

The Challenges of the Plain and Unambiguous Legal Interpretation of some of the Provisions of Nigeria Stamp Duties Act

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Abstract. Payment of taxes in Nigeria is a function of law, in other words, all taxes collected by Nigeria government are regulated by tax laws. It had been held in plethora of cases in Nigeria, that lawyers and judges are the custodian of the laws. They owed the general public the duty of interpreting and applying laws in its plain and ordinary meaning, and for the common good of humanity. However, it has been observed that there had been divergent interpretation of some provision of the Nigeria Stamp Duty Act, which in effect altered the intendment of the law. In view of the above, this research adopted qualitative methodology, using doctrinal method of research. It was therefore, concluded that an appropriate interpretation and application of the Nigeria Stamp Duty Act is an essential prerequisite in arriving at a just and logical decision, in ensuring justice is achieve for the common good of the general public. It was hereby recommended that, for there to be an appropriate interpretation and application of the Nigeria Stamp Duty Act, the custodian of the Nigeria laws must interpret the Stamp Duty Act in its plain and ordinary meaning as intended by the drafter.

Keywords: Stamp Duties, Nigeria Stamp Duty Act, Stamp, Taxes, Tax laws, Stamp Document, Unstamped Document.

1. Introduction

Tax is a primary fundamental means of revenue generation for the governments of most nations of the world (Abdulrazaq, 2014; Abdulrazaq 1992; and Sani, 2015), and Nigeria is not an exception. The administration of taxes cut across various fields of endeavour and sub-sectors of the Nigeria economy (Obadina, 2013; (Agbonika, 2012; Ayua, 1996; and Okauru, 2012). In fact, according to Ola, no major

accountancy or legal problem can be satisfactorily solved without a consideration of its tax aspects (Ola, 1981). However, stamp duty is a tax collected by the Federal and State Government in Nigeria. The payment of stamp duties is a function of law, and it is regulated by legislation which is the Stamp Duties Act (Stamp Duty Act, 2004). Stamp Duties according to the Stamp Duty Act, are taxes paid to the Federal or State Government on instrument or documents (Stamp Duty Act, 2004). Some of this document includes; Instruments of Apprenticeship, Conveyances on Sale, Receipts, Share Warrant, Warrant for Goods, Letters of allotment or renunciation or power of attorney, Bank Notes, Bills of Exchange, Promissory Notes, Bills of Lading, Bills of Sale, Leases, Scrip, Certificate, Scrip, Marketable Securities, Mortgages, Policies of Insurance (Stamp Duty Act, 2004).

It is required by section 23 of the Stamp Duties Act that the instruments attract fixed stamp duties, should be stamped 40 days from its first execution. However, where the instruments attract ad valorem stamp duties, the time limit for stamping is 30 days from its first execution. In recent time there have been issues and controversy as to the interpretation and application of the stamp Duty Act (Fowokan, 2019), as a result of inadequate knowledge of Nigeria tax laws. However, not interpreting some of these provision of the Stamp Duty Act often cause injustice and unfair application the Stamp Duty Act in assessing taxpayer. To this end, the intendment of the Stamp Duty Act to a great extent, is defeated.

It is in view of the above that this research work sort to consider some of the provision of the Nigeria Stamp Duty Act, that had generated some controversial interpretation. The decision given by the Nigeria trial and appellate court with regard to

admissibility of unstamped documents in Nigeria Court, power to legislate on stamp duties, power of the Attorney General of the Federation to prosecute in stamp duties cases, exemption of "receipt" as part of instrument not chargeable with stamp duties and qualifying electronic transfer and deposit by teller as a receipt exempted by the Stamp Duty Act.

2. What is Stamp Duty?

Section 4(1) and (2) of the Stamp Duties Act provides that stamp duties are fees paid to the Federal Government and State Government, to give instruments legal backing (Oseni, 2013). The Act regulates transactions which are chargeable with *Advalorem* duties (Ayodele, 2006). The words "Stamp" and "Duties" mean two different things. Section 2 of the Stamp Duties Act defines 'Stamp' as an impression by means of a die as an adhesive stamp for states and light red for federal. Therefore Stamp Duties means any Duty or fee chargeable for the time being under the Stamp Duties Act or Law for stamping documents which are subject to stamping to make it legal. Another definition of Stamp Duty is as stated in the Oxford Dictionary of Law 9th edition, where Stamp Duty is defined as "A Tax Payable on certain legal documents specified by statute. It can take the form either of a fixed Duty in which the same amount is payable on all documents of the same kind or as an *ad valorem* Duty when the amount of Duty varies according to the value of the transaction effected by the document."

3. The Relevance of Complying in the Payment of Stamp Duties

By virtue of section 22 of the Stamp Duties Act, the relevance of Stamp Duties cannot be overemphasized as a result of the fact that we live in a society where many fraudsters may want to contend with the or over the ownership of one document or if it is genuine. However, the following, in a nutshell, serves as some of the relevance of Stamp Duties:

- By the Stamp Duty Act, it is only a document that is duly stamped according to section 19 of the Nigeria Stamp Duties Act that will be admissible as evidence in a court of law to prove as a proof of ownership to anything that is claimed.
- Stamp Duties is enforceable in law, in this regard to avoid been prosecuted one have to duly comply by Stamping their respective documents and pay the appropriate fees.
- It safeguards an individual from being exploited by fraudsters or touts.

- Early compliance of payment of Stamp Duties saves an individual from additional cost (Interest and Penalty) for failure to pay stamp duties within the stipulated time.

Furthermore, It is provided by the Stamp Duty Act that, failure to pay stamp duty within the stipulated time will attract 10% of the stamp duty charge on the instrument, per annum from the date the instruments was first executed. While if the document is assessed as *ad valorem* duty, a further penalty equivalent to the unpaid duty in addition to the 10% stated above, shall be paid upon conviction by a court.

4. Issues and Controversy in Interpreting the Stamp Duty Act

The duty to interpret the law resides with the Judiciary. In this regard, section 111 of the Stamp Duties Act provide that in determining whether any stamp duty is chargeable on any documents or instrument when there is contention concerning the provision of Stamp Duties Act, it is the Judiciary that is saddled with the responsibility (Abdulrazaq *et al*, 2017). However, in interpreting the Stamp Duties Act, it has posed several challenges to Nigeria legal custodian in giving the plain and ordinary meaning of some of the provisions of the Stamp Duty Act. This is in regards, to the fact that some of Nigeria legal custodians have erred in most instances when called upon to give interpretation to some of the provision of the Stamp Duties Act. Some of these areas or provisions of the Stamp Duties Act where most legal custodian in Nigeria had failed to give the appropriate judicial interpretation are:

- Admissibility of Unstamped Documents
- Power to Legislate on Stamp Duties
- Power of the Attorney General of the Federation to prosecute in stamp duties cases
- Exemption of "Receipt" as Part of Instrument not chargeable with stamp duties
- Qualifying electronic transfer and deposit by teller as a receipt exempted by the Stamp Duty Act

4.1. Admissibility of Unstamped Documents

Section 22 of the Stamp Duty Act provides that, before a document evidencing any transaction or contract can be admissible as an exhibit in any civil proceeding in a court of law, The document must be stamped by a Commissioner of Stamp Duty. However, in recent times and with the case of *Benjamin V Kalio* (2018) 18 W.R.N 30, (2018) 15 NWLR (PT. 1641), most legal practitioners are on

the view that the Supreme Court decides that an unstamped document is admissible in evidence. in *Kalio's case supra*, the Appellant at the trial instituted an action against the Respondents in respect of land matters, evidence was given, and exhibits were tendered. The trial Court and the Court of Appeal gave judgments in favour of Respondent. These prompted the Appellant to appeal to the Supreme Court.

In the course of Ejembi Eko JSC delivering the leads judgment, he stated that once the document is appropriately pleaded and relevant, it is admissible. That unregistered registrable land instrument is admissible in evidence to prove, not only the payment and receipt of the purchase price but also the equitable interest of purchaser in the subject land. Several legal practitioners in Nigeria have misinterpreted this part of the decision of the Supreme Court. There have been a series of argument by most legal practitioner that the decision in *Kalio's case* (2018) has made it possible and admissible to tendered document that is not stamped at the stamp duty office. One such interpretation was as stated by A. R. S Solicitors (2019) when he stated thus:

The recent decision of the Supreme Court in BENJAMIN V KALIO In a unanimous decision delivered by a full panel on 15 December 2017, the Supreme Court in Moses Benjamin &ors. VKalio&Kalio jettisoned the requirement of registration as a precondition for the admissibility of land documents in evidence. It held that as far as they are properly pleaded, land documents are admissible as proof of title... Consequently, unregistered land documents are admissible even as proof of title.

The implications of the decision:

- *Objections based on non-registration of registrable instruments can no longer be entertained*

- *Decisions of the lower courts which run contrary to the pronouncement of the Supreme Court on this issue will be overturned on appeal.*

However, the above statement is quite different from the position of the law, as decided by the Supreme Court of Nigeria in the case of *Kalio (2018)*. The learned Lawyer quote above as the Supreme Court decision on an unregistered document, is just only a part of the Supreme Court decision (which is regarded as *obiter dictum*). He did not consider other relevant fact and laws the Supreme Court addressed before they arrive at the above decision. The actual position is that the Supreme Court has to consider section 20 of the River State Registration Law, section 4(3), (5) and Item 23 of the Exclusive Legislative List part 1 of the second schedule

Constitution of the Federal Republic of Nigeria (as amended) 2011 . It is with the above laws, which informed Ejembi Eko JSC to conclude that, the undoubted intent of the Constitution is that, State Houses of Assembly does not have any Constitutional power to enact any laws on evidence. The Supreme Court further stated that a perusal of section 20 of the River State Registration Law purportedly enacted a piece of legislation on evidence and it is an act of legislative trespass into the exclusive legislative terrain of the National Assembly (*Kalio's case 2018*). In this regard, the Supreme Court held that section 20 of the River State Registration Law could not render an unregistered document inadmissible, as it conflicts with the Evidence Act that stated that a document that is relevant to a case is admissible (Elvis, 2019). However, this does not mean that a document that is required by an adequately enacted legislation to be stamped or registered before it can be admissible in evidence will be admissible in evidence if it is not stamped or registered. According to EjembiEko JSC in *Kalio case (2018)*, he stated thus:

"The duty on every law court, as this court stated in Shittu v. Fashawe (2005) 14 NWLR (pt. 946) 67 at 690-691 in every proceeding is to admit and act only on evidence that is admissible in law under the Evidence Act or any other relevant law (validly enacted, I must say) "

Given the above, the law that required a document to be stamped before it can be admissible in any court in Nigeria has not been overruled as the case of *Kalio* was misconceived.

4.2. Power to Legislate on Stamp Duty

Section 1(1)-(3) of the Nigeria Constitution provides that, the Constitution is supreme and its provisions shall have binding force on the authorities and persons. It also states that Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except by the provisions of this Constitution. The Constitution of Nigeria further stated that, if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail. That other law shall, to the extent of the inconsistency, be void.

By section 4 and 5 of the Nigeria Constitution, the National Assembly is empowered to make laws for the Federation concerning any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution. Item 58 of the Exclusive Legislative List in Part I of the Second Schedule to the Nigeria Constitution provide thus:

"Stamp duties."

It is in according to the above that empowers the National Assembly as the body to legislate on the Stamp Duty Act. However, in recent time some States in the federation are now varying stamp duty rates and adding new duties by referring to section 116(2) of the Stamp Duty Act. For example, the Edo State Internal Revenue wrote to the Edo State house of assembly to by resolution and order varies stamp duties rates in Edo State by resolving as follows:

- That the stamp duties for all fixed charges shall be ₦ 5,000 (Five Thousand Naira) for original copy and ₦50 (Fifty Naira) each for four counterpart copies, bringing the value to ₦ 5,200 (Five Thousand Two Hundred Naira).
- That all ad valorem rates (as specified in the schedule) shall be 2% of the consideration.
- That stamp duties shall be charged for all Certificates of Primary Schools, Secondary Schools and Tertiary Institutions at a rate of ₦ 500 (Five Hundred Naira) per certificate.
- That stamp duties shall be charged for Receipt at the rate of ₦ 1,000 (One Thousand Naira).

However, their reliance to legislate by adding new stamp duty and varying the rate as contained in the Stamp Duty Act is with regard to section 116(2) of the Stamp Duties Act. It will be very apt to state that the power to enact a law on stamp duty is solely reserved exclusively for the National Assembly to legislate. To this end, Section 116(2) of the Stamp Duties Act, that empowers State House of Assembly to legislate by resolution in increasing, diminish or repeal, and charge duty under any of the heads specified in the Schedule. Furthermore, to also add new duties or vary or revoke the Schedule, is void, null and inconsistent with the Constitution. The States House of Assembly cannot legislate on any matter as it relates to stamp duties until the Constitution is review to remove stamp duties from Item 58 of exclusive legislative of the second schedule part 1 to the Constitution of the Federal Republic of Nigeria (as amended) 2011.

Furthermore, even before the proposal was made and which had yet to be approved or passed into law, 2% of consideration and 5,200 naira had been used to assessed documents that attracted ad valorem and fixed stamp duties charges in Edo State as shown in Figure 1, Figure 2(a) and Figure 2(b).

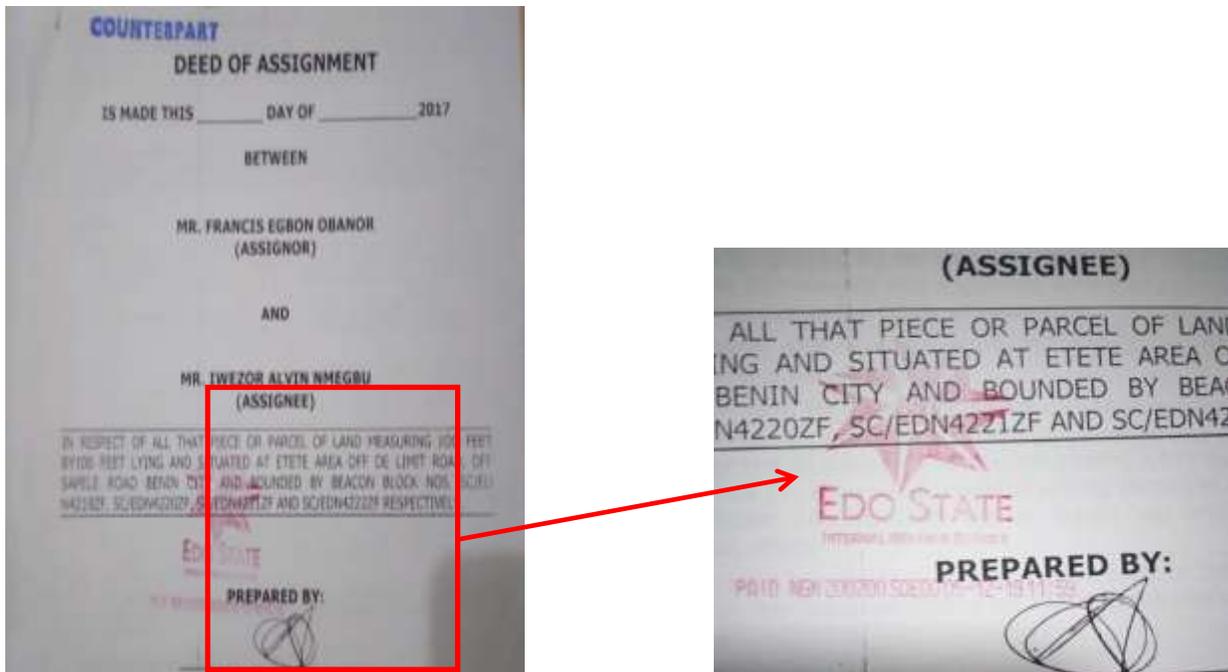
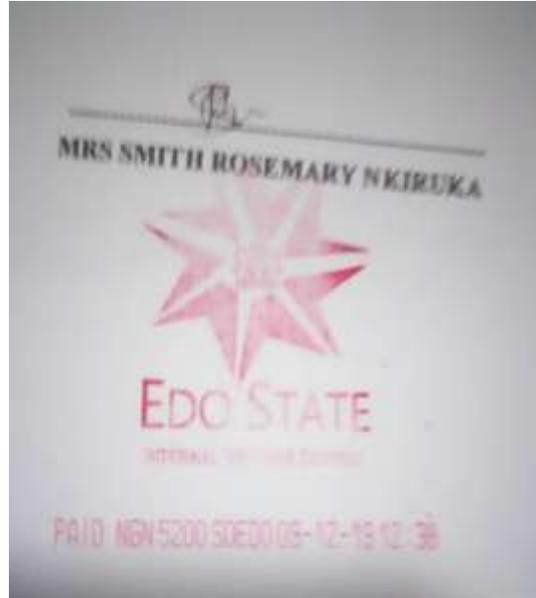


Figure 1: Sample deed of Assignment that attracts ad valorem charges of 2 % of consideration often used as the bases of assessment



(a)



(b)

Figure 2(a) and (b): Sample power of attorney that attracts fixed charges of 5,200 naira, often used as the bases of assessment

The above charges are clearly against and ad variance to the provision of the Stamp Duties Act, as the Act never contemplated such charges. The rate of stamp duties to be charged on any documents be as that stipulated in the schedule to the Stamp Duties Act. According to Aelx law firm (2019) in its comment on the amendments of the Stamp Duties Act stated thus:

The position of the law is that a tax can only be imposed on a subject where there is a clear intention of an Act of Parliament to impose such tax on the subject. Accordingly, the rate of tax to be charged on a particular subject can only be deduced from the act of parliament imposing the tax.

4.3. Power of the Attorney General of the Federation to Prosecution in Stamp Duty Cases

It is a known fact that the extant law that regulates the stamp duties charges is the Stamp Duties Act 2004 and no amendment has been effected (Kachidobelu, 2019). In this regard, any issue that arises from stamp duty charges is resolved by the court with regard to the Stamp Duty Act 2004. Section 122(2) of the Evidence Act 2011 provide thus;

"The court shall take judicial notice of:
a. all laws or enactments and subsidiary legislation made under them having the force of law or previously in force in any part of Nigeria;
b. all public Acts or laws passed or to be passed by the National Assembly or a State House of Assembly,

as the case may be, and all subsidiary legislation made under them and all local and personal Acts or Laws directed by the National Assembly or a State House of Assembly to be judicially noticed."

Furthermore, section 111 of the Stamp Duty Act provide that, the Attorney General of the Federation or The State is saddled with the power to prosecute when there had been any breach of the Stamp Duty Act. However, in the case of *Kasmal V Standard Chartered Bank* unreported Federal High Court Suit No. FHC/L/CS/146/2013 Where the central bank of Nigeria through a circular BSD/GEN/CIR/03/015 in 2017 mandated all banks to deduct #50 from every deposit of over #1,000 made into their customer bank accounts and remit the deduction to the Nigeria Postal Service (NIPOST), by the CBN's interpretation of the provision of Federal Government Financial Regulations 2009 and the Stamp Duties Act. Given the circular, deposits into customer bank accounts are subject to deduction. In effect of the Central Bank Circular, NIPOST contracted Kasmal as a recovery agent to help in the collection of stamp duty charges.

However, the defendant refused to comply; it is in view of this that Kasmal brought an action before the Federal High Court against the defendant. One of the issues raised was whether or not by the express of the provisions of section III of the Stamp Duties Act, Cap. S10, Laws of the Federation of Nigeria, 2010, Kasmal have the requisite *locus standi* to institute and maintain the instant suit. However, Kasmal in

their defence stated that NIPOST is a Federal Government parastatal established by the Nigeria Postal Service (NIPOST) Decree No. 41 of 1997. By an amendment of this Act in 2004, NIPOST became charged with the management of Stamp Duties chargeable under the Stamp Duties Act as amended 2010. In this regard, being an agent of NIPOST, they are saddled with the power to prosecute concerning the recovery of stamp duties charges on receipt. The Federal High Court in considering the issue stated thus;

I have carefully read the Affidavit in support of the Originating Summons and think that paragraphs 14, 15, 16, 17, 19, 20 and 21 of the said Affidavit are germane in determining whether or not the plaintiff has established his *locus standi*

Also relevant are paragraphs 22, 23, 24, and 25 of the Affidavit in Support of the Originating Summons. The above paragraphs when read together with the other paragraphs of the affidavit in support of the originating summons will clearly disclose the interest Plaintiff in instituting and maintaining the instant action having been appointed by NIPOST to take steps to ensure compliance by banks and financial institutions with the provisions of the Stamp Duties Act regarding receipts on teller deposits and electronic transfers.

Concerning the above, the court further agreed with the submissions. It held that NIPOST could sue by itself or through its agents, such as the Plaintiff herein and not the Federal Government of Nigeria that has the power to enforce the collection of stamp duties like the reliefs sought in the originating summons. However, the above decision of the Federal High Court is not the correct position of the law. On appeal it was overruled by the Court of Appeal in *Standard Chartered Bank Vs Kasmal* (2016) 27 TLRN 1 where the Court held thus:

With possible deference, the above finding of the court below cannot be justified, as it is not supported by the evidence on record and well-established principles of law.

Under section 2 of the NIPOST Act CAP N 127, Laws of the Federation of Nigeria, 2004, it's provided for the establishment of a board to oversee the affairs of the 22 Respondent. That section equally confers powers on the President of the Federal Republic of Nigeria to appoint members of the board of the 22nd Respondent. Section 4 and 5 of the Act equally spelt out the powers and function of the 22 Respondent.

The foregoing provisions of the NIPOST Act (supra) and most unequivocally show that the 22 Respondent is no more than an agency or parastatal of the Federal Government of Nigeria specially conferred with power to charge duties, rates and fees for all postal services carried out within the entire territory of the Federal Republic of Nigeria. Thus, there's no gainsaying the fact that all revenues collected by the 22 Respondent as duties, rates and fees by whatever name so-called, for all postal services rendered by it are revenues duly accruable to the Federal Government of Nigeria.

Considering the above position as held by the Federal High Court, is absolutely the wrong position of the law and as a matter of law, there is no law such as the Stamp Duties Act Cap. S10, Laws of the Federation of Nigeria, 2010. The extant law that regulates stamp duty is the Stamp Duty Act 2004. Section 111 of the Act provides that "All duties, fines, penalties and debts due to the Government of the Federation imposed by this Act shall be recoverable in a summary manner in the name of the Attorney General of the Federation or the State".

The Federal High Court failed to recognise the extant Stamp Duties Act. The Act emphasize that it is the Attorney General of the Federation that possess the power to institute summary action for all stamp duty debt that is dues, but instead the Federal High Court relied on and applied non-existing law. The Court of Appeal is well commendable in their well-considered judgment in condemning and overruling the decision of the Federal High Court and further emphasises that section 122(2) of the Evidence Act 2011, requires a court of law to take judicial notice of all laws in force in Nigeria.

4.4. Exemption of "Receipt" as part of instrument chargeable with stamp duty

The section 90 of the Stamp Duty Act exempted some documents or instruments from being chargeable with stamp duties. One of such Instruments or Document contemplated by Act is "Receipt" (Onele and Emokiniovo, 2016). However, it is not all receipt that is exempted by the Act. In the course of interpreting the type of receipt exempted by the Act, the Federal High Court in *Kasmal V Standard Chartered Bank* unreported Federal High Court Suit No. FHC/L/CS/146/2013 held that Schedule 4 of the Act which provide that receipt given for money deposited in any bank, or with any banker, to be accounted for and expressed to be received of the person to whom the same is to be accounted for, or for money withdrawn from a

savings bank, conflicts with section 90 of the Stamp Duty Act. In this regard the Federal High Court further held thus:

"Again, it would appear that the provision of item (4) on exemption of certain forms of receipts as provided in the Schedule to the Act is in direct conflict with substantive provisions of the Act, especially section 90 of the Act which has expressly provided for the forms of receipts exempted from Stamp Duty."

However, from the above, it was evident that the Federal High Court failed to realise the fact that the Schedule to an Act is also part of the Act and cannot be detached or read independently from the act or seen as subject to the Act except as provided in the Act. In *NNPC Vs Famfa Oil Ltd* (2012) 17 NWLR (PT. 1328) 148 at 196 Per Rhodes Vivour, JSC held thus:

"I must observe that the Schedule of an Act/Statute is part of the Act, and it is as potent as any part of the Act."

Furthermore, the Federal High Court did not consider Section 3(1) of the Stamp Duty Act. It provides that from and after the commencement of the Stamp Duty Act, duties to be charged upon the several instruments specified in the Schedule shall be the several duties in the said Schedule specified. The duties shall be in substitution for the duties hereto chargeable under the enactments repealed by the Stamp Duties Act. It further stated that it should be subject to the exemptions contained in the Stamp Duty Act and any other Act for the time being in force.

However, the Nigeria Court of Appeal in the case of *Standard Chartered Bank vs Kasmal* (2016) 27 TLRN 1 at page 51 overruled the decision of the Federal High Court. It held that an appraisal of the provision of section 90 of the Stamp Duty Act, created a specific exemption. That the exemption exclusively relates to the particular forms of receipts not dutiable but relates to the exemption listed under item 4 of the Schedule to the Stamp Duty Act which has been duly recognised under section 3 of the Stamp Duty Act. The Court of Appeal stated that the Federal High Court below failed to consider other provision, such as section 3(1) of the Stamp Duty Act. That it is the cardinal principles of interpretation of the law, that no particular provision should be glossed over, all the entire provision of the law must be duly considered.

4.5. Qualifying Electronic Transfer and Deposit by Teller as a Receipt Exempted by the Stamp Duty Act

From the provision of section 3 and Schedule 4 of the Stamp Duties Act, it is evident that the provision exempted receipt given for money deposited in any bank, or with any banker. Also, Money to be accounted for and expressed to be received of the person to whom the same is to be accounted for, or for money withdrawn from a savings bank. However, the word "receipt" has been defined in section 89 (1) Of the Stamp Duty Act to mean thus:

"For the purposes of this Act, the expression "receipt" includes any note, memorandum, or writing whereby any money amounting to four naira or upwards, or any bill of exchange or promissory note for money amounting to four naira or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of four naira or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person".

In recent time lawyers, accountant and even judges have misconstrued the above section in ascertaining whether bank teller and electronic deposit qualify as receipts exempted from stamp duties charges. In the case of *Kasmalvs Standard Chartered Bank* unreported suit No. FHC/L/CS/146/2013 Lawyer to the plaintiff (Kasmal) at the lower court (Federal High Court) address the issue that bank teller and electronic fund transfer is not a receipt contemplated by Schedule 4 to the Stamp Duty Act. As such, they are not exempted by the Act. The Federal High Court, in its decision further, stated that careful consideration of the provision of the Stamp Duties Act reveal that electronic fund transfer and deposits by teller are not receipt contemplated by the act. Therefore they are not exempted from stamp duty charges. However, on appeal, the Court of Appeal addressed the issue as regard deposit by teller. The Court in interpreting section 89 of the Stamp Duty Act and Schedule 4 to the Stamp Duty Act, overrule the decision of the Federal High Court. It stated that teller deposit qualified as receipt contemplated by section 89 and Schedule 4 of the act as a stamp deposit teller, served as evidence of money paid into a bank, which is also regarded as a receipt. The Court of Appeal further rely on the case of *Sale V Bon Ltd* (2006) 6 NWLR (PT. 976) 316 that the Supreme Court made use of bank teller or receipt interchangeably by quoting Per Mustapha, JSC when he stated thus:

"A bank teller duly stamped with the official stamp of the bank and properly initialled by the cashier constitute prima facie proof of payment of the sum

therein indicated and a customer, after producing such a teller or receipt needs not prove more unless payment is being challenged".

In essence, the above statements of the Apex Court settle the issue that teller deposit also qualifies as a receipt. However, while the lower court erred in stating that electronic fund transfer is not a receipt, that the Act never contemplated it, the Court of Appeal shy away from addressing the issue. Concerning the Act, no section mention electronic fund transfer and it would have been an opportunity for the Court of Appeal to set precedence as regard electronic fund transfer whether it qualifies as a receipt or not since it was not expressly and indirectly stated in the Section 89 (2) Stamp Duties Amendment Bill 2017.

However, the decision of the Court of Appeal in *Kasmal* case *supra* has also been adopted in *Retail Supermarkets Nigeria Limited V. Citibank Nigeria Limited & Central Bank of Nigeria* unreported Federal High Court case with Suit No: FHC/L/CS/126/2016. In this case, Retail Supermarkets Nigeria Ltd instituted an action against Citibank and Central Bank of Nigeria on the 8th of July, 2016. They argued that the provisions of the 2nd Defendant's (CBN) circular reference GEN/CBN/DMB/02/006 of 15th January, 2016 which mandated the deduction of the sum of N50 for every N1000 deposit into its account was inconsistent with the Schedule of the Stamp Duties Act and are invalid, null and void. In deciding on the case, the Federal High Court relied solely on the Court of Appeal decision in *Standard Chartered Bank Nigeria Limited v. Kasmal International Services Ltd & 22 Others*, based on the settled principle of *stare decisis*. By stating this; "that the provisions of the 2nd Defendants circular reference GEN/CBN/DMB/02/006 of 15th January 2016 are inconsistent with the provisions of the Stamp Duties Act Cap S8 Laws of the Federation of Nigeria, 2004 and are invalid, null and void. The Federal High Court further made an order of perpetual injunction restraining the first Defendant (Citibank) from further implementing the 2nd Defendant's circular reference GEN/CBN/DMB/02/006 of 15th January 2016 with the Plaintiff's bank accounts.

5. Recommendations

Given the above the following are hereby suggested as a remedy to some of the above challenges and they are:

5.1 Review of the Constitution

The Constitution should be review by removing Item 58 of the Exclusive Legislative List in Part 1 of the Second Schedule to the Nigeria Constitution. In this regard, the Concurrent Legislative List should provide for it, to enable the Federal and State government to have the power to legislate on the area of stamp duty as it affects their jurisdiction to collect stamp duties respectively.

5.2 Fast Tracking and Enactment of the Stamp Duties Amendment Bill 2018

The Stamp Duties Amendment Bill 2018, the Bill expands the meaning of stamp to include electronically generated stamps or stamps embossed through a point of sale (POS) machine. The Bill further sorts to add receipts issued in respect of deposits made into a bank as document for which stamp duty can be imposed. Given the above, the bill had within it provisions as it relates to a bank teller and electronic transfer. Therefore the enactment of the bill into law will lay to rest the argument of whether electronic transfer and bank teller qualified as a receipt.

5.3 Well Train Impartial Judges to specialised in Tax Law Area

It is noteworthy that what the judge does in court is adjudication, i.e. the application of the law to issue in dispute to arrive at a just decision. Whether or not justice can be produced in any given tax cases, depend on whether the judge is well learned in tax cases, the impartiality of the judge himself and his philosophy of the law he is administering (whether they are just or harsh and oppressive) and on the extent of the discretion, the laws allow him. To this extent justice according to the law should, therefore, be the burden of judges in any given case, thereby sidelining unnecessary interpretation of some provision of tax law, formalities and procedural defect that is unfounded. In this regard, the Nigeria judges should appreciate that in the final analysis; the end of law is justice. He should, therefore, endeavour to see that the law and the justice of the individual case go hand in hand. To this end, they are advised that the spirit of justice does not reside informalities or words, nor is the triumph of administration of justice to be found in successfully picking a way between pitfalls of technicalities. However, Nigeria judges cannot achieve justice if they are adamant to the changing social circumstances of society. To this end, the Nigeria judges that want justice to be done, even if heaven falls, must possess two salts i.e. the

salts of wisdom and intellectual capacity in other not to become insipid.

Given this, as a competent umpire at the wheel of justice delivery, the judge owes himself and the society the obligation to be up to date, to improve their intellectual ability and to widen his knowledge and experience of the world-changing circumstances and the law and its procedures.

5.4 A Virile Lawyers that is well Train in area of Tax Laws

The Communiqué issued by the section of legal practice of the Nigeria Bar Association after its meeting at Ibadan on November 15, 2012, Item 1, contains a clarification of what ethics and professionalism meant to the legal profession and its practising lawyers in ensuring that justice is done, item 1 read:

A lawyer lives for the direction of his people and the advancement of the cause of his country, therefore as lawyers; we owe a duty to the society to observe the intrinsic rules of basic fairness, equality and justice. We are to carry out our profession in the spirit of these three ideals; organisation, learning and a spirit of public services.

To finally conclude the recommendation of this research work, it is imperative to draw our attention in reflecting on the words of Hon. Justice C.A. Oputa C.F.R (2014) when he said:

In a changing and inter-dependent world generally and in a developing society like ours, in particular, lawyers should in addition to their day to day duties in court and the administration of law lead the way in the achievement of social justice... our lawyers, therefore, have to be active in law reform and normal legislation. They have a duty which they owe to the community at large to put across proposals to change the law in order to bring it in line with justice. The lawyer politician should initiate or support changes in the law, in the broader interest of justice with a human face. The lawyer of today should see himself as a social engineer, a determined fighter for freedom and citizens' rights within the large ambit of greater justice. Our law teachers have a vital role in attuning our future lawyers to the idea that law is good, but that justice is better. Our law faculties and law school should, therefore, turn out men and women who, as well as becoming competent practitioners, have in addition, a burning zeal in law approximating as far as is humanly possible to justice, and who intend to do the best they can in the course of their professional lives to improve the quality of our law and thus further the cause of justice in our land.

From the above words of HON. Justice Oputa, it implies that, if the law is to serve its purpose as a dynamic instrument to bring about the pressing and much needed social change in a developing country like Nigeria in ensuring justice is done. Then the operators of the law; the Bar and the Bench should be able to use the law to achieve social and distributive justice (Leyira *et al*, 2012) . These can be achieved by ensuring that our outdated laws are review to suit the current trend. Furthermore, the Court should interpret the law in its plain and ordinary meaning, avoid unnecessary interpretation, loopholes, technicality and a procedural defect found in Nigeria tax laws, especially the Stamp Duty Act.

6. Conclusion

From the above, it has been clearly emphasising that Stamp Duties is regulated by legislation which is the Stamp Duties Act and it is taxes paid to the Federal or State Government on documents in generating revenue (Oyedele, 2013). Furthermore, issues as they relate to the interpretation of Section 111 of the Stamp Duties Act which provides for the power of the Attorney General to prosecute in Stamp Duty cases. If the Stamp Duties Act Exempted "Receipt" as part of instrument chargeable with stamp duty and Whether by section 89 of the Stamp Duties Act, electronic transfer and deposit by teller qualified as a receipt exempted by the Act from stamp duty charges as been address vis a vis the judicial attitude in interpreting relevant section of the Stamp Duty Act. It was revealed that most custodians of the Nigeria law in most instances failed to give the appropriate plain and ordinary meaning to some of the provision of the Stamp Duties Act. As a result of the inappropriate interpretation of some of this provision, it had often misled the general public and therefore caused great injustice. However, Courts and lawyers in Nigeria have been adjudged to be the primary custodian of the ground norms (the Constitution) and all laws made in Nigeria. In this regard, they owe Nigeria the onerous duty to at all time, guard the Constitution and laws, interpret and uphold laws without any fear, favour or misinterpreting the law to suit their purpose.

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