

AN APPRAISAL OF THE LAW PROHIBITING RELIGIOUS AND POLITICAL ORGANIZATIONS FROM POSSESSING BROADCAST LICENSE IN NIGERIA

Dayo Ashonibare*

Abstract

The National Broadcasting Commission was established in 2004 by virtue of the National Broadcasting Commission Act, 2004 with the mandate of licensing and regulating the broadcast industry in Nigeria. In carrying out its mandates, the Commission rolled out the requirements that every broadcast company must comply with before being granted a license by the President upon the recommendation of the Commission. This article examines the development of broadcasting regulations in Nigeria and powers of the Commission with a special focus on the licensing requirements. It specifically argues that S. 10 of the NBC Act prohibits religious and political bodies from owning a broadcast license in Nigeria. Some cases reviewed in this work demonstrate the approval of section 10 by the courts discarding the constitutional provision of fundamental rights and the advancement in technology. The paper argues further that the provision of S. 10, apart from being constitutionally discriminatory, is also backwards owing to the global advancement of the internet. The paper concludes that apart from the fact that S. 10 is contrary to the provision of the Constitution, it is no longer practicable due to the growth of the internet in Nigeria. The article recommends that the section needs to be expunged from the statute book, in light of the emergence of new technology.

Keywords: *Prohibition; Religious/Political Bodies; Fundamental Rights; Constitution*

INTRODUCTION

Historically, the development of broadcasting regulations in Nigeria has been said to evolve under the close watch and control of the government and colonial masters. This assertion is predicated on the fact that the government plays a unilateral role of controlling and licensing operators of broadcast industry through its set up machineries.¹ The machinery saddled with the mandate of regulating the broadcast sector is known as the National broadcasting commission (“NBC”) which was setup by virtue of its enabling

*. Lecturer, Faculty of Law, Baze University, Abuja, Nigeria. Email: dayoashonibare@gmail.com.

¹. Attahiru Jega, ‘Broadcasting, Democratization and the Challenge of the New Nigeria National Broadcasting Commission (NBC)’ <<https://www.channelstv.com/2016/08/24/jega-seeks-broadcast-media-independence/>> assessed on 17 October 2019.

act known and cited as the NBC Act, 2004². The NBC Act in support of other subsidiary legislation such as the National Broadcasting Code amongst others used to regulate the sector. This power amongst others includes the powers to grant license subject to the approval of the president.³ With the alarming growth of the internet and its wide acceptance in Nigeria⁴, this has paved the way for online broadcast organizations. Virtually all the license broadcast stations in Nigeria have an online platform to which their teeming listeners can tune in from time to time to enjoy their choice programmes. Broadcasting in its self has enjoyed recognition especially radio broadcasting, even before the advent of the internet because it transcends all nooks and crannies of the country, this has made the control by government tightened and more restrictive. The government claims the restriction is targeted towards the promotion of peace, public safety and national cohesion. In a bid to promote public safety the NBC act has provided a clog by restricting religious and political organizations from owning and operating a broadcast organization in Nigeria.⁵ The provision of S. 10 of the NBC Act is one of the control mechanism the government use to widen and deepen government access for propaganda and to put it to good use for the advancement of the vested interests of those who exercise governmental power, as well as to restrict access to those perceived as being in opposition to government⁶

Broadcasting contents are monitored and censored to ensure that information that can bring about religious and cultural hatred are eliminated totally or reduced to none⁷. However, the government has used this medium to

². Nigeria Broadcasting Corporation Act, Cap N11 Laws of the Federation of Nigeria, 2004.

³. NBC Act, S 10.

⁴. Iberienary, L ‘The Internet, free speech and National Laws’ <<http://www.thelawyerschronicle.com/the-internet-free-speech-and-national-laws/>> accessed 15 June 2018.

⁵. Note 3.

⁶. Decree 38 of 1992 3, Fawenhmei G, *Nigerian Press Law*, (Nigerian Law Publication Ltd 1969) 67; s.39(1) of 1999 Constitution as amended.

⁷. See the Nigeria Broadcasting Code (5th Edition) 2010 hereinafter referred to as ‘The Code’

<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjW1_KB4trlAhUIQ0EAHW6DD8sQFjAAegQIAxAC&url=https%3A%2F%2Fnlpw.com%2Fwp-content%2Fuploads%2FDRAFT-Nigeria-

monopolize the regulation of broadcasting in Nigeria⁸ without regards to international best practice and technological advancement owing to the upsurge of the internet. Although, the government is not the only entity who practice this monopoly, powerful individuals, groups, religious organization and corporate organization for commercial interest often for selfish reason and in the sole interest of the government, as we all known control over Broadcasting means control over the society.⁹

Historical Development of Broadcasting Law in Nigeria

Broadcasting services started far back in 1933 with radio broadcasting which was introduced by the then colonial government in Nigeria. The service was called Radio Diffusion System (“RDS”) which was provided then by the British Broadcasting Corporation through wired system with loudspeakers at the various listening end.¹⁰ The main purpose of establishing the RDS was to enable the colonial masters to communicate with the colony in England. Subsequently, this gave birth to the emergence of the Nigeria Broadcasting Service (“NBS”) later in April 1950. However, in April 1957, the Nigerian Broadcasting Corporation, (“NBC”) came into being through an Act of Parliament No. 39 of 1956.¹¹ And by 1978, the NBC was re-organized, with the merger of the Broadcasting Corporation of Northern Nigeria, BCNN with the NBC stations in Lagos, Ibadan and Enugu to become the present Federal

[Broadcasting-Code_5th-Edition](#)

[2010.pdf&usg=AOvVaw3YPOwr_TcMdiDeG24v0J1h>](#) assessed on 08 November 2018.

⁸. Rodney Ciboh, ‘Private Broadcasting and the Challenges of Democratization of Electronic Media in Nigeria’ <https://www.researchgate.net/publication/323112775_Private_Broadcasting_and_the_Challenges_of_Democratization_of_Electronic_Media_in_Nigeria> assessed 11 December 2019.

⁹. *Ibid*

¹⁰. Iredia Tony, ‘Issues in Broadcast Licensing in Nigeria: An Appraisal of the Enabling Law-the National Broadcasting Commission Act No. 38 of 1992 as amended’[2017](19)(12) *IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668*. 86-92 <www.iosrjournals.org> accessed 24 December 2018.

¹¹. Babawale K, ‘History of Broadcasting in Nigeria’ (2018). <<https://infoguidenigeria.com/history-broadcasting-nigeria/>> accessed 15 June 2018.

Radio Corporation of Nigeria, (“FRCN”).¹² Prior to the merger, NBC handed over its stations that broadcast on Medium Wave frequencies to the State Governments and it took over Short Wave Transmitters from the States. However, the western part of Nigeria in October 31, 1959, governed by the Premier of Western Region, in the person of Chief Obafemi Awolowo, in partnership with the Overseas Rediffusion Limited, launched the Western Nigeria Broadcasting Services (WNBS) as the first television station in Africa at Ibadan, alongside another small transmitter of 500 watts power at Abafon near Ikorodu. In 1960, the Eastern Region government set up its own television service (Eastern Nigeria Television Service); and this was followed by Radio Television Kaduna, established by the former Northern Nigerian Government as an arm of the Broadcasting Company of Northern Nigeria (BCNN) in March, 1962. In the same year, the Western Region government took full control of the WNBS/WNTV by buying over all the shares held by the Overseas Rediffusion Ltd, while the Federal Government, a month later, established the Nigerian Television Service (“NTS”) in Lagos. The NTS later changed its name to NBC/TV. The Federal Military Government of Nigeria under General Olusegun Obasanjo (as he then was) took over the television stations in Nigeria in 1978 and changed its name to Nigeria television authority (“NTA”).¹³ Of course, the creation of states in 1967 and 1976 to 12 states and later 19 states respectively, the Midwest Television took the lead in this regard, when it came on the air in 1973 in Benin City. Soon, there were television stations in Jos, Kano, Port Harcourt, and Sokoto, which were state capitals.¹⁴

The Broadcasting sector has over the years been monopolized by the government but in 1992 under the administration General Ibrahim Babangida, the sector was deregulated and opened up for private participation in the

¹². Chukwuka C, ‘The internet, role in contemporary broadcasting in Nigeria’ <http://www.doublegist.com/internet-role-contemporary-broadcasting-nigeria/> accessed 09/07/2018.

¹³. CC Umeh, ‘The advent and growth of television broadcasting in Nigeria: its political and educational overtones’ <<https://www.ncbi.nlm.nih.gov/pubmed/12342789>> assessed 8 November 2019.

¹⁴. Akashoro, O G and Okidu O and Ajaga M I, ‘Ideological Implications of Broadcasting Practice in Nigeria: From Pre and Post-Independence Regulation to Deregulation’ [2013] (15)(2), *IOSR Journal of Humanities and Social Science* (IOSR-HHSS), 41-55.

broadcast industry.¹⁵ The privatization made it possible for licenses to be granted to private individuals and organizations to set up radio and television broadcasting stations opening up the sector. Since then there has been a proliferation of radio and television stations across the country.¹⁶ The Act of Parliament No. 39 of 1956 and 1978 were repealed which thereafter gave birth to the National Broadcasting Commission Act, 2004¹⁷ (“NBC ACT 2004”). Section 23 NBC Act, 2004 empowers the commission the powers to make subsidiary legislation such as Nigeria Broadcasting Code, copyright-related issues, freedom of information, Government White Paper on the Transition from Analogue to Digital Terrestrial Television (DTT) Broadcasting and Digital Terrestrial Television (DTT) Regulation which are for the purpose of helping the commission achieve its mandate. However, the powers to make subsidiary legislation has been challenged on many occasions but My Lord, Bode Rhodes-Vivour JCA as he then was on 14th December 2006 *Resolved the controversies in Ifeanyi Ukaegbu v National Broadcasting Commission & 3 Ors.*¹⁸ held:

The NBC Code is not contrary to the Constitution. It is a valid subsidiary legislation to give full effect to the NBC Act. There is wisdom in regulating broadcasting. The issue is as simple as one filtering his drinking water before he drinks it into his bowels...it will not be in one's interest to connect his house directly to a high tension electric current no matter the nature of his house...without stepping it down with a transformer. It has disastrous consequences. No country conscious of its security and existence can ever have a codeless broadcasting environment.¹⁹

Broadcasting law is a well-developed subject in many European jurisdictions and in the United States. A fundamental assumption which underpins

¹⁵. Tunde Okoli, ‘Nigeria: Big Up for Broadcasting since Deregulation’ <<https://allafrica.com/stories/200501040670.html>> accessed 8 November 2019.

¹⁶. *Ibid.*

¹⁷. Cap N11, Laws of the Federation of Nigeria (LFN) 2004.

¹⁸. *Suit No. CA/A/146/05* (unreported)

¹⁹. *Ibid.*

broadcasting law is that broadcasting, unlike the press, should be subject to a degree of special regulation beyond the general law of libel, confidentiality, obscenity, and so on. In that respect, broadcasting laws often impose duties on licensees to be impartial and not to take an editorial line; there is also a standard requirement in many jurisdictions that broadcasters show a certain proportion of material produced in those countries.²⁰

However with the advancement in technological innovations such as the internet which have contributed to the massive growth of internet broadcasting, has produced an increasingly diverse set of offerings for consumers/viewers, but although internet broadcasting remains for the most part in its infancy, at the same time the introduction of interactive services on digital TV has led to a narrowing of the divide between what is “online” and what is “TV”²¹

Regulatory Body

The National Broadcasting Act 2004²² is an act to establish the National Broadcasting, commission and for matters connected therewith. Section 1²³ state that:

the commission shall be a body corporate with perpetual succession and a common seal and may be sued and be sued

Section 2(1) (d) states among other responsibilities of the National Broadcasting Commission, that:

the commission shall have the responsibility of regulating and controlling the broadcasting industry

The National Broadcasting Commission (NBC) is to also intervene in the broadcast industry, ensure qualitative manpower development, monitoring broadcasting for harmful emission, arbitrate in conflicts, interference illegal

²⁰. *Ibid.*

²¹. *Ibid.*

²². Note 17.

²³. *Ibid.*

broadcast and set and apply sanctions, including revocation of licenses of defaulting stations.²⁴ These functions carried out in compliance with the Act that establishes it. Amongst these functions are the sole power to grant a license to any intending broadcast company in Nigeria. However, despite the requirements provided by the act some organization such as religious bodies and political parties have been prohibited from obtaining a broadcasting license, this will be discussed in detail in the cause of this work.

Powers of National Broadcasting Commission (NBC)

The powers of the National broadcasting commission are provided in S. 2 (1) a – u of the NBC Act.²⁵

- I. Licensing of any broadcasting Industry in Nigeria²⁶
- II. They have the exclusive powers to Monitoring broadcast industries in Nigeria²⁷
- III. Regulating and Controlling the Broadcast Industry²⁸
- IV. They also Undertake Research and Development in the broadcasting industry²⁹
- V. They Investigate Complaints by consumers and the general public on Broadcasting Content that are contrary to the NBC regulations code.³⁰
- VI. Promotion of Nigerian Indigenous Culture and Morals
- VII. Upholding the Principles of Equity and Fairness
- VIII. Intervening and Arbitrating in Conflicts in the Industry
- IX. Authentication of Radio & Television Audience Measurements
- X. Determining and applying Sanctions to defaulting broadcasting industries e.g. Fine, licence revocation

²⁴. <www.nbc.gov.ng/mandates> accessed 15 May 2018.

²⁵. Note 17.

²⁶. *Ibid.*

²⁷. *Ibid.*

²⁸. *Ibid.*

²⁹. *Ibid.*

³⁰. *Ibid.*

This work shall focus more on the licensing powers of the commission being the subject of discussion in this paper. It is important to state that the commission does not have the exclusive right to issue a broadcasting license, they can only recommend to the president for his approval.³¹

Requirements for the Power of the Commission to Grant Licence

The Act empowers the Commission to consider an application for grant of licence after satisfying that the Applicant.³²

- (a) Is a body corporate registered under the companies and allied matters Act or a station owned, established or operated by the Federal, State or Local Government?
- (b) Can demonstrate to the satisfaction of the commission that he is not applying on behalf of any foreign interest.
- (c) Can comply with the objectives of the National Mass Communication Policy as is applicable to the electronic media that is Radio and Television.
- (d) Can give an undertaking that the licensed station shall be used to promote National interest, unity and cohesion and that it shall not be used to offend religious sensibilities or promote ethnicity, sectionalism and hatred among the people of Nigeria.

The above assertion basically implies that once an intending broadcasting company complies with the above requirement and undertake to promote National interest, unity and cohesion such a company ought to be recommended to the president for approval of the license. Regrettably, whether these conditions are fulfilled or not, once any intending broadcasting company falls under the category of either political or religious organization, the act specifically in section 10 prohibits such an organization from owning a broadcast license in Nigeria. This prohibition is provided for under section 10 of the NBC Act 2004.³³

Section 10(a)³⁴ states that:

³¹. S 39 (1) (2) of the 1999 Constitution of the Federal republic of Nigeria (as amended).

³². NBC Act, s 9.

³³. *Ibid.*

³⁴. *Ibid.*

the commission shall not grant a license to (a) a religious organization.

The proviso above is in a bid to ensure that a licensed station shall be used to promote national interest, unity and cohesion and that it shall not be used to offend the religious sensibility or promote ethnicity sectionalism hatred and disaffection among the people of Nigeria owing to the volatile nature of the country. This is as set out in section 9(1) (d)³⁵ ensures that the above responsibility is efficiently discharged.

This paper will, therefore, examine whether the powers of NBC to register religious or political organization is not contrary to section 39(1) and 45³⁶. I will reproduce the provisions of the constitution for a proper understanding of the matter under discussion.

S 10 of the National Broadcasting Act,³⁷ which prohibits the registration of Religious organization, is contrary to section 39(1) and 45³⁸ of the Constitution of the Federal Republic of Nigeria. It is important to analyze section 10 of the National Broadcasting Act³⁹ (“NBC Act 2004”) vis-à-vis sections 39(1) and 45⁴⁰ for further understanding.

S 39(1)⁴¹ States:

Every person shall be entitled to freedom of expression, including freedom to hold opinions and receive and impart ideas and information without interference.

S 39(2)⁴² however states:

³⁵. *Ibid.*

³⁶. CFRN, 1999 (as amended).

³⁷. Note 17.

³⁸. Note 36.

³⁹. Note 17.

⁴⁰. Note 36.

⁴¹. *Ibid.*

⁴². *Ibid.*

without prejudice to the generality of section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information ideas and opinions provided that no person, other than the Government of the Federation or of a state or any other person or body authorized by the president on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, established or operate a television or wireless broadcasting station for any purpose whatsoever

Also, S 45 (1)⁴³ states that:

Nothing shall in section 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic Society:

- a. In the interest of defence, public, safety, public order, public morality or public health; or
- b. For the purpose of protecting the rights and freedom of other person

The Court in its wisdom affirmed the provision of section 10 of the NBC Act 2004 in the case of *Incorporated Trustees of Savannah Ministries v NBC & 2 Ors*⁴⁴ without putting into consideration the innovations created by technology. It was the decision of the court that:

Section 10 is a form of regulation and control of the broadcasting industry. It prohibits a class of people from entering into the industry by owning, operating or establishing a broadcasting station...I have taken cognizance of the power of the media cum the vulnerability of our largely illiterate population who are gullible to anything that comes from a radio and/or television.

Most essentially, our democratic society is usually and largely polarized on religious and ethnic lines. In our society, religion

⁴³. Note 36.

⁴⁴. FCT/HC/CV/369/11(unreported).

is usually a factor...Section 10 of the NBC Act is reasonably justifiable in a democratic society such as ours. It is a blanket ban on all religious and “political” (addition mine) groups or bodies without exception.

This provision of this section is a clear discharge of the responsibility vested in the (“NBC”) National Broadcasting Commission, by section 2(1) (d)⁴⁵ which is the responsibility of regulating and controlling the broadcasting industry. According to the court, it must be stretched out that section 10(a)⁴⁶ does not in any way infringe on the right of the citizen as entrenched in sections 38, 39(1) and 45⁴⁷. For determination whether section 10⁴⁸ is not a violation of the rights of citizens as guaranteed by sections 39, 42, and 45⁴⁹ Justice U P Kekemeke held further in resolving the case in favour of the respondent and stating that:

The right to own, establish and operate any medium of the dissemination of information, ideas and opinion granted to every person as contained in section 39(2) of the Constitution is not confers the right to own, establish and operate any medium for the dissemination of information, ideas and opinion on three categories of legal person

1. *The Federal Government*
2. *The State Government*”

The Learned trial Judge further stated that:

.....the right guaranteed by section 39(2) therefore, is not fundamental, basic or inherent to Nigerian citizens is restrictive. It is a right that can be given at the pleasure of the

⁴⁵. *Ibid.*

⁴⁶. *Ibid.*

⁴⁷. 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁴⁸. National Broadcasting commission Act CAP N11 LFN 2004.

⁴⁹. Note 36.

president upon the fulfillment of some conditions. The President of the Federal Republic of Nigeria is not empowered by law to dole out or give fundamental rights, it is the constitution, that does, the 1999 Constitution having failed to give that right or having tied that right to the pleasure of the President, it then means to my mind, that it is no more inherent, basic and or fundamental and I so hold.

The question that comes for determination from the above statutory provision and the decision of the court on the provision of section 10 is whether the outright prohibition of religious organization (bodies formed to further religious purposes) incorporated under the Companies and Allied Matters Act, 1990 from applying for the grant of a licence to own, establish or operate a television or wireless Broadcasting Station by Section 10(a) of the National Broadcasting Commission Act 2004 is not a contravention of Section 38, 39(1) and (2) and 45 of the Constitution of the Federal Republic of Nigeria 1999 as Amended and in turn not outdated owing to the growth of the internet in Nigeria. This work answers these questions raised in the affirmative and have categorized the arguments in support of, into two perspectives: Constitutional perspective and technology/internet perspective.

Constitutional Perspectives

The Constitution is the supreme law of the land, It is referred to as the grundnorm i.e. it is the basic law from which all other laws of the society derive their validity. Section 1 (1) of the 1999 Constitution (as amended) provides:

- (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.
- (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.

Therefore the provisions are superior to every provision embodied in any Act or law and are binding on all persons and authorities in Nigeria. The failure to

follow any of the provisions renders the steps taken unconstitutional, null and void.⁵⁰

"In the *National Union of Electricity Employees & Anr. v. Bureau of Public Enterprises*⁵¹

It is trite law that under the consistency test that the validity of any law is determined by its consistency with the provisions of the Supreme Law, that is, the Constitution. So that where any law is inconsistent with any provisions of the Constitution, such other law shall to the extent of the inconsistency be void.

The provision of Section 45 (1999) CFRN as amended provides for freedom of religion whilst section 38 (1) states that every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance. The two provisions are from the constitution hence it should be treated as a supreme provision. In addition, Section 38(1)⁵² guarantees freedom of expression and religion which overrules any contravening legislation be it the NBC Act if the matters come to a constitutional tussle.

In the case of *Okafor & Ors v Ntoka & Ors*⁵³ the Court thus:

Section 38 by the provision of this section, every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in

⁵⁰. See *Kawuwa & Anor v PDP & ORS*: [2016] LPELR-40344(CA).

⁵¹. [2010] LPELR 966 (SC).

⁵². NBC Act, 2004 CAP N11 LFN 2004.

⁵³. [2017] LPELR-42794(CA).

private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.⁵⁴

The law is said to be geared towards protecting public safety but the question is what public safety can be provided when the provisions of the NBC ACT 2004 prevents lawful citizens from owing broadcasting stations thereby shutting citizens from a lawful expression of their constitutional rights.

The provision Section 39 (1) and (2) of the 1999 Constitution guarantees the right of every person to freedom of expression including the liberty to hold opinions receive, impact ideas and disseminate information without interference, this provision is clear and unambiguous. Subsection 2⁵⁵ further entitles every person to own, establish or operate any medium for the dissemination of those opinions, ideas and information provided that were the medium for dissemination sought to be owned, established and operated is television or wireless broadcasting station, the person or body of persons must fulfill conditions laid down by an Act of the National Assembly and obtain approval of the President. The word ‘shall’ in the subsection referred above connotes mandatory and compulsory conferment of the right to express and hold opinion including the right to own, establish or operate any medium for the dissemination of those opinions, ideas and information. The drafters of the 1999 Constitution of the Federal Republic of Nigeria used the word ‘**shall**’ which connotes that it is a mandatory provision. In *Onunout EchuIgiriga v Elder Effiong Okon Bassey & Ors*,⁵⁶ the High Court of Rivers State in interpreting the Rules of Court held on the word “*shall*” that “***The word shall in this subsection is mandatory...***”

Further to the more, it is trite law that once a right is conferred by the constitution, an Act of the National Assembly cannot abrogate the same. This was illustrated in the court of appeal case of *Ekejiuba v INEC & Anor*⁵⁷

"The law is well settled to the effect that any Act of the National Assembly which is inconsistent with the Constitution is void ab initio. A right conferred or vested by the Constitution cannot be taken away or interfered with by any

⁵⁴. Per Ogunwumiju, JCA. 27, Paras A-C) *Okafor v Ntoka ibid.*

⁵⁵. 1999 CFRN.

⁵⁶. [2013] LPELR-20346.

⁵⁷. [2016] LPELR-40926(CA).

other legislation or statutory provision except the Constitution itself and any such other law purportedly made abrogating a right conferred by the Constitution will be void to the extent of its inconsistency. See also Tukur v Government of Gongola State⁵⁸ and Adisa v Oyinwola.⁵⁹

Also, in the case of *National Conscience Party (NCP) & Anor v National Assembly of the Federal Republic of Nigeria & 2 Ors*⁶⁰

It must always be borne in mind by lawmakers that it is a well-settled principle of law that: a right conferred or vested by the Constitution cannot be taken away or interfered with by any other legislation or statutory provision except the Constitution itself and any such other law purportedly made abrogating a right conferred by the Constitution will be void to the extent of its inconsistency.⁶¹

The purport of the above is to the effect that every person is competent to make an attempt to meet the conditions laid down by an Act of the National Assembly for the grant of a licence to own, establish or operate a television or wireless broadcasting station. That every person or class of persons is eligible to take advantage of the constitutional provision. The case above further demonstrates that S. 10 (a) of the NBC Act⁶² has clearly abrogated, repealed and nullified the constitutional right to own, establish or operate a television or wireless broadcasting station. That the expression any person used in S. 39(1) and (2) of the 1999 Constitution as Amended includes religious organizations and cannot be whittled down by Section 10(a) of the NBC Act 2004 because it is inconsistent to the provisions of the Constitution which stand tall over any law.⁶³

⁵⁸. [1989] 4 NWLR (pt 117) 517 at 541.

⁵⁹. [2000] LPELR 186 (SC) at pp 100 - 101; [2000] 10 WRN 125.

⁶⁰. [2016] 1 NWLR (Pt 1492) 1 at 26 (CA)."

⁶¹. Per Yakubu, JCA (28-30, Paras F-A) in *NCP v National Assembly* (note 60).

⁶². CAP N11 LFN 2004.

⁶³. See Section 1 of the 1999 Constitution.

The Supreme Court further reiterated the Supremacy of the Constitution in the case of *Saraki v FRN*.⁶⁴

"The Constitution is the supreme law of the land. It is the grundnorm i.e. it is the basic law from which all other laws of the society derive their validity. Section 1 (1) of the 1999 Constitution (as amended) provides:1. (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency be void.⁶⁵

Furthermore, it is trite law that once a company⁶⁶ is registered such should be regarded as an artificial person capable of all the responsibilities, obligations and rights of a citizen of the Federal Republic of Nigeria. A legal personality is a status of one regarded by law as a person the legal conception by which the law regards a human being or an artificial entity as a person.⁶⁷

This was the position of the Supreme Court in the case of *Onuekwusi & Ors v The Registered Trustees of the Christ Methodist Zion Church*.⁶⁸

The effect of incorporation or registration of a company, firm, etc is to confer on its legal entity as a person separate and distinct from its members. It is a legal person with a personality of its own. It is more than a mere association of individuals. It becomes an artificial legal entity once the formal procedure of registration or incorporation has been complied with.⁶⁹

⁶⁴. (2016) LPELR-40013 (SC).

⁶⁵. Per KEKERE-EKUN, J S C (P 109, Paras A-D) in *FRN v Saraki (ibid)*.

⁶⁶. The Company referred to above could be a Limited Liability Company, Proprietorship or Incorporated trustee under the Company and Allied Matters Act.

⁶⁷. Blacks Law Dictionary 8th Edition.

⁶⁸. [2011] LPELR-2702(SC).

⁶⁹. Per Muhammad, JSC (24-25, paras G-F) in *Onuekwusi v Incorporated Trustees Christ Methodist Zion Church(ibid)*.

The position above validates the provision of Section 37 the Companies and Allied Matters Act⁷⁰ which recognizes a registered organization either by incorporation or Registration by Trustee as a Juristic person or a legal person who can sue or be sued. This presupposes that both religious organizations and political parties being juristic person shall enjoy all the rights as provided in section 45 of CAMA⁷¹ as if they are individuals with life and blood.⁷²

This presupposes that once a company is duly incorporated under the Company and Allied Matters Act and provides all the relevant requirements to obtain a broadcast license, such a company should not be prohibited by the provisions of Section of 10 of the Act.⁷³

The totality of the authorities cited above shows that the provisions of S. 10 of the Act lack constitutional validity because it opposes freedom of expression and religion under the Constitution of the Federal Republic of Nigeria. In other words, by every standard religious organization apart from exercising their rights in expression has developed a complex and unstoppable means to reach her vast audiences in Nigeria thereby rendering these NBC laws inactive and to a very large extent unexercised.

The law prohibiting churches or religious bodies from owning a broadcast media is to an extent is almost impracticable because most of the organizations now have channels on the satellites and online televisions. If religion is so good to the extent that the state funds religious activities like pilgrimage, and build worship canters why can't they be allowed to own a broadcast medium that will be equally regulated and heavily tasked to generate huge revenue for the government?

The religious schools that we have remain among the best in equality education when compared to public owed schools and their curriculum are

⁷⁰. Cap C20 LFN 2004.

⁷¹. CAMA Cap C20 LFN 2004.

⁷². *Salomon v Salomon* (1897) AC 22, *UBA Plc v Gostar Investment Co Ltd* [2018] LPELR-44886(CA).

⁷³. NBC Act, 2004.

subject to regulations. If we can allow religious schools under regulations why not a regulated broadcast station.

The irony of this provision is that the same NBC as a Regulatory Agency allows the licensed local station the right to sell airtime to religions & political organizations to air their preaching, forcing them into expensive contracts.

However, this article will like to conclude on this point that the blanket disqualification of religious and political parties by S. 10(a) of the NBC Act is outdated and runs contrary to the provision of the 1999 Constitution looking at the following perspectives.

Technology/Internet Perspectives

With the rapid growth of the internet, the internet has taken over every aspect of our livelihood. The broadcasting industry has taken its own share from the advancement of the internet. The Internet has been the most useful technology of modern times which helps us not only in our daily lives but also in our personal and professional life developments. The internet helps us achieve this in several different ways.⁷⁴

The internet, from time to time referred to as "the Net," which is a worldwide system of computer networks,⁷⁵ the connection of devices (other than typical fare such as computers and smartphones) to the Internet.⁷⁶ Internet is a global system of interconnected computer networks that use the standard Internet protocol suite (often called TCP/IP, although not all protocols use TCP) to serve billions of users worldwide. It is a network of networks that consists of millions of private, public, academic, business, and government networks, of local to global scope, that are linked by a broad array of electronic, wireless and optical networking technologies.⁷⁷ The networks that make up the Internet may be owned and maintained by different companies but messages and data

⁷⁴. Karthik Katkojwala, 'What is the internet' <<https://www.quora.com/What-is-the-Internet-2>>accessed on 13 July 2018.

⁷⁵. <<https://searchwindevelopment.techtarget.com/definition/Internet>> accessed 15 July 2018.

⁷⁶. "What is the Internet of things" <<http://www.businessinsider.com/internet-of-things-definition?IR=T>> accessed 15 July 2018.

⁷⁷. *Ibid.*

move across all of them without regard to ownership because they all use the same protocol or language to communicate.⁷⁸

The internet is said to ubiquitous because of its ability to transcend national boundaries and sovereign territories.⁷⁹ The ubiquitous and borderless nature has presented a mammoth challenge for regulators, this is predicated on the differences in the legal system of various jurisdictions over matters theoretically located in cyberspace of other national authorities. This has made difficult for NBC to regulate the activities of some radio and television station hosted on the internet. We have seen a situation, where an attempt to stop or shut station on the internet, has caused the government a huge amount of money.

The irony here is that NBC allowed cable networks, internet applications like YouTube, Facebook and other social media into the country. A look from the analysis above, it has become apparent that technology has broken the barriers of controlling what is aired in the information network, thereby obsolescing what the NBC act is trying to prevent. One good example of the inefficiency of the provision of Section 10 of the act is the Biafra internet radio saga which NBC could not totally short down their transmissions due to the borderless nature of the internet.

In 2015 Radio Biafra, also known as Voice of Biafra an online radio which started transmission via the internet and shortwave broadcast targeted to the Eastern part of Nigeria which is predominantly occupied by the Igbos known. The station was broadcasting and transmitting online content from the United Kingdom (UK) and the same medium was reported to have been used in the transmission of a broadcast of speeches and propaganda⁸⁰ by late Col O

⁷⁸. Spooner E, 'What is the Internet? - Definition & Explanation' <<https://study.com/academy/lesson/what-is-the-internet-definition-lesson-quiz.html>> accessed 13 July 2018.

⁷⁹. Maier B, 'How Has the Law Attempted to Tackle the Borderless Nature of the Internet?' [2010](18)(2) *International Journal of Law and Information Technology*, 142–175, <<https://doi.org/10.1093/ijlit/eaq001>> and <<https://academic.oup.com/ijlit/article-abstract/18/2/142/651035>>. accessed on 12 July 2018.

⁸⁰. the leader of the defunct Republic of Biafra in 1967.

Ojukwu before the Nigeria-Biafra war.⁸¹ This station was rejuvenated by Mazi Nnamdi Kanu, the self-acclaimed leader of the Independent People of the Biafra republic (IPOB). Radio Biafra has been met with mixed reactions. The station has been criticized for "inciting war" through its programmes and "preaching of hate messages" against Nigeria which it refers to as a "zoo"⁸² This development made the NBC who is the regulatory body to on the 14 July 2015 said to have jammed the station for not having the licence to operate. However, from the commission which was immediately refuted by the radio station in a swift reaction and went on to release its new frequency details to the public⁸³ boasting that it has more superior technology to that of the government, the operators.⁸⁴ This has posed a major challenge to the regulators. The Director-General of the NBC, Is'haq Modibbo Kawu has also explained the difficulty in shutting down the Biafran station is because of the international transmission system and internet, which the station is using.⁸⁵ The internet has made it difficult for NBC to regulate Religious organizations because most of them now engage in Podcasting, streaming audio and video, media downloads, and self-broadcasting websites which have made it possible to share the sights and sounds of their beliefs. While religious recordings of different types have certainly existed before, it is the Internet's ability to make these files public for millions of users that have led to the growth and influence of this component of Internet churches⁸⁶. NBC has not been able to stop nor control such activities of religious organizations. It is important to

⁸¹. Tony Adibe (2015) 'My role in Radio Biafra - Pete Edochie' [.https://www.dailytrust.com.ng/sunday/index.php/the-arts/19874-my-role-in-radio-biafra-pete-edochie](https://www.dailytrust.com.ng/sunday/index.php/the-arts/19874-my-role-in-radio-biafra-pete-edochie) accessed on 15 July 2018.

⁸². 'Radio Biafra lying against me — Buhari' [<https://www.premiumtimesng.com/news/headlines/186763-radio-biafra-lying-against-me-buhari.html>](https://www.premiumtimesng.com/news/headlines/186763-radio-biafra-lying-against-me-buhari.html) accessed 08 July 2018.

⁸³. 'Radio Biafra mocks FG, releases frequency details' [<http://www.newsexpressngr.com/news/detail.php?news=12946&title=Radio-Biafra-mocks-FG,-releases-frequency-details>](http://www.newsexpressngr.com/news/detail.php?news=12946&title=Radio-Biafra-mocks-FG,-releases-frequency-details) accessed 08 July 2018.

⁸⁴. 'NBC lied, our engineer was not arrested and we are still broadcasting, says Radio Biafra' [<https://www.pmnewsnigeria.com/2015/07/18/nbc-lied-our-engineer-was-not-arrested-and-we-are-still-broadcasting-says-radio-biafra/>](https://www.pmnewsnigeria.com/2015/07/18/nbc-lied-our-engineer-was-not-arrested-and-we-are-still-broadcasting-says-radio-biafra/) accessed 08 July 2018

⁸⁵ 'NBC: Radio station operated by B'Haram has been blocked... Biafra TV is next' [<https://www.thecable.ng/nbc-biafra-television-broadcasting-illegally-nigeria>](https://www.thecable.ng/nbc-biafra-television-broadcasting-illegally-nigeria) accessed 08 July 2018.

state that stopping religious organizations from operating broadcast stations is not the solution to stop or mitigate religious or political crises in Nigeria.

CONCLUSION

Conclusively, having juxtaposed the provision of section 10 of the National Broadcasting Act and sections 39(1) and 45 of 1999 Constitution of the Federal Republic of Nigeria (as amended) it is concluded that the provision is outdated and in conflict with the provision of the constitution. While making the law, the lawmakers did envisage that the internet will overtake and transcend boundaries making its control cumbersome. NBC needs to reconsider the provision of the section owing to the borderless nature of the internet and grant licenses to the political and religious organizations under strict guidelines. The government can grant licenses to these people and make them pay high taxes to generate revenue for the government. Furthermore, politics and religious play a big role in Nigeria, however, information transmitted by such bodies through radio or television under an atmosphere of strict regulation or fine will go a long way to mitigate the fears of the commission. The government should use this medium to generate revenue and allow viewers to use their discretion in viewing stations of their choice.