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TENEMENT RATES: AN END TO THE TENEMENT RATE SAGA.

CASE IN REVIEW

PLANNED SHELTER LIMITED V. AMAC & 5
OTHERS SUIT NO: FCT/HC/CV/2625/16

INSIGHTS

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The issue of whether residents in the Federal Capital Territory (F.C.T.) are obliged to pay tenement rates to their Area Councils, has been a reoccurring question many have pondered upon. This opinion shall review the judgment delivered by Honourable Justice V.B. Ashi on the legality of the payment of tenement rates in the F.C.T.

Tenement rates are property taxes paid by landlords and or Occupiers of a Building payable to local government Councils as part of their internally generated revenue¹. Generally in countries around the world, citizens have the civic duty to pay taxes to the government. These taxes serve as a means of revenue generation which enables the government provide social amenities and infrastructures for the benefit of her citizens. However, it is important to note that for an effective taxation system to exist, there must be well defined laws and institutions to facilitate the collection and regulation of these taxes.

It is quite unfortunate to say that over the past few years in the F.C.T, there has been an outcry by the residents over arbitrary and unjustifiable tenement rates imposed upon them by the Area Councils. This has brought about a number of lawsuits against the Area Councils, protests and appeals to the Federal Government to intervene, but all these efforts have been to no avail. The case of **Planned Shelter Limited v. AMAC & 5 others**² seems to have laid the matter to rest.

On April 12, 2018, Hon. Justice V.B. Ashi of the High Court of the Federal Capital Territory, Apo, delivered what many would consider a landmark judgement regarding the payment of tenement rates. The action was instituted by Planned Shelter Limited suing for itself and all persons liable to be assessed for payment of tenement rates on real estate in all the Area Councils of the F.C.T.

Facts of the Case

The Abuja Municipal Area Council from 2011 – 2015 served notices on the Plaintiff to pay tenement rates of N156,000, N75,000, N600,000, N219,784 and N277,762 in respect of their property at No. 8 Sombrero, Off Limpopo Street, Maitama. They were dissatisfied with the tenement rates and after a series of unattended appeals to AMAC³, proceeded to institute an action against them. In determining the suit, the Court considered two pertinent questions set out by the Plaintiff:

1 <https://businesspost.ng/2017/08/23/pays-tenement-rates/> last accessed on September 12, 2018

2 Unreported *Suit no: FCT/HC/CV/2625/16*

3 Abuja Municipal Area Council.

1. *Whether the Abuja Municipal Area Council, Abaji Area Council, Bwari Area Council, Gwagwalada Area Council, Kuje Area Council and Kwali Area Council respectively, have the power and capacity to assess, determine, demand and legislate on tenement rates without strict compliance and in accordance with the provisions of Section 1(j) of the 4th Schedule of the 1999 Constitution as amended.*
2. *Whether Abuja Municipal Area Council Rate Collection By-Law (No 22) 2012 and any other similar By-laws by the defendants, amount to creating a law to inflict double taxation on the Plaintiff over her property.*

The Court noted:

Firstly, an Area Council in the F.C.T. is equivalent to a Local Government area in a state by virtue of Section 318 of the 1999 Constitution. Secondly, Section 299(a) of the Constitution confers the National Assembly with exclusive competence over and in respect of the F.C.T and lastly, the law which governs the Area Councils in the F.C.T., is the Local Government Act which is be subject to the overriding provisions of the 1999 Constitution of the Federal Republic of Nigeria as amended. The Court went further to consider Sections 52(1), 55 and 56 of the Local Government Act and Section 1(j) of the 4th Schedule to the Constitution. The sections read thus:

52(1) A local Government shall have such powers and duties as are conferred or imposed upon it by this Act or any other enactments.

55 Exclusive Powers of the Local Governments subject to the provisions of this Act or any other enactment, a local Government shall have responsibility for and power to make by laws for, all the following matters, that is-

.....

(r) Collection of community tax, property and other rates and other designated revenues

Fourth Schedule

Functions of a Local Government Council

1. The main functions of a local government council are as follows:

.....(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State⁴

⁴ All emphases were added by the Author

In view of the above provisions, the Court maintained that the Constitution does not empower an Area Council to collect tenement rates. However, when the sections are read *ejusdem generis*, it would appear that the provision could be interpreted wide enough to include tenement rates. The Court further stated that the power to enact by-laws under this section, subject to the provisions of the Act or any other enactment, would readily make sub-paragraph (r) of S55 of the Local Government Act amenable to the Superintendent provision of Section (j) of the 4th Schedule to the Constitution.

The Court concluded that:

“Section 1 (j) Under consideration, in my view, does not seem to suggest that a local government can by itself fix the tenement rates but it could assess houses liable for collection of tenements, based on or in accordance with the rates already fixed or otherwise approved for it by a law enacted by a House of Assembly (National Assembly, for the F.C.T). The Local Government Act now in force in the F.C.T does not contain prescribed rates to be used by the Area Councils. The National Assembly has not enacted a separate tenement rates law for the F.C.T. either.”

In view of the above, the Court resolved the issues in favour of the Plaintiff and entered judgement in their favour. The Court consequently made an order prohibiting the collection of tenement rates in the F.C.T as there is no recognizable law enacted by the National Assembly to determine the rates for the collection of tenement rates.

The Court also declared that the by-laws established by the Area Councils were void and constituted an epitome of usurpation of powers of the National Assembly as prescribed by Section 1(j) of the 4th Schedule of the 1999 Constitution of the Federal Republic as amended.

The judgement delivered in respect of this case is a laudable one and same could be viewed from different perspectives:

Our Opinion

1. **Wake Up Call to Good and Responsible Governance:**

This judgement serves as a wake up call to the authorities of the Area Councils of the F.C.T to carry out their duties for the good of the people. It could have been expected that rather than resorting to self-help by enacting by-laws for the assessment and collection of tenement rates, they ought to have channelled their energy into sponsoring bills or putting pressure on the National Assembly to enact a Tenement Rates Act for the F.C.T. On the Part of the National Assembly, particularly the members of the committee on F.C.T.

and the senators and members representing the F.C.T., they ought to have pushed for the enactment of this Act. The writer of this opinion believes that this judgement serves as a wakeup call to all the authorities involved, to use this opportunity to develop a legal and institutional frame work for the collection of tenement rates in the F.C.T.

2. **Restriction and Control of powers of Local Government Councils:**

The judgement also restricted the powers of Area Councils in the Federal Capital Territory. Generally the Area Councils are expected to have a certain degree of autonomy but when issues like excessive taxation and exploitation of residents begin to occur, there should be some form of intervention. The delivery of this judgement has served as an intervention and a saviour to the residents in the F.C.T. It is our collective hope that Area Councils obey the order of Court and refrain from collecting tenement rates.

3. **Respect for the Constitution and Rule of Law:**

The Judgement serves as a reminder that the Constitution of the Federal Republic of Nigeria is the grundnorm which every authority is subject to⁵. No individual or authority should act against the provisions of the Constitution.

In Conclusion, the responsible authorities need to use their positions to ensure there is an effective tenement rate system in place. If there is a transparent and well governed system in place, residents in the F.C.T. certainly would not have an issue with the payment of tenement rates.

One of the step to moving past all these would be for the National Assembly to enact a Tenement Rates Act that will establish the Tenement Rates Dispute Resolution Tribunal, which should have a clear assessment and valuation procedure. A valuation agency could also be set up to carry out the valuations of properties. There could also be an independent body set aside to settle disputes that are likely to arise over wrong or arbitrary assessment. If these mechanisms are put in place there would be a seamless and operational tenement rate system in the F.C.T.

5 See Section 1 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

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