

A close-up photograph of a wooden gavel resting on its sound block, with a pair of golden scales of justice in the background. The scene is set in a courtroom or library, with bookshelves visible. The lighting is warm and focused on the gavel.

**A NEW ACT, AN OLD BATTLE: SECURITY DEPOSITS,
CONSTITUTIONAL RIGHTS, AND THE NIGERIAN TAX
ADMINISTRATION ACT 2025**

In Nigeria's tax dispute resolution framework, few issues have provoked as much sustained controversy as the requirement for taxpayers to lodge security deposits before pursuing an appeal. This procedural requirement, presented by revenue authorities as a safeguard against frivolous litigation has increasingly collided with the constitutional guarantees of access to court and fair hearing. The controversial issue came into limelight in **Multichoice Africa Holdings BV v FIRS**, where the Tax Appeal Tribunal (TAT) interpreted **Paragraph 15(7)(c) of the Fifth Schedule to the FIRS (Establishment) Act 2007 (as amended)** as empowering the Revenue authority to require a taxpayer to pay 50 per cent of the disputed tax amount before an appeal could be heard. Accordingly, the Tribunal held that failure to pay the deposit rendered the appeal incompetent, effectively precluding judicial review and access to remedy.

This rigid application prompted immediate criticism. Observers correctly noted that a deposit requirement that effectively shuts the courthouse door runs directly counter to the constitutional guarantee of access to court and fair hearing under Section 36(1) and (2) of the 1999 Constitution. The Supreme Court in *Amadi v NNPC* had already warned that litigants should not be prevented from exercising their right to access court through regulations that render the right "nugatory".

In **Emenite Limited v FIRS**, the Tribunal recalibrated its stance. It held that, consistent with the hierarchy of legislation, the FIRS Act must prevail over subsidiary rules like the TAT (Procedure) Rules. Thus, the 50 per cent deposit under **Order III Rule 6(a)** of the TAT (Procedure) Rules 2021 could not displace the FIRS Act, and a security deposit could only be ordered at the Tribunal's discretion and only if FIRS proved one of three statutory conditions: failure to file returns, a frivolous or vexatious appeal, or the expediency of securing a deposit. This modest but significant jurisprudential shift reasserted that procedural rules may not impose burdens beyond what primary legislation contemplates

Judicial intervention at the constitutional level soon followed in Joseph Bodunrin Daudu SAN v Minister of Finance, Budget and National Planning & Ors, where the Federal High Court (Abuja) unequivocally held that any provision, whether in Tribunal Rules, Practice Directions, or Tax Appeal Rules mandating payment of 50 per cent (or the full assessed amount) of the disputed tax as a precondition to appeal is unconstitutional and void. The Court explicitly anchored its reasoning in **Sections 6, 36, and 251 of the Constitution** and the doctrine of separation of powers, affirming that procedural preconditions should not nullify the constitutional right to appeal.

Confronting this backdrop, the recent **Section 41(8) of the Tax Administration Act** stands out with its clear statutory requirement: a taxpayer dissatisfied with a TAT judgment may appeal to the High Court only if they pay **20 per cent** of the disputed amount into a designated High Court account, attaching proof of payment to the notice of appeal. This provision, though less austere than the previous 50 per cent requirement, nevertheless mirrors the same structural problem: it erects a financial threshold before the taxpayer's right of appeal can be entertained. It invites the same constitutional critique: does mandating 20 per cent as security still infringe constitutional rights by disproportionately impeding access to justice? Especially where judicial relief should be accessible irrespective of the litigant's wealth or liquidity.

The defenders of Section 41(8) may contend that the provision is grounded in sound policy, that is it deters frivolous appeals designed solely to delay payment of valid tax liabilities, ensures that the revenue authority's enforcement powers are not unduly stalled, and preserves public revenue. These arguments draw strength from comparative tax systems where similar deposit requirements exist, such as in parts of South Africa and Kenya, though often accompanied by mechanisms for waiver or judicial discretion in cases of hardship. Indeed, the problem

is the absence of any express hardship provision or waiver clause in Section 41(8) is a notable weakness.

The problem is that the Nigerian constitutional framework requires that limitations on fundamental rights must be reasonably justifiable in a democratic society. In the absence of a proportionality test or a balancing mechanism within the legislation, a blanket 20 per cent deposit requirement risks being struck down on the same reasoning as in **Daudu** - that it is a blunt instrument which fails to account for varying taxpayer circumstances and may disproportionately exclude legitimate appellants. The reduction from 50 per cent to 20 per cent may mitigate the severity of the barrier, but it does not eliminate the underlying constitutional friction.

Furthermore, by embedding the deposit requirement directly into primary legislation, Parliament may believe it has insulated the provision from the fate of the TAT's procedural rules invalidated in earlier cases. However, legislative supremacy in Nigeria is not absolute; under **Section 1(3) of the Constitution**, any law inconsistent with the Constitution is void to the extent of the inconsistency. Consequently, the mere elevation of the requirement from a tribunal rule to an Act of the National Assembly does not render it immune from constitutional challenge.

In practical terms, the likely trajectory is clear. Section 41(8) will almost certainly be tested in the courts, and its survival will depend on whether the judiciary is persuaded that the deposit requirement serves a compelling public interest in a proportionate manner that minimally impairs constitutional rights. If the courts adhere to the reasoning in **Daudu**, they may well strike it down, unless the provision is interpreted to allow for judicial discretion or exemptions. This points to a need for legislative foresight: a simple amendment inserting a hardship waiver or judicial override clause could preserve the revenue-protection purpose while insulating the provision from constitutional invalidation.

Conclusively, the legal and constitutional tension between protecting public revenue through security-deposit requirements and safeguarding taxpayers' right of appeal is far from resolved. **Multichoice** demonstrated the perils of rigid procedural rules; **Emenite** reaffirmed the primacy of statutory safeguards; **Daudu** laid down a constitutional baseline; and now, Section 41(8) of the TAA has re-ignited the debate. Whether this new legislative provision is the end of the matter or the beginning of another cycle of litigation will depend not only on judicial interpretation but on whether lawmakers are willing to refine it to withstand constitutional scrutiny.



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