

IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON MONDAY THE 28TH DAY OF APRIL, 2014
BEFORE THE HONOURABLE
JUSTICE MUSA .H. KURYA
JUDGE

SUIT NO: FHC/L/CS/1210/13

BETWEEN:

PENIEL APARTMENT LIMITED

..... APPLICANT

AND

1. FEDERAL INLAND REVENUE
SERVICE

2. STANDARD CHARTERED BANK
NIGERIA LTD

..... RESPONDENTS

JUDGMENT

PENIEL APARTMENT LIMITED

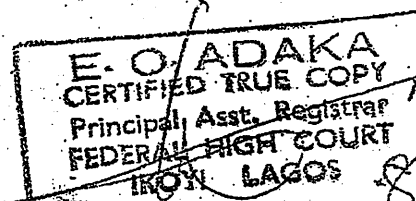
VS.

FEDERAL INLAND REVENUE SERVICE & 1 OTHER

This Judgment is sequel to an Originating Motion filed by the Applicant against the two Respondents dated 27th September, 2013.

The Originating Motion is brought pursuant to Order 34 Rule 5 (1) of the Federal High Court (Civil Procedure) Rules 2009, Sections 77 (2) (C) of the Companies Income Tax Act (C.I.T.A) C21 LFN 2004.

It is for a Declaration.



An Order of Certiorari and

An Order for Injunction.

The Originating Motion is supported by a 34 paragraph affidavit deposed to by one Oluwatoyin Adedoyin (Mrs.) an Executive Director of the Applicant with 5 grounds upon which the application is made.

While the Learned Counsel relied on all the averments, he adopted the written address as his argument.

He moved in terms and prayed the Court to grant their prayers.

There are two Counsels for the two Respondents.

In response, the Learned Counsel to the 1st Respondent, Federal Inland Revenue Service, filed an 11 paragraph counter affidavit dated 20th November, 2013, which is deposed to by one Adedeji Ibiroinke (Mrs.) and filed a written address while the Learned Counsel relied on all the 11 paragraph of their counter affidavit he adopted the submission as their argument.

Before I proceed, it is neater to refer to the facts of this case.

As at the year 2010, the sum of ₦46,506,325.64 was established as the tax liability of the Applicant which the Applicant did not dispute. There was some correspondents as to the waiver of the tax, when to be paid, how much is to be paid and the period within which payments are to be made. The Plaintiff/Applicant have alleged that without allowing the due date as stipulated in the said letter dated

E. O. ADAKA
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Principal Asst. Registrar

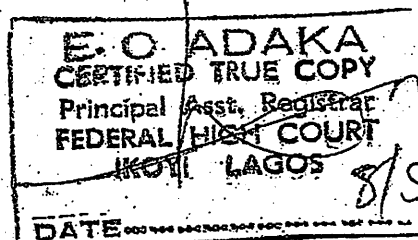
31st July, 2013 to lapse, the 1st Respondent Acting Chairman, purporting to act pursuant to Section 49 CIT Act 2004 issued a letter dated 12th August, 2013 appointing the 2nd Respondent, Standard Chartered Bank Nigeria Limited, the Applicant's Bankers, as agent for the sole purpose of recovering the tax liability.

By that act, the Applicants claim that the appointment of the 2nd Respondents as collecting agents by the Acting chairman of the 1st Respondent was ultra vires his powers under the Act, and was done in bad faith. Further alleging that the implementation of the decision of the 1st Respondents will cause irreparable damage to the Applicant unless the decision of the 1st Respondent as it is contained in the said letter dated 12th August, 2013 is quashed and the Respondents urgently restrained.

In his oral arguments, the Learned Counsel to the 1st Respondents argued that Section 31 of the Federal Inland Revenue Service empowers the Chief Executive/Chairman to act for and on behalf of the Board.

He proceeded to formulate one issue for determination.

Whether the Acting Chairman had acted within his powers under the Federal Inland Revenue Service Act, in which the Learned Counsel proceeded to answer in the affirmative.



He further Argued that Section 31 of the Federal Inland Revenue Service provides an avenue for an aggrieved party to ventilate his grievances and that the Applicant had not exhausted these options before coming to the Court.

He cited the case of NNPC where Honourable Justice Buba Held that parties have to exhaust all options before resorting to the Court.

The Learned Counsel therefore urged the Court to dismiss the application as the Acting Executive Chairman has powers to act the way he did, and had not acted ultra vires his powers.

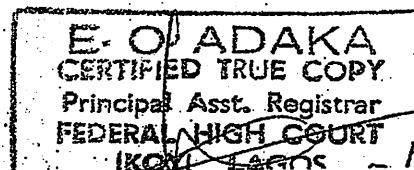
In his own oral response, the Learned Counsel to the 2nd Respondent said he did not file any process. That they align themselves with the submissions of the Learned Counsel to the Applicant.

In his reply on points of law, the Applicant filed further affidavit and a written address dated 10th February, 2014, accompanied by a written address and prayed the Court to grant their reliefs.

The substance of the 10 paragraph Applicant's further affidavit is a reply to the 1st Respondents argument that the Applicant has not resorted to the Tax Appeal Tribunal and therefore has not exhausted all remedies available to them.

They replied that:

1. The dispute between the parties borders on taxation and revenue of the Federal Government of Nigeria.



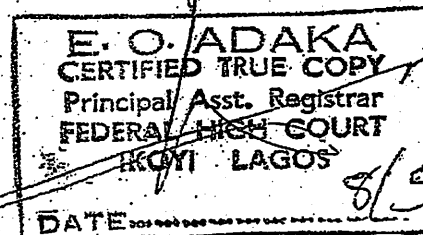
2. The Federal High Court is vested with exclusive jurisdiction to entertain issues involving taxation and revenue of the Federal Government.
3. The Tax Appeal Tribunal has no jurisdiction to entertain this matter.
4. The Tax Appeal Tribunal has been struck out by a Court of competent jurisdiction.

Before I proceed I would like to point out here that the Learned Counsel to the 2nd Respondent did not challenge the jurisdiction of this Court but that there are remedies the Applicant could have exhausted before coming to this Court.

I have listened to the oral submissions and have gone over the written processes and have found that:

1. The Applicants were owing. As they have not paid their taxes.
2. The 1st Respondent as the Acting Chairman has the responsibility of executing the policy and administering the CITA, VAT and Federal Inland Revenue Service Act.
3. That the acting Chairman Federal Inland Revenue Service letter dated 12th August, 2013 was written when it became obvious that the Applicant has neglected, failed and/or refused to pay the reconnected and agreed liabilities for many years.
4. That by written the letter dated 12th August, 2013, Acting Chairman was not acting ultra vires his powers.

From the foregoing, I am of the view that the Applicants' application fails for lack of merit and it is hereby struck out.



Consequently, Judgment is hereby entered in favour of the 2nd Respondent against the Applicants. It is hereby also declared that the 1st Respondent action under the law is valid and in accordance with the provisions of the law.

The whole Applicant is hereby struck out with no cost.

HON. JUSTICE MUSA H. KURYA
JUDGE 28/04/2014

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Official

