

POWER OF THE STATE TAX AUTHORITY TO DISTRAIN THE TAX PAYER FOR NON-PAYMENT OF TAX. HOW EXERCISABLE.¹

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1 INTRODUCTION

Nigeria operates a constitutional democracy. The Constitution of Nigeria is therefore the guide for the use or exercise of any power in Nigeria. Section 1 of the CFRN 1999 provides that the Constitution is supreme and its provisions are binding on all authorities and persons throughout Nigeria. Section 1(3) goes further to state that "If any other law is inconsistent with the provision of this Constitution this Constitution shall prevail, and other law shall to the extent of the inconsistency be void."²

In *Kalu v Odili*³ the Supreme Court stated that the Constitution is the 'acid test' through which all acts of legislators or public officers must pass through to become legal. Therefore, the discussion on any power in Nigeria must have its root in the Constitution.

Section 43(1) of the Constitution provides for the right to private ownership of property. The Section provides as follows: "Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria"

Also, section 44(1) of the Constitution provides that:

- (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things –
 - (a) requires the prompt payment of compensation therefore and
 - (b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.⁴

"To distraint" means, "To force a person, by seizure and detention of personal property, to perform an obligation"⁵. Distress therefore may seem to derogate from these sections of the Constitution.

However the Constitution provides for instances where such violations of section 43 of the Constitution will be permissible. Section 44(2) (a) of the Constitution provides thus: "Nothing in subsection (1) of this section shall be construed as affecting any general law (a) for the imposition or enforcement of any tax rate or duty."

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² *Abacha & Ors. v. Fawehinmi* (2000) LPELR-14(SC) Per ACHIKE, J.S.C (P. 90, paras. C-G)

³ (1992) LPELR-1653(SC) at 104

⁴ See also Article 14 of the African Charter on Humans and Peoples' Rights (Ratification and Enforcement) Act Cap A9 LFN

⁵ A. G. Bryan, *Black's Law Dictionary* (8th edition Thompson West Publishers 2004) p 403

This means that a law competently made by a legislative body in Nigeria will be constitutional even if it derogates from Section 44(1), as long as it is made for the imposition or enforcement of tax or duties. Flowing from this constitutional provision, legislation on tax imposition and enforcement in Nigeria generally gives tax authorities power to distrain upon the property of a tax defaulter.

Such legislation are strictly interpreted because it tends to deprive individuals rights conferred by the Constitution. According to the Court of Appeal which stated in *Bendex Engineering Corporation & Anor v Efficient Petroleum Nigeria Ltd*⁶

“Particularly instructive is the principle that, any legislative provision which seeks to deprive the citizenry of his rights, be they personal or proprietary rights, must be interpreted fortissime contra-preferentes, i.e. strict construction against the person relying on the power of deprivation”

Taxation legislation are also strictly interpreted. The Court of Appeal explained this thus:

Tax laws are strictly or narrowly interpreted from the bare words used in the enactment. There is no presumption or equity about a tax - See *Ahmadu & Anor. v. The Governor of Kogi State & Ors.* (2002) 3 NWLR (Pt.755) 502 at 522 thus - "In a taxing legislation, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption about a tax. Nothing is to be read in and nothing is to be implied, one can only look fairly at the language used.⁷

All enforcement processes of tax are therefore strictly interpreted. This includes power to distrain. This strict interpretation of power to distrain makes it imperative to understand and appreciate how such power should be exercised. The recent drive at enforcing taxation laws to generate revenue for government can only be achieved if the relevant tax authority exercise its authority over taxation as prescribed by law. This will remove several delays in appeal or challenge of ‘unlawful’ enforcement procedure in courts.

This work therefore looks at

- The establishment and functions of the state tax authorities,
- Explains the power to distrain given to such tax authorities
- Uses some judicial authorities to explain how these power to distrain should be exercised.
- Explains the jurisdiction of courts in enforcement of power to distrain and other processes of tax collection

2 LEGISLATION ON TAXATION

Nigerian operates a federal system of government and power to legislate on any issue, to impose any tax or levy, is effectively shared by the Nigerian Constitution among the three tiers of government. Section 4 of the Constitution gives the National Assembly and the State Houses of Assembly the power to make laws in Nigeria, subject to the restrictions placed by the Constitution. The Section provides as follows:

4. --(1)The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any

⁶ (2000) LPELR-10143(CA)

⁷ *Nigerian Breweries Plc. v. Oyo State Board of Internal Revenue* (2012) LPELR-8672(CA)

matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say-

a) Any matter in the concurrent legislative list set out in the first column of Part II of the second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

b) Any matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say-

a) Any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;

b) Any matter in the Concurrent Legislative List set out in the first column of Part II of the second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

c) Any matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(8) Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

(9) Notwithstanding the foregoing provisions of this section, the National Assembly or a House of Assembly shall not, in relation to any criminal offence whatsoever, have power to make any law which shall have retrospective effect.

The Interpretation Act provides that an enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it.⁸ This means that a legislative body with power to make laws on an issue can also make laws setting up the machinery for the enforcement of such laws.

Laws on tax is also made based on the constitutional competence of the legislature to make laws. The level of government with power to make law on an issue can impose tax on that issue.

⁸ See Section 10(2) Interpretation Act, *Ag Ondo v. A-G Of Federation* (2002) LPELR-623(SC)

3 FEDERAL LEGISLATION ON TAX AND TAX ENFORCEMENT

The National Assembly is vested with exclusive legislative powers in respect of all the matters specified in the Exclusive Legislative List. Except where expressly provided in the Constitution, the House of Assembly of a State has no legislative power in respect of any of the matters in the Concurrent Legislative List and legislation made by the National Assembly on matters within the Concurrent List has supremacy over State's legislation on the same matters.

In this respect, a Law enacted by a State may be void either on the ground of inconsistency with an Act of the National Assembly as per Section 4(5) of the Constitution or on the ground of covering the field. That is where the State and the Federation validly made identical legislation, without any inconsistency, on the same subject matter. In such situation, the State's Law must give way to the Federal legislation⁹. The Supreme Court settled the issue on competence of any level of government to impose tax in the case of *Attorney-General of Ogun State v. Aberuagba*¹⁰

The issue in the case was the Sales Tax law of Ogun State, which imposed tax and levies on goods sold in the State. The Respondent in the matter challenged the competence of the Ogun State House of Assembly to impose such tax and contended that the imposition of tax on interstate goods was in the exclusive legislative competence of the Federal Government and that the State Legislative Body cannot make laws on the issue.

Resolving the issue of competence of any level of Government to impose tax on any matter, the Supreme Court per M. Bello, J.S.C stated that:

By virtue of section 4, section 150 and item D of Part II of the Second Schedule to the Constitution the Federation has the power to impose tax on any of the matters in the Exclusive and Concurrent lists. Similarly, pursuant to section 4 and item D9 of Part II of the Second Schedule, which provides:

"9. A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate....."

a State has the power to impose tax on all matters in the Concurrent List and residuary matters. However, it must be noted that the taxing power of a State over the concurrent matters is subject to the rule of inconsistency under section 4(5) and the doctrine of covering the field, which I have stated at the beginning of this judgment.

It is axiomatic that in the absence of any constitutional provision, express or implied, to the contrary the respective taxing power of the Federation and of a State includes sales taxing power. Accordingly, the Federation is entitled to levy sale tax on any saleable matters within its competence. A state can also do the same within its competence. It must, however, be emphasized that it is not within the competence of a State:

- (1) to make sales tax law affecting any of the matters in the Exclusive Legislative List; or
- (2) to make any sales tax law in the Concurrent Legislative List which is inconsistent with any law validly made by the Federation; or

⁹ *Attorney-General of Ogun State v. Attorney-General of the Federation* (1982) 3 N.C.L.R. 166 at 179 cited by the Supreme Court in *The Attorney-General, Ogun State v. Alhaja Ayinke Aberuagba & Ors* (1985) LPELR-3164(SC)

¹⁰ (1985) LPELR-3164(SC)

(3) to make any sales tax law in the Concurrent Legislative List on any matter in the Concurrent List where any law validly made by the Federation has covered the field.

It is in pursuance of the above stated constitutional law that several States in the Federation enacted Sales Tax Laws.¹¹

The court went further to state thus “Having regard to the foregoing, I may summarize that the Federation has implied exclusive power to make sales tax law in all matters within the Exclusive and Concurrent Lists while the States have implied or residuary power to enact sales tax law on all matters outside the said Lists.”

Therefore, a level of government cannot impose tax on a matter not within its legislative competence.

Confirming this reasoning, the Supreme Court Uwais CJN, put it succinctly thus in *Knight Frank & Rutley (Nig) v. Attorney-General, Kano State*:¹²

It is clear from the Provisions of Paragraph 1(b) and (i) of the Fourth Schedule read together with the provision of Section 7(5) of the Constitution that the intendment of the constitution is that only Local Government Councils have the power to assess and impose rates on privately owned property.

Further elucidating on this, the Court of Appeal, per Kumai Bayang Akaahs, J.C.A(as he then was), in a case that challenged the Urban Development Tax Law of Cross River State, stated thus:

The constitutionality or otherwise of the Urban Development Tax Law should not be hinged on the Taxes and Levies (Approved List of Collection) Act Cap T2 Laws of the Federation of Nigeria 2004. That Act was made during the period of Military inter regnum when the 1979 Constitution was suspended and only such amendments that were introduced by the Military was the groundnorm. However since the Act was not repealed after the coming into existence of the 1999 Constitution it became an existing Law which was deemed to have been made by the National Assembly. Unlike the time it was first promulgated in 1998 when the Military held sway and Decrees took precedence over the unsuspending sections of the 1979 Constitution, with the coming into being of the 1999 Constitution, any existing Acts of the National Assembly would be valid subject to their being consistent, with the Constitution.¹³

It should further be noted, that in determination of the legality of any tax imposed on anyone in Nigeria or process of collected of such taxes, recourse cannot be made to the Tax and Levies (Approved List for Collection) Act. This is because the Taxes and Levies (Approved List of Collection) Act Cap T2 Laws of the Federation of Nigeria 2004 is deemed an Act of the National Assembly and is subject to the constitutional provisions.

A legislation imposing tax must be specific in its provision and must clearly state the manner of levying such tax.¹⁴

In line with its powers to make laws, the National Assembly can impose taxes and create authorities that will administer those taxes. By virtue of item 58 & 59 of the Exclusive

¹¹ (1985) LPELR-3164(SC)

¹² (1998) LPELR-1694(SC), (1998) 7 NWLR (Pt.556) 1 @ 19

¹³ *Attorney-General of Cross River State & Anor. v. Matthew Ojua* (2010) LPELR-9014(CA)

¹⁴ See *S. A. Authority v. Regional Tax Board* (1970) LPELR- 2967(SC)

Legislative List, the National Assembly has the legislative competence to make laws on stamp duties, taxation of incomes, profits and capital gains. Thus, the National Assembly has made such laws as the Personal Income Tax Act, the Capital Gains Tax Act, the Stamp Duties Act, and the Companies Income Tax Act. Flowing from its general powers to legislate on other issues, the National Assembly can also make laws imposing tax in other areas. For example, by virtue of its powers to make laws on mines and mineral¹⁵, the National Assembly made the Petroleum Profit Tax Act¹⁶.

Item 7 of the Concurrent Legislative List to the Constitution also provides that the National Assembly may make laws delegating collection of some taxes and duties imposed on capital gains, incomes or profit of persons other than companies to the Government of a State or other authority of a State. Therefore, by virtue of such laws as the Personal Income Tax Act(PITA) and Taxes and Levies (Approved List of Collection) Act¹⁷ the National Assembly delegated power to collect some taxes and duties to the State Government. The enforcement of these taxes take the procedure specified by the Act of the National Assembly. The Personal Income Tax creates the State Board of Internal Revenue and gives it the responsibility for “ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws.”¹⁸

The State Board of Internal Revenue created by the Act of the National Assembly has all the powers given by laws made by National Assembly for the enforcement of taxes created by the National Assembly. These powers include the power to distrain properties of tax defaulters as provided for in section 104 of the Personal Income Tax Act.

Power to distrain under PITA, How exercisable.

Section 104 of PITA provides thus:

1. Without prejudice to any other power conferred on the relevant tax authority for the enforcement of payment of tax due from a taxable person that has been properly served with an assessment which has become final and conclusive and a demand notice has been served upon the person in accordance with the provisions of this part of this Act, or has been served upon the person, then, if payment of tax is not made within the time specified by the demand note, the relevant tax authority may, in the prescribed form, for the purpose of enforcing payment of the tax due-
 - a. Distrain the taxpayer by his goods, other chattels, bonds or other securities;
 - b. Distrain upon any land, premises, or places in respect of which the taxpayer is the owner and, subject to the provisions of this section, recover the amount of tax due by sale of anything so distrained.
2. The authority to distrain under this section shall be in the form prescribed by the relevant tax authority.
3. For the purpose of levying a distress under this section, an officer dully authorised by the relevant tax authority shall apply to a judge of a High Court sitting in chambers, under oath for the issue of a warrant under this section.
4. The Judge may, on application made ex-parte, authorise such officer, refered to in subsection(3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of the warrant of distress and in levying the distress.

¹⁵ Item 39 of the Exclusive Legislative List

¹⁶ Cap. P13 Laws of the Federation of Nigeria 2004

¹⁷ Cap T2 Laws of the Federation of Nigeria 2004

¹⁸ 88(1)(a) PITA

5. The distress taken pursuant to this section may, at the cost of the owner, be kept for fourteen days and at the end of which time, if the amount due in respect of the tax and the cost and charges and incidental to the distress are not paid, the same may be sold.
6. There shall be paid out of the proceeds of a sale, in the first instance, the cost or charges incidental to the sale and keeping of the distress and the residue, if any, after the recovery of the tax liability, shall be payable to the owner of the things distrained or to the appropriate court where the owner cannot be traced, within thirty days of such sale.
7. In exercise of the powers of distress conferred by this Section, the person to whom the authority is granted under subsection (3) of this Section, may distrain upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.
8. Nothing in this section shall be construed as authorising the sale of any immovable property without an order of a court of competent jurisdiction

To exercise this power, the following are very important:

A. THE ENFORCEMENT MUST BE DONE BY A RELEVANT TAX AUTHORITY.

For the purpose of taxes imposed by the National Assembly, tax authority means the Federal Board of Inland Revenue, the State Board or the Local Government Revenue Committee¹⁹. The State Board is the State Board of Internal Revenue²⁰. The operational arm of the State Board is the State Internal Revenue Service. PITA provides for the composition of the State Board.²¹ Only the State Board as constituted by the Act can perform the powers to distrain a taxpayer and it cannot delegate that function.²² The power to distrain is given to the State Board of Internal Revenue. This means that the State Board must always authorise the officer that will apply for the power to distrain. This authorised official is a tax collector.²³ Tax authority cannot authorise any person to carry out its powers other than its personnel.²⁴ This also suggests that the authority given to the officer to apply for the warrant of distress is very sacrosanct.

A tax collector may prove that he is an authorised official if he produces a certificate or warrant with the following:

- i. Issued by, and having printed on it the official name of the relevant tax authority
- ii. Setting out his full name or names; and
- iii. Stating that he is authorised to exercise the functions of a tax collector.²⁵

The tax collector is immune from criminal or civil prosecution on account of anything said or done by him in the lawful exercise of his powers as a tax collector.²⁶

B. THE TAX PAYMENT MUST BE DUE FROM A TAXABLE PERSON

Power to distrain can only be exercisable against a taxable person through his goods, chattels bonds, security land or premises owned by the taxable person. Under the PITA, a taxable person is “any individual or body of individuals (including a family, any corporation sole, trustee or executor) having any income which is chargeable with tax under the provisions of this Act.” Categories of taxable persons under PITA will include individuals, communities, families,

¹⁹ 109 PITA

²⁰ S. 87 of the Personal Income Tax Act(PITA).

²¹ See S. 87(2) PITA

²² S. 88(4) PITA

²³ S. 102 PITA

²⁴ S. 54 PITA

²⁵ S. 102 PITA

²⁶ S. 106 PITA

trustees and trusts; except military personnel in the Nigerian Armed forces, Police Force and officers of the Nigerian Foreign Service.²⁷

The literal interpretation of the definition of “taxable persons” suggests that employers or withholding tax agents are not taxable persons. Assessment under section 53²⁸ PITA is between the relevant Tax Authority and the taxable person, and not between the tax authority and an employer. A taxable person under PITA and the PAYE system is the employee and not the employer. An employer are therefore not taxable persons under PITA²⁹.

In *Nigerian Breweries PLC v Lagos State Inland Revenue Board*³⁰ the court interpreted section 29 of the then Lagos State Personal Income Tax Law which is same as section 54 of PITA. The court reiterated that for the PAYE system, a taxable person is an employee or staff.

Section 40 of PITA also provides for persons chargeable. A taxable person is chargeable to the tax in his own name or in the name of a receiver, trustee, guardian, his agent or a committee in control of his affairs and properties. The tax is charged in the manner and amount a taxable person would be charged. A person chargeable is answerable for the tax due.³¹

Although a company or an employer is not a taxable person, PITA however places obligation on employers or companies. Section 74 of PITA makes it an offence for a person who has obligation to deduct tax at source to fail to deduct or to fail to remit such deduction to the tax authority. Also under the PAYE system, Section 82 of PITA provides that the employer is answerable for tax charged on the income paid to its employees. It therefore follows that proceedings can also be commenced to distrain the property of an employer who fails to remit income tax under the PAYE system or to distrain a company who fails to deduct or remit withholding tax.

In *Independent Television/Radio v. Edo State Board of Internal Revenue*³² the Edo State Board of Internal Revenue proceeded against Independent Television/Radio for the tax of the it's employees from 2005-2010 “which would have long time been deducted from the employees' salaries but which the appellant failed to remit to the appropriate authority”.

Considering this duties, Operation Pay as You Earn (PAYE) Regulations, 2002(PAYE Regulations) made by the Minister pursuant to section 80(6) PITA in regulation 9 provides that the provisions of PITA on assessment, appeals and other proceedings shall apply to an employer.

C. THE TAX PAYER MUST BE SERVED WITH TAX ASSESSMENT

A final and conclusive tax assessment is the basis for demanding tax payment³³. Section 54 to 59 of PITA provides for tax assessment.

²⁷ *Hon. Commissioner for Finance and Economic Development & Anor. v. Ukpong & Anor.* (2000) LPELR-6931(CA)

²⁸ Now S. 54 PITA

²⁹ *D.S.A. Agriculture Machinery Manufacturing Company Ltd. v. Lagos State Internal Revenue Board*(2006) LPELR-11560(CA)

³⁰ *Nigerian Breweries PLC v. Lagos State Inland Revenue Board* [2002] 5 NWLR (Pt. 759) 1(Court of Appeal); cited by B. D. Olumide *Distrain under the Personal Income Tax Act: An Analysis and Evaluation of Principles and Practice* accessed from www.slideshare.net/OlumideBidemiDaniel/distrain-under-pita-an-analysis-and-evaluation-of-principles-practice-bidemi-daniel-olumide on 28/04/17

³¹ S. 40 PITA

³² (2014) LPELR-23215(CA)

³³ *Lanto v. Wowo* (1999) 7 NWLR (Pt. 610) at Pg. 236 Para G, *FIRS v. Mega Tech Software Limited* [1922-2014] 8 ALL NTC 39 (TAT), 45 paragraphs 31-40 cited in K. Oruade, *Salient Points About Tax Assessments in Nigeria: BOJ, NORA etc.* Section 54 of PITA

In respect of income tax, taxpayer is expected to make returns to the tax authority of his income within ninety days from the commencement of every year of assessment, on his own³⁴. In making the returns, the taxpayer is expected to calculate the amount of tax payable by him and make payment for such tax.³⁵ This prompt personal assessment attracts a bonus of one percent of the tax payable in favour of the taxpayer.³⁶ If the taxpayer fails to make this return, or if the tax authority rejects the returns made by the taxpayer, the tax authority is expected to assess the tax payable by the taxpayer and send the assessment to the taxpayer.³⁷

Tax assessment must

- i. State the amount of assessable, total and chargeable income;
- ii. State the tax charged;
- iii. State the place where payment should be made;
- iv. Set out right of the tax payer to dispute the assessment
- v. Served on the taxpayer. It can be served personally, by registered post, courier service or email.³⁸

A default in the assessment notice will however not affect the validity of the assessment as long as it is made in substance and conformity with the intent of the Act³⁹. Therefore, a mistake as to the name of a taxable person, or the description of income or the amount of income charged will not invalidate the assessment as long as it is properly served on the taxable person or a person chargeable.

Payment on an assessment become due two (2) months from the date of service of notice of assessment or any later time limited by tax authority⁴⁰. This is subject to the right of the taxpayer to object the assessment. Section 58 of PITA gives the taxpayer the right dispute the assessment made by the tax authority by a formal application made to the tax authority setting out ground for the objection. The objection must be made within thirty (30) days of service of tax assessment.

The tax authority may agree with the objection of the taxpayer and review the tax payable or may insist on its assessment. The taxpayer can also appeal to the Tax Appeal Tribunal if the tax authority refuses to review the tax payable⁴¹. The appeal to the Tax Appeal Tribunal must be made within thirty (30) days from the date a copy of the decision of the tax authority was

³⁴ S. 41 PITA

³⁵ S. 44 PITA

³⁶ S. 45 PITA

³⁷ S. 54 PITA

³⁸ S. 57 PITA

³⁹ S. 59 PITA

⁴⁰ 68(1) PITA. See *Femi Ikuomola v. Alhaji Ganiyu Alani Ige & Ors.* Accessed from <http://lawpavilionplus.com/view/judgments/?suitno=CA%2FL%2F59%2F92#17619> on 12/05/17

⁴¹ Section 60 PITA, 59 FIRS Act and paras 11 and 13 of fifth schedule to FIRS Act.

served on him or deemed to have been served on him⁴². Objection to the tax authority must be made before any appeal to the Tax Appeal Tribunal can be entertained⁴³.

In Anambra State, the Anambra State Revenue Administration Law 2010 in section 50 creates a Tax Appeal Commissioners body to hear appeals on objections to the assessment by the Anambra State Board of Internal Revenue. Further appeal from the Tax Appeal Commissioners body goes to the High Court of the state.

The tax payer who objects to the tax authority' can therefore appeal an assessment of the tax authority from the Tax Appeal Tribunal, to the Federal High Court⁴⁴ or directly to the State High Court⁴⁵, to the Court of Appeal and ultimately to the Supreme Court.

After the determination of the objection and appeal that may be filed by the taxpayer, the tax authority is to serve a notice of assessment on the taxable person showing the tax now chargeable and the tax is payable within one month of service of such notice.⁴⁶

Penalty and interest should not arise at the stage of raising an assessment; it is only where the taxpayer fails to make payment within the 2 months (or later time limited by the tax authority) from the date of service of the assessment that the imposition of penalty and interest should arise. The penalty is set at 10% per annum 76 PITA and the interest that is also on an annual basis tracks the bank base lending rate 77 PITA. It will therefore be improper for a tax authority to:

⁴² Paras 13(2) of fifth schedule to FIRS Act.

JURISDICTION OF THE TAX APPEAL TRIBUNAL

The Tax Appeal Tribunal is established by section 59 of the Federal Inland Revenue Services(Establishment) (FIRS)Act. The Fifth Schedule to the FIRS Act provides for the powers and procedures in a Tax Appeal Tribunal. Paragraph 11 of the Fifth Schedule to the FIRS Act gives the tribunal "power to adjudicate on disputes and controversies arising from Personal Income Tax". The tribunal sits on appeal on the decision of a state tax authority or the FIRS.

There has been recent challenges as to the jurisdiction of the tribunal and its constitutionality. In *TSKJ II Construces Internationals Sociadade LDA v. FIRS* (Suit No. FHC/ABJ/TA/11/12), the Federal High Court struck down the composition of the TAT. The court ruled that, the Federal Inland Revenue Establishment Act and the Tax Appeal Tribunals (Establishment) Order of November 25th, 2009 (TAT Order) under which the TAT was established conflicted with the exclusive jurisdiction of the FHC conferred by section 251 of the Constitution. The court stated that the Federal High Court has the exclusive jurisdiction to entertain matters that affect the revenue of the Federal Government. The court held that certain sections of the FIRS Establishment Act relating to the powers of the TAT to determine disputes on companies' taxation and federal revenue are inconsistent with the provisions of section 251(1) of the Constitution and therefore void to the extent of such inconsistency. An appeal against this decision is currently pending at the Court of Appeal, Abuja Division.

The ratio in this case however seem to imply that the Tax Appeal Tribunal still has the jurisdiction to entertain appeals from decisions of the State Tax Authorities since the tax collected by the state tax authority is not within the exclusive jurisdiction of the Federal High Court. It is therefore safe to say that for the purpose of enforcement of taxes on matters not subject to the exclusive jurisdiction of the Federal High Court, the Tax Appeal Tribunal still has jurisdiction.

Another Federal High Court decision in *Nigerian National Petroleum Corporation (NNPC) v. Tax Appeal Tribunal (TAT) (Lagos zone)* Suit No. FHL /L/CS/630/2013, have however stated more recently that the Tax Appeal Tribunal is an administrative tribunal See *FMC Technologies AG & Anor v. FIRS* (unreported) Appeal no. TAT/LZ/CIT/063/14 delivered by the Tax Appeal Tribunal holding at Ikeja on 22/01/16 and that its powers are not inconsistent with the provisions in section 251 of the Constitution. The court held that appeal to the Tax Appeal Tribunal is a condition precedent for commencement of suits at the Federal High Court and that since the decisions of the Tax Appeal Tribunal is appealable to the Federal High Court, the provisions creating the tribunal does not violate the Constitution.

⁴³ *The Hon. Commissioner for Finance and Economic Development & Anor v. Sampson Daniel Ukpogon & Anor*(2000) LPELR- 6931(CA)

⁴⁴ Paragraph 17 of the Fifth Schedule to the FIRS Act.

⁴⁵ Depending on the subject of tax and the enabling state law.

⁴⁶ 68(3) PITA

- a. Request by its assessment notice that payment of the tax due be made within a period that is less than 2 months;
- b. Impose penalty and interest on its assessment notice, before the expiration of the minimum period.

Penalty and interest only should only be considered when making a demand notice and not an assessment notice. The income tax payer will however lose the bonus for early filing of self-assessment return provided for in section 45 of PITA if the tax authority makes the assessment.

Before the 2011 amendment of PITA, section 66 provided that if after service of assessment notice there is no notice of objection filed by the taxpayer, then the assessment becomes final and conclusive. This provision has been deleted by the 2011 amendment. There is also no provision on whether the tax authority or the Tax Appeal Tribunal can extend the time for making objection.

An assessment can therefore be said to become final and conclusive when the tax payer has exercised all his rights of appeal provided under PITA.

D. THE DEMAND NOTICE

The process for the issuance of a demand notice or note is provided for by Section 76(2) of PITA. If after two months of service of assessment the taxpayer fails to file an objection or to pay tax, the tax authority shall serve the taxpayer with a demand notice. The demand notice will specify the amount chargeable with penalties accrued. Section 76(2) sets a statutory limit of 1 month from the date of the service of the demand notice for payment to be made. It provides: “(2) The relevant tax authority shall serve a demand note on the taxable person or the person in whose name the taxable person is chargeable and, if payment is not made within one month from the date of the service of the demand notice, the relevant tax authority may proceed to enforce payment as hereinafter provided.”

A demand notice cannot therefore ask the taxpayer to make payment before the expiration of one month. By section 68(3) of PITA if there is an objection to the assessment notice, the tax becomes payable within one month of such determination of objection or appeal as the case may be.

It is important to highlight a special power of the tax authority in Section 68(4) of PITA which allows the tax authority to proceed with its rights of collection of an Undisputed Tax before the expiration of two months in the instance where:

- a. it has reason to believe that the tax will become unrecoverable for any reason including that the tax payer will leave Nigeria;
- b. further to (a), the tax authority gives notice to the tax payer to either: (i) pay the tax; or (ii) provide, to the reasonable satisfaction of the tax authority, security for the payment of the tax; and neither the tax nor the security is paid or provided.

E. ISSUANCE AND EXECUTION OF WARRANT OF DISTRESS

The application for the issuance and execution of warrant is provided for in section 104(3) & (4) of PITA. Section 104(3) provides for the issuance while section 104(4) provides for its execution. 104(3) provides thus:

“For the purpose of levying a distress under this section, an officer duly authorised by the relevant tax authority shall apply to a judge of a High Court sitting in chambers, under oath for the issue of a warrant under this section.”

While section 104(4) provides thus: “The Judge may, on application made ex-parte, authorise such officer, referred to in subsection (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of the warrant of distress and in levying the distress”

A look at the two provisions shows that issuance of the warrant of distress and the execution of the warrant are two different procedures and are to be applied for separately. While the authorised officer must make the application for issuance of warrant of distress on oath, the application for execution of the warrant need not be made on oath. The mode of application for issuance of the warrant of distress is not specified while the mode of application for execution of the warrant is by application ex parte. Applications in legal parlance is made by way of motion whether on notice or ex parte⁴⁷. The Supreme Court has however held in *Abubarkar v Nasamu*⁴⁸ that where the procedure for making an application is not specified, such application can be made by writing a letter to the court.

Therefore a literal interpretation of the provisions of section 104(3) and 104(4) of PITA is to the effect that the authorised officer must first apply to the judge of a High Court for issuance of warrant of distress. The application is made under oath and is made in chambers. Thereafter, the authorised officer is to apply ex parte for the execution of the warrant issued. This application does not have to be under oath. However, in *Independent Television/Radio v. Edo State Board of Internal Revenue*⁴⁹ the Court of Appeal did not fault the proceeding where the tax authority only made one application to cover the issuance and execution of the warrant of distress.

The Court of Appeal in *Independent Television/Radio v. Edo State Board Of Internal Revenue*⁵⁰ held that although the application to distrain is made ex parte, it does not violate the constitutional provisions of fair hearing because the processes of assessment, demand and appeals to the Tax Appeal Tribunal gives the taxpayer opportunities to be heard. The tax payer can for instance appeal an assessment of the tax authority from the Tax Appeal Tribunal, to the Federal High Court⁵¹, to the Court of Appeal and ultimately to the Supreme Court.

F. COURT WITH JURISDICTION TO ENTERTAIN APPLICATION TO DISTRAIN

Section 104(3) provides that the relevant tax authority shall apply to a judge of a High Court to issue a warrant of distress. The court in *A.G Lagos State & Ors v. Zanen Verstoep & Co (NIG) LTD & Ors*⁵² explained the meaning of high court thus:

Although, unlike the 1979 Constitution, Section 318 (1) of the present Constitution does not define "High Court", there is no doubt that the terms carries the same meaning

⁴⁷ *Riruwa v. Shekarau*(2008)12NWLR(pt 1100)142 at 158-159 See also *Ado v.. Mekara and others* (2009) 9NWLR (pt 1147), *Ayuba v. INEC*(unreported) suit no. CA/K/EP/NA/15/2007 delivered 14th may 2009

⁴⁸ (2011)12(Pt. 2) SCM 505, *Malam Abubakar Abubakar & Ors. v. Saidu Usman Nasamu & Ors.*(2011) LPELR-1831(SC)

⁴⁹ (2014) LPELR-23215(CA)

⁵⁰ (2014) LPELR-23215(CA)

⁵¹ Paragraph 17 of the Fifth Schedule to the FIRS Act.

⁵² (2016) LPELR-41402(CA)

as given by Section 277 (1) of the 1979 Constitution to mean Federal High Court or High Court of a state.

The application to issue or execute a warrant of distress can therefore be made at the State High Court or the Federal High Court. The decision of the High Court on the application to issue or execute warrant of distress can be appealed up to the Supreme Court.

G. EXECUTION OF THE WARRANT OF DISTRESS

Upon the grant of leave to execute a warrant of distress, the authorised officer may “if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of the warrant of distress and in levying the distress”⁵³. The authorised officials and persons helping him will seize or take over such properties owned by the taxpayer.

In practical terms, the provision of Subsection 104(5), suggests that following the seizure of any Asset, the taxpayer is at liberty to approach the tax collector and request that the Asset be kept for a period not more than 14 days, to enable the taxpayer try to offset its debt. The tax collector may sell the Asset at the expiration of the 14 days period if the debt remains unpaid. The debt is the tax due, the costs or charges incidental to the keeping of the distrained assets; and costs or charges incidental to the sale of the distrained property.

H. SALE OF PROPERTY

The property distrained may be sold if after 14 days the taxpayer has not paid the tax due and the cost incidental to the distress. At this stage, the authorised tax official will:

- i. In the case of immovable properties, apply to the High Court for an order of court permitting the tax authority to sale the property.⁵⁴
- ii. In the case of movable properties, the authorized tax official may sale them without an order of the court. Therefore, in the case of an immovable property, the authorised tax authority will again apply to a high court for an order to sale the property. This application should be on notice because the law does not say it should be made *ex parte*.

I. ACCOUNTING FOR THE PROCEEDS OF SALE

The Tax Collector has a duty of accountability in ensuring that the Debt is duly deducted from the proceeds of sale and any outstanding amount is either (a) remitted to the tax payer; or (b) where the tax payer cannot be found, is paid to the appropriate court; all within 30 days of the sale.⁵⁵

The tax authority has an obligation to try to trace the tax payer, it is only when he fails to find the taxpayer that he can pay the sum remaining to the court.

4 STATE LEGISLATION ON TAX

As was earlier stated, taxing power is derived from power to legislate on an issue. The State Houses of Assembly therefore have power to impose taxes and create the authority to

⁵³ S. 104(4) PITA

⁵⁴ S. 104(8) PITA

⁵⁵ S. 104(6) PITA

administer such taxes. These laws must however pass the constitutional muster and be made based on the authority of the House of Assembly.

By virtue of section 4(7) of Constitution Federal Republic of Nigeria, the House of Assembly of a State has power to make laws for the peace, order, and good government of the state or any part of the state with respect to

- a. Any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule of this Constitution;
- b. Any matter included in the concurrent Legislative List set out in the first column of part II of the Second Schedule to this constitution to the extent prescribed in the second column opposite thereto; and
- c. Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

Section 4(7)(c) presupposes that the state legislature can competently make laws on issues not provided for in the Concurrent Legislative List. For example, the state legislative house can competently make laws based on powers derived from other constitutional provisions. The State Houses of Assembly is also competent to make laws on all issues not provided for in the Concurrent Legislative List or the Exclusive legislative List.

Therefore, for a state law to impose tax and levies on an issue, the State Government must have competence to make laws on that issue. Therefore, since the State has no legislative competence to make laws concerning mining⁵⁶, it will have no business imposing tax or levies on a company for mining.

However, the states will be competent to impose taxes on issues it has legislative competence to legislate. For example, the State Government can duly impose tax on industrial, commercial and agricultural development of the state.⁵⁷

It is important to note that an agency created by statute cannot impose taxes & levies in execution of its functions if the enabling statute does not give it power to impose taxes and levies. This was reaffirmed in *Jude Nwabuzor & 24 Ors v. Nnaemeka Orji & 3 Ors*⁵⁸ And in *Chrinan Investment Limited(Suing On Behalf Of Ipman Aba Branch) v. Abia State Environmental Protection Agency And Hon. Attorney-General And Commissioner For Justice Abia State*⁵⁹ where the Abia State High Court declared that the Abia State Environmental Protection agency law and the Abia State Basic Environmental Law did not give Abia State Environmental Sanitation Agency the power to impose or charge sanitation fee for refuse disposal.

The States can therefore make laws on tax and enforce compliance with such laws when it has the constitutional competence to legislate on that area of the law.

Most states, in exercise of their taxing powers make general laws for the administration of taxes in their states and these laws give powers to the tax authority. These laws also give the tax authorities power to distrain upon the properties of persons who fail to pay their tax. Examples of these laws include, the Anambra State Revenue Administration Law 2010 established the Lagos State Board of Internal Revenue and gives it powers and duties conferred on it 'by the

⁵⁶ Item 39 of the Exclusive Legislative List

⁵⁷ See *Attorney-General of Lagos State v. Attorney General of the Federation*

⁵⁸ (Unreported) Suit No: A/194/2011 delivered on January 22, 2013.

⁵⁹ (Unreported) Suit No H8B/10/2008 delivered on July 22, 2008

law and any other law'⁶⁰, the Lagos State Revenue Administration Law⁶¹ established the Lagos State Board of Internal Revenue and gives it powers and duties conferred on it 'by the law and any other law'⁶². Federal Capital Territory Internal Revenue Service Act, 2015⁶³ creates the Federal Capital Territory Internal Revenue Service. The Service has "powers and duties as are conferred on it by this Act, or by any other enactment or law on such matters on which the National Assembly has power to make law"⁶⁴. The Kaduna State Tax (Codification and Consolidation) Law 2016 creates the Kaduna State Internal Revenue Service and gives it "such powers and duties as are conferred on it by this Law or by any other enactment".⁶⁵ The Edo State Revenue Administration Law⁶⁶ established the Edo State Board of Internal Revenue and gives it powers and duties conferred on it "by the law and any other law".⁶⁷

These tax authorities are a creation of laws made by the State House of Assembly. They are competent laws as long as the laws are made from the power of the House of Assembly to legislate in the Concurrent Legislative List in the second Schedule to the Constitution. These laws cannot infringe on the constitutional functions of the Local Government Council.⁶⁸

These laws provide for the power of the tax authority created by them to distrain the properties of a tax defaulter. For example, section 42 of the Anambra State Revenue Administration Law 2010⁶⁹ provides thus:

1. Notwithstanding the power conferred on the relevant revenue authority for the enforcement of payment of revenue, if payment has become due and a demand note has, in accordance with the provisions of the relevant law, been served on the chargeable person or his agent, and payment is not made within the time limited by the demand note, the Internal Revenue Service or other relevant revenue authority may for the purpose of enforcing payment of the amount due, distrain:
 - a. upon the goods, chattels or other properties movable or immovable, of the person liable to pay tax outstanding; and
 - b. upon all machinery, plant, tools, vehicles, animals and effects in the possession, used or found on the premises or on the land of the person.
2. The authority to distrain under this section shall be in such form as the relevant revenue authority may direct and that authority shall be sufficient warrant and authority to levy by distress the amount of revenue due.
3. For the purpose of levying any distress, under this section, an officer duly authorized by the Chairman may apply to a Judge of the State High Court sitting in Chambers under oath for the issue of a warrant under this section.
4. A Judge of the High Court in Chambers may authorize such officer, referred to in subsection (3) of this section, in writing to execute any warrant of distress and, if necessary, break open any building or place in the daytime for the purpose of levying such distress and he may call to his assistance any police officer and it shall be the duty of any police officer when so required to aid and assist in the execution of any warrant of distrain and in levying the distress.
5. Things distrained under this Section may, at the expense of the defaulter, be kept for fourteen days and if at the end of this period, the amount due in respect of the

⁶⁰ S. 3(2) Anambra State Revenue Administration Law

⁶¹ Ch. L59 Laws of Lagos State of Nigeria 2015

⁶² S. 1 Lagos State Revenue Administration Law

⁶³ Act No. 10

⁶⁴ S. 1(3) Federal Capital Territory Internal Revenue Service Act, 2015 2015

⁶⁵ S. 4 The Kaduna State Tax (Codification and Consolidation) Law 2016

⁶⁶ Ch. L59 Laws of Lagos State of Nigeria 2015

⁶⁷ Section 1 Edo State Revenue Administration Law

⁶⁸ *Knight Frank & Rutley (Nig) v. Attorney-General, Kano State*

⁶⁹ See also section 40 of the Lagos State Revenue Administration Law Ch. L59 Laws of Lagos State of Nigeria 2015

revenue, cost and charges of, and incident to the distress are not paid, they may, subject to subsection (6) of this Section, be sold at any time.

6. Out of the proceeds of a sale under this Section, the cost or charges of and incidental to the sale and keeping of the distress and disposal thereunder, shall be paid thereafter the amount of revenue due, and the balance (if any) shall be payable to the defaulter on demand being made by him or on his behalf within one year of the date of the sale or shall be forfeited.
7. Nothing in this Section shall be construed as to authorise the sale of an immovable property without an order of a High Court, made upon application in such form as may be prescribed by the rules of court or by the Sheriffs and Civil Process(Judgement Enforcement) Rules.
8. In exercise of the powers of distress conferred by this Section, the person to whom the authority is granted under subsection (4) of this Section, may distress upon all goods, chattels and effects belonging to the debtor wherever the same may be found in Nigeria.

Generally, the principles of enforcement of the power to distress under PITA is same with the enforcement under the various state laws. However, some important points must be noted. These points include:

- A. The composition of the State Board of Internal Revenue created by PITA is most times different from the composition of the Board created by the state laws. For example the Anambra State Board of Internal Revenue established by Anambra State Revenue Administration Law⁷⁰ is composed by section 4 of the law and the board membership and qualification for appointment is different from the Board stipulated by section 86 of PITA. It may become an issue, whether the board constituted by the federal law can carry out the functions given by the state law including the power to distress and whether the board constituted by the state law can carry out the functions and powers in the state law. This objection was raised in *Ikeja Hotels Plc. v. Lagos State Board of Internal Revenue*⁷¹. The court however was unable to decide on the issue because the appellants in the case withdrew the objection. It is however logical to state that for a body to carry out the function and power given by a statute, the body must be properly constituted as prescribed by the statute. A board constituted under PITA must be properly constituted in accordance with PITA before they can exercise the powers stated in the law. A board constituted under states revenue laws must be properly constituted in line with the state law before they can exercise the powers stated in the law.
- B. Although the application to execute warrant under PITA is made ex parte, the procedure in the state laws made for revenue collection varies and must be strictly obeyed. For example, the Edo State Revenue Administration Law does not say that an application to issue a warrant can be made exparte. This implies that a taxable person has to be put on notice in proceedings to determine whether to grant or deny distress warrant against his property. In *Igbinedion v. Edo State Board of Internal Revenue*⁷² the Court of Appeal discharged an order for the issuance and execution of distress made against the appellant. The court held that such application is not an application under 104 of PITA and therefore should comply fully with the enabling law for that application. Since the Edo State Revenue Administration Law does not provide for the use of exparte application to get an order to distress, use of such procedure is irregular and robs the court of jurisdiction to grant the requested order.

⁷⁰ Ch. L59 Laws of Lagos State of Nigeria 2015

⁷¹ (2005) LPELR-7507(CA)

⁷² (2017) LPELR-41619(CA)

- C. Personal income tax collection is within the legislative competence of the National Assembly, therefore any process for collection or distraining property for the collection of such taxes as designated to the state tax authority by the National Assembly must follow the procedure in PITA. On the other hand, the state laws made for the enforcement of tax laws of the state are used for collection of such tax and must be fully complied with in collecting such tax.
- D. As to jurisdiction to grant leave to issue a warrant of distress, only the State High Court can exercise that power under the state laws. Although the section does not specify that only a State High Court can grant such orders, the State House of Assembly cannot confer jurisdiction on the Federal High Court. The Federal High Court cannot exercise jurisdiction on the state tax laws.

5 CONSTITUTIONALITY OF PROCEDURE ON POWER TO DISTRAIN

The Court of Appeal has confirmed the constitutionality of the procedure for distress in the case of *Independent Television/Radio v. Edo State Board of Internal Revenue*⁷³. The court in that case held that although the application to distrain is made ex parte, it does not violate the constitutional provisions of fair hearing because the processes of assessment, demand and appeals to the Tax Appeal Tribunal gives the taxpayer opportunities to be heard. The tax payer can for instance appeal an assessment of the tax authority from the Tax Appeal Tribunal, to the Federal High Court⁷⁴, to the Court of Appeal and ultimately to the Supreme Court.

The recent Court of Appeal decision in *Igbinedion v. Edo State Board of Internal Revenue*⁷⁵ nullifying the procedure used in *Igbinedion v. Edo State Board of Internal Revenue*⁷⁶ may lead to an opinion that the court has held the use of *ex parte* application in exercise of distress to be unconstitutional.⁷⁷ In *Igbinedion v. Edo State Board of Internal Revenue*⁷⁸ the Court of Appeal distinguished between an application for order of distress made under section 104 of PITA and one made under section 38 of the Edo State Revenue Administration Law. The court held that since the application under Edo State Revenue Administration Law is not an application under 104 of PITA, it therefore should comply fully with the enabling law for that application to be valid. Since the Edo State Revenue Administration Law does not provide for the use of *ex parte* application to get an order to distrain, use of such procedure is irregular and robs the court of jurisdiction to grant the requested order.

This decision does not make unconstitutional the procedure on power to distrain. The decision however emphasises the imperativeness of complying strictly and completely with the enabling law in exercise of power to distrain.

⁷³ (2014) LPELR-23215(CA)

⁷⁴ Paragraph 17 of the Fifth Schedule to the FIRS Act.

⁷⁵ (2017) LPELR-41619(CA)

⁷⁶ (2017) LPELR-41619(CA)/

⁷⁷ See N. Agokei "Is the Tax Payer Entitled to be heard before the Court Can Give an Order to Distrain? Paper presented at a one-day workshop powered by Anambra State Internal Revenue Service(AIRS) in May, 2017

⁷⁸ (2017) LPELR-41619(CA)/

6 CONCLUSION

The current drive by government at all levels to emphasise more on internal revenue generation means that there will be more emphasis on the enforcement of tax legislation. Such enforcement procedure include power to distrain upon a property of a tax defaulter.

There used to be a dearth of judicial decisions on the ways of enforcing the powers of a state tax authority to distrain. *Igbinedion v. Edo State Board of Internal Revenue*⁷⁹ and *Independent Television/Radio v. Edo State Board of Internal Revenue*⁸⁰ have provided judicial authority of proper way of enforcing this power under the different laws that give state tax authority power to distrain. These authorities have also made it clear that the procedure provided under both laws are constitutional and if they are fully complied with, the state tax authority can use them to enforce tax legislation.

The law is therefore good enough. This has placed a duty on the state tax authority to know the extent of its powers and work within those powers. This paper has explained the power to distrain, the procedures and the important elements in an application to distrain. The state tax authority must maximize the use of its powers to distrain and this is the only way to sustain the current drive for better tax collection.

We must remember that such powers to distrain the property of another does not translate to the competence to act without due process. The courts must always watch for infractions of the Constitution, especially constitutional provisions of fair hearing and right to own properties. The courts must also be alive to its responsibility and guide its proceedings against abuse by the tax authority or tax defaulter.

⁷⁹ (2017) LPELR-41619(CA)

⁸⁰ (2014) LPELR-23215(CA)