

**IN THE TAX APPEAL TRIBUNAL
IN THE NORTH- EAST ZONE
HOLDEN AT BAUCHI**

APP NO.: TAT/NEZ/009/2014

BETWEEN

ASHAKA CEMENT PLC

APPELLANT/APPLICANT

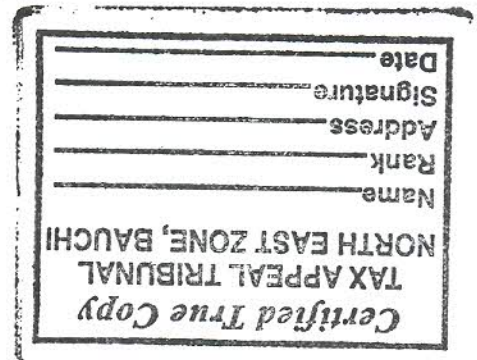
AND

**GOMBE STATE BOARD OF
INTERNAL REVENUE SERVICE**

RESPONDENT

14th OCTOBER, 2014.

MEMBERS: **HON. SULEMAN AUDU**
 HON. HALIMA S. MOHAMMED
 HON. CHIEF NGOZI AMALIRI
 HON. SUNDAY IDAM ISU
 HON. ALIYU ABBAS BELLO

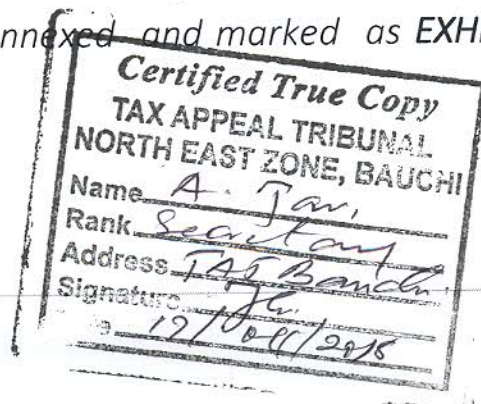


JUDGEMENT

This motion on Notice dated 22nd day of July, 2014 was filed on the 4th day of August 2014. The motion is brought pursuant to Order XI Rule 1 and Order XIII Rule 1 of the Rules of this Tribunal and the inherent Jurisdiction of this honourable Tribunal.

The motion is praying the Tribunal for:

1. *AN ORDER of this honourable Tribunal granting leave to the Appellant to amend its notice of appeal,*
2. *AN ORDER of this honourable Tribunal deeming the amended notice of appeal of the Appellant herein annexed and marked as EXHIBIT "A" as duly filed and served.*



In support of the Motion is a six (6) paragraph affidavit deposed to by Elizabeth Joshua, of B.C.G.A Quarters, Gombe. Accompanying the motion, is a written address dated 22nd day of July, 2014.

On the other hand, the Respondent filed an eighteen (18) paragraph counter affidavit deposed to by Bulus Umaru, a staff of Gombe State Board of Internal Revenue Service. The Respondent also filed a counter affidavit dated 15th day of September, 2014.

Learned counsel to the Appellant H. B. Ghide Esq in his oral submission, submitted that the objection raised by the Respondent does not touch the merit of the Appellant's application. He contended that Paragraphs 3 – 10 of the Respondent's counter-affidavit are arguments that touched on the substance of the appeal and secondly, Paragraphs 13 – 16 are arguments touching the competence of the ground of appeal which can only come by way of preliminary objection. Counsel submitted that it is not about whether the appeal is competent or not as proceedings have not reached that stage and that since the objection contained in the counter-affidavit touched the merit of the appeal which is not before the Tribunal same should be discountenanced.

The learned counsel to the Respondent Musa Saidu Esq. in his counter-affidavit raised a sole issue for the Tribunal's determination as follows:

Whether the new seven grounds sought to be added by the Appellant's application does not violate the provisions of Section 58(1) PITA 2011 (as amended)

Relying on the following cases **NIGERIAN RAILWAY CORPORATION Vs NWAZE** (2008) 4 NWLR PART 107 (b) Page 92 @ 95-96 RATIO: 2,3,4 and 5 and **AKUME Vs LIN** (2008) 16 NWLR Part 1114 Page 490 @ 494 ratio 8 Respondent's counsel argued that by the provisions of the Personal Income Tax Act, any objection must be in writing and must be brought to the Tax authority within thirty (30) days, failure upon which you cannot be heard.

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TAX APPEAL
NORTH EAST ZONE, BARRON
Name A. Jari
Rank Secretary
Address T. J. B. B. C.
Signature [Signature]
Date 17/09/2015

However, the Tribunal has considered the submissions of parties and their oral arguments and hereby formulates a sole issue for determination.

Whether the Appellant is entitled to the order of this Tribunal granting leave to amend its notice of appeal.

Generally, the essence of pleadings is to compel the parties to define precisely the issues upon which the case is to be contested. It is to avoid the element of surprises by either party. See **OLOGUN Vs FATAYO** (2013) 1 NWLR (Pt.1335) P 303 @ 306. The circumstances in which a court may grant or refuse leave to amend pleadings are clearly set out in the Rules of the court and in the exercise of the discretionary powers conferred; the court must have regards to the substance. The aim of an amendment is usually to prevent the manifest justice of the cause from being defeated or delayed by formal slips which arise from the negligence of counsel. The courts have held in plethora of cases that it will certainly be wrong to visit the inadvertence or mistake of counsel on the litigant. See **AKININWO Vs NSIRIM** (2008) 9 NWLR (Pt. 1093) P 439.

The Supreme Court held in **AKININWO Vs NSIRIM** (supra) that:

“In law, parties to a case in the superior courts of record are bound rigidly to their pleadings. But in the preparation of pleadings, counsels are bound to or may be prone to make mistakes. A party will not lose his right to have the dispute between him and his adversary decided on its merit simply because a mistake has been made in the preparation of the pleadings. It must always be remembered that the object of courts is to decide the rights of the parties and not to punish them for the mistakes which they make in the conduct of their cases by deciding otherwise in accordance with their rights. If it is seen that the mistake made in the course of preparing the case of a party to litigation is not fraudulent or calculated to overreach the opponent, the court must be ready to correct such a mistake upon an application to it.”

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TAX APPEAL TRIBUNAL	
NORTH EAST ZONE, BA	
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Date	_____

Although it is the position of the law that a party should not be inhibited to present his case in court, there is the other side of the coin, and it is that a party owes the administration of justice and the judicial process a duty to present his case in whole or in block and not in installments. However, an application for amendment of pleadings will be granted if the application is made bona fide or in good faith and not designed to abuse the court process.

In the same vein, ORDER XI Rule 1 of the Rules of this Tribunal provides that:

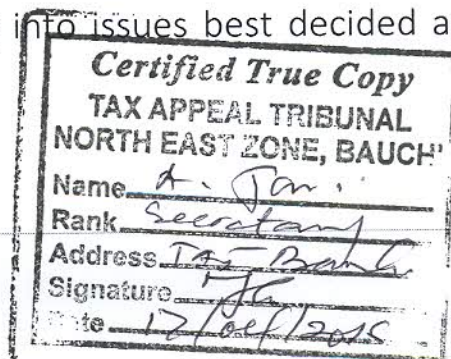
"An application may be made at any stage of the proceedings"

ORDER XII Rule1 provides that:

"A party may at any time amend the notice of appeal or any other process on such terms as the Tribunal may deem fit"

See generally ORDER X Rule 1 Sub-Rule (a),(b)(c)(d), (2)(3) and 2 of Tax Appeal Tribunal (Procedure) Rules, 2010.

In this case, we have taken into consideration the totality of the content of the Appellant's application vis a vis the relief sought in the matter. The Appellant intended to correct errors and assist the Tribunal to speedily determine the issues in dispute. The Appellant averred also that the Respondent would not be prejudiced by the application and that it would serve the course of justice if it is granted. Though the Respondent has made a heavy whether on the applicability or the position of the Personal Income Tax Act as it applies to the substantive case and the period upon which the Appellant brought its application. We are of the view that the contention of the Respondent is rather premature and misleading. All what the Appellant is seeking for is the indulgence of this Tribunal to grant it leave to amend its notice of appeal and nothing more. The Respondent embarked on a frolic exercise by delving into issues best decided at the substantive level.



The two cases **NIGERIAN RAILWAY CORPORATION Vs NWAZE** and **AKUME Vs LIN** relied on by the Respondent are quite in order in the context in which they are cited but they do not apply in the present application. This is to the effect that Appellant's application is centered on the need for the Tribunal to grant the Appellant leave to amend its notice of appeal.

However, assuming the Appellant brought its objection when the time allowed for same has elapsed. The Supreme Court in **ADEGOKE ALAGBE Vs SAMUEL ABIMBOLA & SONS** (1978)2 SC 39 stated that;

...such a length of time is immaterial provided the Applicant is able to show good cause justifying the delay.

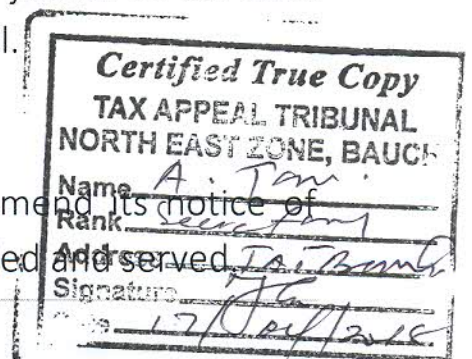
The Appellant, in its affidavit in support of the motion for amendment, submitted that the Appellant in the course of reviewing the process already filed, discovered the need to amend the notice and ground of Appeal in order to capture omitted vital facts.

It is therefore needful to reiterate that this application is not made mala fide. There is no injury that will be occasioned to the Respondent in this case if this application is granted. Hearing in this matter has not commenced therefore, we agree with the affidavit evidence of the Appellant that the Respondent will not be prejudiced if the application is granted.

The courts including this Tribunal will often refuse application for amendment where the amendment sought will substitute a new pleading or introduce new issues. We are of the opinion that the amendment as contained on the amended notice of appeal of the Appellant is still within the context of the subject matter. All the Appellant is trying to do is to throw more light so that the Tribunal can speedily do justice to the case which is in accordance with the mandate of the Tribunal.

Therefore, the Tribunal hereby orders as follows:

1. Leave is hereby granted for the Appellant to amend its notice of appeal and same is hereby deemed as properly filed and served.



This is the ruling of this Tribunal.

Dated this 14th day of October, 2014.

RIGHT OF APPEAL

Any party dissatisfied with a decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary within thirty (30) days from the date on which such decision was given.

Hmoh

HON. HALIMA S. MOHAMMED

Chairman

