birth is essential, but expert evidence may also be held sufficient in the absence of such other evidence. Similar evidence will also be required in civil cases where the age of one of the parties to the suit is a material fact, for example, where a defendant relies on the fact of his infancy in an action to recover the price of goods supplied to him. At times, however, a non-expert witness may be allowed to say that a particular person was of a certain age. For example, a witness who saw a person killed in a motor accident will be allowed to say that the deceased was a man of about forty years of age. And a witness may be allowed to state his own age, which may be a matter of opinion or, at the best, hearsay. If this is challenged, however, it may be inadmissible.¹⁶

When age is in doubt the benefit should be resolved in favour of the accused.¹⁷

b. Civil Cases.

In civil cases, there are judicial authorities on when the biological age of a witness would affect the probative value to be ascribed to his oral evidence. For example, it was held in *D.M Kachia V Kurmin Musa*¹⁸,

¹¹(1960) FSC 1 at 2. The appellants in this case were convicted in the High Court of the Northern Region for killing a certain Yaya Bangaza. The judge accepted evidence which showed that the appellants had killed the deceased by hitting and attacking him with sticks with the intention of causing him grievous harm.

¹² NLR (pt.XVIII) (18) 150 at 151

¹³Evidence Act 2011 s.209(1)

¹⁴Evidence Act 2011 s.209(2)

¹⁵ (1993) 6 NWLR (pt. 300) 399. The appellant was charged with rape of a 10 year old girl. At the trial, the trial court received the evidence of PW. 1 who is the child raped on oath. The prosecution also called other witnesses but the appellant did not call any evidence. The trial court found the appellant guilty of the offence of attempted rape and sentenced him.

¹⁶ Aguda, *The Law of Evidence*, (Third Edition) (Spectrum Books Limited, Ibadan, 1989)102

¹⁷ See *Geogre V The State*(1991) 9 NWLR (pt. 214) 199 at 209.

¹⁸ (1975) UILR (pt. IV) 472 at 476. The appellant's claim in the Kachia/Kargarko Area Court was that the land in dispute was inherited from his father. The respondent being Chief of the area, counter-claimed the same land to be chieftaincy land. Whilst the appellant's four witnesses testified before the trial court, the three witnesses

that 'where the history of the subject matter of litigation is in issue and there is no documentary evidence; the ages of witnesses become material, for the older the witnesses are, the more likely would their evidence be correct'.

In another instance, a court may take the evidence of a witness outside the courtroom on account of the age of such a witness. In *O. Olowu & 2 Ors v R. Keke & 2 Ors*¹⁹, an application was brought under Order 33 Rule 11 of the High Court of Lagos (Civil Procedure) Rules 1972, for an order for the examination of Salu Osoojuba on oath "before a Magistrate or any officer of Court in Shagamu Magisterial District of Western State Judiciary or any other person at Shagamu in Western Nigeria" on account of old age and ill health. It was held per Jinadu J. that:

"I believe that an English Judge would entertain this type of application because his jurisdiction extends all over England and Wales whereas my jurisdiction is restricted to Lagos, Badagry, Epe and Ikeja Divisions: as such I do not think that I can, in this instance, use "any place" as it would have been used in England for the purpose of this application. In the circumstances, I think the application should be refused and it is accordingly dismissed. The applicants may, however, be advised to bring an application which may be within my power to grant."

The case of *Jimoh Gbadamosi V Bello Azeez & Ors*²⁰, illustrates the primacy of a parent's testimony in relation to the age of his/her child. The Court of Appeal Ibadan Division in that case held that:

With respect to issue (ii) dealing with whether or not the 2nd respondent was under the statutory age of 35 years at the time of the election, I have considered the arguments of learned counsel to the parties in their briefs vis-à-vis the records and the prevailing law. The poser here is whether or not the 2nd respondent was 35 years as required under s.10(b) of Decree No.7 of 1997 for the post of Chairman. The petitioner tendered through his witnesses 3 documents to prove that he was under the statutory age. PW3 tendered 2 documents – the 2nd respondent's testimonial which put his age as 22 in 1982 indicating that 2nd respondent must have been born in 1960 and the admission register of 2nd respondent at UMCA Secondary School Igbeti which put his date of birth as 6.5.60. PW2 tendered 2nd respondent's admission register at I.A Primary School Igbeti which put his date of birth at approximately 1963. Against all these exhibits, the 2nd respondent tendered as part of his screening documents to NECON his statutory declaration of age showing that he was born on 7/7/60. The 1st respondent's witness who was the father of 2nd respondent testified that he gave birth to his son about 3 months before Independence. This conflict in various affidavit evidence was resolved by the oral evidence of the father of 2nd

for the respondent could not do so on account of their infirmity and blindness. Consequently the trial Judge sent his clerk to their village to record their evidence. At the resumed hearing of the proceedings, the clerk submitted his report and the depositions of the three witnesses. The trial Judge declared the land as chieftaincy land and awarded it to the respondent using the deposition of the respondent's witnesses and the evidence taken before him. The appellant's appeal on the ground that the taking of the evidence of the respondent's witnesses by commission was contrary to section 26 of the Area Court Edict and Order 13 Rule 5 of the Area Court (Civil Procedure) Rules 1971 and as such the proceeding should be declared a nullity.

¹⁹ (1975) 11 CCHCJ 1895 at 1897.

²⁰ (1998) 9 NWLR (pt. 566) 471 at 475, The appellant, on the platform of UNCP and the first two respondents, on the platform of CNC, contested the March 15, 1997 Local government election for the chairmanship of Olorunshogo Local Government Council of Oyo State. At the conclusion of the election the 1st and 2nd respondents were returned as Chairman and Vice-chairman respectively and the petitioner filed a petition in the Oyo State Election Tribunal protesting against the result of the election on the grounds of fraudulent, reckless, and perverse performance of duty by the agents of the National Electoral Commission of Nigeria (NECON). He also alleged in the petition that the 2nd respondent had not attained the statutory age of 35 years as at the time of the election. At the trial, it was found that the petitioner, in alleging electoral malpractices against the officials of NECON failed to join NECON as a respondent by which he contravened the provisions of section 67 of Decree No.7 of 1997. The Election Tribunal therefore dismissed the petition for lack of jurisdiction. Dissatisfied with the judgment of the Election Tribunal, the petitioner appealed to the Election Appeal Tribunal, which appeal the Appeal Tribunal also dismissed. The petitioner then applied to the Court of Appeal sitting as the Constitutional Court for a review of the judgment of the Appeal Tribunal.

respondent which puts his age as 1960. This issue has therefore been resolved in favour of the respondents. See *Adebayo & Anor V Mayaki & ors.* (1991) 1 LRECEN which enjoin that parents evidence be accorded priority over and above other evidence in determining the age of their children. In the circumstance this issue is also resolved in favour of the respondents.

It would appear that the probative value attached to the testimony of a parent as regards the age of his child in a criminal trial where the child is the accused is different from that in a civil case. While further evidence may be required in criminal cases²¹, like a doctor's report etc, such evidence in a civil case is treated as conclusive proof of the age of the child.

Age in Relation to Retirement

An observation of happenings in the Nigerian society show that the rate of registration of births and deaths in the country is not encouraging. Parents and Guardians accidentally or by design do not register the births of their children and wards but would rather depose to a declaration of age in later years. Aside from the fact that a false declaration of age could lead to a charge of perjury, it inhibits the smooth administration of governmental activities. For example, the problem associated with retirement from the civil service on the basis of age by civil servants in Nigeria to create vacancies for unemployed but qualified youths in Nigeria is a vexed one. Plans to create vacancies in government service is easily thwarted or sabotaged by civil and public servants who merely go to obtain sworn declaration of age depositions to reduce their biological ages and extend their service in government employment. Ascertaining the veracity of some of the depositions in these affidavits is almost nigh impossible as there are done sometimes at the commencement of employment with retirement in mind. This has a chain reaction in the sense that the young graduate whose entrance in the civil service has been delayed, would when he finally secures employment, depose to a false declaration of age in order to prolong his stay in the service to make up for his late entrance. And thus the vicious circle of youth unemployment occasioned by the inordinate stay in service by those that ought to have retired continues.

A corollary to the effects of false declaration of age above is the failure to register deaths. This is one of the reasons for ghost workers in the civil service in Nigeria. When government employees die and their deaths are not registered immediately and imputed in a centralized database, unscrupulous public officers in charge of payment of salaries continue to collect the salaries of these deceased persons which would have been used to pay new entrants into the service to fill vacancies created by death.

The Judiciary in Nigeria is not immune from the inclination of the average Nigerian to falsify his or her age if any benefit would accrue there from. It is reported that:

...Council also considered a petition written by Mohammed Idris Eggun against Hon. Justices Idris M.J. Evuti and Tanko Yusuf Usman of the High Court of Niger State on falsification of their dates of birth. A fact-finding committee set up by the council found from the records made available to it that the Hon. Justice Evuti used three different dates of births over the years as 15th September, 1950, 10th April, 1953 and 1st April, 1953 and therefore recommended his compulsory retirement with immediate effect. Apart from the recommendation for compulsory retirement of Hon. Justice Idris M.J. Evuti, Council recommended to the Government of Niger State to deduct all salaries received by him from September, 2015 till date from his gratuity and remit same to the National Judicial Council that pays salaries of all Judicial Officers in the Federation. With respect to the Hon. Justice Tanko Yusuf Usman, Council did not recommend his compulsory retirement because it had already accepted his retirement with effect from March 1, 2016. However, Council decided to write to the Government of Niger State, to deduct from the gratuity the salaries received by him from June, 2015 when His Lordship should have retired from the bench.²²

In a related development, the Premium Times Online News Media reports that:

Hon. Justice Francis Chukwuma Abosi, was recommended for compulsory retirement following the falsification of his date of birth from 1950 to 1958. Findings showed that he was supposed to have retired in November, 2015 when

²¹ *Peter Orisakwe v The State* (2004) 5 SCNJ 256 at 274-275.

²² See <https://ynaija.com>>njc-punishes-judges, accessed at 12:48pm on 7th May, 2020

he clocked the mandatory retirement age of Sixty-five (65) years. Council decided to recommend for his compulsory retirement to Governor Hope Uzodinma of Imo State and to also deduct the salaries he had earned from November, 2015 to date from his retirement benefit...²³

The Legal Regime and the Authority Vested with the Power to Register Births and Deaths in Nigeria

Having discussed some legal significance of age which is a direct consequence of the date of birth of a person under the Nigerian law, attention will now turn to the legal regime on and the authority vested with the power to register births and deaths in Nigeria.

The registration of births and deaths in Nigeria is regulated by the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (As Amended), The Births, Deaths, Etc. (Compulsory Registration) Act, 1992, The Births, Deaths, Etc. (Registration) Regulations, 1996, The Births, Deaths and Burials Act, The Registration (Births, Deaths and Marriages) Act and The Penal Code among others. The highlights of the relevant provisions of the Constitution and some of these statutes would form the focus of the next stage of our discourse.

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 (As Amended)

The Nigerian Constitution is the fountain head of all legislation in the country because it is from it that the National and State Legislatures derive their powers to enact laws. Section 7 of the 1999 Constitution of the Federal Republic of Nigeria is generally on the local government system. It provides in subsection 1 of the section that the system of local government by democratically elected local government councils is under the Constitution guaranteed; and accordingly, the Government of every State shall subject to section 8 of the Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils. An example of a law made pursuant to the foregoing provision is the 1976 Kaduna State Local Government Law which makes copious provisions relating to the subject matter of this discourse. For instance, Section 60 thereof provides for the functions of local governments generally. Section 66(g) deals with the exclusive powers of the local governments in relation to registration of births, deaths and marriages. Section 67 provides for powers of local governments which may be exercised concurrently with the State Government but does not include powers to register births. Section 68 empowers local governments to delegate their powers.

Item 1 of the Fourth Schedule to the Constitution of the Federal Republic of Nigeria, 1999 provides that the main functions of a Local Government Council includes the registration of births, deaths and marriages. Item 8 of the Exclusive Legislative List in Part 1 of the Second Schedule to the same Constitution on the other hand, empowers the National Assembly to legislate on 'Census, including the establishment and maintenance of machinery for continuous and universal registration of births and deaths throughout Nigeria.' In pursuance of Item 8 of the Exclusive Legislative List, the National Assembly enacted the National Population Commission Act which by its section 6 provides for the powers and functions of the Commission which includes the establishment and maintenance of a machinery for continuous and universal registration of births and deaths, throughout the Federation.

²³See <https://www.premiumtimesng.com> accessed at 1:10pm on 7th May, 2020. The Late Justice Aguda in his book titled "Flashback" (Spectrum Books Limited, 1989) 38, narrates an incident related to the present discourse thus: 'Somolu made a tactical error which was destined to result in his premature exit from the judiciary. When he took up Judicial appointment, the age which he put down, and which was recorded in the staff list, would not have qualified him for pension and gratuity at the then retirement age of sixty-two. On realizing this, he requested Adeyinka Adebayo to put the record straight. After some hesitation, Governor Adebayo, a very affable and friendly person, not wanting to hurt Somolu, acceded to the request. When within a short time thereafter the Chief Justice asked for a further reduction in his age, Adebayo was unwilling to accede to this second request. At that time, a particular newspaper published in Ibadan with a very limited circulation, called *The Star*, started calling for the removal of the Chief Justice. It was the most persistent call for the removal of any judge from his official position that has ever been made in this country. Adebayo did not heed the call. One young woman Adetoun Adeyemi, made some calls on the Chief Justice Somolu whilst she was involved in a civil case in the High Court. The Chief Justice cited the woman for contempt and convicted her. She engaged Rotimi Williams, Q.C, to file an appeal which he did. One of the grounds of appeal was that at the time Somolu convicted the woman, he no longer had jurisdiction as he was above the constitutional retirement age of sixty-two. This rather novel point excited the interest of judges, lawyers, and the whole educated society. However, as Williams was able to succeed in his appeal without pressing this point, the matter died a natural death.

It may initially appear that there is a conflict between the Second and Fourth Schedule to the Constitution. However, it is opined that there is none. Our interpretation of these seemingly contradictory provisions of the Constitution is that the National Assembly can legislate on the issue of registration of births and deaths but the power to enforce or exercise the powers under such legislation is that of the Local Government. This interpretation however throws up the question of whether the National Assembly can legislate for the Local Government tier of government? In *Fasakin Foods Nigeria Ltd. v Martins Babatunde Shosanya*²⁴, the Supreme Court held that:

There can be no doubt that Section 22(3) of the Federal High Court Act, Cap. 134, Laws of the Federation, 1990 to the extent that it sets out what a State High Court should do if the State High Court is of the view that a cause or matter should have been initiated in the Federal High Court, is clearly not in conformity with Section 239 of the 1979 Constitution which vests such legislative authority on the State House of Assembly.

Notwithstanding the fact that the National Assembly is not empowered (generally speaking) to legislate for the Local Government as deducible from the above judicial authority, it is still our position that the power to regulate the registration of births and deaths is that of the Local Government Council. The Supreme Court's decision in *Knight Frank & Anor. V. A-G of Kano State*²⁵ fortifies our position. Ogwuegbu, JS Ctherein opined thus:

I must here emphasize that Local Government Councils should be spared this type of illegitimate intrusion or interference by State Governments in *functions specifically assigned to the former by the Constitution*. It is my considered view that the Kano State Government *does not possess concurrent jurisdiction* with the Local Government Councils in Kano Metropolis over the *functions set out in the Fourth Schedule to the Constitution*.

(Italics ours for emphasis)

Our berth on this point is that it is the Local Government that is empowered to regulate the registration of births and deaths in Nigeria by a compound reading of the provisions of section 7 and Item 1 of the Fourth Schedule to the Constitution. However, where a Local Government Law made pursuant to section 7 of the Constitution by its provisions delegates²⁶ its powers of registration of births and deaths to the National Population Commission or any other body, then the National Population Commission or such other body may regulate the subject but not before such a delegation.

Despite our analysis of the Constitutional provisions stated above, the reality is that both the National Population Commission and the Local Government Council are both at present clothed with powers to register

²⁴ (2006) 4 S.C (pt. II) 204 at 13-14.

²⁵ (1998) 7 NWLR (pt.556) 1 at 27. The appellants and the Kano State Government, represented by its Finance Commissioner, entered into agreement on 10th November, 1983 for the preparation of a valuation list of all rateable hereditaments for the collection of proper rates in certain specified areas of Kano State. On 9th December, 1987, the Commissioner of Finance wrote a letter to the appellants in which he stated, inter alia, as follows: "the Government is left with no option than to rescind and determine the valuation contract entered with you." The reason for this action was that valuation of hereditaments requested fell within the responsibilities of local governments in the State. Upon receipt of the letter the appellants through their solicitors wrote the Kano State Government requesting that the matter be referred to an arbitrator in accordance with clause 12 of the agreement. The Government's solicitor replied contending that the agreement between the parties was void and that since it was ultra vires the Kano State Government, no valid arbitration could be conducted. The appellants' solicitor then wrote a letter to the Chief Judge of Kano State on 16th March, 1988 requesting him to appoint an arbitrator to look into the dispute between the parties. The Chief Judge appointed Mrs Fatima Kwaku as the Arbitrator. The Kano State Government then filed an originating summons seeking to set aside the appointment of the arbitrator and a declaration that the contract between the parties was null and void. The trial court after hearing the parties granted the prayer nullifying the contract. Dissatisfied, the appellants appealed to the Court of Appeal which affirmed the decision of the trial court. The appellants still being dissatisfied appealed to the Supreme Court. The subject matter of which relates to one of the constitutionally entrenched taxing functions of a local government council to wit: the collection of rates on rateable hereditaments and the assessment of rates on privately owned houses as provided in section 1(j) of the fourth schedule to the constitution. It was held that same was the sole preserve of a local government council.

²⁶ See for example section 68 of the 1976 Kaduna State Local Government Law.

births and deaths in Nigeria and this state of things we believe should not be as it amounts to duplicity of functions by government authorities with its attendant wastage of scarce resources.

The Births, Deaths, E.T.C (Compulsory Registration) Act, 1992.

The Births, Deaths, Etc (Compulsory Registration) Act, 1992 is the main legislation that provides for the legal framework for the registration of births and deaths in Nigeria. The highlights of its provisions would be discussed presently.

The Act makes the registration of births and deaths compulsory in the country.²⁷ To enforce its provisions are persons designated as registrars of births and deaths who are mandated to register the birth of every child delivered within the areas of their supervision.²⁸ In ensuring the seamless registration of births and deaths, the Act places a duty on medical personnel in charge of baby deliveries at health facilities to supply the registrars of births and deaths with necessary information for the purpose of registering the births of such babies.²⁹

There is no gainsaying the fact that without the assistance of the populace in the communities they supervise, the duties of the personnel in charge of registration of births and deaths would be tedious and arduous. This because it is humanly impossible to obtain the statistics of new deliveries or even deaths in the area without being supplied with that information by those aware of such events. The Act thus makes the civic responsibility of supplying the personnel in charge of the registration of births and deaths with the requisite information mandatory on the parents or guardians of a child. Persons in charge of any place other than a health facility where a child was born, persons that rescue abandoned babies, law enforcement personnel that are aware of cases of abandoned babies, religious ministers etc. are also under an obligation to promptly supply the particulars of these births to the registrar in charge of the area in which the child was born to enable him register same.³⁰

The registrar is obliged upon registering a birth to deliver to the informant, free of charge, a certificate of birth but no such certificate would be issued in the case of a still-born birth.³¹

The provisions of the Act discussed above relating to the registration of births apply *mutatis mutandis* to the registration of deaths.³² In addition however, the Act enjoins persons in charge of associations of people like professional bodies to report the deaths of their members to the appropriate registrar of births and deaths for the purpose of registration.³³

It is not debatable that the proper administration of any legislation is key to its effectiveness. To that end, the Act empowers its regulatory authority which is the National Population Commission to make regulations for the effective administration of the Act.³⁴ This delegated power has culminated in the enactment of the Births, Deaths, Etc. (Registration) Regulations, 1996. The said Regulations provide for administrative matters like the specimen or format that Birth and Death Certificates Etc. should take.

Though the Births, Deaths Etc. (Compulsory Registration) Act 1992 is the main legislation that regulates the registration of births and deaths in Nigeria as earlier stated, there are other legislation like the Child Rights Act, 2003 and the Penal Code that are also relevant to issues concerning the births and deaths of persons in the country. These legislation are meant to cater or punish human activities in other spheres of life that have to do with births and deaths but which are outside the scope of the Births, Deaths Etc (Compulsory Registration) Act 1992. For example, the Penal Code punishes anyone who secretly buries or otherwise disposes of the dead body of a child whether such child dies before or after or during its birth by intentionally concealing the birth of such child, with imprisonment for a term which may extend to two years or with fine or with both.³⁵

Conclusion

Conclusively, it is our opinion that there is a discordant among some of the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which has led to the usurpation of the functions of the Local Government Councils by the National Population Commission in relation to the registration of births and deaths.

²⁷ Births, Deaths Etc. (Compulsory Registration) Act 1992 s1

²⁸ Births, Deaths Etc. (Compulsory Registration) Act 1992 s7

²⁹ Births, Deaths Etc. (Compulsory Registration) Act 1992 s8(b)(i)-(ii) and s9

³⁰ Births, Deaths Etc. (Compulsory Registration) Act 1992 s8(a) (i) – (iv), (c), (d) and s9

³¹ Births, Deaths Etc. (Compulsory Registration) Act 1992 s15

³² Births, Deaths Etc. (Compulsory Registration) Act 1992 s17, s19, s20(1)-(3)

³³ Births, Deaths Etc. (Compulsory Registration) Act 1992 s24

³⁴ Births, Deaths Etc. (Compulsory Registration) Act 1992 s49(a)-(h)

³⁵ Penal Code s239

Bearing in mind the significance of the registration of births and deaths in the country, it is of importance that only one regulatory authority be empowered to register births and deaths as against the current anomaly where both the National Population Commission and the Local Government Councils are both clothed with powers to do so.