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UPDATE ON PAYMENT OF TENEMENT  
RATES IN THE FCT: REVIEW OF THE  
DECISION OF THE COURT OF APPEAL IN  
PLANNED SHELTER LIMITED V. AMAC & 5  
OTHERS - (SUIT NO: FCT/HC/CV/2625/16)

# INSIGHTS

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## Background

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On April 12, 2018, Hon. Justice V. B. Ashi of the High Court of the Federal Capital Territory, Apo, delivered a landmark decision in the administration of tenement rates in the Federal Capital Territory.<sup>1,2</sup> Based on the decision, Area Councils in Abuja are precluded from enacting any bye-law on the collection of tenement rates in the absence of a law by the National Assembly stipulating the rates to be imposed. Residents in Abuja celebrated this decision<sup>3</sup> which was seen as the end to the arbitrary tenement charges in Abuja.

Aggrieved by the trial Court's decision<sup>4</sup>, the Appellants appealed to the Court of Appeal in **Appeal Number: CA/A/536/2018**.

## The Key Issues for Determination at the Court of Appeal

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The issues decided by the penultimate Court with respect to the power of the Area Councils in the FCT to make Bye-laws on tenement rates<sup>5</sup> are paraphrased as follows:

1. Whether the respective area councils in the Federal Capital Territory are constitutionally empowered to make bye-laws on tenement rates, legitimately and whether their bye-laws were made in compliance with due process.
2. Whether the lower court erred in law by not abiding with judicial decisions of the superior courts<sup>6</sup> on the facts in issue<sup>7</sup>?

This case review analyzes the two main issues determined by the Court of Appeal.

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<sup>1</sup> This is an update of our earlier article published [here](#)

<sup>2</sup> Planned Shelter Limited V. AMAC – Suit No; FCT/HC/CV/2625/16

<sup>3</sup> See Ribomtop Yakubu May 12, 2018 An End of Tenement Rate Saga Case In Review Planned Shelter Limited v. Abuja Municipal Area Council last checked November 14,2022

<sup>4</sup> For details of the judgment, kindly read our earlier-published article.

<sup>5</sup> See ABUJA MUNICIPAL AREA COUNCIL v. PLANNED SHELTER LTD & ORS (2020) LPELR-50494(CA) for all four issues raised.

<sup>6</sup> Knight Frank & Rutley (Nig) Limited & Anor V. Ag Kano (1998) LPELR - 1694 SC and Afdin Venture Limited & Ors V. Chairman, Abuja Municipal Area Council (2014) LPELR - 2350 (CA)

<sup>7</sup> The ability of local governments (or Area Councils) to make Bye-laws on Tenement rates

### ***Powers of Area Councils in the Federal Capital Territory to make bye-laws on tenement rates***

On this issue, the Court of Appeal, after reproducing portions of the trial Court's decision, is of the view that the trial court failed to make reference to the Federal Capital Territory Act<sup>8</sup> which made the Niger State Local Government Edict of 1976<sup>9</sup> ("Edict") applicable to the Federal Capital Territory. The Court Appeal opined that the adoption of the Edict in the Federal Capital Territory is designed to, among other things, enable the six Area Councils in the Federal Capital Territory to take steps to realize and perform the functions given to them by the Constitution. Consequently, the Court of Appeal had this to say:

***"The finding of the Learned trial Judge over-looked the standpoint (sic) and argument of the Appellant to the effect that the Federal Capital Territory Act Cap F - 6 LFN/2004 which is an Act of National Assembly, the provisions of Niger State Local Government Edict of 1976 was made applicable to the Federal Capital Territory concerning and pertaining to matters covered under Paragraph 1 (j) 4th Schedule to the 1999 Constitution as amended. Specifically, Sections 55 and 56 of the said Niger State Local Government relating to 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 State are by the Federal Capital Territory Act F - 6 2004 made applicable to the Federal Capital Territory to among other things enable the six Area Councils in the Federal Capital Territory take steps to realize and perform the functions bestowed upon them by the Constitution. The Appellant, ABUJA MUNICIPAL AREA COUNCIL and the 2nd - 6th Respondents are legally entitled to rely on the Federal Capital Territory Act Cap F - LFN 2004 being a deemed Act of National Assembly of Nigeria to make the bye-laws, the ABUJA MUNICIPAL BYE-LAW 2012 NO. 22 VOL. 99 dated 11th January, 2012 - Abuja Municipal Council (AMAC) Tenement Bye-Law NO. 22 VOL. 2012. It cannot be said that the (sic) there is no law or Act in existence which empowers the six Area Council (sic) in the Federal Capital Territory to make such Bye-Laws. The Learned trial Judge ought to have taken judicial notice of the fact that the adoption or adaption of the Niger State Local Government Law 1976 particularly Sections 52, 55 and 56 thereof by the National Assembly vide Section 315(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended, it must be taken that the National Assembly had in pursuant of Section 7 of the 1999 Constitution and Paragraph (1) (j) of the 4th Schedule to the said Constitution has actually prescribed***

<sup>8</sup> Cap F6 LFN 2004

<sup>9</sup> Especially Sections 55 and 56 relating to 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 State

***method and modalities by which the six Area Council in the Federal Capital Territory will carry out one of their main functions which is assessment (sic) of privately owned houses or tenements for the purpose of levying such rates.”***

From the foregoing, the reasoning of the appellate Court is that:

1. The 1999 Constitution empowers the National Assembly to pass laws upon which the Area Councils are to operate<sup>10</sup>, while it also provides that one of the functions of Area Councils is the assessment of privately owned houses or tenements for the purpose of levying such rates *as may be prescribed by the National Assembly*<sup>11</sup>;
2. The Federal Capital Territory (FCT) Act<sup>12</sup>, by virtue of the Second Schedule to the Federal Capital Territory Act, has made the provisions of Niger State Local Government Edict of 1976 applicable to the Federal Capital Territory;
3. The Niger State Local Government Edict of 1976<sup>13</sup> empowers local governments (Area Councils in the FCT) to make bye-laws that relate to the assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly (National Assembly for the FCT);
4. It can be concluded that the National Assembly, through the application of the Niger State Local Government Edict of 1976 to the FCT, has empowered the Area Councils to make bye-laws for the assessment of tenement rates<sup>14</sup>, and has prescribed modalities by which the six Area Council in the Federal Capital Territory will carry out the assessment of privately owned houses or tenements for the purpose of levying such rates. Conversely, it cannot be said that there is no law or Act in existence that permits the six Area Councils in the Federal Capital Territory to make such Bye-Laws.

### ***Failure to abide by decisions of the superior courts on similar facts in issue***

On this issue, the Court of Appeal held that the cases of ***Knight Frank & Rutley (Nig) Limited & Anor V. Ag Kano***<sup>15</sup> and ***Afdin Venture Limited & Ors V. Chairman, Abuja Municipal Area Council***<sup>16</sup> are on all fours with the instant appeal.

In the ***Knight Frank*** case, the Kano State Government (Respondent) entered into a contract with the Appellants to prepare for the State Government a Valuation List

<sup>10</sup> Section 7  
<sup>11</sup> Paragraph (1) (j) of the 4th Schedule  
<sup>12</sup> Cap F6 LFN 2004  
<sup>13</sup> Sections 55 and 56  
<sup>14</sup> In pursuance of Section 7 of the 1999 Constitution and Paragraph (1) (j) of the 4th Schedule to the said Constitution  
<sup>15</sup> (1998) LPELR - 1694 SC  
<sup>16</sup> (2014) LPELR - 2350 (CA)

for the purpose of property rates in certain parts of Kano State. The Appellants were also to provide training facilities for the employees of the State Government who will take over from the Appellants after the completion of the exercise.

Later on, the State Government discovered that it had no constitutional right to have entered into the contract or agreement in the first place; that the subject matter of the contract was the constitutional responsibility of Local Government Councils. A dispute arose between both parties on the position of the law, which led the Respondent to institute an action in Court. The Apex Court opined that from the provisions of the Constitution<sup>17</sup>, only Local Government Councils have the power to assess and impose rates on privately owned property. Thus, it is the Local Government Councils concerned, and not the Kano State Government, that had the power to award the contract entered into between the parties.

In the ***Afdin Venture*** case, the Abuja Municipal Area Council assessed and served the Appellants tenement rate demand notices of different amounts. Being aggrieved, the Appellants proceeded to seek redress in Court. The Court held that the AMAC has the power to demand and collect tenement rates, as well as to issue a Bye-law for the assessment of privately-owned houses or tenements.

The Court in the instant appeal opined that the above-cited case laws have upheld the powers of Area Councils to assess and demand tenement rates on privately owned houses of tenements for the purpose of levying even rates.

Consequently, the judgment of the trial Court was set aside.

## Brief Analysis of the Decision

It is noteworthy that since the decision of the trial Court has been set aside, it cannot be relied upon as the position of the law on the collection of tenement rates in Abuja. By virtue of Section 287 of the 1999 Constitution, the decision of the Court of Appeal now represents the law and is to be obeyed unless set aside by the Supreme Court. The implication is that the status quo, prior to the judgment of the trial Court in the case of **Planned Shelter Limited V. AMAC & 5 Others**<sup>18</sup>, has returned.

While the decision of the trial Court no longer represents the law, it may be noted that the Court of Appeal missed out on a point that was made by the trial Court. The trial Court agreed that the Area Councils had the power to assess houses for the collection of tenement rates, and even demand and collect tenement rates.

<sup>17</sup>  
<sup>18</sup>

Paragraph 1(b) and (j) of the Fourth Schedule read together with the provisions of Section 7 subsection (5) of the Constitution.  
Suit No: FCT/HC/CV/2625/16

However, the point was that such rates to be collected must be prescribed by a law of the National Assembly. Paragraph 1(j) of the 4th Schedule to the Constitution provides that one of the main functions of a local government council is the 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 State (in this case, the National Assembly)*. Even the Niger State Local Government Edict of 1976<sup>19</sup>, which the Court made reference to, only gives local governments the "...power to make bye-laws for the collection of community tax, property and other rates and other designated revenues." This provision deals with "collection" of rates, not "prescription" of rates.

It is apt to state, at this juncture, that the ***Knight Frank*** case relied on is not on all fours with the instant appeal. The ***Knight Frank*** case arose in Kano State and was decided under the Kano State Local Government Edict No. 5 of 1977 which sets out the process of fixing rates to be charged, as well as appoints local governments as the rating authorities. There is no such law with similar provisions in the FCT. Going further, at page 32 of the judgment, the Supreme Court in the ***Knight Frank*** case, in interpreting Paragraph (1) (j) of the 4th Schedule to the Constitution, stated that "*The House of Assembly of a State may by law prescribe the type of rates to be levied on such privately owned houses or tenements. The assessment and collection of such rates are exclusively the function of the local government council as guaranteed by the Constitution and not by the State Legislature.*" This is an affirmation of the duty of the Area Council for the FCT) as against that of the House of Assembly (National Assembly for the FCT) in relation to tenement rates.

In the ***Afdin Ventures*** case which is more on all fours with this case, the Court spent a lot of time talking about the powers of the President (and by delegated authority, the Minister of the Federal Capital Territory) to make regulations to give effect to the FCT Act as well as his power to change the text of the laws set out in the 2<sup>nd</sup> Schedule to the FCT Act<sup>20</sup>. There is however no law that gives similar powers to the Area Councils, and there is no law that has been altered by the President or the Minister to confer the power to prescribe the tenement rates on the Area Councils. The Court in that case also reasoned that a Bye-law is enacted for the internal governance and external dealings of the Area Councils with the public, and is therefore an authoritative document subordinate to the Constitution. The hole in this argument may be that with regards to tenement rates, the Constitution has already given the power to determine the rates to be charged as tenement rates by the Area Councils, to the National Assembly<sup>21</sup>. So this takes the power away from the Area Councils. In the interpretation of statutes, the express mention of one (lawmaker) is to the express exclusion of any other<sup>22</sup>.

<sup>19</sup> Section 55, particularly at subsection (r)  
<sup>20</sup> Including the Niger State Local Government Edict of 1976  
<sup>21</sup> Paragraph 1 (j) of the Fourth Schedule.  
<sup>22</sup> See SHINKAFI & ANOR v. YARI & ORS (2016) LPELR-26050(SC)

# Conclusion

1. The decision of the trial Court in ***Planned Shelter Limited V. AMAC & 5 Others***<sup>23</sup> has been set aside and no longer represents the law. Area councils in Abuja are empowered to make bye-laws including for the collection of tenement rates.
2. The implication of this is that Area Councils are also empowered to demand and collect rents, as has also been held in the judicial decisions<sup>24</sup> relied on in this judgment.
3. Whilst we acknowledge the bindingness of this decision until it is set aside<sup>25</sup>, we are of the opinion the decision of the Court of Appeal failed to consider the point that there is no law of the National Assembly determining the amount to be collected as tenement rates. However, unless and until this decision is set aside, residents in Abuja are expected to comply with the directives of Area Councils to pay tenement rates in accordance with their Bye-laws.
4. Our analysis of the case is that even though the decision of the Court of Appeal may be questionable, it remains the position of the law and will continue to be applicable until it is set aside by the Supreme Court, on appeal.

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<sup>23</sup> Supra  
<sup>24</sup> Knight Frank & Rutley (Nig) Limited & Anor V. Ag Kano (Supra) and Afdin Venture Limited & Ors V. Chairman, Abuja Municipal Area Council (Supra)  
<sup>25</sup> see Section 287 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

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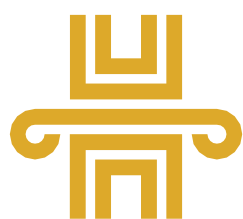
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