



IN THE TAX APPEAL TRIBUNAL  
SOUTHWEST ZONE

HOLDEN AT IBADAN

*[Signature]*  
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THIS THURSDAY, 31<sup>ST</sup> JULY, 2014

APPEAL NO: TAT/IB/020/2013

BEFORE:

1. Honourable Joseph A. Ushie (Chairman)
2. Honourable Cyril I. Ede (Commissioner)
3. Honourable Jibril N. Useni (Commissioner)

FOL-HOPE LIMITED

APPELLANT

AND:

FEDERAL INLAND REVENUE SERVICE

& TWO OTHERS

RESPONDENT

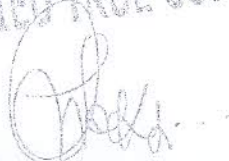
RULING

1. The Respondent/Applicant filed the application under the INHERENT JURISDICTION OF THIS HONOURABLE TRIBUNAL dated 19<sup>th</sup> September 2013 praying the Tribunal to strike out the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as parties to the appeal.

2. The Respondent/Applicants supported the application with a 10 paragraph affidavit. The substance of the affidavit evidence is to the effect that the Appellant joined the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are staff of the 1<sup>st</sup> Respondent to the Appeal as parties and prays the Tribunal to strike them out from the appeal.
3. The Respondent/Applicant also filed written address in which learned Counsel argued and canvassed that by virtue of:
  - (a) Section 2 of the Public Officers Protection Act and,
  - (b) Sections 38 and 55 of the FIRS (Establishment) Act 2007,the aforementioned staff are public officers and therefore, no suit shall lie against them while they remain public officers. Learned Counsel cited Garba v. Shuaibu (2001) 8NWRL (PT 716) 760 CA and Tafida v. Abubakar (1992) 3NWLR (pt 230) 51 in support of the application.
4. The Appellant/Respondent on the other hand, filed a counter-affidavit and written address on 3<sup>rd</sup> of March, 2014 and formulated a lone issue for determination to wit:

“Whether in view of the Appellant’s claim as contained in the grounds of appeal proper parties are not before the Honourable Tribunal”
5. The learned Counsel to the Appellant/Respondent cited the cases of Oba Joseph Adeyemi v. Oba Joseph Abolarin Jolayemi (2001) 10NWLR (PT 722) 516 and Okukuje v. Akwido (2001) FWLR PT 39, 1487 @ 1523. He submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on record are proper and necessary parties without which the appeal cannot be effectively and completely adjudicated upon all questions in the appeal.

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This submission appears reasonable and may be sustainable in a normal Civil Litigation but for the process of the commencement of the action.

6. The Appellant did not controvert the depositions in the affidavit of the Respondents in support of their application but entirely relied on the averments in his notice of appeal and statement of claim.

Paragraphs 5 & 6 of Respondents affidavit are relevant here:

5. *" That pursuant to sections 38 and 55 of the FIRS (Establishment) Act 2007 and the statutory provisions of section 2 of the Public Officers Protection Act no suit shall lie against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents"*
6. *"That the above statutory provisions shall apply in relation to any suit instituted against officer or employee of the 1<sup>st</sup> Respondent"*

The Appellant counter affidavit at paragraph 4 states:

4. *"That Paragraph 5, 6, 7, 8, 9 and 10 of the supporting affidavit are untrue and misleading"*
7. The Tribunal does not see anything being untrue and misleading in the statutory provisions of the two Acts cited in the supporting affidavit of the Respondents as shown above. These are statutes of Limitation and there are a series of Supreme Court decisions outlining the applicable principles inherent in them.

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8. In BELLO NASIR V CIVIL SERVICE COMMISSION, KANO STATE (2010) 6 NWLR (Pt 1190) 253 (SC), the Supreme Court held that:

*"The Statute of Limitation is a matter of jurisdiction which can be raised at any stage of litigation, even in the Supreme Court. There is no doubt that this rule connotes mandatory procedure because such issue borders on the fundamental issue of jurisdiction"* PER MUKHTAR JSC as she then was at p. 17 paras C-G

*"An appellate Court can even raise it suo motu"* see the cases of ANYA V IYAYI (1993) 7NWLR (pt 305) and KOTOYE V SARAKI (1994) 7 NWLR (Pt 357) 414.

In the case of KATTO V CBN (1991) 9 NWLR (pt 214) 126, the Supreme Court held that "it is settled that mandatory Rules of court are not as sacrosanct as mandatory statutory provisions and therefore, a rule of court cannot override statutory provisions of the Law", PER OGBUAGU JSC at p 26 paras. A-E

9. The Respondents also formulated a lone issue for determination to wit:

*"Whether section 2 of the Public Officers Protection Act cap. 41 LFN 2001 and sections 38 & 55 of the FIRS (Establishment) Act 2007 are applicable or protect the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents."*

10. **CONSIDERATION OF THE LONE ISSUE FOR  
DETERMINATION**

S.55 (2) provides that:

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*"Notwithstanding anything contained in any other law or enactment, no suit against the Executive Chairman, a member of the board, or any other officer or employee of the Service for any act done in pursuance or execution of this Act or any other law or enactment, or of any public duty or authority or in respect of any alleged neglect or default in the execution of this Act or any other law or enactment, duty or authority, shall lie or be instituted in any court unless it is commenced*

*(a) within three months next after the act, neglect or default complained of; or*

*(b) in the case of a continuation of damage or injury, within six months next after the ceasing thereof"*

11. The Appellant filed the notice of appeal dated 12<sup>th</sup> August, 2013 against FIRS and joined the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents praying the Tribunal to set aside the entire decision of FIRS vide a letter dated 11<sup>th</sup> July, 2013. The period between when the action accrued and when the appeal was filed is within the statutory limitation period of 3 months under S.2 of the Act. This means that the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents are not protected under section 2 of the Public Officers Protection Act and FIRS Act.
12. Section 38 of FIRS Act merely extend the protection under the Public Officers Protection Act to cover an officer of the Service without more. The provisions of section 55 of FIRS Act are practically identical with those of Public Officers Protection Act and Nigerian Ports Authority Act.
13. The really main issue for determination by this Honourable Tribunal is the applicability or otherwise of section 55 (3) & (4) of FIRS Act to this application for striking out the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents as parties to the appeal.

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The section reads:

"S.55 (3) *"No suit SHALL be commenced against the Executive Chairman, a member of the Board, or any other officer or employee of the Service before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the Service by the intending plaintiff or his agent."*

(4) *"The notice referred to in subsection (3) of this section shall clearly and explicitly state the-*

*(a) cause of action;*

*(b) particulars of claim;*

*(c) name and place of abode of the intending plaintiff; and*

*(d) relief which he claims."*

14. The issue is whether the Appellant has complied with the mandatory statutory provisions of section 55 (3) & (4) by the service of the required notice on the 1<sup>st</sup> Respondent before commencing this action. It is clear from the notice of appeal, statement of claim, counter affidavit, the reliefs sought and the written address of the Appellant that no such notice of action was served on the 1<sup>st</sup> Respondent before the action was commenced. Failure to comply with the mandatory statutory provisions of section 55 (3) & (4) renders the action against the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents who are officers or employees of the 1<sup>st</sup> Respondent statute barred.

15. The Tribunal agrees with the submission of the learned Counsel for the Respondents in her written address that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent are Public Officers and that they are protected under the Act. She relied on the case of GARBA V SHUAIBU (2001) 8 NWLR (Pt 716) 730 CA where the Court of Appeal held that Public Officers Protection Act is not

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intended to cover Public bodies or Public Institutions, but public officers themselves.

16. From the foregoing, it is therefore incontrovertible that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and not the 1<sup>st</sup> Respondent that section 55 is intended to protect. The provisions of section 55 (3) & (4) are quite clear and unambiguous and the imperative nature of the provisions is also not in doubt. It is also not in doubt that the Appellant never gave any notice to the 1<sup>st</sup> Respondent before instituting the suit.
17. In UMUKORO V N.P.A (1997) 4 NWLR (Pt. 502) (Supra), the Supreme Court in considering the provisions of Section 97 (1) & (2) of NPA Act, which are practically identical with section 55 (3) & (4) of FIRS Act, held that:

*"The Court of Appeal in a reserved and unanimous judgment considered all the points canvassed before it and dismissed the plaintiffs appeal. The judgment of trial High Court was upheld in that the learned trial judge rightly applied S. 97 (1) & (2) of the Ports Act to the facts of the case before him and came to the right conclusion when he held that plaintiffs claims must be dismissed because no notice of the action was served on the 1<sup>st</sup> defendant before the suit was commenced and the action was statute barred. Both the High Court and the Court of Appeal were right when they held that S. 97 (1) & (2) of the Ports Act applied in the case and that the plaintiffs claims are statute barred"*

Per KUTIGUJSC.

18. The Honourable Tribunal holds that joining the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents as parties to the appeal is against the mandatory statutory provisions of

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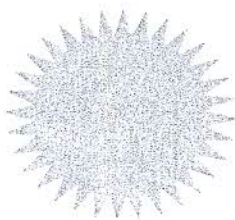




section 55 (3) & (4) of FIRS Act 2007. The application has merit. The issue is therefore resolved in favour of the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents because the action against them is statute barred and is hereby dismissed. They are accordingly struck out from this appeal as parties.

The Tribunal considers it fair, just and reasonable that the parties should bear their respective costs in this appeal. No order as to costs.

DATED AT IBADAN THIS 31<sup>ST</sup> DAY OF JULY, 2014



1. Honourable Joseph A. Ushie (Chairman)

2. Honourable Cyril I. Ede (Commissioner)

3. Honourable Jibril N. Useni (Commissioner)

1. TUNJI OGUNRINDE

For Appellant

2. Y. MATTHEW

For Respondents

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