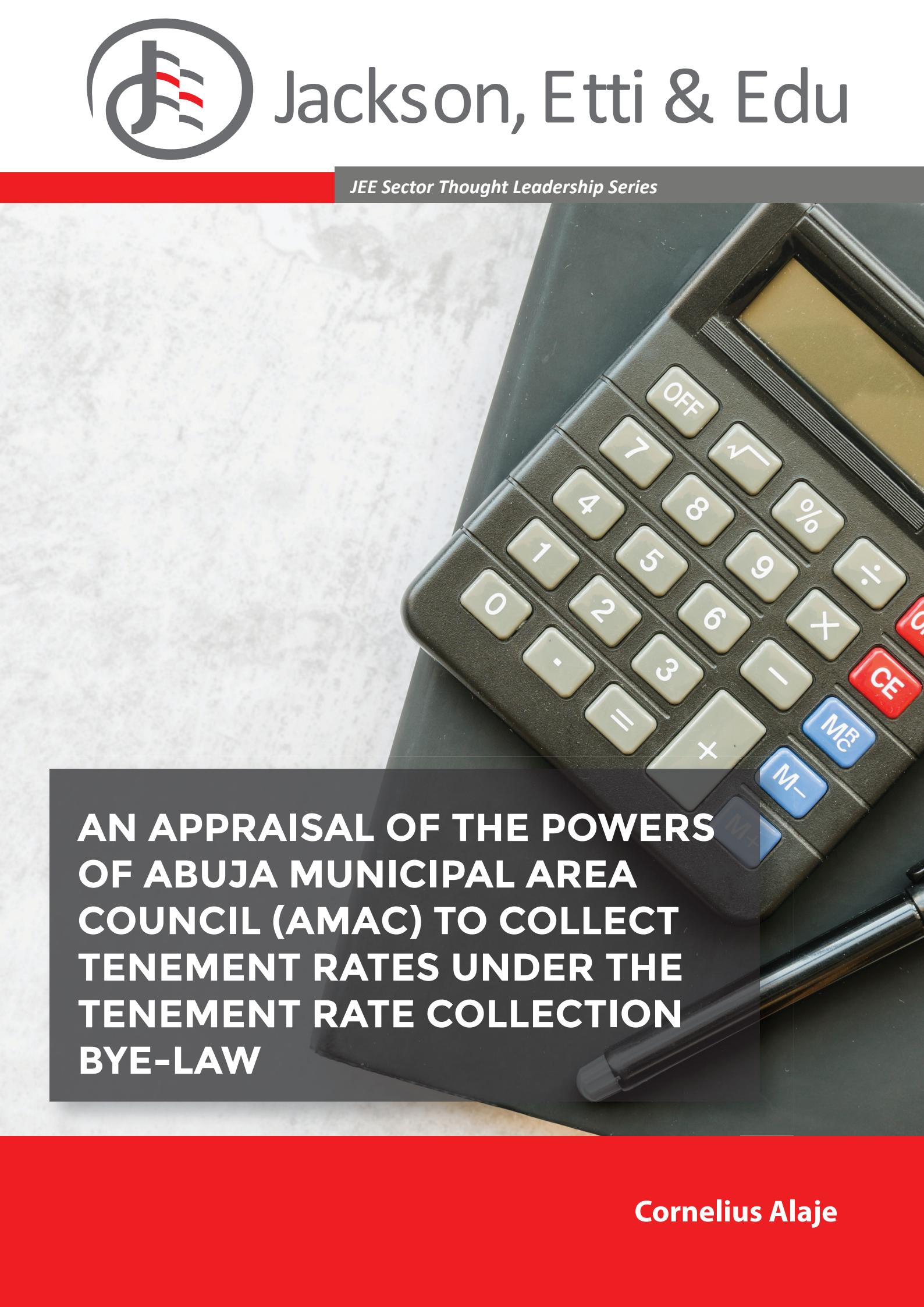




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JEE Sector Thought Leadership Series



AN APPRAISAL OF THE POWERS OF ABUJA MUNICIPAL AREA COUNCIL (AMAC) TO COLLECT TENEMENT RATES UNDER THE TENEMENT RATE COLLECTION BYE-LAW

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Introduction

The term “Tenement” refers to any type of property such as estate or land owned by one person and leased to another.

Tenement Rates (“TR”), on the other hand, are property taxes paid by owners or occupiers of tenements as part of Internally Generated Revenues (“IGR”) to Local Government or Area Councils within the Federal Capital Territory (FCT).

The Abuja Municipal Area Council (AMAC), in exercise of their powers under the 1999 Constitution of the Federal Republic of Nigeria, (as amended), passed the **Tenement Rate Collection Bye-Law (No. 22) (“TRCB”) 2014** for the levying and collection of tenement rates.

Over the years, demand notices for payment of tenement rates is greeted with stiff opposition for reasons such as lack of accountability; lack of social amenities

and infrastructures; huge burden on small scale businesses; multiplicity of tax, fraud, etc.

In this article, the writer appraises the legal and judicial framework on the powers of Area Councils to levy, demand, collect and/or seek enforcement of collection of tenement rates in the FCT.

The Legal Framework

a. The 1999 Constitution

Under the 1999 Constitution of the Federal Republic of Nigeria (as amended), the powers to collect tenement rates is vested in Local Government Areas and Area Councils in the FCT under Paragraphs 1 (j) of the Fourth Schedule.

By operation of law, Local Government Authorities and Area Councils in the FCT are constitutionally empowered to demand and collect tenement rates.

b. The Taxes and Levies (Approved List of Collection) Act, CAP T2, Laws of the Federation of Nigeria (LFN) 2004

The Taxes and Levies (Approved List of Collection) Act, CAP T2, LFN 2004, is an Act of the National Assembly that specifies the levies and taxes payable to the three tiers of government.

Parts I and II of the Schedule deals with taxes and levies to be collected by the Federal and State Governments, respectively, while Part III of the Schedule empowers Local Governments in all the States of the Federation (and Area Councils in the FCT) as collecting authorities for tenement rates and other sundry levies.

Judicial Framework

a. The Planned Shelter Case

The controversy generated by the imposition and collection of tenement rates by Area Councils in Abuja was heightened by a decision of the FCT High Court in **Suit No: FCT/HC/CV/2625/16 Between The Planned Shelter Limited v. Abuja Municipal Area Council (AMAC)**.

The Plaintiff challenged the powers of the Area Council to assess, demand and legislate on tenement rates without strict compliance with **Paragraph 1(j) of the Fourth Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**.



In its judgment, the Court declared as null and void the practice of collection of tenement rates by Area Councils in the FCT. The Court held further that the Area Council acted ultra vires in that their powers to levy and collect tenement rates is limited to tenement rates fixed by an Act of the National Assembly (and not Bye-Laws of the Area Councils).

The Planned Shelter Case is at variance with another decision of FCT High Court in **Suit No: FCT/H-C/CV/603/2017 Between Ibrahim Kabir Masari v. The Chairman, Abuja Municipal Area Council & 3 Ors.**, where the Court held that the Abuja Municipal Area Council is constitutionally backed by law to levy, demand, collect and/or seek enforcement of collection of tenement rate in accordance with the Tenement Rate Collection Bye-Law of the FCT.

b. Afdin Ventures Limited v. Chairman, Abuja Municipal Area Council (2014) LPELR-23509(CA)

The Appellants, in this action, challenged the powers of AMAC to issue tenement demand notice. Upon conclusion of evidence, the trial Court dismissed the suit. On further appeal, the Court of Appeal resolved all the issues in favour of AMAC and dismissed the appeal. The Court ruled that the Minister of FCT has the Constitutional and legal powers to adapt and modify regulations, bye-laws, orders or subsidiary instruments in order to establish the necessary machinery for the assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Minister.

A Critique of the Tenement Rate Collection Bye-Law

The Tenement Rate Collection Bye-Law 2014 was passed by the Abuja Municipal Area Council (AMAC) in compliance with Paragraph 1(j) of the Fourth Schedule to the 1999 Constitution, (as amended) and other enabling laws. The Law provides for levying and collection of tenement rates and other related matters.

Establishment of Valuation Office

The Law establishes Valuation Office and clothes it with powers to identify, survey

and carry out assessment of all rateable properties in the Council Area subject to a five-yearly review by the Head of Valuation.

Where there is no general assessment in a particular year, the Head of Valuation prepares the list of the existing valuation with necessary modifications to give effect to any new assessment or re-assessment of tenements.

Appointment and Powers of Appraisers

Qualified Estate Surveyors and Valuers registered with the Estate Surveyors and Valuers Registration Board of Nigeria or other relevant professional Body may be appointed as Appraisers.

Appraisers are authorised, amongst other things, to request for information that may affect the assessed value of a tenement; call for documents in relation to evaluation of tenements; enter tenements within the hours of eight in the



morning and six o'clock in the evening (except public holidays) to evaluate and take measurements.

Method of Assessment

Under section 13(1), all properties in the Council are valued by reference to gross by taking cognisance of either the actual rent on the tenement or rents within the vicinity of the property.

Subject to periodic review by a Notice published in a Gazette, the chargeable rate under Section 15 is **4 per cent or 4k per Naira**.

Publication of Valuation

The Valuation Office is empowered to give notice of the valuation list and the place of inspection through advertisement in Daily Newspapers widely circulated within the area.

After publication, occupiers and owners of tenements are served with a notice disclosing the assessed value of the property.

Demand and collection of Rates by Rating Authorities

The Rating Authority gives notice of payable rates with details of amount and due date by affixing a copy in a public and conspicuous place within the Area Council or publishing in one or more Daily Newspapers circulating within the area.

Surcharge of 25%

An owner or occupier of tenement is required to make payment within 21 days of receipt of any demand notice. Under Section 26(3), where the rate remains unpaid after the due date, **25% per cent per annum** is payable by the defaulting party.

We consider the surcharge rate of 25% as excessive and punitive and should be reviewed downward.

Objection to Valuation

Owners and occupiers of tenements who are dissatisfied with valuation files a Notice of objection with the Head of Valuation stating the grounds upon which the objection is premised. The provisions of Sections 16(3) and 24(c) requires an aggrieved party to pay half of the assessed rate as a condition precedent to lodging an appeal.

A Committee is thereafter constituted to consider the objection while an appeal against the decision of the Committee lies to a Magistrate Court within 30 days of the decision.

We hold the view that payment of any rate which is being objected to or appealed should be stayed, pending the determination of the objection and/or the appeal.

Exemption from Tenement Rates

Under Section 12, the following tenements are exempted from assessment and rating: -

- a. All Lands and Buildings used exclusively for the purpose of public worship and recognised as such by Law;
- b. Cemeteries and burial grounds;
- c. Recognised and registered Public Institutions or Educational Institution certified to be non-profit making;
- d. Any tenement specifically exempted by the Chairman and
- e. All palaces or recognised Traditional Rulers.

It would appear that the Law makes no provision for probable or likely instances where exemptions granted may be lost. In our considered view, where any of the exempted properties is leased out for purposes of revenue generation, or the property changes from the initial status that qualifies it for exemption, the

relevant property, shall, forthwith, forfeit the exemption status.

Reliefs, Incentives and Special Considerations

While the Law is silent on incentives and special considerations, we recommend that the Rating Authority should consider some reliefs and incentives in favour of Pensioners, Retirees and physically challenged persons, in the computation of tenement rates.

Automation of Payment Processes and E-Demand Notice

To reduce abuse of the extant manual system of assessment and other perceived fraudulent activities associated with tenement rates, it is recommended that Area Councils should automate their systems and processes, serve e-demand notices and receive payments electronically.



Offences under the Law

The following constitutes offence under the Law: -

- a. Failure, refusal and/or neglect to comply with the provisions of the Law;
- b. Making incorrect return by omitting or understating an income;
- c. Preventing, hindering or obstructing lawful authorities in the discharge of their lawful duties;
- d. Inciting any person to refuse to pay any rate or inciting persons to misrepresent their rateable capacities;
- e. Collection of rates by persons not lawfully authorised to do so;
- f. Collection of rates other than the rates imposed by the Law;
- g. Failure to deposit with the Rating Authority sums of money collected and
- h. Falsification of receipts.

Punishment ranges from summary conviction to payment of fines and/or imprisonment or both.

Jurisdiction

Magistrate Court (of all grades) is vested with original jurisdiction to try persons under the Law and appellate powers to determine appeals from the decision of Committees on objections to valuation.

Conclusion

The combined effect of the legal and judicial framework for collection of TR in the FCT is that Area Councils have powers to legislate on, assess, demand and collect tenement rates in the FCT.

Subject to a reversal by the Supreme Court, the decision of the Court of Appeal in the *Afdin's case* is binding and based on the age long principle of stare decisis, the conflicting decision of the FCT High Court in the *Planned Shelter case* is null and void.

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