

IN THE TAX APPEAL TRIBUNAL
SOUTHWEST ZONE



HOLDEN AT IBADAN

THIS FRIDAY, 13TH APRIL, 2012

APPEAL NO: TAT/IB/006/2010

BETWEEN:

FEDERAL INLAND REVENUE SERVICE - APPELLANT

AND:

LAUTECH OGBOMOSHO & 4 OTHERS - RESPONDENT

RULING OF THE TRIBUNAL

INTRODUCTION

The appellant counsel Miss Yejide Adeyeoluwa brought a Notice of Discontinuance as in form TAT 5 under Order 11, 14(1) and 22(4) of the TAT Procedure Rules 2010, dated 18th January, 2012 and filed same on 19th January, 2012.

On 16th February, 2012 she moved her motion for the withdrawal of the appeal against the Respondent. She relied mainly on Order 14 rule 1 of the TAT Procedure Rules and urged the Tribunal to grant the application as per her motion papers

Order 14 (1) provides thus:

An appellant may:-

- (a) At any time before the hearing of an appeal withdraw the appeal by filing a notice of discontinuance as in Form TAT 5 signed by the appellant or his representative stating that the appeal is withdrawn;*

Respondent Counsel, Mr. Tunde Falola, did not object to the Application for Discontinuance. He conceded that an appellant may at any stage withdraw or discontinue an appeal but informed the Tribunal that he was served the processes only on the morning of the hearing of the Notice of Discontinuance of the appeal. He made an oral application for more time to address the Tribunal

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on the appropriate Order to make in the circumstance i.e. whether dismissal or striking off the appeal

The Tribunal considered that Justice will be better served by granting his oral application for adjournment so as to enable him file written addresses on the appropriate order to be made by the Tribunal. The appeal was adjourned to 22nd March, 2012 for his written addresses

At the resumed sitting of the Tribunal on 22nd March, 2012, learned counsel for the respondent apologized to the Tribunal for his inability to file any written address as ordered during the last sitting. He requested for five (5) minute to address the Tribunal and was granted

Mr. Tunde Falola:

I am not objecting to the application for withdrawal but I have an observation. This Honourable Tribunal should dismiss the appeal in view of the fact that the issue of jurisdiction has been raised and has been partially argued by parties through the exchange of written addresses. At this stage the Tribunal cannot strike out but can only dismiss the appeal.

Learned Counsel did not support his submission with any authority

ISSUES FOR DETERMINATION

The following issues call for determination by this TAX APPEAL TRIBUNAL to wit:

1. The appropriate Order to make where appellant/applicant discontinues an appeal without the leave of the Tribunal under Order XIV rule I of TAT Procedure Rules 2010
2. Whether mere exchange of written addresses by Counsel on issue of jurisdiction which are yet to be adopted and considered by the Tribunal can sustain the dismissal of the appeal

CONSIDERATION OF THE ISSUES

1. ON PROPER ORDER TO MAKE:

On 16th March, 2011, in conformity with the new Procedure Rules of TAT, the appellant/applicant filed this appeal claiming a total sum of ₦658,593,067.00 (six hundred and fifty-eight million, five hundred and ninety-three thousand and sixty-seven Naira) being unremitted VAT for the period of 2000-2010. The substantive appeal has not been heard by the Tribunal because the respondent

raised the issue of the Tribunal's jurisdiction over the appeal by preliminary objection.

Thereafter the appellant/applicant brought this application to discontinue the appeal. The application is appropriate and competent before the Tribunal. It is trite law that a plaintiff has a right to discontinue his action if he so chooses but the learned counsel for the respondent submitted that the proper Order to make in the circumstance is a dismissal.

From the foregoing facts, the Tribunal is of the considered opinion that substantial miscarriage of Justice will be occasioned on the part of the appellant/applicant if the appeal is dismissed at this stage. Thus the proper Order is striking out.

See the Supreme Court case of ABAYOMI Vs 1) PAN ATLANTIC SHIPPING AND TRANSPORT AGENCIES LTD 2) MOBIL OIL(NIG.) LTD 3) UNITAF SHIPPING (NIG.) LTD (2002) 13 NWLR Pg121 to the effect that: "*where a plaintiff duly discontinues his action without leave, the court should merely strike out the action. In other words, once a litigant withdraws his action in a situation where no leave of court is required, the trial court has no option but to strike out the suit*".

2. ON EXCHANGE OF WRITTEN ADDRESSES

The written addresses have been exchanged between the parties. The written addresses have not been adopted, argued and considered by the Tribunal. Strictly speaking, the written addresses are not before the Tribunal in accordance with the provisions of Order XVIII rules 2 & 3 which state that:

2. *Parties or their representatives shall rely upon and adopt their written addresses before a decision.*
3. *Unless otherwise directed by the Tribunal, each party may be given 15 minutes to make oral argument to emphasize and clarify his written address."*

From the foregoing, it is therefore difficult for this Tribunal to be swayed by the argument of the learned counsel for the respondent that there had been partial argument on his preliminary objection on the issue of the jurisdiction of the Tribunal hearing the appeal. Ruling on the preliminary objection at this stage of the proceedings will amount to a nullity no matter how well intended

EVEN WHERE A COURT LACKS JURISDICTION, the proper order is to either strike out the case or transfer it to a court with the requisite jurisdiction for hearing. See the case of Iwuagolu V Azyka (2007) 5NWLR (P1028) 613 particularly page 620 where it was held that:

"Once a court is satisfied that it has no jurisdiction to make any pronouncement other than to say it has no jurisdiction over a matter, the proper order is to either strike out the case or transfer it to a court with the requisite jurisdiction for hearing"

This application for the Discontinuance of Appeal No: TAT/IB/006/2010 is accordingly granted as prayed.

THE APPEAL IS STRUCK OUT.

DATED AT IBADAN THIS 13TH DAY OF APRIL, 2012



1. Honourable Joseph A. Ushie
2. Honourable Moshood O. Oyeleke
3. Honourable Cyril I. Ede
4. Honourable James O. Olopade

(Chairman)

(Member)

(Member)

(Member)

[Handwritten signatures of the four judges: Joseph A. Ushie, Moshood O. Oyeleke, Cyril I. Ede, and James O. Olopade]