‘Worth a second look’: Assessing the pitfalls of Lagos’ new Land Use Charge law

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The Land Use Charge Law of Lagos State, 2018, was passed into law on February 8, 2018. The new law is aimed at unifying an otherwise fragmented legal regime on property taxation within the state and make for more transparency in the calculation of charges levied on the residents of the state. A recent outcry by residents of the state on hiked charges has prompted an inquisition into the provisions of the law which has revealed a good number of fundamental defects in the law (apart from the inexplicable hike in the amount payable). These defects would now be considered.

Section 9 of the Land Use Charge Law 2018 – Persons Liable to Pay Charge – The purport of Section 9 of the Law is that the Lessee of a property is liable to pay the Land use Charge in respect of the said property. It is rather inequitable to have a Lessee who already pays rent to the Lessor under a lease, to then pay the Land Use Charge on the property in question especially considering the fact that most property owners within the Lagos metropolis factor the value of the charge into the determination of the rent to be paid by the Lessee.

The Land Use Charge of Lagos State, 2001 was a lot clearer as it simply provided that the property owner is the person liable to pay the Land Use Charge. Also, Section 9(1) and 9(2) of the Law provides that a lessee whether of 10 (Ten) years and above or less than 10 (Ten) years is liable to pay the Land Use Charge. This is confusing as there was no need to bifurcate the section when it does not matter whether you are a lessee for 2 years or for 11.

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**Section 10 of the Land Use Charge Law 2018** – The Value of Land Use Charge Section 10 (1) of the law provides that the market value of a property is arrived at by an addition of the land value and the building development value of the property. This is a rather insensitive provision. Furthermore, the increase in the “charge rate” has contributed to the hike in the Land Use Charge payable by residents. For instance, the charge rate for a residential property (without an owner in residence) and commercial property has been arbitrarily increased from 0.39 percent to 0.76 percent (a similar increment applies to the various classes of property), an over 200 percent increment which has seen Land Use Charge levies hit the roof.

**Section 15 of the Land Use Charge Law 2018** – Power to Appoint Agent(s) Section 15 of the Law is fundamentally flawed as it botches a fundamental legal principle i.e. the Agency principle. Agency can be described as a consensual relationship created by contract or by law where one party, the principal, grants authority to another party, the agent, to act on behalf of and under the control of the principal to deal with a third party. See Vulcan Gases Ltd v. G. F. Industries A. G (2001) 9 NWLR (Pt. 719) 610; Akanwa v. Ogbaga and Mikano Int’l Ltd v. Ehumadu (2014) 1 NWLR (Pt. 1387) p.100 The Law gives the “Collecting Authority” power to unilaterally appoint an agent for the owner of a taxable property.

The first absurdity that springs up from this is that this mode of creation of an Agency relationship is not one known to law. Secondly, if the Lessee of a property is already liable to pay the Land use charge, why is it necessary to appoint him an agent for the purpose of paying the charge? Lastly, if the law of the land is that an agent of a disclosed principal incurs no liability, then on what basis would the law seek to recover the Land Use Charge from the agent where there is default in payment? These irregularities would definitely make for some interesting times in our Courts as they are unenforceable.

**Section 23, 24 (7) and 26 of the Land Use Charge Law 2018** – Power of the Assessment Appeal Tribunal, Appeals against Assessment and Conditions of Appeal. Sections 23, 24 and 26 of the Law are very peculiar. Section 23(d) empowers the Assessment Appeal Tribunal to levy a fine not exceeding 25% of the assessed fee against an appellant who has appealed against an assessment on his Property where the Tribunal is of the opinion that the appeal is a frivolous one. The Law itself does not define what amounts to “a frivolous appeal” and this fine restricts access to justice. This provision also goes against a fundamental precept of natural justice and fair hearing that requires that a person not be a judge in his own case i.e. “nemo judex in causa sua”. See Atoyebi v. Bello & Ors (1997) 11 NWLR (Pt. 528) 268 at 287.
The position of the government in appointing the members of the Tribunal cannot be overlooked as it can be clearly inferred that in such a situation the government is a Party, Judge, Jury and Executioner in one breath, a party in its own case. Sections 24(7) and Section 26 of the Law require an aggrieved party to deposit part of the judgment sum before he has the right to approach a higher Court. The right of appeal to a higher Court of a party to proceedings before a Court or Tribunal/Body exercising judicial functions is a fundamental issue and a right adequately provided for in the 1999 Constitution of the Federal Republic of Nigeria (as amended).

A combined reading of the relevant sections of the Land Use Charge Law, however, makes it clear that what it seeks to do is to restrain the right of a party aggrieved with the decision of the Assessment Tribunal to appeal to the High Court of a State. This is apparently inconsistent with Sections 241(1), 244(2) and 245(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and thus void. See Otti & Anor. v. Ogah & Ors (2017) LPELR-41986 (S.C.).

**Conclusion and Recommendation** – Flowing from the above, it is clear that the provisions of the law place an unnecessary burden on the residents of the State. It is recommended that this law undergoes a review and some of the sections expunged or amended to reflect the reality of things. It is my hope that the Lagos Government will yield to the outcry of its residents and take a second look at the provisions of the law with stakeholders input in order to come out with a more humane law.