

SANCTIONS AND CURRENT ISSUES IN THE STAMP DUTIES ACT

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Generally, stamp duty is a tax raised by requiring stamps sold by the government to be affixed to designated documents, thus forming part of the perpetual revenue.¹ The tax is calculated based on the value of the property that forms the basis of the instrument.² Failure to stamp an instrument unlike failure to pay an income tax is not an offence leading one to the jurisprudential question whether or not stamp duty is a tax.³ Indeed, if there is no compulsion to stamp an instrument, it is logical to ask why anyone should waste time and resources on stamping. The answer to this is not farfetched. While it may not be an offence not to stamp an instrument, the law confers certain privileges on stamped instruments, which are denied unstamped instruments. One may therefore be tempted into surmising that the relevance of sanctions for non-stamping is basically to deny anyone who has not paid the 'price' for the privileges conferred by the Act from tendering an instrument in a court or arbitral proceeding.⁴ The thrust of this paper is to reveal the dangers in having such a narrow perception of a wider issue.

The paper also discusses some of the current issues relating to the law and administration of stamp duties in Nigeria.

The topic of this paper obviously requires discussion of specific rather than general issues relating to stamp duties. This is logical in a Workshop for Stamp Duties Commissioners from various States who deal with life issues relating to stamp duties on daily basis. Stamp duties may be a relatively insignificant source of government revenue in Nigeria; history tells us that, the Stamp Act was a major catalyst for the American Revolution. The law and administration of Stamp Duties in Nigeria is bedevilled with myriads of constitutional and administrative controversies and problems so much that the Study Group on Review of the Nigerian Tax System recently recommended the abolition of stamp duty in Nigeria.⁵ According to the Study Group:

*"We received representations calling for the abolition of Stamp Duties, having regard to the fact that court cases have largely eroded the legality that this tax is supposed to confer on stamped documents. The discontinuation of ... the Federal Government should take steps to discontinue this tax in the not too distant future."*⁶

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¹See Black's Law Dictionary, ed. B.A Garner. Thompson West. 8th edition ., p. 1441

²http://www.stampoutstampduty.com.au/about_whatistampduty.htm Accessed on 25th September 2003.

³Some people have described Stamp Duty as a 'voluntary tax'. See M.T. Abdulrazaq, "An Appraisal of the Stamp Duties Act and its Operation". Nigerian Tax News. Vol. VI. No. 2. Dec. 2002. p. 8

⁴ See section 22(1) of the Stamp Duties Act, Cap 411, Laws of the Federation of Nigeria (LFN). 1990

⁵ Hereinafter referred to as "the Study Group". The Study Group headed by Prof. Dotun Phillips was inaugurated by the Minister of Finance. Mallam Adamu Chirorma on August 6, 2002 with a mandate to inter alia, review all aspects of the Nigerian Tax System and recommend improvements therein. Say something more about the Study Group. The Group had since concluded its assignments and submitted a report titled *Nigerian Tax Reform in 2003 and Beyond* in July 2003.

⁶See Main Report of the Study Group, p. 278.

This recommendation as simple as it may seem portend far reaching implications for the revenue of the States and inter governmental fiscal relations in Nigeria.⁷Meanwhile, it is appropriate to examine a few preliminary matters if only cursorily before considering the sanctions under the SDA and the issues arising from them.

1.0. Eligibility for stamping.

Eligibility for stamping is predicated upon certain conditions. The instrument must either be "executed in Nigeria" or "relate to a matter of thing done or to be done in Nigeria wherever executed". For instruments executed in Nigeria, it is immaterial whether or not the subject matter of the instruments relates to a matter in Nigeria. An instrument executed between even two or more foreigners or Nigerians in Nigeria will fall within this ambit even if the instrument relates to a matter outside Nigeria.

Instruments executed outside Nigeria will be eligible for stamping in Nigeria if it has some real connection with Nigeria, for instance, if it relates to any matter or thing done or to be done in Nigeria. For instance, if it is in respect of a property located in Nigeria or contract executed outside Nigeria but to be performed in Nigeria.

Therefore, the overriding question as to whether or not an instrument is eligible for stamping is not in the nature of an instrument but "whether the instrument is executed in Nigeria or relates to any matter or thing done or to be done in Nigeria". The nature of an instrument is mainly relevant for determining the rate of duty imposed and whether the instrument is exempted.

1.1. Chargeable and exempted instruments

Not all written instruments are chargeable under STA. The chargeable instruments called 'instruments' are specified in 'the Schedule to STA. However, some instruments are specifically exempted. Ordinarily, one would have thought that any instrument not specified in the list of chargeable instruments is exempted. Perhaps the specific mentioning of the exempted instruments is to preclude any doubt about their non-chargeability.

The base of stamp duty as a tax is very wide and a pointer to its revenue potentials if it is well administered. Section 3(1) of the Act charges to tax the various instruments contained in the schedule to the Act including admission as a barrister or solicitor; affidavit, affirmation and statutory declaration; agreement or contract; allotment; annuity; appointment of a new trustee; appointment of a commissioner for taking affidavit; appraisal or valuation of any property or of any interest therein; apprenticeship; assignment; assurance; power of attorney; award; bill of exchange; bill of lading; bill of sale; bond; capital duty; charter-Party; conveyance; debenture; fidelity bond; guarantee; hire-purchase agreement; insurance policy; letter of allotment and letter of renunciation; letter of credit; license; marketable security; mortgage, protest of any bill; promissory note; receipt given for or upon the

⁷Although Stamp Duties is imposed by a federal statute, the administration of the tax with regard to individual resident outside the Federal Capital Territories and non-corporate bodies are left for the States. Therefore, abolishing the tax will have a negative impact on the revenue of the States.

payment of money amounting to N4 or upward; revocation; settlement; release or renunciation of property; surrender; voting paper; warrant of attorney and warrant for goods.⁸

Some of the chargeable instruments have exemptions. For example, under 'agreement', the following instruments are exempted:

- (i) Agreement and memorandum the subject matter whereof is not of the value of N10.
- (ii) Agreement or memorandum for the hire of any labourer, artificer, manufacturer or menial servant.
- (iii) Agreement, Letter or Memorandum made for or relating to the sale of any goods, wares or merchandise.⁹

Apart a few specific exemptions, there are also 13 general exemptions in the schedule, the prominent among which are:

- (i) instrument for the sale of ship;
- (ii) all instruments on which the duty is payable by any government or its department;
- (iii) agreements made by the Nigerian Railway Corporation;
- (iv) indemnity bond given by the NRC;
- (v) instrument of apprenticeship to which the Government is a party;
- (vi) bond given by a public officer for the execution of his duties;
- (vii) all instruments on which the duty is payable by any consular officer subject to the principle of reciprocity;
- (viii) all instruments relating to transfer of stocks and shares.¹⁰

Where one is in doubt whether an instrument is chargeable or not, the Act provides that 'a person may require the Commissioner to express his opinion on the matter and if chargeable the amount with which it is in his opinion chargeable in a certificate.¹¹ However, no regulations have been made to this effect. The provisions are hardly activated because of the limited scope of stamp duties in practice. In practice, except for important commercial instruments such as mortgages, charges, conveyances, deed of release, proxy or voting papers, stamping of instruments is not very common.

2.0. Relevance of Sanctions

⁸ See section 3(1) of the Act.

⁹ See the Schedule to the Act.

¹⁰ Ibid.

¹¹ Ibid.

Failure to stamp an instrument unlike failure to pay an income tax is not an offence.¹² This is why some people have described stamp duty as a 'voluntary tax'. If there is no compulsion to stamp an instrument, it is logical to ask why anyone should waste time and resources on stamping. The answer to this is not farfetched. While it may not be an offence not to stamp an instrument, the law confers certain privileges on stamped instruments, which are denied to unstamped instruments. The relevance of sanctions for non-stamping is therefore basically deny anyone who has not paid the 'price' for the privileges conferred by the Act from tendering an instrument in a court or arbitral proceeding.

This section examines the various sanctions contained in the Stamp Duties Act is remarkable that there are many sanctions within the Act beyond what an administrator or even Stamp Duties Commissioner may be familiar with in his day-to-day activities. Some of the sanctions may easily escape the attention of some experts because they are not arranged in the same section as one would expect. Different instruments attract different sanctions obviously because of the relative importance the law places on them.

2.1. Sanctions under STA

The main sanctions under STA are contained in sections 22-23. The sections are reproduced below for ease of reference: 22(1) "Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in Nigeria, or before any arbitrator or referee, notice shall be taken by the judge, magistrate, arbitrator or referee of any omission or insufficiency of the stamps thereon and if the instrument is one which may legally be stamped after the execution thereof, it may on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or referee of the amount of unpaid duty, and the sanction payable on stamping the same, and of a further sum of two naira to be received in evidence, saving all just exceptions on other grounds.

(2) The officer or arbitrator or referee receiving the duty and sanction shall give a receipt for the same, and make an entry in the proper book kept for the purpose of showing receipt of money and of the amount thereof, and shall communicate to a commissioner the name or title of the proceedings in which and of the party from whom he received the duty and sanction, and the date and description of the instrument, and shall pay over to the Accountant-General the money so received by him for the duty and the sanction.

(3) On production to the commissioner of any instrument in respect of which any duty or sanction has been paid, together with the receipt, the payment of the duty and sanction shall be denoted on the instrument.

(4) except as aforesaid and subject to the provisions of the section 90(3) of this Act, an instrument executed in Nigeria, or relating wheresoever's executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatsoever, unless it is duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.

¹²M.T. Abdulrazaq, *op. cit.*, p. 8

S.23(1) Except where other express provision is made in this Act, any unstamped or insufficiently stamped instrument may be stamped with an impressed stamp at any time within forty days from the first execution thereof (except such period of forty days is reduced by an Order as provided in subsection (7) of this section) upon payment of the duty or unpaid duty only but after that time the said instrument may only be stamped upon payment of the unpaid duty and a sanction of twenty naira, and also by the way of further sanction, where the unpaid duty exceed twenty naira, of interest on such duty, at the rate of ten per cent per annum, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty".¹³

2.2. Analyzing the scope of the section 22-23(1)

Stamp duty becomes relevant "upon the production of an instrument" in any court or before any arbitrator or referee as evidence. Stamping may therefore be dispensed with if it is not contemplated that the matter forming the subject matter of an instrument may give rise to legal relations. The practical problem however is that is nobody could tell what may become of today's truly happy commercial relationship tomorrow.

The court, arbitrator or referee is empowered to receive the unpaid duty, penalty for late stamping and a further sum of two naira from a party producing the instrument as a pre-condition for admitting the instrument in evidence. The court, arbitrator or referee is required to communicate this to commissioner for stamp duties and pay the money to the Accountant-General. What is usually done in practice however is that the court will request the party tendering an unstamped instrument to go and stamp it at the stamp duties office before admitting it in evidence?

In *Commercial Bank Credit Lyonnais Ltd. v Union Food (Nig.) Ltd. No.2*,¹⁴ the plaintiff sought to tender a personal guarantee and seven promissory notes. The defendant objected on several *grounds, inter alia*, that the personal guarantee was not stamped in conformity with the Stamped Duty Act. It was held that an instrument that is duly executed is not rendered inadmissible because it has not been stamped. The purpose of stamping an instrument is to ensure that the revenue is paid to the government. The best the court could do is to allow the party seeking to tender it to have it stamped before it is admitted in evidence.

Inadmissibility of an unstamped instrument is not relevant for criminal purposes. Hence, an unstamped instrument can be used in evidence in criminal proceedings. Furthermore, since it is not expressly stated that only the prosecution may use unstamped instrument in criminal proceedings, it is submitted that the accused may also adduce it as evidence in his defence. After all, what is good for the goose should be good for the gander.

Section 22(4) provides, *inter alia*, that an unstamped instrument "shall not be given in evidence, or be available for any purpose whatsoever". While the meaning of the first part of the phrase is clear it is

¹³See generally sections 22-23 of the Act.

¹⁴FHCNLR J 992. p. 344.

however not clear what the statement that such an instrument shall not "be available for any purpose whatsoever" means. If the statement were to be strictly construed, it would mean an unstamped instrument is totally useless in any court or arbitral proceeding either to support a claim or deny a liability.

In *Candido Da Rocha &1 or v Hussain*,¹⁵ the Respondent executed a Deed of Mortgage of a property at No.92 Griffith's Street, Ebute Metta on 7th January, 1952 in favour of the first appellant to secure a loan of 300 pounds. The Deed was neither stamped nor registered. The first Appellant later discovered that at the time the Deed was executed, his Moneylender's licence had expired. Having renewed his licence, a second Deed of Mortgage for the same loan was executed by the Respondent on 7th July 1952 and the first deed was returned to the Appellant. At time of the execution of the second Deed, no money passed. The mortgaged property was eventually sold by the second Appellant, an auctioneer, on the instruction of the first Appellant when the Respondent failed to redeem the mortgage. The Respondent instituted an action to set aside the sale and for a declaration that the second Deed is void. The trial judge entered judgment for the Respondent. Being dissatisfied, the Appellant appealed to the Supreme Court on the ground that the learned trial judge erred in law in admitting in evidence and resting his decision on a Deed of Mortgage which was neither been duly stamped nor registered in spite of objection. Allowing the appeal, the Court held that while an unregistered Deed is admissible not as affecting land but to disprove a debt, a deed that is not stamped under the Stamp Duty Ordinance is not admissible.

2.3. Sanction for late stamping

At what point is stamping required? Should it be before or after execution of the instrument? This question must be satisfactorily resolved before one can speak of late stamping.

There is no specific provision in the STA on when exactly when an instrument should be stamped. A learned writer had posited that the original principle of Stamp Duties Act is that instrument should be stamped before execution. According to him, this can be inferred from section 23 STA, which imposes certain penalties on certain instruments, stamped after execution.¹⁶ In practice, the commissioner does not insist on strict compliance with the provisions of section 23. Rather, a 'grace' period of 40 days is allowed after the execution of an instrument before stamping is required without sanction.¹⁷ Under section 23 STA, any unstamped or insufficiently stamped instrument may be stamped within forty days from the first execution upon payment of the unpaid duty and sanction of twenty naira. Where the unpaid duty exceeds twenty naira it will attract interest at the rate of 10 per cent per annum.

2.4. Prohibition of double assessment

¹⁵ (1958) SCCN vol., -, p. (?)

¹⁶ M.T. Adulrazaq, *op, cit.*, p.5

¹⁷*Ibid.*

Section 20 prohibits the submission of an instrument to more than one commissioner for an assessment apparently to avoid "forum shopping".

Hence, a person shall not submit the same instrument to a different commissioner for assessment after the instrument had been previously submitted to another commissioner for the same purpose. A violation of this provision attracts a fine of twenty naira.¹⁸If the rates of stamp duties were really uniform throughout Nigeria as envisaged by SDA, there will hardly be any incentive to engage in forum-shopping.

2.5. Use of adhesive stamp twice or more

The intendment of the law is that adhesive stamp shall be used once. The law therefore prohibits the usage of any adhesive stamps that had been used before. Anyone guilty of this offence is liable on conviction to a fine of one hundred naira in addition to any other fine or sanction to which he may be liable. Section 13 provides in this regard thus:

13 (1) If any person -

- (a) fraudulently removes or causes to be removed from any instrument any adhesive stamp, or affixes to any other instrument or uses for any postal purposes any adhesive stamp which has been so removed, with intent that the stamp may be used again; or
- (b) sells or offers for sale, or alters any adhesive stamp which has been so removed, or alters any instrument having thereon any adhesive stamp which has to his knowledge been so removed aforesaid he shall be guilty of an offence and liable on conviction in addition to any other fine or sanction to which he may be liable, to a fine of one hundred naira.

(2) The expression "instrument" in this section includes a telegram and any postal article within the meaning of the Nigerian Postal Services Department.

It is our view that the above provisions do not have much relevance to the day-to-day administration of stamp duties. Rather, it is more relevant to the Nigerian Postal Services (NIPOST) than stamp duty office.

2.6. Sanction re: power of attorney and voting papers

It is remarkable that the Act prescribes a specific sanction for stamping of two specific instruments. Anyone who makes or execute, votes or attempts to vote, under or by any means of any letter or power of attorney or voting paper shall be guilty of an offence and liable on conviction to a fine of one hundred naira only. Not only that, every vote given or tendered under the authority or by means of the letter or power of attorney or voting paper shall be void.¹⁹

¹⁸See section 20 STA

¹⁹ S. 74 STA

2.7. Sanction relating to appraisal

Every appraisal or valuation is required to be stamped within 14 days it was made failing which the appraiser shall be guilty of an offence and liable to a fine of one hundred naira only.²⁰ Also, anyone who receives from any appraiser, or pays for the making of any such appraisal or valuation shall incur a fine of forty naira.²¹

2.8. Liability of a banker in respect of bank note

It is unlawful for any banker to issue in Nigeria any bank note that is not duly stamped. Any person who contravenes this law shall be guilty of an offence and liable on conviction to a fine of two hundred naira only.²²

2.9. Sanction in respect of stock certificate

Section 98 requires that a bearer stock certificate should be cancelled where the holder has been entered on the register of any company as owner of the shares. This is to prevent the certificate from being reissued to any person. If such a certificate is issued without being duly stamped every person to whom it is issued shall be guilty of an offence and liable on conviction to a fine of one hundred naira only.

2.10. Sanction for registration without stamp

If any instrument is enrolled or registered without the requisite stamp, the person whose office it is to enroll or register shall be guilty of an offence and liable on conviction to a fine of twenty naira.²³

The above discussion does not exhaust all the sanctions contained in the STA. Apart from the foregoing, there may be other minor sanctions relating to some specific instruments. Although the STA is decorated with a number of sanctions the truth is that most of them are of no relevance to the practical administration of STA. The amount of penalty is has not been reviewed for decades and therefore bears very little to the economic circumstances of today. It suffices to that the most potent sanction is the one that diminished the evidential value of unstamped instruments in court and arbitral proceedings and disallows registration of such instruments with the Registrar of Title.

It is convenient at this stage to consider some of the burning issues relating to the law and administration of stamp duties in Nigeria.

3. 0. CURRENT ISSUES IN THE LAW AND ADMINISTRATION OF STAMP DUTIES IN NIGERIA

²⁰ Section 32(1) STA

²¹ Section 32(2) STA

²² Section 35 STA

²³ Section 25 STA

The law and administration of stamp duties are currently in the front burner of public discourse in Nigeria. Remarkably, some of the controversies verge on intergovernmental fiscal relations and cost of doing business. These controversies are the root for the proposal to abolish the Stamp Duty in Nigeria.

3.1. Tax jurisdiction between FIRS and SBIR

Stamp duties is specifically reserved for the federal government under item 58 of the Exclusive Legislative List of 1999 Constitution meaning that only the federal government has power to impose stamp duties and make laws with respect to the matter. The federal jurisdiction over stamp duties in Nigeria started in 1979 with the commencement of the 1979 Constitution. Before 1979, stamp duty was a matter within the jurisdiction of the regions (and later states). However, following the policy of centralization under the military rule, it was recommended that stamp duties should be a federal matter under the 1979 Constitution. The Constitution however permitted the federal government to delegate the administration of stamp duties to the states subject to the conditions prescribed by the federal government. In pursuance of its constitutional power, the federal government had enacted a uniform comprehensive STA charging the same duties on various instruments and granting the same exemptions throughout the country.²⁴

Section 4 of the SDA vests the state governments with power to collect stamp duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the federal government.²⁵

The section however reserves to the federal government the power to collect stamp duties upon instruments executed between a company and an individual thus:

4(1) The Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instruments relate to matters executed between a company and an individual, group or body of individuals.²⁶

(2) The State Government shall collect stamp duties in respect of instruments executed between persons or individuals at such rates to be **imposed or charged** as may be **agreed with the federal government**". (Emphasis ours)

The implementation of the above provisions has not been easy in practice and has often generated inter-governmental fiscal friction between the States and Federal Government, especially during civilian government. A few problem areas are discussed below.

3.2. SDA v Stamp Duties Law

Most, if not all the states still retain their Stamp Duties Laws, which contain identical provisions with that of the *Stamp Duties Act* except the provisions of the SDA relating to companies and allied matters.

²⁴See the Stamp Duties Act. Cap 411 LFN. 1990.

²⁵The revenue collected by the state governments stamp duties are wholly retained by them and form part of the Consolidated Revenue Fund pursuant to sections 120 and 163 (a) of the 1999 Constitution.

²⁶Section 4(1) Stamp Duties Act

This is notwithstanding the constitutional provisions since 1979, which made stamp duty a federal matter.

Hence, the States still charge stamp duties under their Stamp Duty Laws at rates, which are at variance with the rate prescribed under the STA. Elsewhere, this writer had commented thus:

"Lagos State has continued to retain in its statute book a Stamp Duties Law which contains identical provisions with that of the Stamp Duties Act except the provisions of the Act relating to companies and Allied matters. Following our argument on the unconstitutionality of the Personal Income Tax Law of the State (PITL), it is also submitted that the State Stamp Duties Law of Lagos State is inconsistent with the provisions of the 1999 Constitution and therefore null and void to the extent of its inconsistencies."²⁷

The Tax Reform Study Group had recommended that the legal action should be taken to stop any States from having its own laws on stamp duty.²⁸ While the recommendation is undoubtedly in line with the provisions of the 1999 Constitution,²⁹ it is doubtful if it can satisfactorily resolve the conflict of jurisdiction between states and federal government on stamp duty in this era of fiscal federalism. In our view, the country should reopen the issue of the propriety or otherwise of making stamp duties a federal matter in line with the well settled principles of federalism. If this is done, it will be realized that there is nothing in the nature of stamp duties to deserve a place in the Exclusive Legislative List.

3.3. States' rejection of instrument stamped at the federal stamp duties office.

Some State Governments are in the habit of rejecting instruments stamped by the Federal Stamp Duty Office or the Stamp Duty Office of other States in relation to the land located within their territory. Such States are operating on the assumption that where the matter covered by an instrument is within their territory, the stamping of the instrument should be done in their own stamp duties offices. The Study Group has thrown its weight behind the position of such states in its recommendations.³⁰

The existing case laws are however in favour of the Federal Government. In *Savannah Bank Nigeria Limited v. D.G. Ministry of Land, Survey and Town planning and A. G. of Plateau State*,³¹ the applicant, briefed its solicitors to prepare, enroll and register a deed of legal mortgage between itself and one of its customers. After preparing the deed, the solicitor presented it to the Federal Commissioners for Stamp Duties who assessed and stamped the deed after which the assessed duty was duly paid. The solicitor then presented the stamped deed together with the original receipt of payment of stamp duties to the Principal Deed Registry, Plateau Ministry of Lands, Survey and Town Planning, Jos, for registration who refused to register the deed. It came out in evidence that the registration was refused because

²⁷AbiolaSanni, "Division of Taxing Powers", See *Chartered Institute of Taxation of Nigeria (CITN) Guide*, ed. M.T. Abdulrazaq, 2002. p. 661.

²⁸See the Study Group Report. pp.277-8

²⁹*Ibid.*

³⁰*Ibid.*

³¹Unreported, Decided by the Federal High Court. Jos Division on 20th September 1989.

stamp duty was paid to the Federal Inland Revenue Services (FIRS). The trial judge granted an order of mandamus compelling the first respondent to register the deed of legal mortgage.

In *Union Trust Limited v. A.G. Fed., & A.G. Ogun State*,³² the Plaintiff and a company known as Agbara Estate Ltd. executed a mortgage trust deed to secure a loan of four million naira whereby the company conveyed to the Plaintiff, its interests in a landed property situate at Agbara Village in Egbado South of Ogun State. After paying the stamp duties which was N5,000 on the trust deed, to the Federal Commissioner for Stamp Duties, the instrument was taken to the Ogun State Land Registry at Abeokuta for registration. The Ogun State Authorities refused to accept the instrument for registration until another sum of N20,000 was paid as stamp duties plus a registration fee of N128.00. This they did in purported exercise of a power contained in the Stamp Duties Law 1978 Cap 120 of Ogun State. The Plaintiff made the second payment after all entreaties failed to produce a favourable result. The Plaintiff therefore brought this action against the Federal Government and the Ogun State Government claiming an order for a refund of the N20,000 unlawfully collected by the 2nd Defendant.

The second Defendant argued that the determination of the authority to collect stamp duty in respect of the instrument depended on the subject matter of the transaction and the parties, that is whether a corporate person or individual. It submitted that the subject matter of the transaction was land and that land was residual to states. Furthermore, the Federal Government had no function to discharge in respect of the trust deed. Rather, it was the Ogun State Commissioner for Stamp Duties that had responsibility. Nevertheless, the counsel to Ogun State conceded that Ogun State Stamp Duties Law is no longer a valid in view of the provisions of the 1979 Constitution. It was held that State Government could only legislate on stamp duties by delegation with the prior consent of the Federal Military Government. In the absence of any proof that such power had been delegated to the State, Ogun State Government had no power to legislate on Stamp Duties.

3.4. Federal encroachment on State Government's jurisdiction

Another issue relating to the administration of stamp duties is that the Federal Government has also been encroaching on the power of States. One of such issues is the practice whereby the Federal Government stamp duties office accepts for stamping instruments such as guarantor forms, payment receipts and agreements between individuals resident outside the Federal Capital Territory simply because guarantor forms are sometimes issued by federal establishment.³³

3.5. Exorbitant stamp duties

Lastly, there is general complain especially from the Organized Private Sector³⁴ that stamp duty rates are rather high. The high stamp duties rates and other costs associated with perfection of title now constitute avoidable hindrance to perfection of title and interest in property ownership in most states especially, Lagos and Rivers. Until recently, the overall fee payable for application for the consent in

³² FHCLR 1990 p.45.

³³See generally the recommendations of the Tax Study Group, op. cit. 277. See also, B.A. Ogundele, *Elements of Taxation*, 1999, p 256.

³⁴

Lagos State was about 30% of the capital value. The processing of the Governor's consent has been widely criticised as being protracted, expensive, cumbersome and stressful.³⁵ In an effort to address the problems, the Lagos State Government has attempted to review and streamline the procedure for processing Governor's consent under a new procedure tagged "30-Day Consent". One of the key features of the new guidelines is the reduction of the overall fees from 30% to 15% of the capital value of the property. While the effort of the Lagos State Government in streamlining the consent procedure is salutary, it is doubtful if it is far-reaching enough to address the problem of cost. This is because the new consent fee and the Capital Gains Tax are still based on the capital value which brings us to the consideration of the question whether it is appropriate for the application fee to be based on capital value of the property and whether it can be successfully challenged as a disguised tax.

The Tax Study Group noted that "stamp duty was not really meant for revenue generation but for the legalization of instruments" and recommended that the maximum amount payable in stamp duty should be limited to N50,000 per instruments for both companies and individuals³⁶ as a prelude to the abolition of the stamp duty in Nigeria.

4.0. Conclusion

From the foregoing, it is not difficult to see that the law and administration of stamp duty in Nigeria is bedevilled with lots of constitutional and administrative controversies and problems. In studying the American Revolution, virtually every young American student is taught that the words "Stamp Act" are synonymous with oppression and tyranny of the vilest sort.³⁷ A student of contemporary stamp duty laws in Nigeria may however not share this feeling because his daily life has little or nothing to do with stamp duties.

The same however cannot be said of corporate bodies, especially those who have had cause to perfect securities of titles or generally dealing in landed properties. Such companies and individuals are smarting under the yoke of array of taxes and associated cost of perfection of title to land procurement of Certificate of occupancy. Nevertheless, we must however recall that though the British Parliament repealed the detestable Stamp Act in America less than a year after its effective date, the development did not dissuade the British Parliament from enacting similar stamp duties in the British Empire, which have endured till today with necessary modifications over the years.

The significance of stamp duties may be diminishing in other developed jurisdiction where increasing number of transactions are being done electronically, (thereby obviating the need for a paper document). In our view, it is too early in the day to contemplate the abolition of stamp duties in Nigeria. It must be recognized however "that stamp duty on residential conveyancing is an impediment to economic development and that the abolition of the duty would go a long way towards providing a

³⁵See the acknowledgement in a publication titled "Inauguration of Government's Policy on the New Procedure for Obtaining Governors Consent "The 30-Day Consent" by Lands Bureau. Lagos State.

³⁶Tax Study Group Report. *op. cit.* p.257.

³⁷Thomas Katheder, "Purchasing real estate in the Bahamas". 1998, University of Miami Inter-American Law Review. P. 21

more appropriate, simple and consistent taxation system".³⁸ The options for reform in this regard includes an introduction of a flat rate structure or its replacement with an annual charge on all properties.

Furthermore, there should be concerted effort between the federal and state governments to resolve the myriad of problems plaguing the law and administration of stamp duties. Efforts should also be made to review the STA. As we have seen, the various sanctions imposed are too trivial to encourage stamping. The sanctions should be reviewed to take account of the present economic circumstances. If the rates of Stamp duties are moderate and the administration is made easier, it may lead to higher revenue for the states in the long run.

Prevalent corrupt practices among rank and file in the stamp duties offices should also be curbed in order to buoy the revenue potentials of stamp duties in Nigeria as a state tax. The staff of stamp duties should be well remunerated and equipped. Implementation of these suggestions, among others, may save the baby from being thrown out with the bath water.

³⁸http://www.stampoutstampduty.com.aulabout_reviewstatetaxes.htm accessed on 27th September 2003.