

THEORETICAL ISSUES IN THE MANAGEMENT OF PROPERTY RATES TAX: A CASE FOR KAMPALA CAPITAL CITY AUTHORITY

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Abstract

This article examines the key theories in the management of property rates tax with specific focus on their relevance to Kampala Capital City Authority ('KCCA'). The theories discussed include the principal-agent theory, the game theory, Nozick's state of nature theory and Bentham's utilitarianism. The purpose of the review is to enable KCCA to properly manage property rates tax and property rates actors.

1. INTRODUCTION

Property rates tax is one of the taxes levied by local governments in Uganda. Other taxes that are levied by local governments include: ground rent; royalties; stamp duties; and registration and licensing fees.¹ Kampala Capital City is a designated as an urban area under the control of the central government, through Kampala Capital City Authority (hereinafter 'KCCA'). KCCA has the powers to levy taxes levied by other local governments, including property rates tax.² Property rates tax, from the statistics available at KCCA, is underutilized and is characterized by its limited understanding by the taxing authorities and the rate payers. This affects the performance of the property rates tax system. The purpose of this article is to analyse key theories underpinning the operation of the property rates tax system for KCCA to enable it improve property rates tax management in Kampala.

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1 The Local Governments Act, Cap 243, § 80.

2 Kampala Capital City Act, 2010 §50 cl. 2.

2. PROPERTY RATES TAX EXPLAINED

Property rates tax is a principal source of revenue for local governments, a significant operating cost for business, and one of the biggest components of housing costs for many consumers.³ As a source of revenue for Local Governments in light of decentralisation, it has been noted that increasing the autonomy for the districts and other levels of the local government over planning, budgetary and spending has potential for ensuring that delivery of services is tailored toward the specific needs of each local government and call for collection of some taxes like rates on their own to finance their budgetary needs.⁴ Property rates tax is levied by local governments on the taxable properties within their jurisdiction.

Property rates tax is coined in two concepts: property and rate. *Osborn's Concise Law Dictionary* defines property as that which is capable of ownership whether real or personal, tangible or intangible. It can also mean a right of ownership, for example the property in the goods.⁵ In the context of property rates tax, the term property is used to refer to buildings and the land they sit on but vacant land without buildings is not regarded as property.⁶ The Local Government (Rating) Act defines property to mean "immovable property and includes a building (industrial and non-industrial) or structure of any kind, but does not include a vacant site."⁷ The Act also defines "rate" to mean a rate on the property levied by the Local government (under the Act).⁸ According to *Halsbury's Laws of England*,⁹ the rate is not a tax on the land, but a personal charge.¹⁰ Under the Act, the rate is ascertained by reference to the rental value of the property.¹¹

From the above concepts, property rates tax in Uganda can be defined in simple terms as a tax on properties (private houses, commercial houses, factories, banks, e.t.c.) paid to

3 J. Goodman, *Houses, Apartments, and Property Tax Incidence*, JOINT CENTER FOR HOUSING STUDIES HARVARD UNIVERSITY W05-2, 1 (February 2005).

4 The Republic of Uganda, Ministry of Local Government, *Participants Handbook, Property rates Training for Local Governments*.

5 L. Rutherford & S. Bone, *OSBORN'S CONCISE LAW DICTIONARY* 266 (8th ed., 2003).

6 The Republic of Uganda, Ministry of Local Government, *supra* note 3.

7 The Local Government (Rating) Act No. 8 of 2005, §2 cl. 1.

8 *Id.*

9 39 *HALSBURY'S LAWS OF ENGLAND* 9 ¶10 (4th ed).

10 This position is fortified by the case of *R. v. S.T. Luke's Hospital* (1760) 2 Burr 1053, at 1063, it was held that the remedy for the failure to pay rates is a personal one, that is, by distress on the defaulter's goods.

11 The Local Government (Rating) Act No. 8 of 2005, § 11.

local governments based on their rental value.¹² The base for the property rates tax is “real property” defined as land and improvements or attachments to the land. According to Mila Freire, *et al*,¹³ property rates tax can be differentiated from other taxes by virtue of their two main characteristics: its visibility as in its local context within which it is implemented; and diversity with regard to the range of properties on which it can be imposed.

The property rates tax is a highly visible tax. Unlike income tax, for example, the property rates tax is not withheld at the source. Rather, taxpayers generally have to pay it directly in periodic lump sum payments.¹⁴ This means that taxpayers tend to be much more aware of the property rates tax they pay. The property rates tax also finance services that are highly visible such as roads, garbage collection, street lighting, drainage, security. Visibility is desirable from the decision-making perspective because it makes taxpayers aware of costs of local public services.¹⁵ This awareness enhances accountability to the taxpayers and the members of the public.

Property rates tax, aside from the characteristics of visibility and diversity aforementioned, has other unique characteristics which include the favourable treatment of residential property. It is common for the property rates tax to favour residential over commercial and industrial properties.¹⁶

Property rates tax is one of the primary sources of funding for local governments.¹⁷ In Uganda, it can better be expressed as a hand-maid of the fiscal and budgetary realization of the local governments under decentralization.¹⁸ It has been estimated that property rates tax accounts for about 14% of the total local revenue of local governments in Uganda.¹⁹ The revenue generated from property rates tax collection is usually used to finance services of a

12 Kampala District: Local Government Budget Frame Work Paper for Financial Year 2001/2002, 41 (2001/02).

13 F. MILA *et al*, THE CHALLENGES OF URBAN GOVERNMENT: POLICIES AND PRACTICE 269 (2001, World Bank Publications).

14 M. De Cesare Claudia, *Challenges to Property Tax Administration in Porto Alegre, Brazil*, 11 LAND LINES 5, 3 (1999).

15 *Id.*

16 This can be illustrated by the Local Government (Rating) (Amendment) Act 12 of 2006, which exempts residential buildings which are owner – occupied from being liable to levy of the property rates tax.

17 M. Wayne & S. McCullough, ARKANSAS PROPERTY TAX: A LOCAL TAX SUPPORTING LOCAL SERVICES, 3 (2005, University of Arkansas Cooperative Extension Service Printing Services).

18 A. Nsibambi, MAKING DEMOCRATIC DECENTRALIZATION AN INSTRUMENT OF POVERTY ERADICATION, UGANDA’S CHALLENGE, 74 (1997).

19 The Republic of Uganda, Ministry of Local Government, *supra* note 4.

local public goals nature, that is amenity services- the benefits from their provision tend to be geographically concentrated for example physical infrastructure, street lighting, waste disposal and environmental health. Thus, the Local Government (Rating) Act provides that revenue raised from property rates be used to deliver such services to the rate payers of the areas.²⁰ The very nature of these services dictates that they cannot be financed through user charges but have to be financed through taxes.²¹

Property rates tax also has the advantage of being progressive. The presumption is that those who have properties to rent out are rich and they are the ones liable to pay rates. As ones income grows, he/she establishes more structures and pays more taxes in terms of rates. On the other hand, owner-occupied residential houses are exempt and therefore those with no properties to rent out but only have their residential houses (who are the poor) are not liable to pay property rates tax. This meets the desired principle of taxation that as one's income increases, the tax should also increase and vice versa.

The other advantage of property rates tax lies in the fact that it is difficult to avoid. The tax is assessed basing on the rental value which is easy to ascertain. Again it is assessed on immovable property, so there is nothing like the taxpayer has moved out of jurisdiction. Further, under the Local Government (Rating) Act, the tax is payable by the owner. However, if the owner cannot be found, then the occupier is liable to pay this tax. This illustrates that in all circumstances the property rates tax has to be paid and is very hard to avoid thereby providing the local governments with a realistic, stable and predictable financial base from which a local authority can make reasonable forecasts of likely future income, with a substantial certain and predictable yield.

Further, the tax burden needs to be apportioned according to the benefits that the individuals gain from the local government expenditures, which are funded by the taxation. Therefore, property owners whose properties are protected by the taxing authority should pay more in tax for the expenses so incurred than those who do not receive such protection. Property rates tax is justified on this ground because property owners are the major beneficiaries for the services provided as they increase the value of real properties. An example is where a person owns a property in an area with a poor road. If the road is

20 The Local Government (Rating) Act No. 8 of 2005, §37 cl. 2.

21 The Republic of Uganda, Ministry of Local Government, *supra* note 4.

afterwards repaired by the local authority, the rental value of the property will increase and in this case it is only just that the person pays for the enhanced value in terms of property rates.

Although the benefit approach may be challenged on account of the benefits not being traceable to individual property ownership and the fact that the bulk of property rates tax revenue is spent on provision of general public services such as street lighting, property owners view property rates tax and public services as closely linked. There is likely to be more willingness to pay where property tax revenue is spent on public services. Thus besides the criticisms, the benefit approach is seen to gain some support.

On the other hand, property rates tax has been seen as terribly unpopular with voters, and as a result, politicians detest relying too heavily on it. Revenue raised in form of property rates tax may generate more negative reaction than any other levy.²² There are several reasons for this degree of unpopularity. One is that the property rates tax is levied on (unrealized) accretions to the wealth of an individual or a business, and these accretions do not necessarily correspond to income received. The unpopularity of the property rates tax is also a bi-product of the judgmental approach to assessment. A proposed increase in the tax rate on a tax base that is determined in uncertain or even mysterious ways is bound to provoke negative reactions. Again, the property rates tax is unpopular in part because it is so visible. Most income tax payers are subject to withholding, but even so, may not be able to accurately report their annual payments. Consumption taxes are paid in small increments, and are often obscured in the final price of the merchandise. Most could not even estimate the annual amount of Value Added Tax (VAT) that they may pay. The property rates tax, on the other hand, is highly visible in that it is usually billed annually or quarterly, and property owners are much more likely to know exactly what they pay.²³

Property rates tax is also said to be bad because of its inelasticity. Local government officials desire a tax that exhibits an automatic revenue growth. This protects them from returning regularly to the voters for permission to increase the tax rates every time the demand or cost of public services increases. The property rates tax is not an income-elastic tax. The basic problem is that reassessments occur only on a periodic basis; hence year-to-year growth in revenues is mostly due to the addition to the tax base through construction.

22 R. Bahl & J. Martinez-Vazquez, *The Property Tax in Developing Countries: Current Practice and Prospects*, LINCOLN INSTITUTE OF LAND POLICY WORKING PAPER, CODE NO. WP07RB16 (2007).

23 *Id.*

When revaluation is too infrequent, say every 5 or 10 years, it leads to large one-time increases in tax liability, and to voter uproar from the shock.²⁴

3. THEORIES IN ADMINISTRATION OF PROPERTY RATES TAX AND THEIR RELEVANCE TO KCCA

3.1 PRINCIPAL-AGENT THEORY

This theory is a very important management tool in the property rates tax system. Under a principal-agent interaction, at least two people are to collaborate in the creation of a service that has value. The two persons are, however, not partners or of equal legal standing. The agent is the person who works for the principal, who puts up the remuneration for the agent's effort against the value that the agent hands over to the principal in the form of a product of some sort.²⁵ Thus, principal-agent interaction is fundamentally a contracting problem concerning how much of the value that the agent produces should go back to him/her in the form of a payment.

However, what makes the principal-agent model distinctive is the additional assumption of asymmetric information, meaning that the agent knows more than the principal about the service in question in a manner that affects the contracting outcomes.²⁶ A distinction may be made between short-term contracting as with the buying and selling of goods on the one hand and long-term contracting on the other hand whereby one person hires another person or group of persons to work for them against remuneration.²⁷

The principal is the residual owner of the output that the agent contributes to. Thus, the ultimate consequences of the principal-agent interaction fall upon the principal (in this case, KCCA). The agent typically works for the principal, meaning that his output is accredited to the principal who bears the full responsibilities for it. The agent is paid for his service, whereby the final payment terminates the interaction. The principal and the agent are not

24 *Id.*, at 7.

25 Jan-Erik Lane, *Relevance of the Principal-Agent Framework to Public Policy and Implementation*, (University of Geneva and National University of Singapore), (2003) available at <http://www.spp.nus.edu.sg/Handler.ashx?path=Data/Site/SiteDocuments/wp/2003/wp29.pdf> (15 December, 2013).

26 *Id.*

27 *Id.*

partners or merely collaborators.²⁸ The principal is the owner and the ultimate initiator and goal setter. The agent gives advice, suggests means and takes alternative action to promote the goals of the principal, for which activities he/she is compensated by means of a payment of a salary of some sort.

The agent will only demand a contract from the principal which has incentives. Agents are motivated by the manner in which they are rewarded for their work. The principal-agent approach starts from incentives and looks at the strategies that the two sets of players – principal and agents – will engage in when interacting in order to accomplish a collective effort. The quality of the work done by the agent under the principal agent framework is also greatly improved by adequate monitoring of the agent's activities by the principal.²⁹

This theory is important in understanding the relationships among the key actors in property rates tax system. Property rates tax practice presents relationships of central government, local authority, tax administration system and taxpayers at different levels. Kampala Capital City Authority as the principal body responsible for property rates in Kampala City usually hires independent firms of valuers to value the properties. Given this situation, how can the work of these valuers, as agents, be improved under the principal-agent theoretical framework by KCCA, the principal?

The principal-agent framework is not only of interest in understanding the relation between various administrative levels within the taxing authority, but is also useful to the understanding the relation between citizens (property owners) and the political leaders (KCCA). The leaders, having been elected to serve would also be regarded as the agents of the citizens to whom they are accountable.

The principal-agent approach can be looked at starting from incentives and the strategies that the two sets of players – principal and agents – will engage in when interacting in order to accomplish a collective effort. Under this model, the quality of the work done by the agent can be viewed to be greatly improved by adequate monitoring of the agent's activities by the principal. The firms, for example, involved in the valuation process in KCCA have limited finances to accomplish the valuation process. This is because, owing to the competition in the bidding process, they quote a low figure in order to be awarded the

28 *Id.*

29 D. E. Stevens & A. A. Thevaranjan, *Moral Solution to the Moral Hazard Problem*, (2008) available at <http://ssrn.com/abstract=1138279> (10 February, 2014).

contracts. KCCA pays them the quoted low figure to carryout the valuation and in the end they employ very few data collection personnel which delays the valuation process and which renders it ineffective. The limited incentives (limited funds) from the principal (KCCA) makes the private firms (agents) to perform the work with less perfection under the principal-agent model. The Divisions of KCCA have less control over the contracted firms. Most of the monitoring is done from KCCA head office which is ineffective. Limited monitoring from the KCCA or its Divisions, the principal, as established in this article, has negatively affected the quality of the work done by the private firms, the agents.

The principal-agent framework can also be used to understand relationship between citizens (property owners) and KCCA under a decentralised system of governance. The local councillors and executive members of local councils, having been elected to serve are regarded as the agents of the citizens to whom they are accountable. Property rates tax payers are concerned with lack of transparency on the part of KCCA in relation to property rates tax management and there is poor service delivery. It is on the basis of these that the rate payers have been reluctant to pay property rates tax as they fall due to KCCA. The local councillors, executive members at all levels and area members of Parliament exert political interference in the valuation, collection and enforcement processes of property rates tax system.

3.2 GAME THEORY

Game theory is a decision making tool that has wide application in making decisions in various complex situations that confront legal persons and organisations as well as natural persons. A game represents a situation involving players with at least partly opposing interests and where each player is assumed to act from their own interests. According to Davis,³⁰ in a game, there are others present who are making decisions in accordance with their own wishes, and they must be taken into account. In a game, each player must assess the extent to which his or her goals match or clash with the goals of others and decide whether to cooperate or compete with all or some of them.³¹ Thus, on the basis of these views, any decision made in a conflict environment must take into account the position and the likely behaviour of the opposing side.

30 M. D. Davis, *GAME THEORY: A NON TECHNICAL INTRODUCTION*, xiv (1983).

31 *Id.*

In a tax environment, there are distinct set of goals representing the tax authority on one side and the taxpayer on the other. In this article, tax compliance is partly viewed as a game involving interactions of the tax authority (KCCA) and the rate payers, each selecting strategies with the view of winning as many rounds as are played. In a tax game theory, KCCA is assumed to seek to maximise net tax revenue while a rate payer seeks to minimise expected rate payments and therefore maximise his/her net income. Each of the players adopts different strategies in accomplishing the intended motive. The rate payer takes advantage of the information he possesses about the rental value of his property and might evade taxes at the declaration stage.

On the other hand, KCCA ascertains the correct rental value of the rate payer's property by adopting a valuation system. Where cheating is detected (for instance in self declaration forms for the rental value), tax evasion penalties are applied. However, if evasion is not detected, the outcome is a gain to the rate payer since his expected tax payments will be lower, and his income will increase. Conversely, the outcome is a loss to the taxpayer if found guilty of evasion and is punished as his expected tax payments increases plus penalties and subsequently receives lower net income. This reflects one feature of payoffs in a game where a player gains when the opponent loses and vice versa.

Tax compliance can be viewed as a repeated game because declarations and valuations are repeatedly done. Where cheating has been detected and the rate payer convicted, the rate payer's decision about evasion in future is likely to take into account the consequences of the previous evasion. It is presumed that rate payers who have been convicted of evasion will become more compliant in the subsequent periods of the game due to the threat of being detected and punished.

Furthermore, a tax compliance game indicates existence of both competitive and cooperative elements. According to Davis,³² tax compliance game portrays a situation where the interests of the players are opposed in some respects and complementary in others. The interests are opposed in the sense that KCCA plays strategies intended to generate more revenue while the rate payers employ strategies aimed at seeking to pay less than required. Conversely, the interests are considered complementary because they all focus on revenue that the local government spends for the benefit of the citizens in form of public goods and

services. While each player employs different strategies in realising her/his own interests, the opposing interests may indicate that parties have no common interest but in reality they do.

The primary objective of KCCA in imposing property rates tax on individuals is to raise revenue intended for the provision of public services. Subsequently, if rate payers choose not to pay the designated taxes, the probability of KCCA providing the envisaged public goods and services becomes low. In this article, therefore, the game theory is used to understand the relationship between KCCA and the rate payers, in property rates tax assessment, collection and enforcement.

A game represents a situation involving players with at least partly opposing interests and where each player is assumed to act from their own interests. Whereas KCCA seeks to maximise net tax revenue, the rate payers seek to minimise expected rate payments and therefore maximise the net income. It is for these reasons that the rate payers fail to disclose accurate information on the rental value of the properties and accurate names of some property owners. It is for this reason that KCCA hires private firms which may be more effective to carry out the valuation process, to detect the frauds in the system and institute penalties where it is necessary. To maximise tax collection, KCCA contracts private firms to enforce the law and collect property rates from the rate payers.

In the tax authority – rate payer game situation, if a rate payer thinks that KCCA will not provide the services, then he/she will be hesitant to pay the rates. Thus, from the rate payer's point of view, it is more profitable not to pay the tax as the payoffs under this option are higher than if one paid. The equation in this game theory is that KCCA cannot provide public services as required under the law because people do not pay rates. Equally, people are unwilling to pay rates citing the inefficiency of KCCA to provide them with the required services.

3.3 NOZICK'S STATE OF NATURE THEORY

Robert Nozick developed this theory from an initial "state of nature;"³³ a state of affairs in which isolated individuals use whatever means available in order to live and obtain goods and services, with no governing body to bring them together.³⁴ Under these conditions,

33 R. Nozick, ANARCHY, STATE, AND UTOPIA, 10 (1974).

34 *Id.*

Nozick argues that individuals decide to form a protective society. Nozick's basic assumption, which lays the foundation to an overall rejection of almost all forms of taxation, is that this society “naturally” results in a state very limited in powers and responsibilities.³⁵ The meaning of entitlement under the Nozickian regime includes the right of the individual to own goods and services justly acquired, but also the right to dispose of these holdings as one chooses.³⁶ These aspects of entitlement, Nozick prescribes, cannot be challenged without a compelling justification.

As Nozick puts it, individuals have rights, and there are things which no person or group may do to anyone else without violating those rights. So strong and far-reaching are individuals' rights that they raise the question of what, if anything, the state and its officials may do.³⁷ Protecting individuals' rights demands that the state's powers will be limited to narrow functions, such as enforcement of contracts and protection against force, theft and fraud.³⁸ In Nozick's view “any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified.”³⁹ Nozick reaches this conclusion by, in effect, presupposing that individuals are entitled to the holdings they possess. According to this line of thinking, a just distribution of income and wealth is the distribution that results from individuals' free exchanges.⁴⁰

Government interference with personal holdings, such as through the system of taxation, is perceived to be equivalent to forced labour,⁴¹ a violation of individuals' basic rights and not merely of efficiency. That Government intervention by means of redistributive taxation, when taking from the fortune of one person to improve the lot of another, is further unjust because it is a more extreme form of undermining the existing distribution of holdings. It is hence clear why in the Nozickian description of the state there is no place for public education or municipal transportation, roads or parks, since these services necessarily involve the taxation of some people against their will.

35 *Id.*

36 *Id.*, at 160

37 *Id.*, at 140.

38 *Id.*, at 15-17.

39 *Id.*, at 9ix.

40 *Id.*

41 *Id.*, at 224-27, 229. This is because the individual will in effect be coerced to exercise more labour or talent in order to compensate for the tax.

Nozick presents three main principles as the foundation of his theory:

- (1) A principle of transfer: whatever is justly acquired can be freely transferred;⁴²
- (2) A principle of initial acquisition: an account of how people initially came to own their holdings;⁴³ and
- (3) A principle of rectification of injustice: how to deal with holdings that were unjustly acquired or transferred.⁴⁴

According to the Nozickian theory' only private possessions that comply with these three principles are rightfully held. If all private possessions are rightfully held, then the entire distribution of private property is just and should not be disturbed.

The first and second principles of the Nozickian doctrine state that in order to justify the existing distribution of holdings, past acquisitions in the chain of transfers must be legitimate. If the first person who took possession of something did so through an illegitimate use of force or deception, then this person has no legitimate claim over the asset and, hence, no legitimate right to transfer it to someone else. Conversely, when past acquisitions and transfers are legitimate, there is no justification for forced taking of privately held possessions. Notwithstanding the general tenet against forced taking of private resources, according to the third principle of the Nozickian doctrine, redistributive measures, aimed at remedying injustice in past acquisitions or transfers of holdings, are morally justified.⁴⁵

Nozick's theory, however, faces challenges over the description of the initial position and the reliance on this description to generate what he offers as the foundation of a just social system. The historical view of the beginning of time, compared to the philosophical view, describes this period as one in which natural resources came to be someone's property by force rather than through a free willed exercise of effort and talent, as implied by Nozick.⁴⁶ Since the use of force makes acquisition illegitimate according to the Nozickian

42 *Id.*, at 150-151. According to Nozick, the topic of transfer involves "complicated truth," which he does not attempt to develop. He does mention, however, that this principle includes "descriptions of voluntary exchange, and gift and on the other hand, fraud."

43 *Id.*, at 150. Unfortunately, Nozick does not develop this principle of acquisition either. He does, however, note that the principle has several problematic issues including figuring out which "unheld" things came to be held and how.

44 *Id.*, at 152-3, 230-3.

45 *Id.*, at 152.

46 W. Kymlicka, *CONTEMPORARY POLITICAL PHILOSOPHY: AN INTRODUCTION*, 108 (1990).

doctrine, such historical description suggests that the current distribution of holdings is, in the very least, problematic.

This theory can be used to understand issues surrounding the imposition of rates, in particular, whether it is appropriate to require a person owning a rateable property to pay rates and the revenue used for instance in the construction of roads to be used by the general public; and whether this method of taxation amounts to an unjust encroachment on the property owner's wealth which he acquired by his effort. In circumstances where two people hold different properties but one resides in the property and the other lets it out but obtains an alternative place to rent, the latter pays rates on his property while the former does not. This theory can also be used to assess whether in such circumstances it is just to impose rates on the latter while exempting the former.

Whereas it would be just that every property owner pays property rates tax since this is a local service tax that increases the value of the properties in question. This tax could, therefore, be equitable where all rate payers pay the assessed rates and the same is effectively applied to the delivery of services. It would also be just where all the property owners in a particular locality are liable to rates, regardless of the status of occupation (that is whether owner occupied or rented out). The examination of the property rates tax system in KCCA reveals that not all rate payers pay the assessed rates; the money collected from property is not fully applied to the provision of services; and persons in owner occupied properties are not liable to pay rates, yet they enjoy the same services as the rate payers. In these circumstances, the property rates system in KCCA amounts to unjust encroachment on personal wealth within the framework of Nozick's state of nature theory.

3.4 THE THEORY OF UTILITARIANISM

Utilitarianism is one of the dominant contemporary moral theories and no less essential to modern tax discourse. The theory has its roots in the work of Jeremy Bentham,⁴⁷ and can be broken down into two main parts: the first part forces policymakers to concentrate on human welfare, or "utility,"⁴⁸ while the second contains an instruction to consider utility by giving equal weight to each individual.

47 J. Bentham, *THE THEORY OF LEGISLATION*, 2 (C.K. Ogden ed., 1931).

48 *Id.*

Utilitarianism is grounded on a vision of equality in that no one person should be worth more than another.⁴⁹ In its simplest formulation, utilitarianism holds that the right act or policy is that which produces the greatest utility among members of the society, calculated by totaling all individuals' pleasures and pains. Jeremy Bentham believed that man was placed in this world as an individual and is ultimately governed by two masters, pain and pleasure. According to this line of thinking, the entirety of human behaviour can be understood as the pursuit of utility, based on a reasoned calculation designed to maximize pleasure and minimize pain.

The utilitarian principle suggests that public policy should be based on the general pursuit of happiness, the maximization of aggregate utility and fundamental equality. When it comes to the design of the property rates tax system, utilitarianism can therefore be interpreted to result in two main policies: The first policy alternative calls for the extraction of the least total sacrifice, in terms of collective utility loss caused by taxation, while maintaining social welfare at a maximum level. The second policy option demands the extraction of an equal tax burden from each person, in terms of individuals' utility losses caused by taxation, while following the fundamental notion of equal consideration for all members of society.⁵⁰

Early utilitarianism advocated the second policy alternative. Taxes were prescribed to be levied so that the loss in marginal utility of income - that is, the loss in utility from taking money away from an individual - was the same for all individuals.⁵¹

The contemporary utilitarian paradigm holds that for each individual, the relation between the loss in utility from taxation, and the gain in utility from revenue, ought to be the same and that, taken as a whole, the loss of aggregate utility will be minimal, and that there will be some gain in social welfare.⁵²

This theory can be used to justify adoption of the annual rental value basis of assessment such that the higher the rental value, the higher the rates thereby maximizing aggregate utility and fundamental equality as expounded under this theory. Secondly the use

49 *Id.*, at 1.

50 W. Blum & K. Kalven, *THE UNEASY CASE FOR PROGRESSIVE TAXATION*, 41-44 (1953); Musgrave, *THE THEORY OF PUBLIC FINANCE*, 77 (1959).

51 J. S. Mill, *PRINCIPLES OF POLITICAL ECONOMY*, 258-259 (5th ed., 1883).

52 F. P. Ramsey, *A Contribution to the Theory of Taxation*, 37(145) *THE ECONOMIC JOURNAL*, 47-61 (1927).

of revenue from property rates for public purposes such as development of roads and garbage collection which benefit the rates paying community, thus gaining utility from the revenue paid. Under this theory, payment of rates with corresponding development of roads, garbage collection and street lighting to benefit the rates paying public would bring about same utility from the revenue paid. However, in KCCA, the special treatment given to owner occupied properties and the limited services offered by KCCA to the rate paying public imply that the property rates tax system in KCCA does not meet the equality and same utility principles under the utilitarianism theoretical model. In the same vein, KCCA is by law required to take back 75% of the rates so collected to the rate payers for provision of various services.⁵³

4. CONCLUSION

I had the benefit of interviewing senior officials in KCCA and some few property rates tax payers and have doubts whether KCCA understands the theories discussed above and whether they are being applied for better performance and efficient service delivery to the tax payers. Equally, the rate payers might be ignorant about these theories and they end playing no role other than paying the tax in the property rates tax administration system. The way forward is for KCCA to continuously mount educational programmes through the media and encourage participation of the people in the payment and management of property rates tax.

53 The Local Government (Rating) Act No. 8 of 2005, § 37 (2).