

IN TAX APPEAL TRIBUNAL
IN THE NORTH WEST ZONAL TRIBUNAL
HOLDEN AT KADUNA

HONORABLE MEMBERS:

BASHIR ABDULLAHI ALBASU con, fwc, psc, AIG (Rtd) - CHAIRMAN
EBERECHI ADELE, SAN, JP - MEMBER 1
JOSHUA MUKTA WAKLEK, mni - MEMBER 2
KHADEEJA S. HALILU (MRS) - MEMBER 3
DR. OLUMHENSE IMOISILI - MEMBER 4


FEDERAL INLAND REVENUE SERVICE v FINETEX NIG. LTD & MESSRS
BOLA OLOTU ESQ. (TAT/NWZ/KD/02/10)

RULING ON 3RD DECEMBER, 2015

This Appeal was to come up 21st July, 2015 but was later adjourned to 28th July, 2015 in the absence of both parties. The Tribunal was to hear the motion filed by 1st Respondent's counsel seeking to substitute its witness and for continuation of hearing. On the 28th of July, 2015, the Appellant appeared in the Tribunal but both Counsels to 1st and 2nd Respondent were absent. The Appellant urged the Tribunal to close the case against the Respondent. The Tribunal closed the case and ordered the Appellant to file written address.

Counsel to the 2nd Respondent filed a motion on notice dated 17th August 2015 which was moved on 7th October, 2015. The motion was pursuant to Order IX Rules 4 and 5, Order X Rule 3(1) and Order XI Rules (1) and (2) of the Tax Appeal Tribunal (Procedure) Rules, 2010. The motion is praying for the following orders:

1. An order of this Tribunal to set aside its decision of 28th July 2015 closing the case of the Respondent and ordering the Appellant to file written address. The 2nd Respondent's Counsel informed the Tribunal that they were absent at that sitting because they were not aware the case was coming up on that date because no hearing notice was served on them.
2. An order enabling the 2nd Respondent to open their defense.

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Certified by Hashim Abdullahi
Rank Assistant Secretary (Manager)
Signature: 

This Tribunal confirmed from its Registry that hearing notice was not served on the Respondents. The omission by the Tribunal Registry should not be allowed to have negative effect on the Respondents. The Tribunal hereby sets aside its decision of 28th July, 2015.

The 2nd Respondent is hereby ordered to open their defense.

Ruling:

This is the ruling on the 1st Respondent's Application:

Counsel to 1st Respondent also brought an application pursuant to Order XI Rule 1 and 2 of Tax Appeal Tribunal (Procedure) Rules. The motion was supported by an affidavit and was heard on 17th August, 2015. It is also seeking for an Order of this Tribunal setting aside its proceedings of 28th July, 2015 being a nullity. They also prayed for an order granting leave to the 1st Respondent to re-open their case. Counsel states that they were absent on the date because they were not served hearing notice. Citing the case of S.P.D.C (NIG)Ltd V Niger Optical Services CO (2004)7 NWLR part 872 page 420-435 at parag G-H, Counsel submitted that it is the duty of the court to notify litigants of a new date after disruption of hearing.

Counsel further submitted that mistake of the registry should not be visited on the litigant or his counsel. She relied on the case of Ede v Mba (2012) All FWLR pt 612 at pg 1646-1665 parag F-G. She also urged this Tribunal to set aside its decision of 28th August, 2015 and cited the case of Bada v Atunbi (2012) 3NWLR Part 1287 page 354 at 368 parag G-H, where the Court of Appeal held that proceedings held without prior notice of hearing date to the parties ought to be set aside on the application of the party not served.

We entirely agree with the above position of the law. The record of this Tribunal clearly shows the parties were not served hearing notices regarding the sitting of 28th August, 2015. The proceeding of 28th August, 2015 is hereby set aside. Leave is also granted the 1st Respondent to re-open their defense.

**BASHIR ABDULLAHI ALBASU
(CHAIRMAN)**

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Bashir Assistant Secretary (Manager)