



EXAMINING THE LEGAL LANDSCAPE OF TENEMENT RATES ON LAND WITH TELECOM MASTS IN NIGERIA

1.0 Introduction

This op-ed article investigates the question of who has the power to charge/collect tenement rate on land on which telecommunication mast is erected. It sets out to first define what tenement rate means and gives brief historical background and philosophical foundation of the term. It also examines and interrogates whether there is any law enabling Local Government Authority (LGA) to charge tenement rate and how. It also examines whether the LGA can charge tenement rate on land on which telecom mast/tower is erected as well as the question of whose domain of the authority such a power falls. The article then uses Lagos and Ogun States as a case study. The choice of the two states is informed by reason of the facts that the states have enacted laws which enable the state governments step into the shoes of the LGs in the area of collection of tenement rates. It then examines the constitutionality or otherwise of such step and while also giving instances of other states with similar legislative history.

2.0 Meaning of Tenement Rate

“Tenement” means any land with or without buildings which is held or occupied as a distinct or separate holding or tenancy or any wharf or pier in the waters of Nigeria. This literal meaning of tenement was provided in the case of *Appraiser vs Nigerian Railway Corporation (1964) LPELR – 25171 (SC)*. However, from the contextual meaning of the term, it is basically used for developed land or any land with buildings on it. The word “rate” means a charge, payment, price determined through the application of a mathematical formula or based upon a scale or standard.¹ Combining the two words, ‘tenement rate’ is a tax imposed on occupiers of developed properties within a locality by the local government.² It also means a fee, levy or tax, charged and collected on a developed and occupied property by Local Government or Area Council Authorities³.

¹<https://legal-dictionary.thefreedictionary.com/rates> accessed on 6th day of August, 2022

²<https://www.citalerealtors.com/what-is-tenement-rate/> accessed on 6th day of August, 2022

³<https://www.amofinsolicitors.com.ng/publication/tenement-rate-what-you-need-to-know-about-it-by-kazeem-a-oyinwola.pdf> accessed on 6th day of August, 2022.



3.0 Historical & Philosophical to Tenement Rate

Tenement rate is as old as the British colonialism in the entity now known as Nigeria. It was policy common to the British in England but imported to Nigeria during colonial period by the British solely to raise fund for the development of local administration. It was first introduced in Lagos, then Benin and Aba Townships. The introduction of the tenement rate followed the promulgation of the Township Ordinance No. 29 of 1917 enacted to give a force of law for its collection. After the British left Nigeria, the practice was sustained and even found foundation in our successive 1979 Constitution and now 1999 Constitution (as amended).

The Constitution empowers each state of the Federation to make their special or specific law on issues relating to tenement rate and this is what gave birth to laws such as the Niger State Local Government Law, 1976, the Lagos State Tenement Rates Law of 1989 among other states of the Federation.

4.0 Legality and Constitutionality of Tenement Rate

The power to charge and collect tenement is ordinarily vested in with the Local Government/Area Council authority. This submission has its foundation in the provision of **section 7(5) and section 1 (f and J) of the Fourth Schedule of the 1999 Constitution (as amended)**. This provision is further strengthened by **section 1 (3) (2) of the Taxes and Levies (Approved List of Collection) Act, 1998**. Courts have had reasons to interpret the provisions of the law regarding tenement rates and the powers of local government authority to collect same. The Supreme Court in the case of **Knight Frank & Rutley (Nig) & Anor vs A.G Kano State (1998) LPELR –1694 (SC)** has held that the powers of Local Government Authority to charge and collect tenement is rooted in the section of the 1999 Constitution cited above. The decision in the case was followed by the Court of Appeal in the case of **Abuja Municipal Area Council vs Planned Shelter Ltd & Ors (2020) LPELR – 50494 (CA)**. With this, it is obvious, it is the Local Government Authority that has the power to charge/collect tenement rate.

5.0 Theory and Valuation of Tenement Rate

Generally, the amount to be charged as tenement is ordinarily based on the rental value of the property in question. There is a general theoretical belief which regards land “as a surplus capable of earning income in relation to its locality and improvements on it.” This doctrine is derived from the understanding that “the normal value of land is the residue of the net annual value/income after all deductions/expenses in making the income on the land.” Thus, since no two lands may be the same in terms of value, what is then charged as tenement rates may differ from one land to the other taking into consideration the use of the land, the locality and the improvements on it.

However, considering the fact that using the theoretical basis maybe time consuming, practically, the annual rent of the land is mostly used in determining the tenement rates to be paid on such land.

6.0 Tenement Rate and Land Use Charge: Any Difference?

Tenement rate is not the same as Land Use Charge though they are both charged on landed property. Tenement rate is as old as the colonial system itself; it is a practice of England introduced into the Nigerian system by the British intended to aid the local authorities/council in raising fund/generating revenue to cater for their responsibilities and expenses to make them independent and self-sustaining. Whereas Land Use Charge is a recent invention; it was an initiative or the creation of Lagos State Government in 2001 which has been followed by some states of the Federation since then.

Tenement rate has its legal backing in the Constitution, Land Use Charge has no constitutional basis to our knowledge. One reason is that some states have introduced laws empowering themselves to collect Land Use Charge and under the guise of collecting Land Use Charge they also collect tenement rate. Meanwhile, tenement rate is ordinarily and constitutionally within the power of the Local Government Authority. Tenement rate is charged on the development made on the land for the sole purpose of helping the Local Government Authority with its finance and expenses. While Land Use Charge is a consolidated ground rent on leases of state government, for development charges and tenement rates. This is seen as a continuous tying of the owner of the land to the State Government. And this informs our opinion that Land Use Charge being collected by the States to the extent that the states also collect tenement rate as part of the charges has no constitutional basis.

7.0 Can both Tenement Rate and Land Use Charge be Subsumed or Merged?

Tenement rate has a constitutional basis because it is well stipulated in the constitution. Whereas, land use charge is a creation of state governments presumably to raise funds for the state and its affairs at large. So, both cannot and should not be subsumed or merged. This is because subsuming tenement rate under the land use charge will amount to an attempt at eroding the constitutional power and duty given to each Local Government. Thus, merging tenement rate (as its presently done in some states) with the land use charge will be an attempt by the state government to give the land use charge a face of constitutionality or to place it on the same pedestal with the tenement rate ordinarily supposed to be charged by the Local Government. Meanwhile, states collecting tenement rate on behalf of the Local Government Authority is a clear case of usurpation of power.

8.0 The Current Position of Tenement Rate and Land Use Charge: Lagos and Ogun States as a case study

In Lagos and Ogun States, the practice of collection of tenement rate by Local Government Authorities has been literally abolished. This followed the passage of Land Use and Amenities Law, 2013 in Ogun State and the Land Use Charge Law 2020 which come into force on 25th May, 2020 in Lagos State.⁴ The Land use Charge was introduced to harmonize all land use based charges (such as tenement rate, Ground Rent, neighbourhood improvement charge etc).

8.1 Position in Ogun State

What obtains in Ogun State at present is no longer tenement rate because tenement rate has been replaced with Land Use and Amenities Charges. So this, in effect, means that in Ogun State, the powers of the local government authority to charge and collect tenement rates has been taken away or presumably submitted to the state government authority under the Land Use and Amenities Law. Ogun State Government is not the only one that has taken this direction, other states with similar directions include Lagos State, Anambra State (2010), Edo State (2012) and Enugu (2016).

8.2 Position in Lagos State

In Lagos State, the Lagos State Government, by the passage of the Land Use Charge Law 2020 which come into force on 25th May, 2020 has consolidated all Property and Land Based Rates and Charges Payable under the Land Rates Law, the Neighbourhood Improvement Charge Law and Tenement Rates Law into a land base charge called the Land Use Charge. This charge is provided to be payable on all real property situate in the State. Regarding the question of which tier of the government has power to charge or collect the Land Use Charge, section 2(2) and (3) of the Land Use Charge of Lagos provides thus: "For the purpose of this Law, each Local Government Area in the State will be the body empowered to levy and collect Land Use Charge for its area of jurisdiction(referred to in this Law as "the collecting Authority") (3) Each Collecting Authority may delegate to the State, by a written agreement, its functions with respect to the assessment of privately-owned houses or tenement and the collection of rates..." It is usually under this provisions that the State mostly hides to get the Local Government to cede the power of collection of the charge to the state ostensibly on the agreement of the revenue would be subsequently shared in an agreed ratios with the state after collection.

Using the position in Lagos and Ogun States, it goes without saying that it is most likely that in the states which have adopted this style, Local Government Authority might have been made to cede its power to the State government and so can no longer collect tenement rate as the power has been donated by them to be usurped by the State Government. Although, states in this regard mostly claim that there is an agreed

⁴ Note that Land Use Charge was first introduced in Lagos in 2001 following the passing of the Land Use Charge which derived its legitimacy from the Land Use Charge Law No. 11 of 2001. The 2020 law is a consolidation of all Property and Land Based Rates and Charges Payable under the Land Rates Law, The Neighbourhood Improvement Charge Law and Tenement Rates Law in Lagos State.

sharing formula to share the charge collected with the local government authority but whether this is working practically remains an open debate.

9.0 Other States where tenement rate is yet to be merged/subsumed with Land Use Charge

The position of law in other states that have not merged or subsumed tenement rate with land use charge is clear and straightforward. It means that in such states, local government authority can charge/collect tenement rate. For instance, in Kwara State, tenement rate is still expressly reserved for local government authority within the state, and other charges on land go to the state Government. See the provisions of sections 1 and 2 of the Kwara State Land Charge Law, 2009 and the case of *Airtel Network Ltd vs A.G of Kwara State & Anor (2014) LPELR – 23790 (CA)*.

10.0 Can Tenement Rate be Charged on Land Specifically used for Network Masts and Towers?

The answer is yes. It has been established that tenement rate is charged on the developed land in respective of the purposes in which the land is being used for. And it is the sole responsibility of local government to collect same. In fact, the allusion of the court in the case of *Airtel Network Ltd vs A.G of Kwara State & Anor (2014) LPELR – 23790 (CA)* is to the effect that network providers/third-party having masts and towers erected on land are liable to pay tenement rate together with all other charges as maybe imposed by the State.

11.0 Who pays Tenement Rate on Land with Network Masts and Towers?

Generally, tenement rate is paid by the occupier of the land. Where the initial owner is not in occupation which is most often the situations on land with masts and towers, then the person in occupation will pay. Where there is a direct lease from the initial owner of the land to the person in occupation of the land wherein network mast/tower is erected, the person in occupation will be liable to pay the tenement rates as well as other charges for the time being imposed on the land. This kind of arrangement between the owner of the land and the occupation is usually evidenced or impended in the terms of the lease agreement between them. Conversely, the position is slightly different in Lagos State. Under the new Land Use Charge regime in Lagos, the responsibility for payment of the Land Use Charge resides primarily with the property owner; however there is provision in the law establishing the charge, for payment to be made by the occupier who is then empowered to look to reimbursement of the charge from the property owner. The different is understandable considering the fact that Lagos and other States have consolidated the tenement rate with other charges and departed from allowing Local Government the sole responsible for the administration of tenement rate.

12.0 Feasibility of collecting tenement rate on lands wherein telecom mast/tower is erected in Ogun State and other states that have merged or subsumed tenement rate with land use charge.

In view of the existence of the Ogun State Land Use and Amenities Law, 2013 which has harmonized all charges on lands, including tenement rate, and replace them with Land Use and Amenities Charges, Local Government Authority in Ogun State and those other states may no longer be able to collect tenement rate until the law is amended or repealed. The same thing applies to states such as Lagos, Anambra, Enugu and Edo. However, for states that have not followed this step, the Local Government authority in those states can still collect tenement rates on occupied land, including land, wherein telecom mast/tower is erected.

13.0 Conclusion

Tenement rate is a source of income for local government authority and it is as old as the system of colonialism in the country. It is deeply rooted in our constitution. Local Government Authority is empowered to impose and collect same on the developed land within its domain. It is however observed that the apparent ineptitude of Local Government Authority to be up to the task has made State Government to arm-twists them to donate the power to them to be usurped. One way this is done is by the state making laws enabling the local government to donate, cede and delegate its power to the state government that makes the law. One other way this is done is by the State government consolidating tenement rate with other charges chargeable by the state and thereby leaving the local government authority with no option but to key into the scheme.

Author



Jimoh Tohir Olaitan LL.B, BL

Senior Associate,
AMOFIN SOLICITORS
Legal Practitioners & Consultants
Ilorin, Nigeria
Tel: +2349027210128
info@amofinsolicitors.com.ng
<https://www.amofinsolicitors.com.ng>