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PROPERTY TAX REFORMS IN EMERGING ECONOMIES: THE CASE OF LAGOS STATE, NIGERIA.

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ABSTRACT

In its desire to supplement its dwindling federal revenue allocations and boost its internally generated revenue, so as to raise the revenue it needs to fulfill its statutory obligations such as the provision and maintenance of public infrastructures and social amenities, the Lagos State Government embarked on property tax reform which culminated into the enactment of the Lagos State Land Use Charge Law 2018. The enactment of this Law was greeted with spontaneous wild protests and criticism. Professional bodies and the organized private sector (OPS) attacked the Law on various grounds describing it as draconian. This study extensively critiqued the Lagos State Land Use Charge Law 2018 to reveal the provisions of the Law that attracted the wild protests and criticisms by the masses, and which may hinder the effective and efficient administration of property tax in Lagos State. The study employed the doctrinal research methodology to critique the subject Law. The study revealed various flaws in the Law that are unconstitutional, provocative, controversial, opaque, and would hinder an efficient and sustainable administration of property tax. The study recommended that the Law be urgently reviewed by the Lagos State House of Assembly to correct the provocative and controversial sections of the Law.

Keywords: Property Tax Reforms, Property Taxation, Property Tax Law, Land Use Charge, Revenue Generation, Lagos State, Nigeria.

1.0 INTRODUCTION

Property tax is often cited as an attractive method of raising local revenues since much of the burden is borne by the people who live in the jurisdiction (Fish, 2015). Despite the viability of property tax, in Sub-Saharan Africa property tax is rarely tapped as a source of significant local revenue (Fish, 2015). Property taxation is one of the most lucrative yet least tapped sources of revenue to support urban government in Africa (Mou, 1996). Few States in Nigeria are found to have exploited the tax as a source of internally generated revenue. In Nigeria, crude oil sold in the international market constitutes over 70% of country's source of external revenue. State Governments in Nigeria are mostly dependent on monthly federal revenue allocation because they usually raise little through internally generated revenues defined by local taxes, fines, and fees resulting in impoverished and under-developed local economies (National Planning Commission, 2013).

The instability of the price of crude oil in the international has resulted in great concern about to sustainability and adequacy of the revenue generated via crude oil in aiding the Federal, State and Local Governments in Nigeria to execute their statutory obligations of providing and maintaining infrastructure and social amenities. In the light of this growing revenue uncertainty in Nigeria, various State governments, in their bid to attain some level of financial autonomy, boost their internally generated revenue and supplement federal allocation, have conducted property tax reforms. This study is focused on the property tax reform of Lagos State.

The Lagos State House Assembly passed the Land Use Charge Bill 2017 on 29th January, 2018, and signed into Law by the then Governor, Mr Akinwunmi Ambode on 5th February 2018. The Law was enacted to provide for the consolidation of property and land based charges and to make provisions for the levying and collection of land use charges in Lagos State and for connected purposes. The Lagos State Land Use Charge Law 2018 is a creation by the Lagos State Government to give legal back-bone to revenue generation through property taxation for both the State and Local Governments. The passage of the Lagos State Land Use Charge Law 2018 was greeted with loud, vehement and spontaneous protest and criticism cutting across all stakeholders as well as all sections of the general public. The Law was attacked on the grounds that it is draconian (Babawale, 2019).

Based on the above preceding discussions, this study seeks to critique the Lagos State Land Use Charge Law 2018. The justification of this study is premised on the argument that the extant unsustainable land-based taxation across emerging economies in Africa is in dire need of improvement instaurations. This paper is divided into the following headings namely, introduction, previous research, methodology, critique of the Lagos State Land Use Charge Law 2018, analysis, conclusion, and recommendations.

2.0 PREVIOUS RESEARCH

Literatures concerning property taxation are extensive and ongoing. This section of this paper reviews some of the plethora of extant studies that are related to this study.

2.1 Property Tax as a Veritable Source of Revenue

Ezinando (2020) examined policy implication on property tax and revenue maximization in South East Region of Nigeria. The effect of property taxes on revenue maximization and the factors that hindered the effectiveness of property taxes in the subject region was examined. Property taxation is a stable source of revenue to the government in south east region of Nigeria. Property taxes improves the internally generated revenue of government thereby enhancing economic development. Property tax in the subject region is affected by some factors such as rapid increase in the cost of land, and corrupt practices among the tax administrator etc.

Asllani & Grima (2019) analysed the role of property tax regime in the local finance of Kosovo. The study relied on secondary data sources. Property tax has exceptionally little importance in Kosovo, both in the national tax system and in local government revenues. Property tax is a key issue for the functioning of local self-government and fiscal decentralization, which will impact on sustainable development of municipalities. Property tax regime in the local finance of Kosovo can be improved via: a. Improvement of the cadastral maps, by which it would be easier to identify properties; b. Improvement of the software for property tax and putting into the database those properties with a specific character; c. Increased awareness of citizens on the payment of taxes; and d. Provision of technical assistance to property tax officials in all municipalities.

2.2 Property Tax Reforms

Jibao & Prichard (2015) explored the relatively successful property tax reform programme implemented in the four largest city councils of Sierra Leone – Makeni, Kenema, Bo, and Freetown. The study captured the role of political factors that have been critical to shaping the reform outcomes: the relationships among economic elites and political leaders; the extent and character of ethnic diversity; the relationship between local and central political parties; and the extent and character of local-level political competition. The implementation of the property tax reform programme resulted in substantial improvements in property tax collection across the city councils. Property tax collection grew roughly twice as quickly as other revenue sources, increasing from an average of 15% of total revenue collection across the four city councils in 2006 to 31% in 2011. All of the city councils experienced dramatic improvements in property identification and valuation.

Olga et al. (2013) analysed the successful property tax reform implemented in Moldova in 2007 which replaced the existing area/inventory based property tax system with an ad valorem based tax. One of the main drivers of the reform was that the actual revenue generated from area/inventory based property tax system was insignificant, and it created anomalies that resulted to an inequitable and unfair property tax system. The process of the reform involved creation of a legal cadastre to identify all real property and their owners; the adoption of mass appraisal techniques; and the passage of underpinning legislation. The implementation of the reform resulted in yearly increase in property tax revenue, and yearly increase in the level of property tax compliance, which was a good indicator of how well the new system had been accepted by taxpayers as well as a measure of the perceived fairness of the ad valorem based tax system.

Bandyopadhyay (2013) comparatively evaluated the performance of implementing property tax reforms of two Indian cities of Delhi and Bangalore through unit area method of valuation and self-assessment schemes respectively. In Delhi, the results of implementation of these reforms was not up to the mark whereas Bangalore achieved considerable success. In Bangalore, there was increase in number of assessed properties, and the property tax to GSDP increased. In Bangalore, the reforms were undertaken in two phases. The first phase started in 2000 with

Bangalore City Corporation initiating the reforms, while the second phase was initiated in 2007. The results of the first phase was an increase in property tax collections by 33% compared to the previous financial year (1999). The result of the second phase was an increase in property tax collection by 74% in 2008 compared to the previous year. In 2000 there was an increase of 4% in the number of assessed properties compared to 1999. In 2008, there was an increase of 5% in the number of properties assessed compared to 2007.

Domingos (2011) examined the implementation of property tax reform in Belo Horizonte, Brazil. The reform was prompted for two reasons. The first was the accelerated appreciation of urban land in Belo Horizonte which exposed the discrepancy between the collection potential and the actual flow of funds into the public treasury from the property tax. A second factor was the global economic crisis of 2008, which resulted in decline of federal transfers to municipalities. The success of the property tax reform was the increase in early payments, increase in the number of properties taxed; increase in total revenue assessed, increase in the number of taxpayers making discounted payments, increased revenue received in advance, increase in the percentage of total revenues paid in advance, increase in the number of taxpayers paying property tax, and increase in the total discount given to tax payers who paid in advance.

McCluskey & Woods (2010) evaluated the residential property tax reform in Northern Ireland. The drivers for property tax reform in Northern Ireland were: the deficiencies within the existing residential rating system, and the need for government to raise sufficient revenue to meet increased public expenditure. The reform was designed on the basis of a five stage incremental process conducted over the period 2000-2007. The adopted policy on the basis of the residential property tax was to switch from rental value to discrete capital value. The outcomes of the residential property tax reform was low numbers of objections to the new assessed values which demonstrated widespread public acceptance; high level of taxpayer compliance and a comprehensive understanding of the reformed system. Northern Ireland achieved a successful reform by instituting processes that provided quality policy development, delivered fair and equitable assessments, provided quality and timely information to the key stakeholders and efficiently reacted to taxpayer queries.

Kelly (2004) examined the implementation of property tax reform in Indonesia. The reform was undertaken in two steps. First, a new Land and Building Tax was enacted in 1986. This Law simplified the property tax structure, replaced seven different land-related taxes, significantly rationalised property tax policy, broaden the tax base, reduced exemptions, simplified the tax rate structure, and introduced a framework for improved administration. Secondly, the government initiated a major institutional exercise to strengthen property tax administration. This resulted in the adoption of a "collection-led'' implementation strategy, and the introduction of an innovative payment point collection system (SISTEP). The SISTEP system significantly simplified revenue collection, improved accountability, reduced compliance and administration costs and provided a delinquency list for enforcement purposes. The implementation of the reform resulted in increase in property tax revenue from Rp. 154 billion in 1985/1986 to over Rp. 900 billion in 1991/1992. Collection efficiency improved and enforcement activities resulted in a historic number of property seizure for property tax delinquency in October, 1991.

Kelly & Musunu (2000) examined the implementation of property tax reform in Tanzania. Tanzania embarked on its property tax reform in 1993 following a "valuation-pushed" implementation strategy that focused on creating a property valuation roll for Dar Es Salaam (DSM). Phase one of the reform was completed in 1996, producing a valuation roll covering about one third of all properties. The DSM City Commission established in 1996 used this new valuation roll to generate significant increases in the property tax, along with major increases in all locally generated revenue. This revenue improvement in the property tax was due to the new property tax roll, which provided a basis for increased property revenue liability; strong political will; and improved revenue mobilization efficiency brought about by the change in city administration.

2.3 Property Tax Laws and UN-HABITAT (2011) Land and Property Tax Policy Guide

Ifeanacho et al. (2021) carried out a comparative analysis of the property tax laws of Oyo, Ondo, and Kano States with a view to ascertaining their compliance levels with global best standards. The UN-HABITAT (2011) Land and Property Tax Policy Guide was employed as a qualitative appraisal benchmark. The UN-HABITAT (2011) Land and Property Tax Policy Guide provides

a description of what should be included in a sound property tax law. This policy guide was developed and proposed by United Nation for adaptation by governments. The study adopted qualitative research method, while data was collected from secondary sources. Content analysis and scissor-sort technique were used for analysis. Findings indicated a level of uniformity amongst the provisions of the property tax laws of Oyo, Ondo, and Kano States, but there was evidence of idiosyncratic variations amongst them when matched against the appraisal benchmark.

Odimegwu & Igwe (2019) examined adequate tax policy and implementation as a panacea to the success of a property tax system using the Anambra State Property and Land Use Charge (APLUC) Law as a case study. The APLUC Law was compared with the property tax policy guide of UN-HABITAT to determine the adequacy of its provisions. The responses from the tax administrators and valuers in the State were also used in the study. There is a significant difference between the provisions of APLUC and UN-HABITAT (2011) Land and Property Tax Policy Guide. The APLUC Law did not provide the basis for assessment; the skills and training of tax assessors; and the cycle for updating taxable values. The tax assessment system in Anambra State is not transparent. The basis and method of tax assessment provided by the Law are not consistent with known equitable principles of taxation.

Odimegwu et al. (2018) comparatively analysed the provisions of the Anambra, Edo, Lagos and Enugu States Land Use Charge Laws based on the provisions of UN-HABITAT (2011) Land and Property Tax Policy Guide. Chi-square test was employed to determine their differences and similarities. The study discovered that there is no significant difference between the provisions of the States' property tax laws. Some of the States property tax laws did not provide the basis for assessment of the tax, which shows that the tax systems are not transparent. Also not provided are information on the skills and training of tax assessors and the cycle for updating taxable values, among other findings. There was evidence of idiosyncratic variations amongst them when matched against the appraisal benchmark.

2.4 Property Tax Administration

Ifeanacho et al (2020) carried out a meta-analytical review of property tax administration in Africa, with focus on Nigeria. The aim of the study was to establish a research agenda. There are

relatively plethora of studies on property tax administration in Lagos State, however there are paucity of studies on property tax administration in States such as Oyo, Osun, Ondo, Edo, Abia, and Enugu States despite the implementation and operation of property taxes in these States. Furthermore there are paucity of studies on the critique of the property tax laws (otherwise known as land use charge laws) of Oyo, Osun, Ondo, Abia, Anambra, Kano and Enugu States.

Muhammad, & Ishiaku (2013) examined the prospects of property tax administration in Bauchi State and the factors militating against its implementation. Data was collected from the Bauchi State Board of Internal Revenue and the Bauchi State Ministry of Lands and Housing using the interview method. Stamp duty, consent fees, planning rates and registration fees are charged in the State. Tenement rating had at no time in the history of Bauchi State been administered. The main problems identified that militate against the successful implementation of property tax such as tenement rate are lack of political will and inadequate records on properties.

2.5 Property Tax Assessment

Kampamba et al. (2016) comparatively analysed how residential properties are assessed in Botswana and Sweden for property tax at local government levels. A survey involving administration of questionnaire to property valuers/principal Estate officers in the Department of Local Government Finance and Procurement was used. In Botswana the general revaluation cycle is after every five years and after every three years for Sweden. Botswana uses individual property assessment techniques and Sweden applies mass appraisal techniques. Sweden uses a computerised cadastral register system where as in Botswana the cadastral register system is not computerised. The basis of valuation in Botswana is market value based on capital value of land and improvements, while Sweden applies the market value principle based on land and improvements. In Botswana the responsibility of property assessment lies on the valuer where as in Sweden it lies on the owner to self-declare.

2.6 Property Tax Collection

Muhammad et al. (2012) examined property tax collection as a tool for a sustainable local government reform in Malaysia. Tax collection in the local governments in Malaysia has been a recurring issue due to high rate of arrears in property tax revenue generation. The Economic Report of the Ministry of Finance showed that the performance of the revenue collection in local

governments throughout the country showed an alarming decline. Low income generation from property tax has resulted in the reduction of expenditure due to persistent increase in budgets allocations. There has been a persistent problem of declining property tax collection generation in Pasir Gudang Municipal Council Malaysia. The reason for the prevailing decrease in property tax collection generation is that of low tax payers compliance to tax payment because taxes are widely perceived by taxpayers to be unfair and taxpayers see few tangible benefits in return for the taxes they pay.

2.7 Application of Geographical Information System (GIS) in Property Taxation

Shakede & Komolafe (2017) analysed the potential of Geographical Information System (GIS) in property taxation in Government Reserved Area (GRA), Ikeja, Lagos State. The map of GRA was obtained, digitised and exported into the GIS environment. The arc view 3.2a software was used. GIS software was used to demonstrate how information concerning properties can be accessed from a database that contained all property types in GRA Ikeja. The database includes the facilities in each building, location, its rental value, and the property owner. Attribute data of the properties such as street name, ownership, building type, owner‘s occupation, title on the property, etc. were collected. Buildings numbering 1,705 in GRA that were captured through the use of the aerial map was digitised. The digitised map when inputed into the GIS software automatically numbered all the buildings and roads in the area. The results showed the vital roles of using GIS in the management of a simple data within a system, which was used in the creation, storage, and retrieval, manipulation of spatial and non-spatial data useful for carrying out property taxation.

An important fact that emerged from the review of extant related literatures is that no previous studies has focused on the critique of the Lagos State Land Use Charge Laws 2018. Therefore, the review of related studies waters the soil for the planting of this study to surmount this gap in literature with regards to a critique of the Lagos State Land Use Charge Law 2018.

Although the Lagos State Land Use Charge Laws 2018 is a State Law, the critique of this Law (in other words this study) is relevant to the property tax laws and system of some other States in Nigeria. This is because the Lagos State Land Use Charge Law 2001 was the first of its kind in Nigeria, and after its enactment some States in Nigeria that undertook property tax reforms

copied almost verbatim the provisions of the Lagos State Land Use Charge Law 2001 in the enactment of their own Land Use Charge Laws, with minor difference between these Laws to take care of local/peculiar situations and circumstances of the States. The subsequent Land Use Charge Laws enacted by some States in Nigeria after that of the Lagos State are Anambra State Property and Land Use Charge Law 2010, Edo State Land Use Charge Law 2012, Oyo State Land Use Charge Law 2012, Ondo State Land Use Charge Law 2014, Abia State Land Use Charge Law 2014, and Kano State Land Use Charge (Amendment) Law, 2017, and Enugu State Land Use Charge (Amendment) Law, 2017. To validate the assertion and argument that there is no significant difference the Land Use Charge Laws of the some States in Nigeria, the findings in the study of Ifeanacho et al. (2021) revealed a level of uniformity amongst the provisions of the property tax laws of Oyo, Ondo, and Kano States, while the study of Odimegwu et al. (2018) revealed that there is no significant difference between the provisions of the States' land use charge laws of Anambra, Edo, Lagos and Enugu States.

3.0 METHODOLOGY

This study employed the doctrinal research methodology to critique the Lagos State Land Use Charge Law 2018. Doctrinal research methodology involves rigorous studying and systematic analysis of legal status, statutory provisions, judicial pronouncements, and adjudications of legal matters in case law (Nasiru & Olusoji, 2019; Khushal & Filipos, 2009). The researcher organizes his study around legal provisions, principles, concepts and judicial statements relating thereto, and/or reflecting thereon. These statutory provisions are regarded as the primary sources, which are then supported by secondary sources such as journal articles, conference papers, text books, written commentaries on the case laws and legislations. The doctrinal research method is theoretical and not empirical. This is because the researcher aims is to describe a body of law and how it applied to previous situations or events. (Nasiru & Olusoji, 2019).

Advantages of the doctrinal research methodology is that provides quick answers to a problem as the researcher is continuously engaged in the exposition and analysis of legislation and case-law and the integration of statutory provisions and judicial pronouncements into a coherent and workable body of doctrine (Khushal & Filipos, 2009). It gives insight into the evolution and development of a law while highlighting inconsistencies and uncertainties (Nasiru & Olusoji,

2019). A scholar of law indulged in doctrinal legal research in a systematic way and with convincing reasoning, exhibits 'inbuilt' 'loopholes', 'gaps', 'ambiguities' or 'inconsistencies' in the substantive law inquired into as well as in some of principles or doctrines embodied therein (Khushal & Filipos, 2009). He thereby invites the legislature to plug them through amendments or to repeal it. The doctrinal research methodology has been criticized as highly theoretical, uncritical, conservative, and does not give due considerations to the social, economic and political importance of the legal process (Salam et al, 2017). Despite this shortcoming of the doctrinal research method, the authors of this work are convinced that this research methodology is the most appropriate research methodology to use to critique the Lagos State Land Use Charge 2018, as there is no research methodology without its own shortcomings.

4.0 CRITIQUE OF THE LAGOS STATE LAND USE CHARGE LAW 2018.

In the light of the dwindling federal revenue allocations, the deficit of public infrastructures, and the ever-increasing demand for the provision of social and economic infrastructures, the Lagos State House Assembly passed the Land Use Charge Bill 2017 on 29th January 2018, and signed into law by the then Governor, Mr Akinwunmi Ambode on 5th February, 2018. The Law was enacted to provide for the consolidation of property and land based charges and make provisions for the levying and collection of land use charges in Lagos State and for connected purposes.

The Lagos State Land Use Charge Law 2018, like its immediate predecessor, the Lagos State Land Use Charge Law 2001 represents a radical and wholesome restructuring of the entire erstwhile land-based tax system in the State. When a new LUC was announced, there was a high expectation that the new Law (Lagos State LUC Law, 2018) was being contemplated apparently to build on gains of erstwhile reform (Lagos State LUC, 2001) and probably to plug loopholes and redress certain policy and administrative inadequacies or contradictions (Babawale, 2019).

However, the Lagos State Land Use Charge Law 2018 seems to head the same way as the former Law (Lagos State Land Use Charge Law 2001) in what turns out to be a more provocative and controversial provision (Babawale, 2019). The Nigerian Institution of Estate Surveyors and Valuers (NIESV), the Nigerian Bar Association (NBA), the Chartered Institute of Taxation of Nigeria (CITN), among professional bodies, and the organized private sector (OPS) have

particularly attacked the Law on various grounds describing it variously as draconian and a breach of democratic ideals, among others (Babawale, 2019). The enactment of the Lagos State LUC Law, 2018 attracted vehement and spontaneous protest cutting across all stakeholders as well as most sections of the general public. It is against this background that this section of this study sets out to extensively critique the subject Law.

4.1 Section 2 & 3 of the Lagos State Land Use Charge Law 2018.

Sec. 2 (2) stipulates that*: Each Local Government Area in the State shall be the collecting authority and it shall be the only body empowered to levy and collect LUC for its area of jurisdiction.* Furthermore Sec. 3 states that: *Each collecting authority may delegate to the State, by written agreement, its functions with respect to the collection of LUC and the assessment of privately owned houses or tenement for the purpose of levying LUC.*

The subject Law was enacted by the Lagos State House of Assembly pursuant to Sec. 4 (7) and Item 9 Part B of the Second Schedule of the 1999 Constitution of the Federal Republic of Nigeria. By virtue of Item 9 Part B of the Second Schedule of the 1999 Constitution, as amended, *a State House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a Local Government Council.* Furthermore, Paragraph 1 (j) of the Fourth Schedule of the 1999 Constitution of the Federal Republic of Nigeria, stipulates that: *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.* Sec.1 (3) of the 1999 Constitution of the Federal Republic of Nigeria stipulates that: *Any law which is inconsistent with the provisions of the Constitution is to the extent of the inconsistency null and void.*

The combined effect of Sec. 4 (7), Item 9 of the Second Schedule and Paragraph 1 (j) of the Fourth Schedule of the 1999 Constitution of the Federal Republic of Nigeria is that the Lagos State House of Assembly has the legislative power to make laws on matters affecting the collection of any tax, fee or rate or for the administration of the law providing for such collection by the twenty four local government councils in Lagos State. This categorically means that the twenty four (24) Local Government Councils in Lagos State have the powers to assess, levy and

collect tenement rates (known referred to as LUC) in the State. Hence it is contravention and breach of the constitutional provision for the Lagos State Government to seek to do that which the 1999 Constitution of the Federal Republic of Nigeria empowers the twenty four (24) Local Government's Councils in Lagos State to do. Similarly it is unconstitutional for the twenty four (24) Local Government's Councils in Lagos State to delegate to the Lagos State Government its constitutional responsibility of levying and collecting property tax.

The Supreme Court's decision in the case of Knight Frank Rutley Nigeria v Attorney General of Kano State ([1998] 4 SC 251) further validates the preceding argument of the unconstitutionality of Sec. 2(2) and Sec. 3 of the subject Law. In this case, the Supreme Court of Nigeria held that by the provisions of Sec. 7 (5) of the Constitution and Paragraph 1(b) and (j) of the Fourth Schedule to the Constitution, only local government councils have the exclusive power to assess and impose rates on privately owned property. Therefore, the Supreme Court of Nigeria declared null and void a contract entered between the Kano State Government and Knight Frank Rutley to prepare a valuation list of all ratable hereditaments for collection of property rates in some areas of Kano State for being outside the powers of the Kano State Government and a usurpation of the powers conferred on local government councils by the 1999 Constitution of the Federal Republic of Nigeria.

4.2 Section 4 of the Lagos State Land Use Charge Law 2018.

Sec. 4 (1) states that: *The Commissioner of Finance shall undertake an assessment of chargeable properties in such areas of the State as the Commissioner of Finance may designate*. Sec. 4 (2) stipulates that: *For the purpose of subsection (1), the Commissioner of Finance may appoint such Property Identification Officers, Professional Valuers and other persons as may be considered necessary for the purpose of carrying into effect the provisions of this Law.*

The use of the word – **"May Appoint"** in Sec. 4 (2) gives the Commissioner of Finance the unrestricted powers to appoint any professional he deems fit to execute the assessment of chargeable property for the payment of LUC. The possibility of abuse of the powers bestowed on the Commissioner of Finance is made evident by the fact that similar provisions found in the Sec. 5 (1) & (2) of the Enugu State LUC (Amendment) Law 2017 has resulted in the non-physical assessment of chargeable properties within Enugu State by the Enugu State Board of

Internal Revenue Service, rather a document titled - Approved Land Use Charge which contains a predetermined range of LUC amount that is to be paid annually by chargeable persons for various types of properties in various zones in Enugu State.

Sec. 1 (Interpretation) of the Law, did not define the term Property Identification Officer, and the training and qualification of persons to be appointed as Property Identification Officers. The appointment of Property Identification Officers in Sec. 4 (2) to carry out the assessment of chargeable properties for the payment of LUC contravenes the Estate Surveyors and Valuers Decree No. 24 of 1975, now CAP E13 (Laws of the Federation of Nigeria) 2007. This Law which established the Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) provides that only persons registered with ESVARBON are entitled to render the service of property valuation for whatever purpose in Nigeria, inclusive of property taxation.

The Valuers that the Commissioner of Finance should appoint for the assessment of chargeable properties should be persons who are not employees of the Lagos State Government. This is because there may be conflict of interest if the Valuers are employees of the State Government and this would go against one of the principles of natural justice which states that "One cannot be a judge in one's case". It would be right and in line with natural justice if independent Valuers are employed to undertake the assessment of chargeable properties in the State.

4.3 Section 6 of the Lagos State Land Use Charge Law 2018.

Sec. 6 (1) states that: *The Commissioner may appoint Consultants to carry out property assessment and levying of the LUC for the purpose of carrying into effect the provisions of this Law.*

Sec. 1 (Interpretation) of the Law, did not define the term Consultant, and the training, and qualification(s) of persons to be appointed as Consultants. The appointment of Consultants in Sec. 6 (1) to carry out property assessment contravenes the Estate Surveyors and Valuers Decree No. 24 of 1975, now CAP E13 (Laws of the Federation of Nigeria) 2007. This Law which established the Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) provides that only persons registered with ESVARBON are entitled to render the service of property valuation for whatever purpose in Nigeria, inclusive of property taxation. Furthermore, the provisions of Sec. 6 (1) and Sec. 4 (2) of the Law results in chaos and ambiguity as to the

right professional that is empowered by the Law to carryout property assessment for the levying of LUC.

4.4 Section 8 of the Lagos State Land Use Charge Law 2018.

Sec. 8 states that: *For the purpose of carrying out the identification, assessment of a property, a duly authorized officers may, on any day between the hours of 7.00am and 5.00pm : (a) enter, inspect, survey and assess the property; (b) request documents or other information to be produced;(c)take photograph; (d) make copies of necessary documents.*

This provision of the Law is not appropriate enough. This Sec. of the Law should have exempted public holidays; and Fridays, Saturdays, Sundays, which are religious days of worship for Christians, Muslims and Sabbath members respectively in Nigeria. Nigerians are very religious people and would not allow anything to interfere with their consecrated days of religious activities and observance. A support to this argument is found in Sec. 4 (3) of the Oyo State LUC Law 2012 which excluded Saturdays and Public Holidays as the days when property assessors should carry out the assessment of chargeable properties for LUC purposes. Also, Sec. 10 (a) of the Enugu State Assessment Law 1991 excluded Sundays and public holidays from days when an appraiser should assess a property for rating purposes.

4.5 Section 9 of the Lagos State Land Use Charge Law, 2018.

Sec. 9 (1) states that: *The owner of a property or occupier of a lease of less than ten (10) years is liable to pay LUC in respect of a taxable property*. Furthermore, Sec. 9 (2) states that: *The occupier holding a lease of ten (10) years and above is liable to pay LUC in respect of any taxable property.*

The above provision of the Law is opaque and conflicting. The provision of the Sec. 9 is not clear and explicit on whether it is an occupier of a lease of less than ten (10) years or an occupier of a lease of more than ten (10) years that is liable to pay LUC. This flaw in Sec. 9 could result in chaos and conflicts, which can constrain the efficient implementation of the Law. Furthermore, the provision that occupiers of a property are to pay LUC is alien to Nigeria property tax system and practice where property owners are liable to pay property tax.

4.6 Section 15 & 16 of the Lagos State Land Use Charge Law 2018.

Sec. 15 states that: *the collecting authority may by notice in writing appoint any person including any occupier of a taxable property to be an agent of the owner and the person declared agent of the owner for the purposes of this Law, may be required to pay LUC which is or will be payable by the owner from any money which may be held by the agent for or due to the owner and in default of such payment the charges shall be recoverable from the agent.* Sec. 16 states that: A *person liable to pay LUC on behalf of an owner may retain out any money coming into an account on behalf of or becoming due from the agent to the owner as may be sufficient to pay the charge, and shall be indemnified against any person for all payments made by him under this Law.*

The above provisions of the Law will cause serious challenge and chaos to occupiers of a property (where an occupier is not the owner of the property). One wonders how a Law would hold occupier responsible for the misdemeanor of his landlord (Oni, 2009). These provisions of the Law promote the idea of dual responsibility for the payment of LUC, which is wrong in taxation. One of the cannons of taxation is Certainty, not only to the amount payable as LUC, but also the person or organization liable to pay the LUC (Ogbuefi, 2004). Sanni, (2003) in Ogbuefi (2004) suggested that the "banker" of the owner and not the occupier is better held as the agent of the property owner by the collecting authority.

The authors of this work suggests that in the event where LUC cannot be paid by a property owner, the property manager should be made to pay the collecting authority the LUC from any money held by the property manager which is meant for the property owner. Despite this supposed better alternative, Oni (2010) revealed that this strategy will create lots of property management challenges and chaos to property managers because the Law holds occupier or agents of property owners vicariously liable for the misdemeanor of the principal. According to Oni (2009) it is impracticable for property managers to assume the duty of the landlords for the payment of LUC when the Lagos State Government has forcibly imposed such duty on them against the consent of their clients. It is envisaged that many landlords in Lagos State might dispense with the services of property managers who dare make deductions for LUC without their authorization.

4.7 Section 31 of the Lagos State Land Use Charge Law 2018.

Sec. 31 (1) states that: *Where a person who has received a LUC Demand Notice fails to pay the amount within the period specified in the notice, the charge payable shall be increased by the following percentage: (a) Between forty-five (45) calendar days and seventy-five (75) calendar days – 25%; (b) Between seventy-five (75) calendar days and one hundred and five (105) calendar days – 50%; and (c) Between one hundred and five (105) calendar days and one hundred and thirty five (135) calendar days – 100%.* Sec. 31 (2) states that*: If payment is not made after one hundred and thirty (135) calendar days, the Property on which the LUC is payable shall be liable to enforcement under the provisions of this Law by the State or its appointed agent until all outstanding taxes, penalties and administrative charges are paid.*

The above Sections of the Law is harsh on property owners who let out their properties to tenants. The Law ignored the source from where the LUC is to be paid (which is the rent), and the tendency for tenants to delay and default to pay their rent as at and when due, from which property owners meet their LUC obligation and other expenses needed to keep their property in a tenantable and lettable condition. The findings in the studies of Oni (2009), Oni (2010), Sani & Gbadegesin (2015), Daniel et al., (2017), Kemiki et al. (2018) are evidences of rent defaults/rent arrears among tenants in private rental housing sectors in Nigeria.

4.8 Schedule Section of the Lagos State Land Use Charge Law 2018.

The Law stipulated the formula to be used to determine the annual amount of LUC payable for any property under the Law. The formula is: *(Land Value + Building Development Value) x Relief Rate x Charge Rate.*

Interpreted as,

LUC = [(LA x LR) x (BA x BR x DR) x RR x CR]

Where

LUC = annual amount of LUC in Naira.

LA = the area of the land parcel in square meters.

LR = the average market value of a land parcel in the neighborhood, based on the market value of the property as determined by valuers appointed by the Commissioner for that purpose.

BA = the total developed floor area of building on the plot of land in square metres, or the total floor area of apartment unit in a building where the apartment has a separate ownership title.
BR = the average construction value of medium quality buildings and improvements in the neighborhood, based on the market value of the property as determined by valuers.
DR = the Depreciation Rate for the buildings and improvements of land
RR = the Rate of Relief from tax (if any) applicable to the owner occupier in the circumstances shall be determined by the Commissioner and shall be reviewed by the Commissioner once every five years.
CR = The annual charge rate expressed as a percentage of the assessed market value of the property and which may, at the State Government discretion, vary based on various criteria and conditions.

The above formula is alien to any known valuation method, inappropriate, too regimented and defies logic and reasoning (Oni, 2009; Oni, 2010; Ogbuefi, 2004; Oni and Ajayi, 2011). The formula does not take into consideration the principle, basis and methods of property valuation. The use of this formula could result to either an over assessment or under assessment of chargeable properties thereby affecting the transparency, fairness, and equity of the assessment process**.** Oni (2010) criticized the above formula on the following grounds; first, the components of the formulae (rate payable and property code rate) are entirely at the discretion of the government officials. Secondly, the formula assumes that all properties are homogenous whereas no two properties are the same. The use of uniform annual charge rate negates uniqueness of each property. Thirdly, the formulae implies that both the bare-site and physical development on it are being taxed, whereas the norm is that taxes are expected to be levied on the owner of an income-generating property and not on the property per se.

From critical examination of the formulae stipulated by the Law for calculating LUC, it appears that the formulae is an adulterated Depreciated Replacement Cost Method. Cesare and Claudia (1999) and De Cesare and Ruddock (1997), stated that the depreciated replacement cost approach of assessing real property is the major cause of the lack of assessment uniformity because it relies on the availability of data on unit costs and depreciation figures which most times give rise to inconsistencies that create assessment bias. UNHABITAT (2011) Land and

Property Tax Policy Guide stated that a property tax system based on capital market value presumes that there is a functioning property market that information on the capital value of land is publicly available and that estimates of the value of all taxable land can be obtained from the available information. This is not the case of Lagos State property market. The use of the depreciated replacement cost method for assessing properties for tax should only be used in a nearly stagnant economy (Ogbuefi, 2004). This is not the case of Nigeria economy, which is characterized by fluctuating and unpredictable economic condition.

Since property tax is an annual rent several researchers have clamored for the use of rental value method based on annual value basis of property assessment. Dillinger (1992) stressed that annual value should be the basis of assessment of property tax if the majority of the property is held on leasehold with an active rental market, which is the case of Lagos State property market as most properties are held on tenancy and lease. Rental value basis offers a more rational and equitable basis of assessment in line with social justice of pay as you enjoy (Egolum, 2016). The rental value method is an appropriate method of property tax assessment since it considers the net annual rental income on which to determine the appropriate land use charge that is payable annually (Oni, 2009). The annual rental value adheres to the ability to-pay principle and also reflects the quality of public services enjoyed by the property (Ebi et al., 2017).

Babawale (2019) asserted that the reasons why the rental value basis of assessment option is a more appropriate basis of assessment compared to the area-based/cost/statutory formula basis prescribed by the Law are that the annual rent passing on different classes of property in most parts of the Lagos State is a common knowledge or can easily be imputed by the over 400 firms of valuers; whereas the capital value market is thin and opaque. The rental value assessment obviously satisfies the canons of taxation i.e. equity (or fairness), certainty, productivity, economy and simplicity more than the capital value/area-based cum statutory formula. On the whole, the annual rent basis improves the transparency and simplicity of the tax system; it is more cost-effective and promises higher potential for compliance and revenue yields buoyancy. Ogbuefi (2004) suggested that rather than stipulate a formulae to calculate LUC, registered valuers should be given the freedom to apply their knowledge, skill, training and experience in

using the right theories, principles, basis and methods in the assessment of liable for properties for the levying of LUC.

5.0 ANALYSIS

From the critique of the subject Law, despite its good intention to provide a legal backing for the generation of internal revenue by the Lagos State Government via annual property tax, certain crucial and troubling discoveries were made. The unconstitutionality of the Law in Sec. 3 would frustrate the implementation of the Law as most liable property owners would use this flaw as a basis to obstruct the State Government from carrying out the assessment of their chargeable property, and also object the payment of any LUC levy placed on their property. Sec. 3 would propel liable property owners and civil society groups to take the Lagos State Government to court to contest the constitutionality of Sec.3 of the Law as the Law cannot override the 1999 Constitution of the Federal Republic of Nigeria. The provision of Sec. 4(1) & 6(1) could result in government engaging wrong professionals to execute the assessment of liable properties which would result to inaccurate property tax assessment and levy of chargeable properties. It could also form the basis for liable property owners to resist their LUC obligation on the grounds that property assessment was not carried out by the appropriate professionals recognized by relevant Laws in Nigeria.

Sec 8 of the Law could result to situations where property tax appraisers would set out to carryout assessment of chargeable properties on either Friday, Saturday or Sunday only to find out that occupants of the properties are unavailable to grant them access into the premises of the property thereby resulting to waste of time, energy and resources on the part of government, thereby frustrating property tax assessment in the State. The provision of Sec. 9 (1) is strange to Nigeria property tax system where liable property owners and not occupier (tenants) are liable to pay property tax. Sec. 9 (1) of the Law would face serious opposition by most tenants considering the fact that Lagos property market is a tenant/leasehold dominated market. The provision of Sec. 15 & Sec. 16 could cause serious rift between property owners and persons appointed as Agent to the property owners (could be a tenant or a property manager). It could result to persons turning down appointment by the government to be an Agent to a liable property owner for fear of fierce actions of property owners against them.

The enforcement of Sec. 31 would result to several properties been sealed up and seized by the government as most property owner who let out their properties to tenant(s) can mainly meet their LUC obligation from the rent paid by their tenant(s), and most tenants default in paying their rent as at and when due. The formulae stipulated in the Law for the assessment of chargeable properties is alien to the principles, basis and methods of property tax assessment, and could result in inaccurate assessment of chargeable properties. Valuers should be given the freehand to use their skill, and knowledge to assess liable properties.

This troubling and crucial discoveries revealed from the critique of the subject Law would cause serious hindrance to the actual implementation of the Law in Lagos State, thereby frustrating the good intention of the Law which is to generate internal revenue via annual tax on chargeable properties within the State.

6.0 CONCLUSION

This study critiqued the Lagos State Land Use Charge Law 2018 and concludes that there is need for the Lagos State House of Representative to urgently review and amend the flawed provisions in this Law which this study identified and provided recommendation for, so as to make for an efficient and effective implementation and administration of the Law in Lagos State.

7.0 RECOMMENDATION

In the light of the findings from the critique of the Lagos State Land Use Charge Law 2018, the following recommendations are proffered:

i. The function of assessing chargeable properties in Lagos State should be taken away from the Lagos State Government and bestowed back on the twenty four Local Government Councils in Lagos State, as it is their constitutional responsibility which is enshrined in the 1999 Constitution of the Federal Republic of Nigeria.

ii. The Chairmen of the twenty four Local Government Councils should undertake the assessment of chargeable properties in their area of jurisdiction.

iii. Based on Estate Surveyors and Valuers Decree No. 24 of 1975, now CAP E13 (Laws of the Federation of Nigeria) 2007, only registered Estate Surveyors and Valuers should be empowered to execute the assessment of chargeable properties for the levying of property tax.

v. Hence Section 9 of the Law should be amended to stipulate that only chargeable property owners are liable to pay LUC, and not occupiers of chargeable properties who are not owners of the property.

v. Property managers or banks rather than occupiers of properties (if the occupier is not the property owner) should be appointed as Agent to a liable property owner by the collecting authority in writing to pay LUC in the event of a liable property owners inability to pay his/her land use charge bill within stipulated time frame.

vi. The Law should give freehand to Estate Surveyors & Valuers to use their technical knowledge, skill and experience to determine the appropriate basis and method(s) for valuing liable properties of different types for the levying of LUC.

vii. If Lagos State Government is desirous on prompt payment of LUC by property owners, then there should be provisions to protect the landlord against difficult tenants in Lagos State who delay and default in paying their rent as at and when due.

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