IMPOSITION OF 6 PERCENT STAMP DUTIES RATE ON TENANCY AGREEMENT – A NEGATIVE RESPONSE TO THE EFFECT OF COVID-19 PANDEMIC IN NIGERIA

Abstract

The sudden surge of the COVID-19 pandemic in the world brought a lot of hardship and harm to individuals, corporate bodies and government. The challenges posed by the pandemic are visible from health to economy, business and commercial sectors. It is not an overstatement that it caused a lot of crisis and led to the death of many people around the globe. The effects led to the reduction or even halt in the economic activities of many countries which Nigeria is not an exception. The impacts of the pandemic on the economy of nations have adverse implications on the tax revenue of these countries. It is worrisome however that while nations battle on how to revamp their economies and assist or cushion the effects of the pandemic on their citizenry, the reverse is the case in Nigeria. In Nigeria, the Federal Inland Revenue Service (FIRS) rather than make policies towards the reduction of tax rates or outright waiver of taxes to be paid by tax payers in order to mitigate the effects of the pandemic increased the pain and hardship on individuals involved in tenancy. Doctrinal method of data collection was adopted and analytical approach used in examining research materials like Stamp Duties Act, judicial decisions, textbooks, journal articles, internet sources and so on. The paper discovered that FIRS rather than maintain *status quo* in the face of the deadly effects of the pandemic on taxpayers increased their woes. It is also unfortunate that this unilateral action in increasing the rate astronomically is illegal as it is not backed by any law and amounts to usurpation of the powers of the National Assembly. It is expected that stakeholders in tax matters will challenge this illegality as same is *ultra vires*.

Keywords: Stamp Duties, Tax, Tenancy Agreement, Covid-19, mitigation

Introduction

It is no longer news that COVID-19 pandemic shut down the world. There is a serious reduction in Government revenue as a result of the pandemic. The closure of borders of many countries as a result of the outbreak of the pandemic led to the dwindling in the government revenue. There was a stalemate in the economic activities of many businesses as a result of lockdown imposed by many nations to check the spread of COVID-19. It also resulted in double taxation as the borders were closed. A non-resident in Nigeria for a period exceeding 183 days is exempted from tax in Nigeria[273]. However, a situation where a non-resident is trapped as a result of the closure of borders leading to the person staying in

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[273] Personal Income Tax Act (PITA), 2011, S 16 & 27, second schedule, part II, Paragraph 4(3)

Nigeria exceeding limitation period for the exemption, such a person will be liable to pay income tax and on leaving Nigeria he may be subjected to pay further tax. Again, corporate bodies in their corporate social responsibility donated money to the government in aid against the pandemic and expectation is that there will be deductions while filing tax returns.

It is expected that the stakeholders in taxation matters should have introduced measures to mitigate the impact of Covid-19 pandemic on the tax payers. For instance, it is expected that there should be;

i. extension of the timeline for filing of Value Added Tax and withholding tax from the 21st day to the last working day of the month, following the month of deduction;
ii. Extending the due date for filing of Companies' Income Tax (CIT) returns by one month.
iii. Protection of employees from loss of jobs as a result of COVID-19 by granting a 50% Income Tax rebate on the total and actual due or paid as Pay-As-You-Earn (PAYE) tax under the Personal Income Tax Act.

Rather than adopt these measures aimed at mitigating the hardship created by the sudden surge of COVID-19 pandemic, the Federal Inland Revenue Service (FIRS), the federal authority for collection and administration of tax embarked on a wild goose chase, as the action was not backed by any law, hence it is *abinitio* illegal and aimed at increasing the sufferings of the people by imposition of a *prorata* duty rate of 6% on all Tenancy Agreements. This introduced extensive financial implications for individuals and corporate persons and same is in consistent with the prevailing global practice.

2. The Stamp Duties Tax

Stamp Duties Tax came into being with the coming into effect of Stamp Duties promulgation in 1903[274]. The Proclamation was intended to regulate the charging of stamp duties with respect to certain instruments.[275] But the proclamation has gone through several amendments until the extant Act.[276] The most recent of the amendments is the Finance Act 2020. Some of the instruments specified in the schedule to the Act[277], for denoting them with the stamp duties are;

a. Admission as a barrister or solicitor
b. Admission as a notary public

[274] K J Bielu, The Legality or Otherwise of Collection of Stamp Duties by Nigeria Postal (NIPOST) 3 AJCAL (2019) 71-85
[275] Long title of the Proclamation
[276] Stamp Duties Act, Cap S8 Laws of the Federation of Nigeria, 2004
[277] Ibid, S.3 (1)

c. Affidavit, affirmation and statutory declaration,[278]
d. Agreement or contract
e. Agreement for sale of property except it is not of value of N10, to hire labourer, artificer, and manufacturer.
f. Hire purchase
g. Letter of allotment
h. Conveyances, annuity
i. Appointment of a trustee
j. Appraisement or valuation of any property with exceptions
k. Apprenticeship instrument
l. Assignment
m. Assurance policy
n. Power of attorney and the likes
o. Award
p. Receipt[279]

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[278] However, there are exemptions; as affidavit or affirmation to be used in court, made upon a requisition of a commissioner under the Act and required by Central Bank to prove death

[279] Receipt given for or upon the payment of money amounting to N4 or upwards. However there are exemptions which include:

i. Receipt given by any person or his representative for or on account of any salary, pay or wages or for or on account of any other like payment made to or for the account or benefit of any person being the holder of any office or an employee, in respect of his office or employment or from or on account of money paid in respect of any person, superannuation allowance, compassionate allowance or other like allowance,
ii. Receipt endorsed or otherwise written upon or contained in any instrument liable to stamp duty and duly stamped, acknowledging the receipt of the consideration money therein expressed or the receipt of any principal money, interest or annuity thereby secured or therein mentioned,
iii. Acknowledgment by any banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment
iv. Receipt given for money deposited in any bank or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for or for money withdrawn from a savings bank account
v. Receipt given by the payee of a money order
vi. Receipt given for or upon the payment of any government duties or taxes or of money to or for the use of the government,
vii. The duplicate of any receipt required by government to be given in duplicate, the original receipt being duly stamped,
viii. Receipt given by an officer of a public department of the government of Nigeria or a state for money paid by way of impress or advance or in adjustment of account, where he derives no personal benefit there from or for the refund of out-of-pocket expenses due from government.
ix. Receipt given for drawback or bounty upon the exportation of any goods or merchandize.
x. Receipt given for the return of any duties of customs upon certificates of over-entry or upon re-importation certificates.

q. Bill of Exchange (except bank note);[280]
r. Bill of loading of or for goods, merchandise,
s. Bill of sale
t. Bonds except bonds to receive or obtain any drawback of any duty or revenue, obtaining letters of administration and others,
u. Capital duty
v. Charter party
w. Covenant
x. Lease
y. Renunciation
z. Surrender or transfer

Notwithstanding the specific exemptions to each duty, there are however general exemptions,[281] allowed by the Act on all stamp duties. The Federal Government has the power to impose, charge, and collect duties upon instruments executed between a company and an individual, groups or body of individuals[282] whilst the State Government collects duties in respect of instruments executed between

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xi. Receipt for the refund of any sums deposited with the Treasury under the provisions of the Mineral Act.
xii. Receipt given for the return of any monies over-collected by government
xiii. Receipt given by a prisoner on discharge, for money placed on deposit in the Treasury or otherwise retained, during the term of his imprisonment.
xiv. Receipt given by an accused person for money or other property taken from him on his arrest.
xv. Receipt given for money given or subscribed to the Nigerian Red Cross Society.

[280] Exemptions are letter of credit for payment out of Nigeria, Bill or note issued by Central Bank of Nigeria, letter of credit by a firm carrying on the business of banking in Nigeria, Coupon or Warrant for interest attached to and issued with security and an order for payment weekly, monthly or at any other period to the Nigerian Red Cross Society.

[281] The general exemptions include;
i. Transfer of shares in the government or legislative stocks or funds of Nigeria.
ii. Instruments for the sale, transfer or other disposition, either absolutely or by way of mortgage.
iii. All instruments on which duty would be payable locally by government in Nigeria or any of the department thereof,
iv. Agreements made with the Nigerian Railway Corporation relating to the receipt and carriage of passengers, goods or animals.
v. Indemnity bonds given to the Nigerian Railway Corporation by consignees,
vi. An instrument of apprenticeship to which government is a party,
vii. Bond given by public officer for the execution of his duties,

[282] Stamp Duties Act, 2004, S 4 (1)

persons or individuals.[283] The Act[284] recognizes two types of duties; *ad Valorem* and fixed duties.
Ad Valorem duties are duties whose sum increases with an increase in the value of the document evidencing the transaction. For example, a company's share capital is subject to *ad Valorem* duty of one Naira for every 200 Naira.

3. Power to collect Stamp Duties in Nigeria

Stamp Duties is on the Exclusive Legislative List[285] and under the Concurrent Legislative List.[286] Both the Federal and State Governments have power to collect any tax or duty on documents or transactions by way of stamp duties. The Constitution[287] clearly demonstrated that only the Federal government can legislate for the collection and administration of any tax or duty envisaged under items D7 and D8 of the concurrent legislative list. The Act[288] allows the State Government to collect duties with respect to instruments executed between persons or individuals at such rate to be imposed or charged as may be agreed with the Federal Government.

The Taxes and Levies (Approved List for Collection) Act[289], promulgated as Decree No 2, 1998, demarcated the spheres of the tax collectible by each tier of government in Nigeria as enumerated.[290] The Act[291] provides that the Federal Government shall collect stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja. The State Government collects stamp duties on instruments executed by individuals.[292] These powers enumerated under the Taxes and Levies Act is to the exclusion of any other body.[293] It is on this reasoning that

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[283] *Ibid, S 4 (2)*
[284] *Ibid*, S 8
[285] CFRN, 1999 as amended, S4 , 2nd Schedule, Exclusive list, item 58
[286] *Ibid*, part 11, concurrent legislative list, item S paragraph 7 (b)
[287] I*bid.*
[288] *Ibid*, S 4 (2)
[289] Cap T2 Laws of the Federation of Nigeria, 2004. The schedule to the Taxes and Levies (Approved list for collection) Act (Amendment) Order 2015 which seeks to alter the contents has been declared unconstitutional, null and void in Registered Trustees of Hotel Owners and Managers Association of Lagos v the Attorney-General of the Federation & Anor in Suit No L/CS/1082/2019 delivered in May 8,2020.
[290] Ibis, Section 1, schedule part I, II and III & IV
[291] Ibid, schedule, part I, item 7
[292] Ibid, Schedule, part 11, item 4
[293] Section 2(i) of the Act *Ibid* provides on Assessment and Collection. The emphasis by the drafters of the law to show the intention nearly made them to attempt to override the constitution. The opening sentence needs to be amended to be subject to the provisions of the Constitution. Although the Act was made during the military rule when part of the Constitution providing for the supremacy of the Constitution is always suspended. The Act provides that no person, other

the alleged controversial right or power of the Nigerian Postal Service to manage and collect stamp duties which was derived from non-existent provision of NIPOST and Stamp Duties Acts was declared by court not to be in consonance with the extant law.[294] The Taxes and Levies[295] declared tax authorities for the purpose of collecting taxes enumerated in the Act as the Federal Board of Inland Revenue (now, Federal Inland Revenue Service (FIRS), the State Board of Internal Revenue (otherwise called State Internal Revenue Service) as operational arm and Local Government Revenue Committee or a ministry, government department or any other government body charged with responsibility for assessing or collecting the particular tax.[296]

Federal Inland Revenue Service[297] administered stamp duties tax on behalf of the Federal Government.
The FIRS Act[298] made it clear that the provisions of Companies Income Tax Act, Personal Income Tax Act, Petroleum Profits Tax Act, Value Added Tax Act, Capital Gains Tax Act, Stamp Duty Act, Taxes and Levies (Approved List for Collection) Act, or any other law on taxation in Nigeria should be read with such modification to bring them into conformity with the provisions of the FIRS (E)

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than the appropriate tax authority shall assess or collect, on behalf of the Government any tax or levy listed in the Schedule to the Act and members of the Nigeria Police shall be used in accordance with the provisions of the tax laws.

[294] In *Standard Chartered Bank Nigeria Ltd v Kasmal International* Services *Ltd* & 22 Ors, an unreported judgment of the Court of Appeal in CA/L/437A/2014 delivered on 21/4/2016, the Law Lords said, but for reasons best known thereto, the 1st Respondent failed to counter or controvert those averments in paragraphs 5, 6 and 7 of the Appellant's counter affidavit, to the effect that there were no amendments to the NIPOST and Stamp Duties Acts conferring upon NIPOST the power to enforce and collect stamp duties.

[295] Section 4 of Tax and Levies (Approved List for Collection) Act CapT2 *op cit.*

[296] It is unfortunate that the Act did not specify the person or body who will assign this responsibility to ministry, government department or body. This provision runs contrary to the provision under section 2 of the Act that no person other than the appropriate tax authority, shall assess or collect on behalf of the government any tax or levy listed in the schedule to the Act.

[297] See Sections 2, 25 and 68, item 6, 1st schedule, Federal Inland Revenue Service (Establishment) Act No 13 2007.
Although section 68 provides that notwithstanding the provisions of the Act, the relevant provisions of all existing enactments including but not limited, the laws in the first schedule shall be read with such modifications as to bring them into conformity with the provisions of the Act. Again, if the provisions of any other law including the enactments in the first schedule are inconsistent with the provisions of the Act, the provisions of the Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void.

[298] Section 68(2) of FIRS Act op cit. Section 25, ibid.

Act. It is noteworthy that the Service collects all taxes levied under the Act listed in the first schedule.[299]

It is more worrisome that the FIRS (E) Act runs contrary to the provision of the Constitution and other laws. The Personal Income Tax Act[300] empowered the State Board of Internal Revenue and Local Government Revenue Committee to collect the tax. The Court[301] had decided on the legality or otherwise of the State Board of Internal Revenue and Local Government Revenue Committee to collect tax.

The provisions of the Federal Inland Revenue (Establishment) Act juxtaposed with the provisions of the Constitution, the provisions of the Federal Inland Revenue Service shall however to the extent of its inconsistency with the Constitution be void.[302] It is submitted that any other person or body except the bodies permitted by law that imposes, charges and collect revenue under any disguise for the government of the federation, for stamp duties is doing so *ultra vires.*

Since the last amendment, which is in 2004 and the Finance Act 2020[303], nothing has changed to empower the FIRS to unilaterally increase, decrease or modify in any way the provisions and fines imposed in the Act.

4. COVID-19 AND THE EFFECTS OF THE PANDEMIC ON NIGERIANS

The COVID-19 pandemic is now one of the unforeseeable circumstances which no piece of legislation has foreseen. The virus ravaged and continues to disrupt everyday life in Nigeria and the world. It disrupted all aspects of human activity across the world. Businesses were halted, nation and global economies undermined and day to day human activity completely disintegrated. Consequently, governments and business leaders were expected to have taking extra-ordinary responsive steps towards the curtailment of the ravaging scourge.

By the provisions of the Quarantine Act,[304] the President of the Federal Republic of Nigeria, on March 29, 2020 exercised the applicable power to order the restriction of movement. Thus the movement of persons was totally restricted for

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[299] Sections 2, 88 and 91 of the Personal Income Tax (Amendment) Act 2011.

[300] Sections 2, 88 and 91 of the Personal Income Tax (Amendment) Act 2011.

[301] *Knight, Frank and Lutley v AG (Kano State)* (1998) 7 NWLR (pt 556) 1 at 37. Hon. *Minister of Justice & AG Federation v AG Lagos State* (2013) 8 All NTC 425

[302] CFRN, Section 1 (3)

[303] Federal republic of Nigeria Official Gazette, No 6 Vol 107, Lagos 14th January, 2020;

[304] Quarantine Act cap Q2 LFN, 2004, SS 2,3 and 4. See also COVID-19 Regulations 2020 (made pursuant to the Quarantine Act Cap Q2 LFN 2004) S 1 (7). Even the Chief Justice of Nigeria on March 23, 2020 by a circular No NJC/CIR/HOC/11631 issued preventive guidelines for the court.

fourteen days, except for certain exemptions, for instance, those on essential duties. Various State Governments equally closed and placed their states on lockdown. By this, COVID-19 pandemic caused a major decline in tax revenue in most countries. For instance, in some economies, the external sector came under pressure resulting in depreciations or devaluation, which affected tax revenues.[305]

Nigeria being a mono economy and dependent on oil exportation was adversely affected by the pandemic. The closure of borders by nations as a result of the outbreak coupled with the fall in the price of oil led to a drastic reduction in the revenue of the government. The non-payment of import duties as well as other taxes that accrue to the government from its international and commercial transactions impacted on the spending of governments.

As a result of this economic downturn, tax administrators were forced to come up with measures to make the situation more manageable to the taxpayers. Specifically for Africa, tax administrators have done a commendable job to protect taxpayers from the effects of COVD-19. The measures introduced include the following;[306]

i. extension of filing deadlines
ii. extension of payment deadlines and waiver of tax penalties
iii. reduction of tax rates
iv. exemption of import duties on all imports and others.

5. Tenancy Agreement

Tenancy Agreement is an agreement between a Landlord (the party who owns the property) and the tenant (the person acquiring possession of the property for rent) specifying the terms and conditions of the agreement such as the rent, the use of the property, the covenants of both parties, conditions for termination and others.[307] A tenancy may be created by the act of parties or may arise by operation of law.[308] It may subject to the prevailing law in the state or any other law be created orally, or in writing under the hand or by deed.[309]

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[305] COVID-19 Economic and Tax Revenue Impacts, T J Rephan. Http:/www/researchcate.net,3405

[306] A Dushime, rethinking tax in Africa to respond to COVID-19, http://www.weforum.org.2020/04

[307] This is like lease Agreement, however, the residential lease Agreement is used to rent for a longer, termm (usually more than three years), while this document is used to rent a property for a short term, (usually for three years or less)

[308] Landlord and Tenant Law Cap. 76, Laws of Anambra State 1991 S. 6 (1)

[309] Ibid, S 6 (2)

A holder of a right of occupancy may create a tenancy thereof for any term.[310] However, in the absence of an agreement to the contrary, a tenant other than a tenant at will or at sufferance may create one out his tenancy and as an incident thereto create a tenancy of lesser duration in favour of a third party. The tenancy so created is called a sub-tenancy.[311] There are different forms of tenancies under the Nigerian law. The most popular are:

i. **A periodic tenancy:** This is a tenancy that has a commencement date but no end date. The tenancy continues until it is terminated by either the tenant or the landlord upon the issuance of a written notice. It includes: weekly tenancies, monthly tenancies, yearly tenancies, quarterly tenancies.

ii. **A fixed term tenancy:** This lasts for a specified period as agreed by the parties. In this case once this period expires, the tenant is required to vacate the premises except the tenant renews the tenancy. Once the period expires, the landlord does not need to issue a notice to quit[312].

Tenancy agreement is one of such instrument like contracts, receipts, memorandum of understanding (MOU), promissory notes that must be charged under Stamp Duty Act.

6. Power to amend or increase the Tax Rate under the Stamp Duties

The cardinal principle relating to acts that impose tax is that, no tax will be imposed on the subject without the words in Act of parliament clearly showing an intention to lay a burden on him.[313] Nothing empowers the FIRS to unilaterally increase, decrease or modify in any way the provisions and rates stipulated in the Act. Since the commencement of the Act,[314] the duties to be charged upon the several instruments specified in the schedule to the Act shall be the several duties, which duties shall be in substitution for the duties heretofore chargeable under the enactment repealed and shall be subject to the exemptions contained in the Act.

The National Assembly may by resolution increase, diminish or repeal the duty chargeable under any of the heads specified in the schedule to the Act in respect of the documents regarding which the Government of the Federation is competent to make laws and in respect of any other matter within such competence may add

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[310] Ibid, S 7

[311] Ibid S. 8 (1)

[312] This is different from periodic tenancy where the landlord upon termination by the landlord, the landlord must issue the tenant a Notice to Quit and a seven days owner's intention to recover possession.

[313] *Ormond Investment Co v Betts (1928)* AC 143, *Sun Trust Savings & Loans ltd v Hon Minister FCT or ors* (2014) 9 ALL NTC

[314] Stamp Duties Act 2004, S.3 (1)

new duties or otherwise add to, vary or revoke the Schedule.[315] The State House of Assembly can also perform the same function but it is with regards to the documents in which the Government of a State is exclusively competent to make laws.[316] The understanding of the provisions cited is that the spirit and intent of the legislation with regards to who can increase, reduce, or vary the rate of the Stamp duties is the legislature. Fortunately, the Act had made an express provision to the exclusion of all others that is in the legislative arm of government that is empowered legislate by a resolution or order for the amendment of the Act.

Unfortunately, the FIRS as a body or a federal Agency created to administer and collect tax on the duties on instruments is not vested with the power to vary whether upwards or downwards by the Act. Hence the purported 6% stamp duty charge on Tenancy Agreement is contrary to the provisions in the schedule to the Act, therefore, its action is tantamount to arrogating powers they do not have to themselves and same is *ultra vires*.

Under the Act,[317] the provision which was boldly headed; "Schedule may be varied by resolution and order" is still the extant provision of the law. It is clear from the contents or wordings of the Act that the Act reserved the powers to the legislature and which can only be performed by them. On the current provision of the extant law, the duties charged upon the several instruments were specified in the Act.[318] It provides that an agreement for a lease or with respect to the letting of any land or tenements shall be charged with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.[319] However, a lease made subsequently to and in conformity with such an agreement duly stamped is to be charged with the duty of ten kobo only.[320] The Act[321] provides for any Tenancy/lease for a definite term less than a year and where the rent does not exceed the rate of ₦50 a year, the duty charged is 09k. And where the rent exceeds the rate of ₦50 a year, the duty charged is 0.39kobo.
For any other definite term or for any indefinite terms;

(a) For every ₦50 and also for every fractional part of ₦50 of the rent for the years.

i. If the terms is definite and does not exceed seven years, the duty charged is 0.39 kobo but if it exceeds seven years and does not exceed twenty one

[315] Ibid, S.116 (1)
[316] Ibid, S.116 (2)
[317] Ibid, S. 116
[318] Ibid, the Schedule to the Act
[319] Ibid, S 68 (1)
[320] Ibid, S 68(2)
[321] Ibid, Schedule to the Act

years, the duty charged is ₦1.50 kobo. However if it exceeds twenty one years, the duty to be charged is ₦3.00 kobo.

ii. If the term is definite, the duty to be charged is ₦3:00kobo.

iii. Where the consideration or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock or security; in respect of such consideration, the duty as a conveyance on a sale for the same consideration. Any other kind whatsoever not hereinbefore described, the duty charged is N3:00 kobo.

The summary of the above, is that the lease tenure of less than seven years lease or tenancy is chargeable of stamp duty of 0.78%; lease between seven and 21 years is charged -3% duty and lease or tenancy above 21 years is 6%.

From the above, the right construction or interpretation is that the Act did not empower the FIRS to amend tax rate provided in different sections of the legislation by means of an order in a gazette or executive fiat. By the provisions of the Constitution,[322] the Act was made an existing law and deemed Act of the National Assembly. It is submitted that the action of the FIRS publishing and pursuing the implementation of 6% increase in the duty generally to be charged is inconsistent with the provision of the constitution and the Act and therefore void[323].

Upon the community reading of the provisions of the Constitution and the Stamp Duties Act, the FIRS does not possess the power to amend an Act of the National Assembly. This attempt to use executive fiat without due process to either create taxes or increase or vary the rate of tax is a confusion experienced under the Nigerian tax system.[324] In the *Registered Trustee of Hotel Owners and Managers Association v the Attorney General of the Federation and Minister of Justice & Anor*,[325] the court in the same vein declared this type of purported amendment to the Act 2004 by the minister as null, void and unconstitutional.

By the amendment of the tax rate from the maximum of ₦3:00kobo to 6percent which ordinarily is the charge for lease or tenancy of above 21 years in accordance with the extant Act, the FIRS misconceived the provisions of the Act. In *Akingbade v Lagos Town Council*,[326] the court cited with approval the *ratio*

[322] CFRN, 1999 as amended, S. 315 (1) (a)
[323] CFRN, 1999 as amended, S.4 (1) & (4) (a)
[324] See the amendment to the Schedule to the taxes and levies (Approved list for collection) Act (Amendment) Order, 2015
[325] Unreported Suit No FHC/UCS/1082/2019 judgment delivered on 8th May 2020
[326] (1955) 21 NLR 90

decidendi in *Attorney General v Wills Diaries Ltd*[327] and *Ormond Investment Co v Beth*,[328] and held that no pecuniary burden can be imposed upon the subjects of the country, by whatever name it may be called, whether tax, due, rate or toll except upon clear and distinct legal authority. The action of the FIRS by unilaterally varying, increasing or hiking the rate of Stamp Duties rate is utterly and directly in conflict with the procedure stated in known laws and statutes, and as such, it is illegal. It is a clear usurpation of the powers of the National Assembly. It is expected that tax- payers in Nigeria should approach the courts for judicial review and writ of *centrorai* to get the amendment set aside.

As expected, the courts should rise against the acts of constitutional breach in line with established principles in the cases of *Aboud v Regional Tax Board, Williams Adelaga,*[329] *Offsore International v FBIR*,[330] and The *Registered Trustees of Hotel Owners and Manager Association v The Attorney Generation of the Federation and Minister of Justice and Anor*[331] and Okupe v FBIR.[332] Courts will not waste time to uphold the principles enunciated in the cases and declare the act unlawful and *ultra vires.*

7. 6 Percent Stamp Duties Rate – a Negative Response to COVID-19 Scourge

Governments of countries extended tax filing and payment deadlines of taxes in the light of the corona virus pandemic, some authorities did cut tax and considered long-term incentives to help the economy to bounce back, and to make the situation more manageable by the tax payers. The FIRS extended deadline for filing Value Added Tax (VAT) and withholding tax returns from the 21st day to the last working day of the month.[333] Additionally, the due date for filing a company's income tax return was extended by one month; while the Lagos State Tax Authority extended the deadline for filling annual tax returns for certain individual-employees and self employed persons-by two months from 31st March 2020 to 31st May, 2020. In Rwanda, the filling deadline for higher tax-payers was extended by 15 days from March 31st 2020 to April 15, 2020 while low and middle rate taxpayers were granted an additional one month to file their returns and pay the taxes dues.[334]

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[327] (1921) 37 TLR 884
[328] (1928) AC 143
[329] (1978) 3 SC 11 at 17
[330] (1976) 2 All NTC 67
[331] Supra
[332] (1974) 4 SC 930
[333] A. Dushine, rethinking tax in Africa to respond to COVID-19 *op cit*
[334] A, Dushine, ibid

The Uganda Revenue Authority (URA)[335] extended the deadline for filing corporation tax returns from March 31st 2020 to 31st May 2020. The Pay As You Earn (PAYE), VAT, local returns were extended from 15th April to 3oth April. Interestingly, the Kenya took commendable steps in reducing the tax rates for taxpayers following the pandemic. The Kenya Revenue Authority (KRA) issued 100% tax relief for taxpayers earning a gross monthly income of up to KES 24,000, reduced the PAYE rate from 30% to 25%; VAT from 16% to 14% and resident corporate income tax from 30% to 25%.

The 6% prorata duty charge on tenancies and leases in Nigeria will cause more hardship for the majority of the tenant population in Nigeria. The introduction smacks of acts of an insensitive government in that while other countries are offering palliatives to their citizens, Nigeria is hiking the tax rate. It is a harsh fiscal measure coming immediately following the post COVID-19 material condition of Nigerians. Unfortunately, the FIRS forgot that accommodation is a fundamental right guaranteed in Nigeria's constitution.[336] The country is experiencing housing deficit. Millions of Nigerians have lost their jobs, the government rather than thinking of how to help reduce or cushion the effect of the pandemic, at least for now has turned to increase their suffering.

It is to be recalled that tenants pay a lot of charges like rent, agreement, caution, maintenance, electric supply and security among others. These financial burdens on the poor Nigerians were inflicted at a time when socio-economic pressure arising from COVID-19 dislocations is yet to settle. It is to be noted that nobody would want to be a tenant if he has a better alternative. The tenants targeted by this policy are some of the most vulnerable people in our society. It would be illogical, insensitive and inhumane to churn out laws that make people poorer. It is important to know that there is now the shift from income as a means of measurement of poverty to physical estimates of inputs to achieve minimum standards of nutrition, health, shelter, education and other essentials globally and Nigeria must take steps to join.

8. CONCLUSION AND RECOMMENDATIONS

The extant law on the imposition and collection of Stamp Duties is the Stamp Duties Act. The power to mange and collect stamp duties is entrusted in the

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[335] Ibid

[336] The right to life as reserved under section 33(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended presuppose a minimum of the right to food, shelter, health and education.

Federal and State Governments. Both the Stamp Duties Act and Finance Act by extension provide that the authorities to be incharge are the Federal Inland Revenue Service (FIRS) and State Boards of Internal Revenue and part of their functions does not include amending or varying the Stamp Duties tax rate. Again, the FIRS *ultra vires* act of amending or varying or hiking the rate of Stamp Duties tax on Tenancy Agreement is ill-timed. The body should, with the devastating harm caused by the COVID-19 Pandemic, be pushing and fashioning policies that will cushion the effect of COVID-19 on the average level living Nigeria. The hike is tantamount to over- burdening the taxpayers and complete denial of right to housing which is one of the most essential rights of the citizens. This is counterproductive to the goals of reducing poverty in Nigeria. This should be resisted by taxpayers and stakeholders by challenging same in the court. There should also be a synergy between the stakeholders in tax administration in order to avert this usurpation of the powers of the National Assembly. The co-operation should be inspired by the Joint Tax Board (JTB) by insisting on the letters of the law being followed in every action to be taking by the stakeholders.