

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON MONDAY THE 4TH DAY OF DECEMBER, 2017
BEFORE THE HONOURABLE JUSTICE
M. B. IDRIS
JUDGE

SUIT NO:FHC/L/CS /7A/15

BETWEEN:

TRANSOCEAN DRILLING UK LIMITED.... APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE RESPONDENT

JUDGMENT

This is an appeal against the decision of the Tax Appeal Tribunal dated 20th of March, 2015. The Appellant,(as Complainant/Appellant before the Tribunal) commenced Suit No: TAT/025/2013 by a Notice of Appeal dated 13th November, 2013 against Tax Notices (Notice of Additional Assessment) issued on the Appellant by the Respondent for the year 2008, 2009, 2010 and 2011 Years of Assessment.

After the commencement of, TAT/025/2013, the Respondent served on the Appellant, Notice of Additional Assessment for the year 2011, 2012 and 2013. Aggrieved



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by the additional assessment, the Appellant filed another Appeal: TAT/031/2013 vide a Notice of Appeal dated 11th December, 2013 before the Tribunal. At the instance of the Appellant, the Tribunal consolidated both Appeals filed by the Appellant (Appeal Nos: TAT/025/2013 and TAT/031/2013). The Tribunal subsequently delivered a single judgment that covered both Appeals.

On 3/03/2014, the Respondent filed its Notice of Intention to contest the Appellant's Appeal before the Tribunal. The Appellant called one Mrs Aworitse Faseun as its sole witness at trial and tendered documents before the Tribunal including the Notices of Additional Assessment for the years in contention. The Respondent called no witness but cross examined the Appellant's witness. On 19/09/2014, parties exchanged final Addresses and same was adopted before the tribunal on 19/09/2014.

The Tribunal delivered its decision on 20th March, 2015 (Pages 333 - 338 of the Record of Appeal), wherein the Tribunal dismissed the Appellants appeal and held as follows:

The Appellant is liable to tax for all income derived from its operations in Nigeria through its Nigerian affiliate Global Offshore Drilling

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Limited. The recharges form part of the Appellant's Nigerian-derived income and is thus assessable.

2. Recharges are thus not allowable deductions when calculating a foreign company's income tax.

3. The 17th September 2013 additional assessment notice Number PDBA 323 stands. We strike out FIRS's 26th June 2013 additional assessment notice for 2011.

We order the Appellant to pay the additional assessments totaling US\$5,805,940.00 (Five million, Eight Hundred And Five Thousand, Nine Hundred and Forty United States Dollars only).

Dissatisfied with the foregoing decision, the Appellant filed Separate Notices of Appeal against the decision of the Tribunal and has appealed to this Court vide its Notice of Appeal dated 20th March, 2016 with Appeal Nos: FHC/L/7A/2015 and FHC/1/8A/2015. On 19th February, 2016, this Honourable granted the Appellant's Application for Consolidation of the two Appeals.

The Appellant with the leave of the Honourable

1 Court 2016 filed an Amended Notice of Appeal on 16th March, 2016.

The parties filed written addresses, which was adopted at the hearing of the appeal.

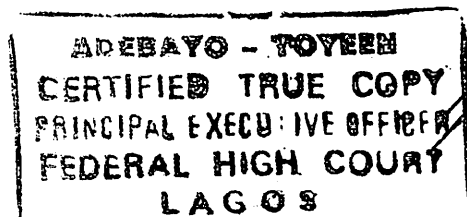
The Appellant formulated the following issues for determination:-

- (1) Whether the Tax Appeal Tribunal had the jurisdiction to entertain this matter being an appeal relating and taxation of companies? (Ground 2 of the Amended Notice of Appeal)?
- (2) Whether the Tribunal was right when it held that "the case has not been made by the Appellant that there was a receipt of tax by the Respondent from the Nigerian Affiliate with respect to such recharges which should be set off from the tax liability and we shall make no more comment on such speculation in the instant appeal?" (Grounds 1 and 3 of the Amended Notice of Appeal).
- (3) Whether the Tribunal properly considered

and determined all the issues submitted to it for determination' by the parties, including evidence adduced before it before it arrived at its decision? (Ground 4 of the Amended Notice of Appeal).

- (4) Whether the Tribunal correctly applied the decision of the Court of Appeal in the case of Halliburton West Africa Limited V. Federal Board of Inland Revenue regarding the applicability of the doctrine of legitimate expectation to the facts and circumstances of these appeals? (Grounds 6 and 7 of the Amended Notice of Appeal).

It was argued that the Tax Appeal Tribunal (Tribunal) lacked the jurisdiction to entertain the subject matter of this appeal because the Constitution had conferred exclusive jurisdiction on the Federal High Court over all cases and matters relating to or pertaining to the revenue of the Government of the Federation and connected with or pertaining to taxation of companies and other bodies



established or carrying on business in Nigeria and all other persons subject to Federal taxation. That the tribunal judgment was null and void and of no effect whatsoever.

It was also argued that the tribunal failed to decide the issues submitted to it by the Appellant and which issues were adopted by the Respondent, and that the judgment of the tribunal was against the weight of evidence adduced by the appellant.

It was contended that the tribunal misunderstood and therefore incorrectly applied the doctrine of legitimate expectation to the facts of this case. That the decision of the Court of Appeal in **HALLIBURTON W/A LTD VS. FBIR** was wrongly applied.

The Court was urged to uphold the appeals and set aside the judgment of the tribunal. These cases were relied on:-

LIST OF AUTHORITIES

1. **NNPC VS. CNOOC & ORS (SUIT NO. FHC/L/7A/2013) REPORTED IN 2015 15 TLRN 17.**
2. **GENERAL ELECTRIC COMPANY VS.**

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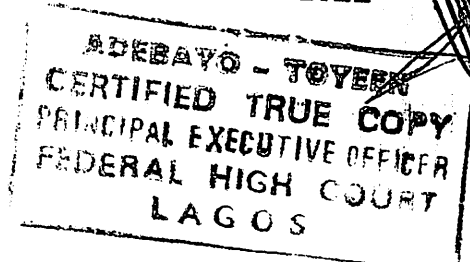
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- HARRY AYOADE AKANDE & 5 OTHERS
(1999) 1 NWLR (PT. 588) 532 AT 543
(C-E).
3. BRONIK MOTORS VS. WEMA BANK
(1983) 1 SCNLR 296.
 4. A.G. LAGOS VS. DOSUNMU (1989) 3
NWLR (PART 111) 552.
 5. A-G BENDEL VS. AIDEYAN (1989) 4
NWLR (PART 118) 646.
 6. OLOBA V AKEREJA (1988) NWLR
(PT.84) 504.
 7. JOV V. DOM (1999) NWLR (PT. 620)
538.
 8. OBIUWEUBI VS. C.B.N (2011) 7 NWLR
(PT. 1247) 466 AT P.494, PARAS. E-F.
 9. GABRIEL MADUKOLU & OTHERS VS.
JOHNSON NKEMDILIM (1962) 2 NSCC
374 AT 379 -380.
 10. JOHN AGBAJI ATTAH OCHAGA VS.
MILITARY ADMINISTRATOR OF BENUE
STATE & ANOTHER (2001) 1 NWLR
(PART 695) 570 AT 585 (PARAGRAPHS
C-F).
 11. BRONIK MOTORS LTD VS. WEMA BANK
LTD (1983) 1 SCNLR 296.



12. OKOYA VS. SANTILI (1990) 2 NWLR (PT. 131) 172.
13. STATE VS. AJIE (2000) 11 NWLR (PT. 678) 434 AT 449 PARA. C-D.
14. CHUKWU & ANOR VS. INEC & ORS (2014) 10 NWLR (PT. 1415) 385.
15. IROLO VS. UKA (2002) 14 NWLR (PT. 786) 195 AT 238 PARA D-F.
16. ATOLAGBE VS. SHORUN (1985) 1 N.W.L.R. (PT. 2) 360 AT 375 PARA. H.
17. HRH EZE (DR.) PETER OPARA & ANOR VS. DIAMOND BANK PLC & ANOR (2011) LPELR-4268 (CA), PAGE 18.
18. JOLAYEMI VS. ALAOYE (2004) 12 NWLR (PT. 887) 322 AT 352 PARA. H-B.
19. UBN PLC VS. CHIMAEZE (2014) 9 NWLR (PT. 1411) 166 AT 182 PARA. G-H.
20. FBN PLC VS. OZOKWERE (2014) 3 NWLR (PT. 1395) 439 AT 467 PARA. C-D.
21. ANEKWE & ANOR VS. NWEKE (2014) 9 NWLR (PT. 1412) 393.
22. N.E.P.A. VS. OSOSANYA (2004) 5 NWLR (PT. 867) 601 AT 624 PARA. H.
23. ODIBA V. AZEGE (1998) 9 NWLR (PT. 566) 370 AT 380 PARA. D-E.