

IN THE TAX APPEAL TRIBUNAL

SOUTHWEST ZONE



HOLDEN AT IBADAN

THIS WEDNESDAY, 27TH JANUARY, 2016

APPEAL NO: TAT/IB/024/2014

BEFORE:

- | | |
|------------------------------------|----------------|
| 1. Honourable Olusola Ibidapo-Obe | (Chairman) |
| 2. Honourable Cyril Ikemefuna Ede | (Commissioner) |
| 3. Honourable Jibril Ngatkya Useni | (Commissioner) |

CHEVRON NIGERIA LIMITED

- **APPELLANT**

AND:

ONDO STATE BOARD OF INTERNAL REVENUE

- **RESPONDENT**

CERTIFIED TRUE COPY
TAX APPEAL TRIBUNAL

RULING ON THE JOINDER OF PARTIES

This is a Ruling on an application filed on 13/7/15 by Olumayowa Oluwole a Legal Practitioner practicing in the Law Firm of WTS Adebiyi & Associates Solicitors to the Appellants in this Appeal, wherein he prayed for the following Orders:-

1. AN ORDER joining the following as Respondents in this Appeal.
 - a. Lagos State Board of Internal Revenue
 - b. Delta State Board of Internal Revenue
 - c. Federal Inland Revenue
2. AN ORDER granting leave to the Appellant/Applicant to amend its Notice of Appeal in the way and manner shown in Exhibit CNL I

3. SUCH FURTHER ORDER OR OTHER ORDERS as this Honourable Tribunal may deem fit to make in the circumstances of this case.

In moving the application the learned counsel for the Applicant/Applicant, submitted that the application was brought pursuant to the provisions of Order XI Rule I of the Tax Appeal Tribunal (Procedure) Rules 2010, Order V Rule 3 of the Tax Appeal Tribunal (Procedure) Rules 2010, Order XV of the Tax Appeal Tribunal (Procedure) Rules 2010 and Under the Inherent Jurisdiction of this Honourable Tribunal praying for an order to join, Lagos State Board of Internal Revenue, Delta State Board of Internal Revenue and Federal Inland Revenue Service as co-Respondents in this Appeal. He relied on a 17 paragraph affidavit deposed to by one Olumayowa Oluwole. In furtherance of their application, the Appellant/Applicant raised a sole issue for determination-

“whether the parties sought to be joined as parties to this suit ought to be joined, considering the nature of the case”.

On the principles governing Joinder of parties the decision of the court of Appeal in David Igboke v Chief Ejimalu Igboke 1993 2NWLR (pt62) 29 AT 33 laid down the following principles which form the parameters in determining if the application of the Appellant/Applicant is to be granted – They are:

1. The relevant rule of court must be relied upon and interpreted as a guide.
2. Is it just and convenient to join the persons?
3. Will the presence of the person as a party enable the court to effectually and completely adjudicate upon all questions involved in the cause or matter?
4. Is the cause or matter likely to be defeated by non joinder?
5. Is it possible for the court to adjudicate upon the cause of action set up by the Plaintiff unless the party is added as a defendant?
6. Is the person to be joined a person who ought to be joined?

In the 17 paragraph affidavit in support of the application deposed to by Olumayowa Oluwole Esq, the relevant paragraphs are as follows:

4. That the facts of this Appeal relate to PAYE tax which the Respondent alleges that the Appellant has not remitted.

5. That the Appellant's contention is that the employees on whose behalf the PAYE tax became due were resident in Lagos and Delta States or in the Federal Capital Territory, Abuja therefore the Appellant remitted the employees' taxes to the relevant tax authorities in the named states/tax jurisdictions
8. That the facts of this Appeal involve a determination of the appropriate tax authority to receive the tax from the Appellant's employees for the period 2010-2013.
10. That if the Tribunal rules in favour of the Respondent at the end of this Appeal, the revenue of the parties sought to be joined will be negatively impacted to the tune of about three hundred million naira because under the PITA, the parties to be joined will be required to hand over the sum of three hundred million naira which the Appellant remitted to them for years 2010-2013.
11. That in view of the significant effect the decision of this Tribunal will have on the parties sought to be joined, it is important that these parties be given the opportunity to protect their interests.
13. That the grant of this application will ensure that all parties necessary for the proper determination of this Appeal are present before the Tribunal".

The only reason which makes it necessary to make a person a party to an action is that he should be bound by the result of the action and the question to be settled. There must be a question in the action which cannot be effectually and completely settled unless he is a party. See the case of Matthew Olawuyi and Anor v Joseph Adeyemi (1990) 4 NWLR (Pt 147) 746 at 752

Also where there is failure to join "proper parties to a suit, the proper Order to make is one of striking out the suit". See the case of Olumide v Oyebi (1954) 5 S.C. 1 at 5

See also Onabanjo v Ewetuga (1993) 4 NWLR (Pt 288) 445, 458 WHERE Niki Tobi JSC stated "It is a fundamental principle of law that all parties who will be affected

one way or the other in a litigation must be made parties. They are entitled to be heard and must be heard before judgement should be given by the court. It is against all the known principles of fair hearing for a party to be condemned in a judgement in which he is not given an opportunity to be heard. This is because a person who is not given an opportunity to lead evidence either in support or in defence of his rights cannot be said to have been given a hearing, not to talk about the fairness of it."

Order V rule 3 of the Tax Appeal Tribunal (Procedure) Rules, 2010 provides as follows:

"If it appears to the Tribunal, at or before the hearing of an appeal that all the persons who may be entitled to or who claim some share or interest in the subject matter of the appeal, or who may be likely to be affected by the result, have not been made parties, the Tribunal may adjourn the hearing of the appeal to a future day to be fixed by the Tribunal and direct that such persons shall be made either appellants or respondents in the appeal."

In our view, there is a cause of action against the parties sought to be joined. See *Ojo & Ors v Awe & Lion of Africa Insurance Co. Ltd* (1962) WNLR 254.

We hold that the parties sought to be joined are parties whose presence is necessary for the purpose of determining the Appeal and so sought to be joined.

We further hold that it is therefore just and convenient to join the parties sought to be joined as they will be bound by the decision to be reached by the Tribunal at the end of the day. Having regard to the affidavit evidence of Olumayowa Oluwole

We hold that there is a question in the action which cannot be effectually and completely settled unless the parties sought to be joined are joined as Respondents. It will therefore be impossible for the Tribunal to adjudicate upon the cause of action set up by the Appellant/Applicant unless

- Lagos State Board of Internal Revenue
 - Delta State Board of Internal Revenue and
 - Federal Inland Revenue Service
- are added as Respondents.

See Igbokwe v Igbokwe (Supra)

In view of the foregoing we hereby order as prayed and therefore make an Order joining

1. Lagos State Board of Internal Revenue
 2. Delta State Board of Internal Revenue
 3. Federal Inland Revenue Service
- as the 2nd, 3rd and 4th Respondents respectively.

We further grant leave to the Appellant/Applicant to amend its Notice of Appeal in the way and manner shown in Exhibit CNL I

We further order that the process filed in this appeal be served on the parties now joined as the 2nd, 3rd and 4th Respondents.

DATED AT IBADAN THIS 27TH DAY OF JANUARY, 2016

1. Honourable Olusola Ibidapo-Obe

(Chairman)



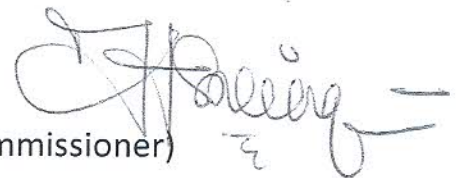
2. Honourable Cyril Ikemefuna Ede

(Commissioner)



3. Honourable Jibril Ngatkya Useni

(Commissioner)



1. OLUMAYOWA OLUWOLE
O. O. OLABINJO

For Appellant

2. DANIEL ONUKUN
DAYO IKUEROWO

For Respondents