

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON WEDNESDAY, THE 19<sup>TH</sup> DAY OF NOVEMBER, 2014

BEFORE THE HON. JUSTICE A. R. MOHAMMED (JUDGE)

SUIT NO. FHC/ABJ/TA/12/2012

BETWEEN:-

OANDO PLC

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APPLICANT

Appellant. let me reproduce the grounds of Appeal. The grounds of

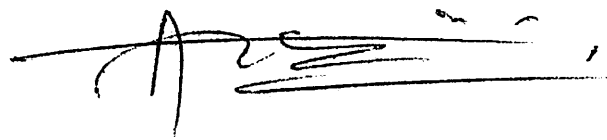
#### **GROUND FOUR**

The tribunal misdirected itself when it held relying on Exhibit P10 (page 4 of it's Judgment) that Exhibit P10 tendered by the Appellant being minutes of the 78<sup>th</sup> meeting of the Board of Directors of 13<sup>th</sup> May, 2002 shows that the meeting was for the purpose of acquisition of 60% share in Agip Nigeria Plc.

#### **GROUND FIVE**

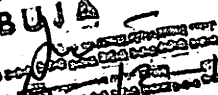
The Tax Appeal Tribunal erred in law when it held in page 5 of the Judgment as follows:

"Interest incurred on the loan from NAL BANK is the cost of acquiring Agip Nigeria Plc, which was to refinance 10% out of 15% paid initial deposit for the acquisition of the shares in Agip Plc. The acquisition of shares in Agip Nigeria Plc remains the basis for securing the loan from NAL BANK Plc, therefore interest (being cost of acquiring the loan) remains cost of acquiring shares of Agip Nigeria Plc".



#### **GROUND SIX**

The Honourable Tribunal erred in law when the Tribunal held in reliance on exhibits D1, D2, P10, P12 that the N1.2 billion loan the Appellant obtained from NAL BANK PLC was expenditure of a capital nature and not allowable for tax purpose.

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Date 16/12/14

### **GROUND SEVEN**

The Honourable Tribunal erred in law when the Tribunal held in page 5 of the Judgment as follows:

"The cost of acquiring shares in another company cannot be in any way described as solely or inevitably incurred for the production of profits of an integrated energy provider. This is especially the case as there is no statutory obligation on the Appellant to make the purchase which the case in the Shell case. Therefore, the purchase of shares in Agip Nigeria Plc is the main cause and purpose of incurring the cost. The loan from NAL BANK Plc was not employed as capital in acquiring the profits of the company being ascertained. The interest was cost of acquiring shares in Agip Nigeria Plc, consequently, the interest incurred as a result of the loan from NAL Bank Plc is not deductible.

### **GROUND EIGHT**

The Tribunal in giving its Judgment did not properly examine the case and argument put forward by the Appellant thereby violating the Appellant's right to fair hearing.



### **GROUND NINE**

The Tax Tribunal misdirected itself when it stated that based on Exhibit P4, the NAL Bank loan was used to refinance the acquisition cost of Agip Plc and not to replenish the working capital of the Appellant.

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#### **GROUND TEN**

The Honourable Tribunal failed to properly evaluate the totality of evidence adduced by the Appellant and also failed to weigh the totality of evidence adduced by the Appellant.

#### **GROUND ELEVEN**

The Tribunal does not have jurisdiction to entertain the subject matter of this appeal.

#### **GROUND TWELVE**

The decision of the Tribunal was against the weight of evidence.

The Appellant formulated the following issues for determination:

#### **ISSUES 1**

Whether in view of the provision of section 251(1) of the

not an allowable deduction for tax purpose is in line with provision of applicable Laws.

The Respondent also filed it's Brief of Argument. In the said Brief of

Sometime in January, 2007, the Appellant received two Notices of Assessment dated December 26, 2006 from the Board of Assessment.



jurisdiction on the Tribunal on an issue exclusively set out as falling  
within the jurisdiction of the Tribunal.

b. That paragraphs 11 and 20 (3) of the fifth schedule to the Federal

That Tax Appeal Tribunal is not (or was not intended to be) a

the Tribunal cannot stand on its own as it must be registered in the  
Federal Court

Court can be added to by an Act of the National Assembly, as in the Federal High Court Act, especially section 28 of the Act which adds jurisdiction of the Federal High Court as created by section 251(1) of the constitution of the Federal Republic of Nigeria, 1999 to enable the court entertain appeals from the Body of Appeal Commissioners by virtue of section 18 of the Income Tax (Amendment) Act, 2007. The Court was referred to the Court of Appeal case of SHITTU VS NIGERIAN AGRIC & COOPERATIVE BANK (2010)2 TLRN 162, which counsel said recognized

dispute relating to tax assessed and paid by the F. I. L. C. ...

Court shall have and exercise jurisdiction to the exclusion of any other court.

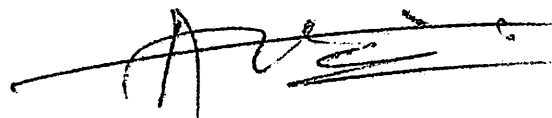
as envisaged in section 6 (5) of the constitution of the Federal Republic



The point should also be made that whether a party elects to first go to the Tax Appeal Tribunal or the Federal High Court to invoke its original jurisdiction on tax matters, is really, in my view a matter of procedure. The fact that a dispute over tax is taken to the Tribunal first does not mean that the Tribunal is usurping the jurisdiction of the Federal High Court, as whatever is decided at the Tribunal is subject to appeal at the Federal High Court. See section 28 of the Federal High Court Act. If the legislature had wanted administrative bodies like the Tax Appeal Tribunal to be among the courts excluded by section 251 (1), it would

to that effect in section 251 (1) of the

On the second issue for determination, it was submitted for the Appellant that had the Tribunal critically considered the documentary evidence tendered, it would have come to the conclusion that the Appellant actually obtained the loan for the purpose of replenishing its working capital. That in reaching the conclusion that the sum of N1.2 billion borrowed by the Appellant from NAL Bank Plc was used for the purchase of Agip Plc and therefore interest arising from the loan is not an allowable deduction, the Tribunal has misdirected itself on the facts and evidence adduced.



In the Respondent's brief of Argument, it was submitted that the

[REDACTED]

capital which was depleted as a result of payment of interest and other fees associated with the Acin transaction. The question to be asked is

to those documents that it perceived were relevant to the determination

On the fourth issue, Appellant counsel contended that the Tribunal was bound to apply the provision...

the Appellants' briefs.

