



EXPERTISE:
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SOLUTIONS:

COURT NULLIFIES COLLECTION OF TENEMENT RATES IN ABUJA, FCT - THE PLANNED SHELTER CASE

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Introduction

The High Court of the Federal Capital Territory (FCT), in a judgment delivered by Honourable Justice Valentine B. Ashi in **Suit No. FCT/HC/CV/2625/16** on 12th April 2018, declared as null and void the practice of collection of tenement rates by the 6 Area Councils (Abuja Municipal Area Council, Abaji Area Council, Bwari Area Council, Gwagwalada Area Council, Kuje Area Council, and Kwali Area Council) in the FCT, Abuja.

Background

In a class action instituted by Planned Shelter Ltd ("the Plaintiff") for itself and on behalf of all persons who were being assessed for payment of tenement rates on real estate in all the Area Councils of the FCT, the Plaintiff applied to the court to determine whether the Area Councils had the power to assess, demand and legislate on tenement rates without strict compliance with the provision of Paragraph 1(j) of the 4th Schedule of the Constitution of the Federal Republic of Nigeria 1999 (CFRN). It also sought to determine whether the Bye-Laws of the Area Councils which made provisions for the collection of tenement rates do not amount to an attempt to introduce double taxation.

The crux of the Plaintiff's argument was that under Paragraph 1 (j) of the 4th Schedule of the CFRN, assessment of privately owned houses or tenement for the levying of tenement rates must be as prescribed by an Act of the National Assembly and not by the Bye-Laws of the respective Area Councils. The Plaintiff fortified its position with

the directive of the Honourable Minister of the FCT which restrained and prohibited all the Area Councils in the FCT from collecting tenement rates. Additionally, the Plaintiff alleged that it was already paying fees to the Abuja Environmental Protection Board (AEPB) for services in relation to the environment and waste management, and so in effect, it was already paying tenement rates to the FCT. It argued that imposition of the tenement rates amounted to double taxation.

In opposition, the Area Councils argued that the law made provisions for their powers to assess and demand for tenement rates and that payments made to the AEPB for services rendered do not equate to a tenement, and as a result, the argument that it was double taxation was misconceived. It further argued that the FCT Minister lacked the powers to prohibit the Area Councils from levying tenements on Abuja residents.

Court's decision

After due consideration of the provisions of Paragraphs 1 (j) and 7 (1) (j) of the 4th Schedule of the CFRN, the court held that the Area Councils have the power to levy and collect tenement rates that have been fixed by an Act of the National Assembly (not by the Bye-Laws of the Area Councils). The Court found that Area Councils cannot by themselves or by their Bye-Laws, fix the tenement rates as their power is limited to assessment and collection of tenements under an Act of the National Assembly which would have already fixed the applicable rates.

Consequently, in the absence of an Act of the National Assembly predetermining the rates to be paid by property owners, the collection of tenement rates by the Area Councils according to the rates stated in the Bye-Laws amounted to self-help.

On this account, the court held that the various Bye-laws of the Area Councils were not made per the due-process stipulated in the CFRN. The Court further held that the Area Councils acted ultra vires their power as provided in Section 1 (j) of the 4th Schedule of the CFRN. However, aligning with the decision of the Court of Appeal in

Bamak Pharmacy Ltd & ors v Abuja Municipal Area Council,¹ the Court declined to hold that tenement rate collection by the Area Councils amounted to double taxation.

It is important to note that this decision is dissimilar to an earlier judgment given by the same court *per* Honourable Justice D.Z. Senchi in *Next Level Resort v Abuja Municipal Area Council & Anor*². On a presentation of similar questions for determination, the Court, after considering the provisions of Sections 299 and 315 of the CFRN and the Federal Capital Territory Act, held that the Niger State Local Government Edict is applicable in the FCT as an Act of the National Assembly, and so its provisions should be considered as being binding on Abuja residents. Consequently, and given the fact that the Niger State Edict had already empowered the Area Councils to prescribe tenement rates by their Bye-Laws (which they have done), it may amount to surplusage if the National Assembly then proceeds to legislate and prescribe tenement rates in the FCT.³

However, in the Planned Shelter case under consideration, the court indeed considered Section 55 of the Niger State Local Government Edict⁴ but held that it had very poor complementarity to the preponderant issue of tenement rates. It, therefore, held that the requirement for the Area Councils to enact the Bye-Laws subject to the provisions of the Act or "any other enactment" made the section subject to the superintendent provision of Paragraph 1(j) of the 4th Schedule of the CFRN.

The inference that can be drawn from this is that there are conflicting decisions of the High court on the power of the Area Councils to demand and collect tenement rates. Until the Appellate Court resolves this, the FCT High Court in the Planned Shelter case recommended that the National Assembly enact a Tenement Rates Act for the

¹ The appellate court affirmed the decision of the lower court which was to the effect that the imposition of Business Premises Levy by the Abuja Municipal Area Council pursuant to its Bye-laws does not qualify within the ambit of taxation so as to give the Federal High Court the jurisdiction to adjudicate over the dispute.

² Suit No: FHC/HC/CV/1072/2011

³ http://fcthighcourtelibrary.com/decisions/?wpfb_dl=1281

⁴ Section 55 of the Edict provides for the exclusive powers of Local Governments. In particular, sub-section (r) provides that "subject to the provisions of this Act or any other enactment, a Local Government shall have responsibility for, and power to make bye-laws for the collection of community tax, property and other rates and other designated revenues."

FCT. This may be a wise move as it may eliminate the arbitrary demand for tenement rates and ensure uniformity of tenement rates across the Area Councils in the FCT.

If you would like to get more information on this and other tax issues, you may contact the Tax Practice Group of the firm through its email address: taxgroup@aelex.com.

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