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A QUERY OF THE LEGALITY OF CONSENT FEE CHARGED BY GOVERNORS PURSUANT TO SECTION 22 OF THE LAND USE ACT

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Abstract
This article considered the legality of the consent fee prescribed by Governors for alienation of the right of occupancy under section 22 of the Land Use Act. Considering that this article borders solely on law, the article examined provisions of the Act relating to the practise of consent fees and judicial decisions. The research conducted was doctrinal. The article argues that consent fee is a tax, and that no pecuniary burden can be imposed upon a citizen by whatever name it may be called, whether tax, due, rate or toll or fee, except upon clear and distinct legal authority, established by those who seek to impose the burden. The paper contends that there is no power, express or implied, vested in the Governor to prescribe any fees as a precondition for exercising his power under section 22 of the Act and that the Governor's consent power is only exercisable subject to a regulation made by the Council of States in that regard under section 46(1(a) of the Act. The paper concludes by recommending a public-interest litigation to test the legality of the practice of Governor's consent fee.

Key words: Land, Governor, consent, fee

1. Introduction

The Land Use Act has become a permanent and prominent feature in Nigeria's land jurisprudence. The pride of place it occupies over and above other land related legislation is explained and perhaps exemplified by elaborate, stern and tortuous procedure for the amendment or repeal of the Act. Section 315(5)(d) of the Constitution of the Federal Republic of Nigeria, 1999 as amended (hereinafter referred to as 'the Constitution') provides that nothing in the Constitution shall invalidate the following enactments: the National Youth Service Corps Decree 1993; the Public Complaints Commission Act; the National Security Agencies Act; the Land Use Act, and the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of the Constitution and shall not be altered or repealed except in accordance with the provisions of section 9(2) of the Constitution.

Section 1 of the Act declares that all land comprised in the territory of each State in the Federation are vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of the Act. To leave no one in doubt about its avowed intention of vesting what has been described as the radical title to land in the Governor of a State,[1] the Act reduces all interest or ownership in land before its commencement to right of occupancy - customary and statutory.[2] The consequence of vesting radical title of all land comprised in a State in the Governor is that the freedom of persons or entities vested with rights of occupancy is circumscribed and in a principal way in the alienation of such rights.

The consent of the Governor of a State in which land is situate must be sought and obtained before alienation. Section 22(1) of the Act provides that it shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof

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[1] *Abioye & ors v Yakubu & ors* (1991) LPELR-43(SC).
[2] Land Use Act, Cap L5, LFN 2004, s 34(2) and s 36(2).

by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained. It is not lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise howsoever-(a) without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or (b) in other cases without the approval of the appropriate Local Government.[3]

That the consent of the Governor is required to alienate a statutory right of occupancy and the modes of such alienation are prescribed by the Act is as certain as the coming of the next day. It seems acceptable that State Governors are permitted by the Act to impose all sorts of monetary conditions as a precondition to give its consent to person and entities to alienate their right of occupancy. It is generally known and called 'the Governor's consent fee'. In Lagos State for example the consent fee for mortgage and assignment of right of occupancy is fixed at 0.25% and 1.5% respectively of the value of the property.[4] For Rivers State, it ranges between 2% and 0.2% for mortgage and ranges between 10% and 5% for assignment.[5] While much has been written about the negative impact of the Governor's consent on mortgage practices and generally on land transactions and with serial calls for its re-examination and abrogation, little attention had been given to the legality of consent fees charged by Governors for alienation of right of occupancy.

The purpose of the article is to examine the lawfulness of Governor's consent fee and in that regard the article will examine whether the mere vesting of powers to give consent for alienation of right of occupancy, Governors are necessarily vested with power to impose a fee or a toll on individuals and corporate entities seeking to alienate their right of occupancy. The objective of this paper, which adopts the doctrinal research methodology, is to puncture the unchallenged and now settled practice of Governors asking as it were for monetary returns to give their consent to alienation of right of occupancy. The paper shall consequently consider whether the language in section 22(1) of the Act along with other provisions thereof admit of or support the practice consent fee, without the involvement of the appropriate legislature.

2. Conceptual Clarifications

2.1 Land

The Act which is Nigeria's principal legislation on land, does not define land, but land has been defined to include any building and any other thing attached to the earth or permanently fastened to anything so attached, but does not include minerals.[6] This definition has been held to be all-embracing.[7] The word 'land', in its ordinary meaning, means any ground, soil or earth or the solid part of the earth's surface as distinguished from the sea.[8] Land in its restrained sense, means soil, but in its legal acceptation, it is a generic term, comprehending every specie of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, waters, marshes, furze and heath; it includes also houses, mills, castles and other buildings, for which the conveyance of land, the structure upon it pass also.[9] And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, *cugus est solum ejus est usque and coelum et ad inferos*.[10] Generally, at common

[3] LUA, s 21.
[4] Lagos State Fair Market Value 2021 < https://gazettes.africa/akn/ng-la/officialGazette/official-gazette/2021-03-15/9/eng@ 2021-03-15/source > accessed 9 April 2025.
[5] Rivers State Land Use Fees (Regulation) 2010< https://northcourtrealestate.com/download/Rivers%20State%20Official%20Gazette.pdf > accessed 9 April 2025.
[6] Interpretation Act, Cap I23, LFN 2004, s 18(1).
[7] *Unilife Development Co Ltd v Adeshigbin & ors* (2001) LPELR-3382(SC) (Pp. 21-22 paras. B).
[8] *Salami v gbodoolu & ors* (1997) LPELR-2984(SC) (Pp. 13 paras. D).
[9] Coke on Littleton, quoted in Jowitt's Dictionary of English Law (1977, 2nd Ed.) vol.2 pp 1058-1059.
[10] The maxim means the owner of the soil is presumed to own everything up to the sky and down to the centre of the earth.

law land covers the earth surfaces, the sub-soil, things attached to the land and other incorporeal hereditaments enjoyed on land.[11] Land is the source of all material wealth.[12]

2.2 Governor

The Constitution establishes for each State of the Federation a Governor.[13] The Governor is the Chief Executive of the State.[14] He is the head of the executive branch of government. It is provided that subject to the provisions of the Constitution, the executive powers of a State; shall be vested in the Governor of that State and may, subject to the provisions of any Law made by a House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and shall extend to the execution and maintenance of the Constitution, all laws made by the House of Assembly of the State and to all matters with respect to which the House of Assembly has for the time being power to make laws.[15]

2.3 Consent

Consent means a concurrence of wills.[16] It also means voluntarily yielding the will to the proposition of another, acquiescence or compliance therewith.[17] Agreement; approval: permission; the act or result of coming into harmony or accord.[18] Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance the good or evil on each side.[19] It means voluntary agreement by a person in the possession and exercise of sufficient mental capacity to make an intelligent choice to do something proposed by another. Consent presupposes a physical power to act, a moral power of acting, and a serious, determined, and free use of these powers.[20] Consent is implied in every agreement. Consent is an act unclouded by fraud, duress, or sometimes even mistake. Willingness in fact that an act or an invasion of an interest shall take place.[21] Consent requires the presence of three elements: parties must reach a complete and final agreement; they must be ad idem in the terms of their compromise agreement; and their consent must be free and voluntary.[22] The Governor when giving his consent to an assignment, mortgage or sub-lease may require the holder of a statutory right of occupancy to submit an instrument executed in evidence of the assignment, mortgage or sub-lease and the holder shall when so required deliver the said instrument to the Governor in order that the consent given by the Governor may be signified by endorsement thereon.

It is clear from provisions of the Act that there are certain instances in which the consent of the Governor is not mandatory. Consent of the Governor shall not be required: to the creation of a legal mortgage over a statutory right of occupancy in favour of a person in whose favour an equitable mortgage over the right of occupancy has already been created with the consent of the Governor;[23] to the reconveyance or release by a mortgagee to a holder or occupier of a statutory right of occupancy which that holder or occupier has mortgaged to that mortgagee with the consent of the

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[11] Chris C Wigwe, *Land Use and Management Law*, (Accra: Mountcrest University Press 2016) 7.
[12] D.G. Barnsley, *Barnsley's Conveyancing Law and Practice*, 3rd edn. (Butterworths, London, 1988) 3.
[13] Constitution of the Federal Republic of Nigeria, 1999 as amended, s 176. Abbreviated in the footnote as CFRN 1999 as amended.
[14] CFRN 1999 as amended, s 176(2).
[15] Ibid, s 5(2).
[16] *Nsugbe v Okobi & anor* (2012) LPELR-24481(CA).
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Nsugbe v Okobi & anor (n 13).
[22] *Star Paper Mill Ltd & anor v Adetunji & ors* (2009) LPELR-3113(SC) (Pp. 27 paras. D).
[23] LUA, s 22(1)(a).

Governor;[24] to the renewal of a sub-lease shall not be presumed by reason only of his having consented to the grant of a sub-lease containing an option to renew the same.[25] The alienation of a statutory right of occupancy in absence of the consent of Governor would have disastrous consequence on that transaction. Any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of the Act shall be null and void.[26] On the effect of failure to obtain the consent of the Governor before alienation, it was held in *Calabar Central Co-Operative Thrift & Credit Society Ltd & Ors V. Ekpo*[27] that:

> The consequence of the unlawful act of alienating a right of occupancy without the requisite consent of the Governor is what is stated under Section 26, also supra. It makes the transaction, such as exhibit A expressly null and void. Section 26, in declaring such an act null and void used the word "shall" which, in the instant case makes the provision mandatory, not directory or discretionary…The provision, as earlier stated is clear and unambiguous and therefore calls for no interpretation - it says that an alienation made contrary to the provisions of the Act "shall be null and void" which to my mind, means "null and void" for all purposes under the sun; if it were not so the law would expressly or by necessary implication have stated so.

2.4 Fee

Although, it appears twice, the word 'fee' is not defined in the Act.[28] Fee simply means an amount of money paid for a particular piece of work or for a particular right or service.[29] A fee is a sum of money that you pay to be allowed to do something.[30] Attempts have been made at drawing a distinction between a tax and a fee. It has been argued that a tax is compulsory extraction of money by public authority for public purpose enforceable by law and is not a payment for services rendered. On the other hand, fee is charged for special services rendered to individuals by some governmental agency. In any event, tax has been defined as a charge, usually, monetary, imposed by the government on persons, entities, transactions or property to yield revenue.[31] Most broadly, the term embraces all government impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises.[32]

There are countless types of fees, some of which are sanctioned by statutes: legal fees, court fee, entrance fee,[33] registration fee,[34] practising fee,[35] school fee, non-refundable fee and of course consent fee which is the subject of this piece. In whatsoever it is view, to the extent that the payment of fee is a precondition for the grant of the consent of the Governor to alienate, the Governor's consent fee is toll, a tax or a levy. Equity looks to the intent or substance rather than the form.[36]

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[24] Ibid s 22(1)(b).
[25] Ibid, s 22(1)(c).
[26] LUA, s 26.
[27] (2008) LPELR-825(SC) (Pp. 26 paras. C).
[28] LUA, ss 9(2) and 46(2)(c).
[29] <https://dictionary.cambridge.org/dictionary/english/fee>accessed 7 April 2025.
[30] <https://www.collinsdictionary.com/dictionary/english/fee>accessed 7 April 2025.
[31] Taofeeq Abdulrazaq, Cases and Materials on Nigerian Taxation (2016) 5.
[32] Ibid.
[33] Association of National Accountants of Nigeria Rules, Rule 7 made pursuant to Association of National Accountants of Nigeria Act, Cap A26, LFN 2004.
[34] Veterinary Surgeons (Registration, Etc., Fees) Rules, Rule 1 made pursuant to Veterinary Surgeons Act, Cap V3, LFN 2004.
[35] Legal Practitioners Act, Cap L11, LFN 2004, s 8(2). Nigerian Council of Food Science and Technology (Establishment) Act, 2019, s 19.
[36] *Oboh & anor v Nigeria Football League* (2022) LPELR-56867(SC).

3. Legality of Governor's Consent Fee

The Act does not expressly vest power on the Governor to charge a fee before giving his consent to alienate. As already stated, the word 'fee' appeared twice in the Act. Section 22 of the Act which is the basis upon which fees are charged by Governors for alienation is not one of those instances. Concerning alienation of a right of occupancy and amongst others, section 46(1)(a-e) of the Act provides that the National Council of States may make regulations for the purpose of carrying the Act into effect and particularly with regard to the following matters; the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians; the terms and conditions upon which special contracts may be made under section 8 of the Act; the grant of certificates of occupancy under section 9 of the Act; the grant of temporary rights of occupancy; and the method of assessment of compensation for the purposes of section 29 of the Act.

The National Council of States otherwise called 'the Council of States' owes its existence to the Constitution.[37] The Council of States comprises of the President, who shall be the Chairman; the Vice-President, who shall be the Deputy Chairman; all former Presidents of the Federation and all former Heads of the Government of the Federation; and all former Chief Justices of Nigeria.[38] Other members of the Council of State are: the President of the Senate; the Speaker of the House of Representatives; all the Governors of the States of the Federation; and the Attorney-General of the Federation.[39] Amongst others the Council of States is empowered to advise the President in the exercise of his powers with respect to the - national population census and compilation, publication and keeping of records and other information concerning the same; prerogative of mercy; award of national honours; and the Independent National Electoral Commission (including the appointment of members of that Commission).

It does not require eye-bulging examination of section 46(1) of the Act to see that enormous powers are vested on the Council of States with respect to key components of the Act. Of importance to this piece is the power vested on the Council of States to make regulations with respect to sections 21 and 22 of the Act, that is, 'the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights to persons who are not Nigerians'**.** For the purpose of carrying into effect the foregoing and amongst others, the Council of State is empowered to make 'regulations.

Where a statute donates power to a person, body or entity to make regulations, those regulations, rules, howsoever described are subsidiary or delegated legislation and those regulations have force of law as if they were actually made by the delegating authority. Put differently, a subsidiary legislation or enactment is one that was subsequently made or enacted under and pursuant to the power conferred by the principal legislation or enactment.[40] It derives its force or efficacy from the principal legislation to which it is therefore secondary and complimentary.[41] It is arguable that the powers vested on the Council of States under section 46(1)(a-e) of the Act are exclusive to it and cannot be exercised by any the person or authority and under any guise. Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.[42] Indeed, an enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it.[43]

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[37] CFRN 1999 as amended, s 153(1)(b)
[38] Part 1 of section 5 of the Third Schedule to the Constitution.
[39] Ibid.
[40] *Best Njoku v Chief Mike Iheanatu* (2008) LPELR - 3871 (CA).
[41] *Ibid.*
[42] Interpretation Act s 10(1).
[43] *Ibid*, s 10(2).

In *UBN Plc & anor v Ayodare & Sons (Nig) Ltd & anor*[44] the Respondents in the appeal were the Plaintiffs at the Lokoja High Court of Kogi State where they claimed against the Appellants as the Defendants for several reliefs. The parties filed and exchanged pleadings after which the suit was tried. The case of the Plaintiff was that in 1980, the 1st Plaintiff obtained from the 1st Defendant, a bank, a loan of N40,000.00. In order to secure the loan, it executed two deeds of mortgage of the 2nd Plaintiff's two properties in favour of the 1st Defendant. One of the properties was at Lokoja and the other at Kabba both in Kogi State. It would appear that the 1st Plaintiff took other loans from the 1st Defendant which in 1989 brought the total amount owed to 1st Defendant to N307, 680.25. In 1989, the 2nd Defendant as agent of the 1st Defendant advertised in the New Nigerian newspapers the sale of 2nd Plaintiff's two landed properties. In reaction, the 1st and 2nd Plaintiffs (now Respondents) instituted the action against the Defendants (i.e. Appellants). The trial Judge in his judgment found for the Plaintiff on claims (ii), (iii), (iv) and (v) above. The Defendants were dissatisfied with the said judgment. They filed an appeal before the Court of Appeal, Abuja. The Court of Appeal in its unanimous judgment affirmed the judgment of the High Court and dismissed the appeal. Still dissatisfied, the Appellants appealed to the Supreme Court.

The Appellants formulated two issues for determination which were also adopted by the Court as follows: whether the learned Justices of the Court of Appeal were right when they held that the deeds of mortgage, Exhibits 1 and D1 were invalid, null and void having been based on consent issued and signed by Ag. Chief Lands Officer or Permanent Secretary and Director-General, Kwara State Ministry of Lands and Housing respectively, who were not the appropriate authorities under the Land Use Act; whether on the peculiar facts of this case, the strict and inflexible application of the ratio decidendi in the case of *Savannah Bank (Nig.) Ltd v Ajilo & Anor* (1989) 1 NWLR (Pt.97) 305 at 324 is not appropriate, distinguishable and inapplicable. In conclusion, the Supreme Court dismissed the appeal and affirmed the judgment of the Court of Appeal. One of the reasons given by the apex Court for dismissing the appeal was that the purported consent to the mortgage transaction did not come from the Governor who is statutorily entitled to give it by virtue of section 22(1) of the Act or his appointed delegated. Relying on section 10(1) of the Interpretation Act, it has been held that it is trite law that if an enactment bestows on a particular person or authority the power to do a specific duty, it is only that person or authority, and none other that can perform the assignment before it will receive the *imprimatur* of the law.[45]

It should be stressed that the Act does vest power on the Governor to make regulation for the purpose of carrying into effect alienation of right of occupancy and the requirement of consent as provided in the Act. Not even remotely. 'The term regulation is defined in Black's Law Dictionary, 8th Edition, page 1311 inter alia as: The act or process of controlling by rule of restriction.'[46] Arguably, the regulation contemplated under section 46(1) of the Act is intended to govern, control or restrict the power vested on the Governor to grant consent to persons or entities seeking to alienate their right of occupancy under sections 22 and 21 of the Act. Those powers are not to be exercised at the whims and caprices of the Governor. This position explains why one will not find anywhere in the Act provisions vesting the Governor with the power to impose a fee before the granting of consent for alienation.

What the Act does is that in section 46(2) it provides that the Governor may, subject to subsection (1) of section 46 make regulations with regard to the following matters - the method of application for any licence or permit and the terms and conditions under which licences may be granted; the procedure to be observed in revising rents; the fees to be paid for any matter or thing done under this Act; the forms to be used for any document or purpose. The purport and extent of the enumerated powers of the Governor under section 46(2) is defined by the use of the phrase 'subject

[44] (2007) LPELR-3391(SC).
[45] *Kwara State Polytechnic, Ilorin & IR v Saliu & ors* (2012) LPELR-9695(CA) (Pp. 68-69 paras. C).
[46] *AG Lagos State v Eko Hotels Ltd & anor* (2006) LPELR-3161(SC) (Pp. 39 paras. D).

to'. In *Tsokwa Oil Marking Co, (Nig) Ltd v Bank of the North Ltd*[47], it was held that where a sub-section of an enactment is subject to another section or subsection of the same enactment, the latter controls and prevails over the former. The implication here is that the power of the Council of States in section 46(1) of the Act controls and prevails over that of the Governor under section 46(2) of the same Act and Governor under the guise of the latter cannot make rules for the payment of consent fee for alienation. The practice of Governor's consent fee for alienation though generally accepted and complied with is illegal and violates the letter and spirit of the Act.

There is justification for unifying the power to make regulations to carry out the items enumerated in section 46(1) of the Act to a single authority, Council of States. The reason is to have some sort of uniform Nigerian regulation for practice and procedure for seeking the consent of Governor for alienation of a right of occupancy, statutory or customary. The Act is a principal land legislation applicable to all parts of Nigeria. It seems incongruous and arguably ludicrous that in the actual application and operation of Sections 21 and 22 of the Act, what happens in one state would be different from what happens in another state. In Nigeria, the north and south have a different mode of regulation of land rights.[48] One of the reasons for the crafting of the Act was to harmonise land law and practice across the Federation and streamline and simplify the management and ownership of land in the country.

It is important to note, as already pointed out above, the requirement of payment of fee for the consent of the Governor for alienation of right of occupancy is the nature of a tax or toll or levy. The cardinal principle relating to acts that impose tax is that, no tax will be imposed on the subject without the words in statute clearly showing an intention to lay a burden on him. In *Akingbade v Lagos Town Council*,[49] the Plaintiff claimed two reliefs: a declaration that the purported making of Public Health Rule No. 55(3) (as amended by the Public Health Rules, 1954) under the provisions of the Public Health Ordinance, section 42, was *ultra vires* and that the said rule is therefore void and of no effect; and for the return of the sum of £5 paid by the said Plaintiff to the Defendants under the said Rule. The facts of the case were not in dispute and the whole case turned on the question whether the making of the Public Health Rule No. 55(3) under section 42 of the Public Health Ordinance, section 42, was *ultra vires*.

Pursuant to section 42 of the Ordinance, a regulation was made, which amongst others provided for the payment of the sum of £5 fee for the registration of an approved business. The issue in this case was whether in the absence of the express words by the legislature requiring the payment of £5 fee as a condition for registration it was not *ultra vires* the Defendants to charge a fee of £5 for registration of the business listed in the regulation. Before the Court agreed with the Plaintiff and set aside the £5 fee for registration of business and order its return to the Plaintiff, it referred to and relied upon the decisions of *Gosling v Velley,*[50] *Ormond Investment Co v Betts*,[51] and *Coltness Iron Co v Black*.[52] In those cases, it was held that the rule of law that no pecuniary burden can be imposed upon a citizen by whatever name it may be called, whether tax, due, rate or toll, except upon clear and distinct legal authority, established by those who seek to impose the burden has so often the subject of legal decision that it may be deemed a legal axiom and requires no authority to be cited in support of it. Particularly, where the sums to be paid to the State are to be paid on a condition of obtaining a licence to exercise ordinary rights of a subject should the clearest words be required. It was held that there cannot be any tax, toll or fee on a citizen without express words in an enactment clearly showing an intention to lay a burden on him.

[47] (2002) LPELR-3268(SC) (Pp. 29-30 paras. A)
[48] Chris C Wigwe (n 11) 28.
[49] (1955) 21 NLR 90.
[50] 12 QB 407.
[51] (1928) AC 143.
[52] (1881) 6 AC 315.

The decision in *Akingbade* (supra) which relied on the three English decisions stated above has force of law in Nigeria and applicable to the question whether without any express words from which the intention can be inferred, the Act vested power on the Governor to charge or impose a fee for alienation of right of occupancy. Rules of common law are still applicable in Nigeria.[53] In *Polaris Bank Plc v Enugu State Board of Internal Revenue*[54] by a motion ex-parte filed on 31/1/2017 in the High Court of Enugu State in the Enugu Judicial Division, the Respondent sought the following reliefs against the Appellant: An order distraining the Respondent for failure to pay its withholding tax on interest due to the Enugu State Government for the period of 2007-2012 and 2013-2014 amounting to the sum of one hundred million, nine hundred and forty-five thousand, two naira, forty-two kobo (N100, 945,002.42): An order directing the Applicant to recover the tax due from the sale of such goods distrained upon failure of the Respondent to pay the tax due and its costs and charges, incidental to the distrain. The application was supported by an affidavit of twenty paragraphs deposed to by one Joseph Onyeke, Director of Taxes in the Respondent.

The motion was moved on 16/2/2017 and the same was granted as prayed. The order was enforced by the sealing of the branches of the appellant in Enugu State. The Appellant therefore filed a Notice of Appeal against the said order on 30/3/2017. The Court determined the appeal on the following issues: can the Appellant be statutorily liable for the failure of Mainstreet Bank to fulfil its tax obligation to the Respondent under the Personal Income Tax Act Cap P8 Laws of the Federation of Nigeria 2004 (as amended); can the trial Court assume jurisdiction over the suit of the Respondent which was initiated through an improper procedure?; Can a distraining order be granted against an agent of collection who is not a taxable person under Section 104 of the Personal Income Tax Act Cap P8 Laws of the Federation of Nigeria 2004 (as amended); Did the adoption of ex-parte proceedings not operate to deny the Appellant constitutional right to fair hearing at the trial Court? In conclusion, the appeal was allowed. It was held that it is the law, that tax is statutory and that in interpreting a tax statute, the Court must confine itself to the clear provisions of the law and not read anything into it that is not there and where no tax liability is imposed on a subject, the taxing authority cannot impose tax liability on the subject.

In *S. A. Authority v Regional Tax Board*[55] in suit M/42/67 in the Ibadan High Court the Plaintiff's summons against the Defendants is for a declaration that the Holy Apostles' Community Aiyetoro, in Ilaje District Council Area, is not liable to pay tax under the Income Tax Law of Western Nigeria. On the 27th day of November, 1967 Thompson, J. dismissed the action and on the 13th day of December, 1968 in appeal CAW /46/68 the Court of Appeal of the Western State dismissed the appeal and upheld the dismissal of the action by Thompson, J. though it set aside certain consequential orders that he made. Against that dismissal the Plaintiffs appealed to the Supreme Court. The issue before the Court was whether by virtue of section 8 of the Income Tax of Western Nigeria tax could validly be levied on the Holy Apostles Community Aiyetoro, in the Western State.

Section 8 of the Law reads: tax shall, subject to the provisions of the Law, be charged for each year of assessment of rate:- (a) Upon the income of any person resident in Western Nigeria accruing in, derived from, brought into or received in Western Nigeria; (b) upon the income of any person from an employment by the Government of Western Nigeria wherever the remuneration is paid, if that person performs the duties of that employment in a country other than Nigeria and that country under any agreement or diplomatic usage exempts him from tax on such income; Provided that for the purposes of deductions that may be allowed under the provisions of Part V of the Law, such a person shall be deemed to be resident in the Region in the year of assessment; (c) Upon the income of any person not resident anywhere in Nigeria accruing in or derived from Western Nigeria. The Supreme Court held that no tax can be imposed on the subject without words in an Act of Parliament

[53] (n 42) s 32.
[54] (2024) LPELR-62182 (CA) (Pp. 6-7 paras. F).
[55] (1970) LPELR-2967(SC).

clearly showing intent on it lay a burden on him and that section 8 of the Law did not contain words showing an intention on the part of the legislature that tax be imposed on and be paid by the Appellant.

4. Finding, Conclusion and Recommendations

This research establishes that the Governor's consent fee for alienation is a tax or toll and the authority to do that is not expressly even remotely discernible from sections 21 and 22 of the Land Use Act. It finds that judicial attitude in England and Nigeria is that no pecuniary burden can be imposed upon a citizen by whatever name it may be called, whether tax, due, rate or toll, except upon clear and distinct legal authority donated to those who seek to impose the burden. The paper demonstrates that while the Council of State is vested with the exclusive power to make regulation for the purpose of carrying this Act into effect and particularly with regard to the following matters; the transfer by assignment or otherwise howsoever of any rights of occupancy, whether statutory or customary, including the conditions applicable to the transfer of such rights, the Act does not contain words expressly vesting the Council of States or the Governor to impose a fee on Nigerians wishing for lawful reason to alienate their right of occupancy.

A public interest litigation is recommended to put to the front burner, the legality of the Governor's consent fee and its deleterious effects with the view towards having the Court pronounce of it. This may just be the leeway to this issue of Governor's consent fee dealt with after years of its illegal implementation.