

DISTRAINT WITHOUT LIMITS: A REVIEW OF THE NIGERIAN TAX  
ADMINISTRATION ACT, 2025

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**ABSTRACT**

*The Nigerian Tax Administration Act, 2025 introduces expansive provisions empowering tax authorities to enforce distraint—the administrative seizure of a taxpayer’s assets—to recover unpaid taxes. While such powers are vital for efficient tax collection and reducing revenue leakages, their exercise without judicial oversight raises critical concerns about constitutionality, fairness, and proportionality. This paper examines the legal framework for distraint under the 2025 Act, highlighting the risks posed by unrestrained enforcement, including potential violations of property rights and due process guarantees under the 1999 Constitution. Drawing on comparative insights from jurisdictions such as the United Kingdom and South Africa, the paper argues that effective tax enforcement can co-exist with robust taxpayer protections. It recommends legislative reforms introducing judicial checks, procedural safeguards, and oversight mechanisms to balance state revenue interests with taxpayers’ fundamental rights. The study concludes that without these reforms, the 2025 Act risks enabling distraint without restraint—undermining public trust in Nigeria’s tax system. This article undertakes a doctrinal and comparative analysis of the distraint provisions, assessing implications and recommending safeguards.*

**Keywords:** Distraint, Nigeria Tax Administration Act, 2025, Tax Enforcement, Taxpayer, Rights, Judicial Oversight

**1.0 Introduction**

Taxation, essential for government funding, depends on effective enforcement mechanisms. Distraint—the administrative seizure of a taxpayer’s assets—such as movable or immovable property, facilitates recovery of tax debt without court proceedings.<sup>1</sup> In Nigeria, this enforcement mechanism has seen important changes over time. Notably, the 2011 amendment to the Personal Income Tax Act (PITA) introduced a safeguard: tax authorities could no longer carry out distraint actions on their own.<sup>2</sup> Instead, they had to first obtain an *ex parte* court order – ensuring a layer of judicial oversight and protecting taxpayers’ rights against

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<sup>1</sup> Encyclopedia Britannica, 'Distraint: Seizure of Property to Obtain Payments' (2025)

<sup>2</sup>Oyenitun, S 'Tax Distraint Under the Nigerian Tax Administration Act 2025: Distraint Without Restraint. <<https://www.mondaq.com> accessed on 10th June, 2025

arbitrary enforcement.<sup>3</sup> The Nigerian Tax Administration Act, 2025 ("the 2025 Act"), grants tax authorities significant distraint powers<sup>4</sup>, raising concern about whether these powers remain unbridled and infringe on constitutional protections. The word "Distraint", "Distrain" and "Distress" in this work will be used interchangeably. They mean the same and one thing.

## 2. Conceptual and Legal Framework

### 2.1 Meaning and Origins of Distraint

The word "distraint" means "to take and detain personal property by distress as security for a debt, claim"<sup>5</sup>. Black Law Dictionary<sup>6</sup> also defines distraint as "to force a person by the seizure or detention of personal property to perform an obligation".

According to ordinary English usage, "distraint" simply means "to seize and hold (property) to compel payment or reparation, as the debts." It may also be defined as "to seize the property of (a person) to compel payment of debts; distress,"<sup>7</sup> or "to seize the property of an individual and retain it until an obligation is performed." In some contexts, particularly landlord-tenant relationships, it is "the taking of the goods and chattels of a tenant by a landlord in order to satisfy an unpaid debt."<sup>8</sup>

This broader interpretation was affirmed in *First Bank v Attorney General of Anambra State & Anor.*<sup>9</sup> where Honourable Justice Kasim (as he then was) explained that distraining can include actions such as sealing off a business location as part of enforcement.

Under Common Law, distraint allows the confiscation of a debtor's goods to satisfy debts.<sup>10</sup> Distraint is an ancient remedy whereby the goods of a tenant in arrears were liable to be seized by the landlord in order to pressurize the tenant into paying overdue rent. The doctrine arose from earliest times at common law as a necessary incident to every rent-service. Even ancient commentators disclaim knowledge of its precise source: whenever the name or ... the notion

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<sup>3</sup> Ibid

<sup>4</sup> Nigerian Tax Administration Act 2025, S. 61 .

<sup>5</sup> New International Webster's Comprehensive Dictionary 2010 Edition, Akereolu, A the dynamics of Distraint cited in Oyenitun, S "Tax Distraint Under the Nigerian Tax Administration Act 2025: Distraint Without Restraint. Op cit.

<sup>6</sup> Garner, B A, Black's Law Dictionary Eighth Edition (St. Paul, MN: Thomson Reuters, 2014), p.808

<sup>7</sup> Free Dictionary<<http://www.thefreedictionary.com/distraint>

<sup>8</sup> Ibid

<sup>9</sup> Vol. 4 All NTC p.437 at 447 cited in Oyenitun, S "Tax Distraint Under the Nigerian Tax Administration Act 2025: Distraint Without Restraint. Op cit.

<sup>10</sup>Encyclopadia Britannica, "Distraint: seizure of property to obtain payments" Op cit

came, the remedy obtained so early in our law that we have no memorial of its origin with us<sup>11</sup>.

Sequel to the public outcry over the exercise of the power, the Law Commission in its report of 1991 “decided that distress was a thoroughly bad thing and total abolition was proposed.<sup>12</sup> The Law Commission said that distress was “wrong” in principle because it offers extra-judicial debt enforcement remedy in circumstances which are, because of its intrinsic nature, the way it which it arises and the manner of its exercise, unjust to debtors, to other creditors, and to third parties”.<sup>13</sup>

## 2.2 Distraint in Pre-2025 Nigerian Law

The principle of distraint were applied prior to the Nigerian Tax Administration Act 2025 in various tax laws in Nigeria. The tax laws are, but not limited to, the following:

### i. Personal Income Tax Act (PITA)

The Personal Income Tax Act applied the principle of distraint in the following:

Section 104 PITA<sup>14</sup> was a primary statutory basis for distraint: it provides that where any tax is in default, the relevant tax authority may authorize the recovery of such tax by levy of distress upon the goods, chattels or other distrainable property of the taxable person.

The law provides under Section 104 *inter alia*

1. There shall be a 30-day notice requirement after demand notice for distraint to be applied.
2. There shall be a written authorization from the chairman of the tax authority.
3. The right to enter premises and seize property with police support.
4. There shall be public auction if tax remains unpaid after 10 days of seizure.
5. The proceeds applied to settle tax, costs, and any surplus returned.

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<sup>11</sup> Gilbert, the Law and Practice of Distresses and Replevin (3<sup>rd</sup> ed; 1994) p.5, Awosan, E. A., Tax System and Administrations in Nigeria, p.175 (being a Memorandum to the Study Group on Nigeria Tax System and Administration, 1991, Lagos cited by Agbonika, J. A. C., Problems of personal income Tax in Nigeria, (Ababa Press Ltd, 2012) p.380.

<sup>12</sup> Ibid

<sup>13</sup> Ibid, also Edjeba, A E, “The Constitutionality of the Power to Distrain for Non-payment of Tax: Independent Television/Radio v. Edo State Board of Internal Revenue in Perspective” Ajayi Crowther University Law Journal <<https://aculj.acu.edu.ng> accessed on 10th June, 2025.

<sup>14</sup> Cap P8, LFN 2004 (as amended)

In the case of GTB PLC v. Ekiti State Board of Internal Revenue<sup>15</sup>, the Court of Appeal held that a State Internal Revenue Service cannot lawfully distrain a taxpayer's property via an *ex parte* application without first ensuring the tax assessment is final and conclusive. The court emphasized that the power to distrain under Section 104 of PITA is not absolute and requires strict adherence to conditions precedent: issuance of a demand notice, service of notice, and the lapse of time without payment. The court affirmed that failing to follow these steps violates the taxpayer's constitutional right to a fair hearing.

In the case of Access Bank Plc v. Edo State Board of Internal Revenue<sup>16</sup>, the Court of Appeal ruled that using *ex parte* proceedings for distraint, where the tax authority fails to disclose that a portion of the tax was paid or disputed, is invalid. The Court declared that any statutory provision allowing for *ex parte* (without notice to the taxpayer) orders for distraint violates the right to fair hearing and is unconstitutional, null, and void. Also, in Chief G.O. Igbinedion v. Edo State Board of Internal Revenue<sup>17</sup>, the Court of Appeal declared the provisions of the Edo State Revenue Administration Law (which mirrored the older, pre-2011 federal tax law structure) that authorized *ex parte* distraint as unconstitutional. This case reinforced that tax authorities cannot "act as a judge in their own case" by seizing property without giving the taxpayer a fair chance to dispute the assessment in court. Same was held in NDDC v. Rivers State Board of Internal Revenue<sup>18</sup>, wherein the Court of Appeal ruled that a tax authority cannot distrain the assets of an employer for failure to remit Pay-As-You-Earn (PAYE) taxes of employees (under the older PITA framework) without proper procedures. It was held that for PAYE tax, the taxable person is the employee, not the employer, limiting the scope of whose property can be seized.

## ii. Companies Income Tax Act (CITA)

The Companies Income Tax Act is another tax legislation that contains distraint in its provisions. They are as follows;

a) Section 84<sup>19</sup> provides that:

"Where a company defaults in paying tax, the Board may authorize the recovery by distraint."

The provision applied to corporate taxpayers and followed similar procedural requirements. In the case of Fidelity Bank Plc v. FIRS<sup>20</sup> this case reinforced the need for strict compliance with service procedures. The court held that

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<sup>15</sup> (2018) LPELR-44156(CA)

<sup>16</sup> 2018 LPELR - 44156 (CA)

<sup>17</sup> (2017) Vol 265 LRCN 69

<sup>18</sup> (2020) 3 NWLR (Pt. 1711) 371 (CA)

<sup>19</sup> Companies Income Tax Act, Ibid

<sup>20</sup> Unreported Suit No. CA/OW/581/2017 Judgment delivered on 10/2/2020)

enforcement actions like account freezes or distraint must follow proper notice, and failure to do so can infringe upon the taxpayer's right to a fair hearing, rendering the enforcement unconstitutional.

**iii. Federal Inland Revenue Service (Establishment) Act, 2007**

The Federal Inland Revenue Service (Establishment) Act in Section 26(3) granted powers to the Federal Inland Revenue Service (FIRS). It provides that:

“... the Service may distraint the goods, chattels or other property of the defaulting person... and may sell them after 10 days.” This section incorporated elements of PITA and CITA, and expanded the power to include police enforcement and broader applicability to federal taxes.

**iv. Customs and Excise Management Act (CEMA)**

Section 104 of CEMA empowered Customs officials to levy distraint on goods for non-payment of import and export duties. For example:

Section 195 CEMA<sup>21</sup> permits seizure of dutiable goods where duties remain unpaid.

Section 203 CEMA<sup>22</sup> provides for forfeiture of seized goods after notice and opportunity for the owner to challenge.

Previously embedded in statutes like CITA and the FIRS Establishment Act, distraint was fragmented<sup>23</sup>. Its application was inconsistent<sup>24</sup> and lacked standard procedural safeguards<sup>25</sup>.

**2.3 Distraint under the 2025 Act**

The 2025 Act consolidates distraint authority under Section 61 of the Act. It provides in sub section 1 that:

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<sup>21</sup>Cap C45, LFN 2004

<sup>22</sup> Ibid

<sup>23</sup> The Instances of fragmentation arose regarding the FIRS's power to issue regulations (eg. Country by Country reporting regulations 2020)

<sup>24</sup> While the FIRS Act is generally superior to CITA regarding administrative powers, discrepancies arise in enforcement, penalties and procedural time lines creating inconsistencies between the Companies Income Tax Act (CITA) and the Federal Inland Revenue Service (Establishment) Act (FIRSEA) 2007.

<sup>25</sup> The Lack of Procedural Safeguards in FIRSEA are arbitrary freezing of bank accounts under sections 8 ((1)(g) and 31 of the FIRSEA, overbroad enforcement powers, insufficient “stay of execution” in appeals, penalties without strict legal basis all in FIRSEA while under CITA are discretionary “Best of judgment” assessments, limitations on deductible expenses, retroactive application of tax laws etc.

61.(1) Where an assessment has become final and conclusive and a demand notice has been served on a person or company, or on the person or company in whose name that person is chargeable and the payment of the tax is not made within the time specified by the demand notice, the relevant tax authority may in the prescribed form, for the purpose of enforcing payment of the tax due –

- a. Distraint that person or corporate body by their goods, chattels, bonds or other securities; or
- b. Distraint any land, premises, place or any asset in respect of which that person or corporate body is the owner, and recover the amount of tax due by sale of anything so distrained.

In *Fidelity Bank Plc v FIRS*<sup>26</sup>, the Court of Appeal stressed the need for strict compliance with service procedures, reinforcing that enforcement—such as account freezes or distraint—must follow proper notice. Failing to do so can infringe the right to fair hearing and may render the enforcement unconstitutional.

In *Eze v. Federal Republic of Nigeria*<sup>27</sup>, the court emphasized that all administrative actions must meet constitutional standards of fair hearing and due process, even when acting within their statutory powers.

The above Section 61 in sub section 3 to provide further distraint that:

61.(3) For the purpose of levying any distraint under this section, any officer duly authorised by the relevant tax authority may execute any warrant of distraint, and if necessary, break open any building or place in the day time for the purpose of levying such distraint, and the relevant tax authority may call for police assistance and the police shall, when so required aid and assist in the execution of any warrant of distraint and in levying the distraint.

By sub section 4 of Section 61 of the Act, it provides for sale of assets distrained. It provides thus:

61.(4) Assets distrained by the Service under this section may, at the cost of that person or corporate body, be kept for 14 days and at the end of that time if the amount due in respect of the tax, cost and charges incidental to the distraint are not paid, they may, subject to subsection (7), be sold without an order of the High Court subject to subsection (8).

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<sup>26</sup> (2012) LPELR - 9341 (CA)

<sup>27</sup> (1987) 2 NWLR (Pt. 56) 447

The balance of the proceeds, if any, shall be refunded to that person with or without a demand made within 90 days of the date of the sale.<sup>28</sup> The provision of Section 61 of the Act shall not be construed to authorise the sale of any immovable property without an order of a High Court or as prescribed by the rules of court.<sup>29</sup>

### **3. Constitutionality of Distraint and Sale of Movable Property Under the Act**

The Act provides that nothing in Section 61 shall be construed to authorise the sale of any immovable property without an order of a High Court or as prescribed by the rules of court<sup>30</sup>. That means there will be a sale of movable property distrained without court order. This is because part of property that could be distrained under the Act includes goods<sup>31</sup>. This section of the law violates Section

44(1) of the 1999 Constitution of Nigeria (As amended), which provides that:

44(1) No moveable 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 ....

Section 61 of the Act which expressly excludes movable property of a distrained property from the category of things that the order of the High Court is required to be obtained before it is sold is unconstitutional. This is because if any other law is inconsistent with the provision of this constitution, this constitution shall prevail. And that other law shall to the extent of inconsistency be void.<sup>32</sup>

## **4. Critical Appraisal**

### **4.1 Scope and Reach**

The Act's broad criteria enable entry and seizure across diverse assets without requiring judicial orders.<sup>33</sup> Enforcement includes a notice and grace period—though details (e.g., seven days, fifteen days) are open to regulatory interpretation<sup>34</sup>.

### **4.2 Lack of Judicial Oversight**

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<sup>28</sup> Nigerian Tax Administration Act 2025, S. 61 (7)

<sup>29</sup> Ibid, S.61(8)

<sup>30</sup> ibid

<sup>31</sup> See Nigerian Tax Administration Act 2025, S.61(1) a.

<sup>32</sup> 1999 Constitution of the Federal Republic of Nigeria (as Amended), S. 1 (3)

<sup>33</sup> See Nigerian Tax Administration Act 2025, S.61 (1)

<sup>34</sup> Ibid, S. 61(4)

Unlike jurisdictions requiring court intervention, Nigerian provisions allow immediate action post-notice. This challenges constitutional due process<sup>35</sup>.

#### **4.3 Comparative Insights**

##### **i. United Kingdom:**

HM Revenue & Customs (HMRC) executes distraint under statutes like the Taxes Management Act 1970, with predefined notice procedures, involvement of certified enforcement agents, and judicial review rights<sup>36</sup>.

The UK provides a structured model that balances enforcement efficiency with taxpayer protections. The older "distrain" system has been replaced by the "Taking Control of Goods" regime, introduced under the Tribunals, Courts and Enforcement Act 2007<sup>37</sup>.

Under Part 3 and Schedule 12,<sup>38</sup> enforcement agents acting on behalf of HM Revenue & Customs (HMRC) are required to follow a clear and transparent process. Taxpayers must receive a Notice of Enforcement at least seven clear days in advance, which must specify the amount owed, identify the certified enforcement agent, and explain the taxpayer's right to appeal, request a review, or propose a repayment plan<sup>39</sup>.

Enforcement agents must also be certified and regulated under the Certification of Enforcement Agents Regulations 2014, ensuring professional standards and accountability throughout the process. The UK model demonstrates how procedural safeguards can support effective enforcement while maintaining public confidence<sup>40</sup>.

##### **ii. United States of America**

In the United States, the Internal Revenue Service (IRS) is empowered to levy a taxpayer's assets under the Internal Revenue Code (IRC), but this power is carefully regulated by Sections 6330 and 6331<sup>41</sup>.

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<sup>35</sup> 1999 Constitution of the Federal Republic of Nigeria (as Amended), S. 36

<sup>36</sup> Tax Appeal Tribunal statistics show increased filing of abuse-of-power complaints.

<sup>37</sup> Oyenitun S. 'Tax Distraint Under the Nigerian Tax Administration act 2025: Distraint without Restraint? Ibid

<sup>38</sup> HM Revenue & Customs (HMRC)

<sup>39</sup> Oyenitun S. 'Tax Distraint Under the Nigerian Tax Administration act 2025: Distraint without Restraint? Op. cit

<sup>40</sup> Ibid

<sup>41</sup> Internal Revenue Code (IRC), also see Oyenitun S. 'Tax Distraint Under the Nigerian Tax Administration act 2025: Distraint without Restraint? Op. cit

Before taking any enforcement action, the IRS must issue a Final Notice of Intent to Levy<sup>42</sup> and allow a 30-day period for the taxpayer to respond. During this period, the taxpayer is entitled to a Collection Due Process (CDP) hearing<sup>43</sup> which offers an opportunity to challenge the validity of the tax debt or propose alternative solutions—such as an installment agreement or an Offer in Compromise<sup>44</sup>.

If the taxpayer is not satisfied with the outcome of the hearing, he may appeal to the U.S. Tax Court. This multi-layered process highlights the importance placed on transparency and access to redress before property is affected<sup>45</sup>.  
South Africa

The South African Revenue Service (SARS) must obtain court-sanctioned compliance orders before seizure, maintaining fairness and transparency<sup>46</sup>. These models balance enforcement with protection which is absent in Nigeria's current design.

South Africa adopts a similarly balanced approach under the Tax Administration Act, 2011, which guides the South African Revenue Service (SARS) in recovering outstanding tax debts<sup>47</sup>.

Chapter 11 of the Act allows SARS to enforce collection either through a civil judgment (Section 172) or via administrative procedures, such as issuing a final demand and giving the taxpayer an opportunity to respond. In cases involving third-party recovery (e.g., instructing a bank to release funds), Section 179 requires a 10-business day advance notice, ensuring the taxpayer is adequately informed<sup>48</sup>.

In addition, taxpayers have the right to object or appeal under Sections 104–107, with further escalation possible to the Tax Board or Tax Court. The framework reflects South Africa's deliberate effort to balance strong enforcement powers with meaningful procedural protections and accessible dispute resolution<sup>49</sup>.

#### **4.4 Comparative Analysis and Key Observations**

A comparative examination reveals several important contrasts:

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<sup>42</sup> Internal Revenue Code (IRC), S.6331(d)

<sup>43</sup> Ibid S. 6330(a)

<sup>44</sup>Oyenitun S. "Tax Distraint Under the Nigerian Tax Administration act 2025: Distraint without Restraint? Op. cit

<sup>45</sup> Ibid

<sup>46</sup> Tax Appeal Tribunal statistics show increased filing of abuse-of-power complaints Op. cit

<sup>47</sup>Oyenitun S. "Tax Distraint Under the Nigerian Tax Administration act 2025: Distraint without Restraint? Op. cit

<sup>48</sup> Ibid

<sup>49</sup> Ibid

**Judicial Oversight:** While Nigeria requires a court order, enforcement in practice is often summary. In contrast, the U.S. and UK embed layered procedural protections before seizure.

**Taxpayer Rights:** Foreign jurisdictions provide clearer appeal mechanisms and exemptions, whereas Nigerian law remains relatively silent or fragmented.

**Proportionality:** Other jurisdictions emphasize proportionality and economic survival, Nigerian distraint sometimes results in business shutdowns.

**Policy Orientation:** Nigeria's approach is largely revenue-driven, while other jurisdictions balance revenue with compliance culture and voluntary cooperation.

Drawing lessons from jurisdictions such as the UK, the US, and South Africa, Nigeria can reform its tax distraint framework in a manner that promotes revenue collection while respecting the rule of law, economic sustainability, and taxpayer rights.

## **5. Implications of Unbounded Distraint**

### **5.1 Risk to Property Rights & Due Process**

Unregulated distraint of property can violate constitutional protections, fostering anxiety and undermining trust in tax institutions.

### **5.2 Potential for Abuse**

With minimal oversight, the system is vulnerable to overreach or corruption, especially affecting individuals and small businesses<sup>50</sup>.

### **5.3 Economic Fallout**

While distraint expedites revenue collection, high-handed use could disrupt business operations and discourage compliance.

## **6. Recommendations**

1. The Act should be amended to mandate Judicial Authorization before distraint, aligning with Section 36 of the 1999 Constitution of Nigeria (as amended)
2. There should be a clear procedural safeguards in law or regulations allowing minimum grace period, a precise notice should be required, and there should be a regulated timeline.
3. There should be implementation of proportionality tests to evaluate necessity and scale of distraint actions.

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<sup>50</sup> TAT data referenced in Chambers Global commentary

4. There should be an established oversight and appeal, empowering Tax Appeal Tribunal (TAT) or Tax Ombud to review distraint actions
5. There should be an enhanced training and ethics for officers on rights-respecting enforcement

Taxpayers should be educated on subordinate rights and remedies post-distraint.

## **7. Conclusion**

The Nigerian Tax Administration Act, 2025 represents significant reform, yet, its wide-reaching distraint powers risk violating constitutional norms through lack of oversight. To sustain tax compliance and public trust, reforms mandating judicial checks and robust procedural safeguards are essential. There should be a principled balance between enforcement and due process ensures both effective taxation and protection of fundamental rights.