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IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT LAGOS, NIGERIA

ON MONDAY, THE 29TH DAY OF SEPT. 2014
BEFORE THE
HONOURABLE JUSTICE SALIU SAIDU
JUDGE

APPEAL NO: FHC/L/10A/13
SUIT NO. TAT/LZ/004/11

BETWEEN:

MOBIL PRODUCING NIGERIA UNLIMITED --- APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE --- RESPONDENT

RULING

This Appellant filed this Appeal on the 30th of September, 2013 against the Judgment of the Tax Appeal Tribunal, Lagos Zone delivered on the 21st June, 2013, in which the Tax Appeal Tribunal disallowed the Tax Appeal of the Appellant against the Education Tax Assessment of the Respondent.

In support of the records of Appeal is the Appellant's Brief of Argument dated and filed on the 30th day of October, 2013, wherein four(4) issues were raised for determination; which are;

i. **Whether** the Appellant has locus standi to bring this claim before this Honourable Tribunal

ii. **Whether** Force Majeure is applicable and relevant in this appeal

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Whether Appellant's failure to join NNPC and the Federal Government of Nigeria as Necessary parties is fatal to this appeal and robs this Tribunal of jurisdiction to hear this Appeal.

On issue 1, the Appellant submitted that having found at page 3 of the Judgment that "Indeed there is no new fiscal regime yet" the lower Tribunal erred when it held that "Exhibit MBU1" terminated at the end of 2002. Rather than apply "a Community reading' to the interpretation of these provisions, the lower Tribunal ought to have construed each word of the clauses carefully in order to ascertain the intention of the parties to Exhibit MBU1. Citing the case of **ANYAKORA VS OBIAKOR (1990) 2 NWLR (pt. 130) P. 52 at P.66 PARAS B-D.**

The Appellant further submitted that the court of Appeal has indicated that principles which apply in the interpretation of statutes are similar to those which apply to the interpretation of contracts. Citing the case of **KWARA STATE POLYTECHNIC VS KAMARU GBADEBO SHITTU (2012) LPELR 9843 AT PG. 52 PARAS A-C**

It is further submitted by the Appellant that had the lower Tribunal considered every word in clause 7 of Exhibit MBU1, the only meaning that it would have given to the provision, even from a community reading of clause 7, is that in the absence of a new fiscal regime, Exhibit MBU1 could not have terminated at the end of 2002, but instead, would have continued in force, by failing to do this, it cannot be said that the lower tribunal correctly interpreted clauses 7.1, 7.2 and 7.3.

The Appellant further submitted that the DPR letter of 17 January, 2008 (Exhibit MBU3) does not qualify as a Notice to terminate under Clause 7.2 and the lower Tribunal at page 3 of its judgment acknowledges that clause 7.2 did not come into play.

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Secondly, as found by the lower tribunal at page 3 of its judgment, no replacement fiscal regime has come into existence.

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In arguing issue 2, the Appellant submitted that by failing to reflect on the issues raised by the Appellant or pronounce on all of them, the lower tribunal has denied the Appellant the right to fair hearing contrary to Section 36(1) of the 1999 Constitution and occasioned a miscarriage of justice. The law is trite that where an omission to consider all the issues before a court has occasioned a miscarriage of justice, an appellate court is entitled to set aside the judgment of the lower court. Citing the cases of **OBAJE VS NIGERIA AIRSPACE MANAGEMENT AGENCY (2013) LPELR – 1995 AND MOKEME VS OKONKWO (2012) LPELR -9799.**

The Appellant further submitted that issues (c) and (d) are crucial and a favourable determination of them would have resulted in a positive judgment for the Appellant at the lower tribunal. The failure to consider and pronounce on them has breached the Appellant's right to fair hearing under Section 36(1) of the 1999 Constitution.

On issue 3, the Appellant submitted that while it concedes that the PPTA is the principal legislation in matters pertaining to the taxation of the profits of companies carrying on petroleum operations, it contends that the PPTA was in existence at the time the FGN executed Exhibit MBU1 with the Appellant and the NNPC, and all the parties agreed to be bound by clause 2.9 until such time as a replacement fiscal regime as contemplated by clause 2.3 of Exhibit MBU1 would come into existence. In reliance on equitable principles this Honourable Court can uphold the applicability of Exhibit MBU1, and/or enforce the Education Tax offsets against the Respondent in spite of the existence of the PPTA as the principal legislation. The equitable principles are legitimate expectation and Accord and Satisfaction. Relying on the cases of **STITCH VS A.G (FED) (1086) 5 NWLR (pt.46) 1007, A.G (HONG KONG) VS NG YUEN SHIU (1983) 2**

.C 629, RV. I.R.C EX-PARTE, UNILEVER PLC & ANOR (1994) IBTC 362, SPDC VS FBIR (1997) 1 NRLR (pt.1) 1 at P.22.

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Finally, on issue 4, the Appellant argued that the lower tribunal had accepted that Exhibit MBU14 and Exhibit MBU1 are all revised MOU's (with respect to the 1986 MOU) which show the parties understanding of their contract. Having held above, the lower tribunal ought then to have held that Exhibit MBU1 was within the contemplation of Section 11 of the PPTA and given effect to it accordingly.

In conclusion, the Appellant urges this court to find that the lower Tribunal was in error to have held in favour of the Respondent and grant the following prayers;

i. **An Order** allowing the appeal.
ii. **An Order** setting aside the judgment of the Tax Appeal Tribunal, Lagos Zone, delivered on 21st June, 2013.
iii. **An Order** setting aside the Respondent's Notice of Assessment No. PPTBA/ED 53 which was served on the Appellant.
iv. **And for Such Further** or Other Orders as this Honourable Tribunal may deem fit to make in the circumstances.

In opposition the Respondent filed a brief of Argument dated and filed on the 19th day of December, 2013 wherein four(4) issues were also raised for determination, which are;

i.) *Whether the lower Tribunal was correct in law when it held that Exhibit MBU1, had terminated at the end of 2002*
ii.) Whether failure of a Court to consider one of the many contentions of a party does not amount to a breach of fair hearing.

iii.) Whether the lower Tribunal was right when it held that Exhibit MBU1 could not subsist in view of the Petroleum Profits Tax Act (PPTA).

iv.) Whether the Tax Appeal Tribunal was right when it held that Exhibit MBU1 was not saved by Section 11 PPTA since the Petroleum Profits Tax Act did not have Exhibit MBU1 in contemplation.

On issue 1, the Respondent submitted that the Tribunal was right in law when it held that on the basis of a community reading of clauses 7.1, 7.2 and 7.3 of Exhibit MBU1 had terminated at the end of 2002. also by virtue of the letter of 17th January, 2008, the MOU has been terminated. It is clear that from this letter that the right and privileges enjoyed under the MOU has been taken away. The enactment of the Petroleum profit Tax Act is the effective law which the appellant had agreed to in clause 6 of the MOU. The law is that where the contents of a document are clear and unambiguous, they should be given literal meaning by reading the entire document together. Citing the cases of **A.G ABIA STATE VS A.G FEDERATION (2005) 12 NWLR (940) 503, AWOLOWO VS SHAGARI (2001) FWLR (pt.73) 53, (1979) 6-7 SC 51, MEDIA TECH (NIG) LTD VS ADESINA (2005) 5 NWLR (pt.259).**

On issue 2, the Respondent submitted that the Appellant was wrong in adducing that it was denied fair hearing by the lower Tribunal. No miscarriage of Justice was occasioned by the lower Tribunal on the Appellant by not pronouncing on all the issues for determination raised before it. It is well known and accepted that a judgment can be decide on more than one issue. The judge hearing the case will decide on the law and facts before him, the issue of facts and points of law he considers more in accord with the justice of the case before him. It does not, therefore, constitute a denial of fair hearing merely because a judge did not consider a particular issue sufficiently cogent for consideration in the determination of a case. Citing the cases of **ALSTHOM S.A. VS SARAKI (2005) 3 NWLR PG. 212 SC, M.M.S LTD VS OTEJU (2005) 3 NWLR PG. 212**

A.M.S LTD VS OTEJU (2005) 14 NWLR 543 S.C., KOTOYE VS CBN (1989) 1 NWLR 98) 419 at 444, WILSON VS OSHIN (2000) 9 NWLR (pt.447-8) SC.

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In arguing issue 3, the Respondent submitted that the Petroleum Profits Tax Act is a principal Legislation it cannot therefore be subordinated to a memorandum of understanding, a mere agreement. The terms of a memorandum of understanding cannot override the provisions of the petroleum Profits Tax Act. It is trite law that whenever there is a conflict or inconsistency between a principal legislation and a subordinate legislation, the principal legislation prevails. In the instant case, the provisions of the PPTA prevail over that of Exhibit MBU1.

The Respondent further submits that the Appellant refused to accept or recognize the PPTA as the new fiscal regime replacing Exhibit MBU1. Placing reliance on the cases of **CORK OPERA PLC VS THE REVENUE COMMISSIONERS (1994) 1.R 160.** The Respondent submitted that the executive enjoys a constitutional entitlement to change policy. It is clear therefore that a legitimate expectation cannot arise to the effect that a policy will not be changed. Citing the cases of **HEMPENSTALL VS MINISTER FOR ENVIRONMENT (1994) 2 I.R 20, FOOD CORPORATION OF INDIA VS M/S KAMDHENU CATTLE FEED INDUSTRIES (1993) (1) SCC 71, ATTORNEY GENERAL FOR NEW SOUTH WALES VS QUINN (1990) 170 CLR 1.**

It is further submitted that Accord and Satisfaction arises in a claim based on contract where there is a dispute between the parties to a contract and a new contract is entered into by the parties, which discharges the obligations under the Original contract in a manner other than as originally agreed. In the present matter, the respondent is not a party to the contract between Mobil producing Nigeria Unlimited and the Federal Government of Nigeria. Although there is a dispute between the Appellant and the Respondent, both parties never entered into a new contract varying the terms of the original contract

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between the Appellant and the Federal Government. The doctrine of accord and satisfaction does not apply to this case; this is so because there was neither an agreement nor a consideration, the quintessence of accord and satisfaction, between the Appellant and the Respondent.

On issue 4, the Respondent submitted that the Tribunal was right when it held that Exhibit MBU1 was not saved by Section 11 PPTA: Undoubtedly the Appellant's case against the Respondent is predicated on their refusal to accept and recognize the validity of the Petroleum profit Tax Act LFN. The PPTA was passed into law by the National Assembly after due consultation with NNPC and other stakeholders. In the event that Tribunal held that Section II of the PPTA did not save Exhibit MBU1 because it does not contemplate it does make the Tribunal wrong.

Finally, the Respondent urge this court to uphold the decision of Tax Appeal Tribunal and hold that Exhibit MBU1 (The 2000 MOU) is not enforceable against the Respondent since it is no longer in existence and to dismiss the appeal with substantial cost.

All of the above are what is before the court for determination. The core issue between the Appellant and the Respondent in this case is centered on the applicability of Exhibit MBU1 clause 7.1, 7.2 and 7.3 to the relationship of the Appellant and the Respondent vis-a-vis the PPT Act of 1959 as amended.

And whether the letter dated 17th January, 2008 by the Ministry of Petroleum Resources to the Appellant in view of the MOU already entered by the parties in the year 2000, has any effect on their relationship.

It is clear from the letter dated 17th /01/2008, that a new Fiscal Regime has been introduced. The clear intention of the Ministry of petroleum resource not to be bond again by the MOU of the year 2000 is well stated in their letter, referring to the power to so do as allowed by Clause 7.3 of the MOU Exhibit MBU1.

No matter how strong and well worded an MOU is, it can not be used to overrule clear provision of law. Parties cannot by consent waive provision of law as held in **MENAKAYA VS MENAKAYA (2001) 9-10 S.C.I.**

I am satisfied that the appropriate parties are in the court considering the cause of appeal in this case. It is clear from Exhibit A the letter dated 17th/01/2008 that all the right and privileges enjoyed under the MOU has been taken away. The Petroleum profit Tax Act is the effective Law that is applicable to the Appellant in this case.

I hereby dismiss the Appeal and uphold the decision of the Tax Appeal Tribunal.

JUSTICE S. SAIDU
JUDGE
29th/09/2014

APPEARANCES:

I. BERENIBARA WITH MISS A.O. ADEWUSI FOR THE APPELLANT
B.H. ONIYANGI FOR THE RESPONDENT.

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