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Appraising Stamp Duties: A Comparative Analysis

by
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I. INTRODUCTION

The subject matter of stamp duties by its nature is complex. It is a government tax, which is levied on all legal property transactions. Stamp duties is, therefore a tax which is evidence as it were, on any purchase or sale of property between two or more parties. Stamp duties are charged on documents or instruments and not on transactions or persons. In ascertaining the nature of particular transactions, which has been carried out by a taxpayer in the form of stamp duties, the court normally looks at the substance of the instrument and not the form. In *Limmer Asphalte Paving Co.* v. *IRC*[1], the court observed that:

> In order to determine whether any and if any what, stamp Duty is chargeable upon on instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained, that the description of it given in the instrument itself by the parties is immaterial even through they may have believed that its effect and operation was to create a security mentioned in the Stamp Duties Act and they so declare[2].

The general rules for the interpretation of taxing statutes apply to the construction of stamp duties provisions. Stamp duties as one of the oldest taxes were introduced in England in 1694. In Nigeria, Stamp duties are

regulated by the Stamp Duties Act of 1939 as amended by numerous Acts and various resolutions[3]. Whist in India, stamp duties are regulated by the Indian Stamp Act, 1899 as amended by the Finance Act, 2006.

In India, stamp duty is paid as regards the provisions of section 3[4] of the Indian Stamp Act; stamp duty is levied to boost revenue for local government besides lending legality to a document. It is paid in full and without delay failing which a penalty is levied. It is a legal instrument which has evidential value. Stamp papers, which have to be bought either in the name of the seller or buyer is valid for six months, provided the stamp duty is paid without delay[5]. Stamp duty has to be paid prior to the execution of a given document, the next day or on the day of document execution. It is paid by a buyer in most cases. By the provisions of section 13 of the Indian Stamp Act[6], an individual executing a given instrument has to cancel the stamp by writing his initials or name across it. If a stamp is not cancelled in the aforementioned method, it is considered unstamped.

In India, stamp duties rates differ in various states across the country as stamp duties in India is a state subject. However, the central government fixes the stamp duty rates of specific instruments. Legal evidence of ownership or transfer of a property is mandatory. To this end, the buyer, in most cases has to register his or her name in the municipal records. The buyer has to pay a stamp duty at the time of registration. The amount of stamp duties may vary from one state to another. Stamp duties in India also depend on whether a given property is new or old[7]. Stamp duty calculators can be used to find the stamp duty applicable on a given property in any state across the country in India by entering various details such as property value and the name of the state[8]. Some factors like the guidance value, proportionality of market value and the location of the property aid the implication of stamp duty at the time of property registration in India[9].

In Nigeria, stamp duties are paid to the Federal or State Governments upon instrument such as conveyance on sale, bills of exchange, promissory notes, agreements, contracts or even instruments such as letters and certificates of admission, instruments of apprenticeship, insurance policies etc. Stamp duties constitute an invaluable revenue source for both the States and the Federal Governments every year. The duty is levied currently at 75k

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per N50 on the price paid on a conveyance. But there are certain deeds that attract fixed duties even where no money has changed hands

The law of stamp duties is governed essentially by statutory provisions and a particular instrument or document is chargeable to stamp duty only if it comes within the express and unambiguous words of a Statute.

II. IMPORTANCE OF STAMP DUTIES IN INDIA

Stamp duties as a tax collected by the government of India was first introduced to raise the revenue of the government of India but with passing years it has obtained so much importance that a stamped document is considered to be *bonafide* and more reliable than an unstamped document[10].

Stamp duty in India is similar to sales tax, income tax which is collected by the government. The payable amount may be fixed or varying depending upon the value of the property, products or services on which it is levied upon. Stamp duties payments must be made in full and must be on time, otherwise it attracts penalty. The payment of stamp duty should be done before execution of the document or it must be done on the day of registration. Failing to make the necessary payment will result in penalty charges, which starts at a minimum of 2% for every month which has elapsed and can go up to 200% of the defaulted amount[11].

All documents which have been registered without stamp duties charges will be valid only for a period of 6 months and are often sorted in to three categories; first, second and third. Under the first category, the stamp duties are always fixed regardless of the value which is mentioned in the documents or the instrument; examples include affidavits, administrative bonds, cancellation deeds, charter party, indemnity bonds and duplicate power of attorney, ectetere[12]. The second category as regards stamp duties, the charges are based upon the values which are mentioned in the documents, examples include lease agreements, mortgage deeds, title deeds, security bonds, articles of association, etcetera. Under the third category, stamp duties charged depend either upon the value mentioned in the documents or the true market value, which one is higher. Examples of such are agreements for sale, partnership deeds, transfer of immovable property, partnership trust deeds, ectetere[13].

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III. BASIC PRINCIPLES GOVERNING THE OPERATION OF STAMP DUTIES.

Section 23 of the Stamp Duties Act[14] provides expressly that they are essentially duties on instruments. An instrument for stamp duties purposes encompasses written documents.

The Stamp Duties imposed by the Act are of two types namely:

(a) Fixed duties, where the amount of duty does not depend on the consideration or other amount stated in the instrument.

(b) *Ad Valorem* duties, where the duty depends on the amount or value of the consideration on the transfer of shares.

The payment of duty is indicated by a Stamp, which is upon the instrument or document. The document is then taken to the Stamp Office where the Stamp is impressed upon by the use of dies, which is in the exclusive possession of the Stamping authorities.

Apart from written forms, a transaction can be effected orally in which case will not attract duty. This is in accordance with the principle that Stamp Duty is a duty on instrument and not transactions. Thus where a contract is orally entered into or the title to property is conveyed by the Act of delivery, such transaction attracts no duty. Again, where property, which is not transferable by delivery, is converted into a delivery state, duty is avoided in such instances. This is the situation where fixtures are severed before transfer. It would seem that where a transaction is effected orally and subsequently a written record of which is made the written record is not liable to duty. The rationale is that the transaction is deemed not to have been effected by the written instrument but merely recorded by the written instrument. There is however an exception to this rule. Thus under the principle contained in *Cohen and Moore* v. *IRC*[15], the court under certain situations would regard an oral transaction and a written record as one whole transaction by a single instrument. The facts of the case are briefly that settles orally declared that they would hold certain securities on trust until other trustees were appointed at their place. The securities were set — forth in schedules to a draft deed and the trust were set forth in the deed. Five weeks after the oral declaration of trust, the draft deed was executed relating to the verbal declaration and appointing trustees. The court held that both the verbal declaration and the later deed were liable to duty.

In the opinion of Finlay J. in the course of his judgment. "The transaction was really all one transaction and that being one transaction, the whole

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was recorded in the document — the only document which has been drawn up — which is the settlement".

It is also settled with regards to Stamp Duties that where an instrument is stamped, the stamping is deemed to cover everything accessory to the instrument[16]. Thus a stamp on a lease covers an option to purchase the reversion and a guarantee on the rent; the stamps on the creation of settlement covers the appointment of the first trustees and the stamp on a conveyance or assent under seal, covers any acknowledgement or production, undertaking for safety custody or any restrictive covenants[17].

Again in transactions effected by operation of law, no duty is chargeable. An instance is the situation where under statute or common law an event or act gives rise to a particular legal consequences without any or any further documentation such as not complying with the condition of a lease which is regarded as surrendering the lease, the vesting of property in a trustee; a *donatio mortis causa* or an oral deceleration of trust.

One other method of arranging transactions and not to make them affected by documents is by delivery or conduct. Delivery or conduct is one method of making gifts or accepting contracts.

Certain transactions cannot be structured for the purpose of saving Stamp Duties by not using an instrument. Thus certain transactions must be in writing if they are to be regarded as being valid, such as the creation or disposition of a legal estate in land; the disposition of an existing equitable interest by a beneficial owner, a declaration of trust concerning land which though can be made orally must be evidenced in writing.

The essence of writing in assignment related transactions is quite obvious. It eliminates the attendant risks involved in proving title on oral evidence. An oral assignment is invariably tantamount to an equitable assignment. A documentary assignment stands on a higher pedestal in the form of a legal assignment.

IV. DOCUMENTS RELATING TO STAMP DUTIES MATTERS.

Section 8 of the Stamp Duties Act regulates a situation where one document deals with several distinct matters. As an anti-duty avoidance device, the section states as follows:

(a) An instrument containing or relating to several distinct matters shall be separately and distinctly charged as if it were a separate instrument with duty in respect of each of such matters.

(b) An instrument made for any consideration or considerations in respect whereof it is chargeable with *advalorem* duty and also for any further or other valuable consideration shall be separately and distinctly charged as if it were a separate instrument, with duty in respect of each of the considerations.

Under Section 2 of Stamp Duties Act, the word "instrument" includes every written document. Though the word 'matters' is not defined in the Act, this may refer to the matters in respect of which duty is charged[18]. Under section 8, instrument or matter will be subjected to more than one duty if it either comes under more than one head of charge or deals with more than one transaction[19]. Thus a separation agreement or deed, which also contains settlement of property, attracts a deed stamp and *ad valorem* voluntary disposition duty. The same obtains in the case of a lease containing an option to buy land other than the demised land. This

V. AN INSTRUMENT FALLING UNDER MORE THAN ONE HEAD OF CHARGE.

Where there is an overlapping heads of charge, the revenue is entitled to claim duty only less than one head as its choice and not under all the heads. In *Speyer Bros.* v. *IRC*[20], certain notes, which were issued by the United States of Mexico, were held to be both promissory notes and marketable securities and as such both liable to attract the higher duty levied on marketable securities. For clarity purpose, it is pointed out that the Speyer's case did not deal with a situation where an instrument contained more than one transaction but an instrument falling under more than one head of a charge.

VI. TRANSACTIONS REQUIRING MORE THAN ONE INSTRUMENT TO COMPLETE

The general rule is that *ad valorem* duty is payable once. If in order to complete title to property several conveyances are involved, it is only the principle conveyance that is chargeable to *ad valorem* Stamp Duty.

Section 61 Stamp Duties Act, provides that the parties may determine for themselves which of the several instruments shall be deemed the principle instrument and may pay the *ad valorem* duty thereon accordingly.

It is important therefore that a person liable to Stamp Duty has to ascertain first the principle instrument out of the several conveyances in each case.

VII. THE CONTINGENCY PRINCIPLE

The contingency principle is applicable in those situations where the sum payable under an instrument is uncertain at the time the document is executed. It is thus a special rule applicable in order to determine the amount of duty payable on the consideration. The essence of the principle is that it ensures that any *ad valorem* payable is assessed on the maximum that might become payable and which can be calculated in advance at the date of the instrument. Warrington L.J. said of the Instrument in *Underground Electric Railways Co. of London Ltd.* v. *IRC*[21], *as* a security for the payment of a sum of money notwithstanding that events may happen which enable one or other of the parties to put an end to the obligation of which the security is a part and notwithstanding that in the event the obligation may not result in the recovery from the obligor any particular sums of money. The fact of the case are that A Ltd agreed that if an adequate number of stockholders in B. Ltd would agree to exchange their ordinary stock for guarantee stock, A Ltd would guarantee ascertain percent interest on such stock if the profits of B Ltd were inadequate to pay the interest at 4 percent. It was well known at the date of the deed that if the first condition was met and if B. Ltd were unable to make profit, A Ltd would be obligated to make periodic payment of a maximum of £120,000 and would be liable to bear covenant duty[22]. The special rule governing the application of the contingency principle may be summarized this way.

(a) Where it is not possible for either maximum not minimum amount to be calculated in advance. In this kind of situation no *ad valorem* is chargeable. The essence of *ad valorem* duty is that the sum upon which duty is payable is ascertainable[23]. But where it is agreed that a figure may be varied either by increase or decrease, duty is payable[24].

(b) Where a definite minimum amount can be ascertained then *ad valorem* duty is payable on the sum[25].

(c) Where a definite maximum amount can be set *ad valorem* duty is chargeable on that amount despite the fact that the real consideration paid may be of a lesser amount[26].

(d) Where however both maximum and minimum amount can be set *ad valorem* duty is chargeable on the maximum sum.

VIII. THE SUBSTANCE AND NOT FORM OF AN INSTRUMENT DETERMINES ITS LEGAL EFFECT

Where an instrument is found to be ineffective for the purpose it is intended, it will not attract Stamp Duty. An example is where trustees of an estate are appointed by the wrong person. The implication is that if a Stamp has already impressed, the Duty paid can be recovered subsequently. The attitude of the court with regards to construction of the effect of instrument is that the substance of an instrument prevails over its form. Thus in *Eastern National Omnibus Co. Ltd.* v. *IRC*[27] the agreement embedded in an instrument of Public Motor Service Company and third parties produced *inter alia:*

(a) The termination of cessation of business in a designated place

(b) That the parties to the agreement would give necessary assistance to their successors to acquire the necessary licenses required to update their business; and

(c) Not to compete with the business of the company.

The court held contrary to the intention of the motor company that the agreement embedded in the interment was tantamount to the sale of the good will of the motor company[28].

Where a Stamped instrument is later discovered after execution to be void or fails due to non fulfillment of a condition; is to be unfit through error or mistake or becomes insufficient for the purpose for which it is intended owing to failure to sign the instrument by a necessary party; or an agreement for sale of and embedded is rescinded or annulled or for any reason is not instrument performed or carried out; as an instrument is mistakenly spoiled before execution, the Accountant General is authorized to make

a return of the Stamp Duty already paid. Section 58 (b) of the Stamp Duties Act states the nature of relief available thus:

> The *ad valorem* Stamp Duty paid up in any such contract shall be returned by the Accountant General on a certificate by the commissioner in case the contract or agreement be afterwards rescinded or annulled or for any other reason be not substantially performed or carried into effect to as to operate as or be followed by a conveyance or transfer.

The subsection emphasizes that the Accountant General shall return the duty paid if the Commissioner of Stamp Duties certifies that any of the frustrating events earlier mentioned had occurred. Though it is not expressly stated in the Stamp Duties Act, it would seem that before the relief is granted, there must be a formal application for the return of duty already paid. The Act does not also provide a limitation period within which to apply for refund. We also think that Section 58(6) should have been made subject to the fact that no legal proceedings must have been commenced in which the particular instrument could or would have been given or offered in evidence. Section 58 (c) in our opinion is too restrictive. It should be widened to include frustrating developments such as inability to fulfil important conditions, unfitness of an instrument due to error etc, in order to enhance its potential.

IX. COMPLETE AND INCOMPLETE DOCUMENTS: EFFECT AS REGARDS STAMP DUTIES

A document is regarded as being complete when it is executed by all necessary parties to it. A complete document or deed assumes legal efficacy upon delivery. An incomplete document on the other hand is not liable to Stamp Duties; though it can be produced in evidence unstamped[29]. A deed which has been signed and sealed but not yet delivered is an incomplete document in law and so not liable to incur stamp duties. The same applies to those delivered in *escrow*. Though it is not mandatory to stamp an incomplete document, the rate of duties payable on such document when eventually complete is the prevailing rate at the time of completion[30].

Also relevant to matters discussed is the time of execution of a document. In *Wm. Cory & Son Ltd.* v. *IRC*[31], the court held that a document

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only becomes liable to Stamp Duties when it is executed. Though the word: executed is not defined under the Stamp Duties Act. A document for all intents and purposes is executed, once it is signed by all parties to it. But does this therefore mean that where a document has been signed and sealed, it is capable of it being stamped, even if not delivered? It is obvious that this is not possible. We submit that an undelivered document in incomplete document.

Section 23 of the Stamp Duties Act, imposes penalties on instruments stamped after execution as well as its efficiently stamped documents. But in practice however, a 40 day period of grace is given after due execution of an instrument. Thus liability to penalty begins as soon as the 40 days grace period elapses.

A. Failures to Stamp Documents

Failure to stamp a document does not invalidate the document, neither is it an offence. But under the Stamp Duties Act, an unstamped document, apart from the fact that it cannot be used in evidence[32], is liable to penalties outside the time limit once they are presented for stamping[33].

It is settled that unstamped document is not admissible either directly or for any collateral[34] purpose. Impliedly therefore, no secondary evidence would be allowed of such a document, cross examination is not allowed upon unstamped documents though may be allowed for the purpose of enabling witness to refresh his memory[35] or establish fraud[36] or establish an act of bankruptcy[37]. The rule prohibiting admissibility of unstamped document does not apply to criminal proceedings, as well as rent tribunal or proceedings before Commissioners. This rule does not extend to proceedings before the High Court acting as an appellate court by way of case stated.

B. Raising and Taking Stamp Objections

Under Section 22(1) of the Stamp Duties Act, when an instrument is produced in court for evidential purposes the judge, arbitrator or the referee has the obligation to take the stamp objection raised by one of the parties.

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Such objections would normally pertain to omission or insufficiency of stamp.

It would seem that if the instrument is one that can be legally stamped after execution the court may receive it in evidence on the personal undertaking by counsel of the party producing the document that the document would be stamp immediately after and the appropriate penalty is paid[38]. The weight to be attached to such undertaking depends on the personal reputation and status of such counsel. It is doubtful therefore if a counsel with unsavory reputation will enjoy such a privilege. Though no appeal lies from the decision of the court that an instrument has been sufficiently stamped or that it requires no stamping, it would seem that an appeal may be possible[39].

C. Penalties for Stamping Outside Time Frame

The sanctions provided for late stamping are not in the nature of criminal sanctions. What are provided under the Stamp Duties Act are tariff for late stamping. Put in another language the penalties are in the nature of monetary sums exacted by the tax authority for stamping an instrument out of time.

The more the delay, the more the tariff payable by a defaulter

Section 23 SDA states that a party responsible for late stamping is liable to pay the unpaid duty and a penalty of N20 and an additional penalty where the unpaid duty in more than N20 and an interest on such duty of the rate of 10% annually commencing from the time the instrument was first executed till the period the interest is equal to the amount of the duty unpaid[40].

D. Instruments Chargeable Generally[41]

It is important to point out that the commissioner may decide to mitigate any penalty. In some cases it may be completely mitigated[42].

E. Administration of Stamp Duties

Section 40(2) of the Stamp Duties Act empowers both the Federal and State governments to impose, charge and collect Stamp Duties. Where the instruments liable to Stamp Duties emanate from transactions between a company and an individual group or body, the Federal government shall have the sole authority to impose charge and collect Stamp Duties. The authority of the states however relate to instruments executed between individuals or persons. However, it would seem that by virtue of item 58 part 1, 2nd schedule of the 1999 constitution, Stamp Duty is one of the matters reserved to the Federal government in the exclusive legislative list.

F. Imposition of Fines

Some provisions of the Stamp Duties Act impose fines with respect to certain conducts, which are not in consonance with the provisions of the Act. Thus where a person with an interest to defraud executes a document without stating the whole facts and circumstances his liability or the whole amount of duty payable, he is liable to N40 fine[43]. A person charged with the responsibility of preparing a document is also liable under a similar situation.

Any person charge with the responsibility of enrolling registering an instrument does so without it being duty stamped is liable to a N20 fine. There are however certain documents that do not attract Stamp Duties under the Act. Some are general while others are specific.

G. Adjudications of Stamps

Adjudication is the process of which the correct amount of Stamp Duty is defined at the Stamp Duty Office. Adjudication is the exclusive preserve of the Commissioner of stamp Duty. The process of adjudication commences when a Commissioner is required to express an option pertaining to a document already executed, whether such document is liable to duty or not and where chargeable, the specific amount payable. Where the Commissioner's opinion indicates that an instrument is liable to duty, it is stamped accordingly. A document stamped under the adjudication process makes the document admissible for all purposes even if there had been objection pertaining to and concerning it. This advantage is glaring in view of Section 19 Stamp Duties Act, which states that every instrument bearing a certificate of a Commissioner that it is not chargeable with duty or that it is duly stamped or being stamped with the amount of duty assessed and

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certified by him shall be admissible in evidence and available for all purposes notwithstanding any objection relating to it[44].

An obvious limitation to adjudication however is that once an instrument is executed with cannot be stamped after execution by law; it cannot be authorized or legalized by the process of adjudication[45]. The process of adjudication may not also remedy a situation where an instrument has been declared not duly stamped by a court order[46]. Nor can prejudice existing rights.

The above limitations notwithstanding, the importance of adjudication can be seen in the light of the fact that it is a means of obtaining an authoritative decision on an issue or issues relating to Stamp Duty.

H. Denoting Stamps

Sometimes, the duty payable on an instrument relies on the duty with which an instrument is chargeable. In such a situation, the party liable to duty is required to apply to the Commissioner for Stamp Duty while armed with the two instruments.[47] The payment of the last duty will then be denoted on the first mentioned instrument or agreement[48]. The denoting stamp does not guarantee that the stamp on the face of an agreement is adequate. The usual process of adjudication is necessary to ascertain its sufficiency.

I. Appeals arising from Adjudication

Where the amount of Stamp Duty payable on an instrument becomes subject to adjudication and the decision of the adjudicator i.e. Commissioner of Stamp Duties is disputed, appeal lies to the High Court by way of case stated. The following conditions must however, be complied with:

(a) The amount of duties assessed must be paid

(b) The appeal must be made within 21 days of assessment

It is the duty of the Commissioner for Stamp Duties to state a case and deliver it to the appellant who is then required to file it at the High Court within a period of seven days. The Commissioner's responsibility to state the case includes the day to determine the facts upon which the appellate court will give its decision.

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Oral evidence is allowed during hearing to supplement case stated[49]. A party successful on appeal is entitled to have Stamp Duty overpaid to be refunded including interest if the court so pleases[50].

J. Instrument allegedly lost or missing

The general presumption is that a lost document is duly' stamped unless the contrary is shown that the document was unstamped, in which case, it remains not stamped.

By concession a replica of a lost document or instrument already stamped may not be subjected to fresh Stamp Duty. But where the replica was stamped afresh the original duty may be refunded. Claims for stamping the replica of a document are usually sent to the Stamp Duties Office.

X. CONCLUSION

There is no doubting the fact that stamp duties in Nigeria & India constitute an invaluable revenue source. This is in view of the numerous instruments that now come before stamp duties offices in the States for purposes of perfection. This is not to say however that all is completely well with Stamp Duties as potential revenue yielding tax base. Indian rates are exceptionally high at rates often above 10 percent. Most countries rate is less then 5 percent, so India should fall in line to avoid same been used for evasion and fraud. Its potential is yet to be fully realized considering the prevalence of ignorance amount both the laymen and professionals of the essence of perfection of documents. The administration charged with the responsibilities of implementing the Stamp Duties law need constant enlightenment. The same applies to contractors, lawyers; accountancies that though may be aware of the existence of Stamp Duties are yet to appreciate its full import as a protective shield.

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[1] 1872 LR 7 Ex 211 at pp. 214-25 per Martin B. See also *IRC* v. *Duke of Westminster*, 1936 AC 1.

[2] An instrument with the lag of a head of dissolution of partnership may be interpreted as a correspondence on sale. In the same vein an agreement in restraint of trade may operate as an agreement to assign a goodwill. See generally *Gannet* v. *IRC*, (1899) 81 l and *Eastern National Omnibus Co. Ltd.* v. *IRC*, (1939) 1 KB 161.

[3] *See* volume 22 Laws of the Federation of Nigeria 1990 Cap 411 (now 2004).

[4] Indian Stamp Act, 1899.

[5] Stamp Duty in India at http://www.bankbazaar.com/t: goggle. Last assessed on 20th of November, 2016.

[6] 1899.

[7] Stamp Duty in India, op. cit.

[8] *Id.*

[9] *Id.*

[10] *See* stamp duty & its importance in India at www.Nirrtigo.com/user. Last accessed on the 19th November, 2016.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 2004.

[15] (1933) 2 KB 126.

[16] *Limmer Asphalte Paving Co.* v. *IRC*, 1872 LR 7 Ex 211 per Martin B.

[17] If the principal object contained on the instrument is exempted from Stamp Duty an accessory provision in the instrument is equally exempted.

[18] See *Reversionary Interest Society* v. *IRC*, (1906) 22 TLR 740 and Rowlath J. in *Angell* v. *IRC*, (1920) J. KQ 608 at p. 617.

[19] See *Lovelock* v. *Franklyn*, (1846) 8 QB 371.

[20] 1908 AC 92. See also *Anderson* v. *IRC*, (1939) 1 KB 341. See also Section 8 of Stamp Duties Act.

[21] (1916) 1 KB 306 (CA). See also the House of Lords decision in *Independent Television Authority and*

Associated-Rediffusion Ltd. v. *IRC*, 1961 AC 427 : (1960) 3 WLR 48.

[22] Bond covenant duty has since been abolished under English law since 1971.

[23] *See Underground Electric Railways Co. of London Ltd.* v. *IRC*, (1916) 1 KB 306 (CA).

[24] *See Independent Television Authority and Associated-Rediffusion Ltd.* v. *IRC*, 1961 AC 427 : (1960) 3 WLR 48.

[25] See *Underground Electric Railways Co. of London Ltd.* v. *IRC*, (1916) 1 KB 306 (CA).

[26] See *Underground Electric Railways Co. of London Ltd.* v. *IRC*, (1916) 1 KB 306 (CA).

[27] (1939) 1 KB 161.

[28] See *Furniss* v. *Dawson*, 1984 AC 474 : (1984) 2 WLR 226 : 1984 STC 153 (HL) for the doctrine of form and substance which applies to tax matters including Stamp Duties.

[29] See *Sinclair* v. *IRC*, (1942) 24 TC 432 at 442.

[30] See *Terrapin International Ltd.* v. *IRC*, (1976) 1 WLR 665 : (1976) 2 All ER 461.

[31] 1965 AC 1088 : (1965) 2 WLR 924. See also *Western United Investment Co. Ltd.* v. *IRC*, 1958 Ch 392 : (1958) 2 WLR 192.

[32] S 22 (4) of Stamp Duties Act.

[33] *See* s 23 (1) which States that the person presenting the instrument for stamping after the date of execution is liable to pay a penalty of N20 and a further penalty if the applicable duty is more than N20 and of interest on such duty at 10% etc.

[34] Before 1891, it was believed that an unstamped document was admissible for a collateral purpose until the later case of *Ram Rattan* v. *Parma Nand*, 1945 SCC OnLine PC 58 : (1945-46) 73 IA 28 decided otherwise.

[35] See *Birchall* v. *Bullough*, (1896) 1 QB 325.

[36] See *The Show*, (1920) 90 LJ KB 204.

[37] *See Gunsbourg, In re*, (1920) 2 KB 426 : (1919) 88 LJ KB 479.

[38] See *Coolgardie Goldfields Ltd., In re*, (1900) 1 Ch 475 at 477, *Parkfield Trust Ltd.* v. *Dent*, (1931) 2 KB 579.

[39] See *The Belfort*, (1884) 9 PD 215.

[40] It would appear that the closing words are inserted to ensure that the amount of interest is pruned down to the amount of duty unpaid.

[41] See the attaching table for specifies. It must be noted that an individual or company may under certain situations be exempted from Stamp Duties under s. 513 of the Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2004, when a company is undergoing a winding up certain instruments are exempted e.g assurance, mortgage, charge or encumbrance on property or access of accompany in liquidation.

[42] See s. 23 113 of SDA. This may probably explain the fact why S 23 is badly adhered to impose penalty on instruments that are presented for stamping outside the 40 days limitation period after it has been executed. See also S 103 and Schedule to SDA.

[43] *See* s. 9 Stamp Duties Act.

[44] See *Fitch Lovell Ltd.* v. *IRC*, (1962) 1 WLR 1325 at 1363.

[45] *See* s 16 (1) Stamp Duties Act.

[46] See *Prudential Mutual Assurance Investment and Loan Assn.* v. *Curzon*, (1852) 8 Exch 97.

[47] It is a condition that the two instruments must be presented at the same time.

[48] *See* s 58 Stamp Duties Act.

[49] See *Holmleigh (Holdings) Ltd.* v. *IRC*, (1958) 46 TC 435.

[50] See *Clarke Chapman-John Thompson Ltd.* v. *IRC*, 1976 Ch 91 : (1976) 2 WLR 1; *Western United Investment Co. Ltd.* v. *IRC*, 1958 Ch 392 : (1958) 2 WLR 192.