

IN THE TAX APPEAL TRIBUNAL

NORTH CENTRAL ZONE

SITTING AT JOS

ON WEDNESDAY 18<sup>th</sup> MAY 2016

BEFORE THEIR HONOURS

HON. ABRAHAM N. YISA  
HON. HASHIYA BEN UMAR (MRS)  
HON. JIBRIL NGATKYA USENI  
HON. JOSEPH O. IHEKWEREME

CHAIRMAN  
COMMISSIONER  
COMMISSIONER  
COMMISSIONER

APPEAL NO: TAT/NCZ/001/2012

BETWEEN

FEDERAL INLAND REVENUE  
SERVICE.....APPELLANT

AND

JOS INTERNATIONAL BREWERIES PLC & ANOR.....RESPONDENT

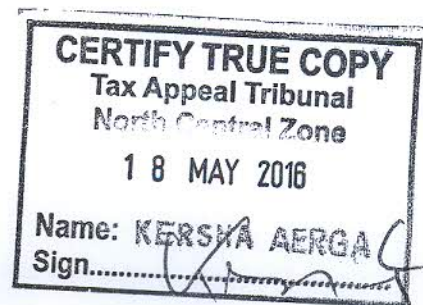
JUDGEMENT

The claim put forth by the Appellant in this matter as contained in their Notice of Appeal dated the 5<sup>th</sup> day of March 2012 as stated on item 3 "*Reliefs sought from the Tribunal*" are, we quote:-

*"The Appellant claims against the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's jointly and severally as follows:"*



- (d) The sum of N3,493,325.00 (Three Million Four Hundred and Ninety Three Thousand Three Hundred and Twenty Five Naira Only) as the sums owing due and payable by the Defendant to the Plaintiff being unremitted Education Tax for the period of 1998-2005 years of assessment.
- (e) Penalty on the unremitted Education Tax of N3,493,325.00 (Three Million Four Hundred and Ninety Three Thousand Three Hundred and Twenty Five Naira Only) at the rate of 10% per annum from 1998-2005 till the total debt is completely liquidated.
- (f) Interest on the unremitted Education Tax of N3,493,325.00 (Three Million Four Hundred and Ninety Three Thousand Three Hundred and Twenty Five Naira Only) at the rate of 20% per annum from 1998-2005 till the total debt is completely liquidated.
- (g) The sum of N53,725,650.12 (Fifty Three Million Seven Hundred and Twenty Five Thousand Six Hundred and Fifty Naira and Twelve Kobo Only) as the sum owing, due and payable by the Defendant to the Plaintiff being unremitted Income Tax for the period of 1998-2005 years of assessment.
- (h) Penalty on the unremitted income Tax of N53,725,650.12 (Fifty Three Million Seven Hundred and Twenty Five Thousand Six Hundred and Fifty Naira and Twelve Kobo Only) at the rate of 10% per annum from 1998-2005 till the total debt is completely liquidated.





- (i) Interest on the unremitted Income Tax of N53,725,650.12 (Fifty Three Million Seven Hundred and Twenty Five Thousand Six Hundred and Fifty Naira and Twelve Kobo Only) at the rate of 20% per annum from 1998-2005 till the total debt is completely liquidated.

Judgement was delivered in this matter by the Tribunal on the agreed Principal sum in the Appeal which is N28,205,251.00 (Twenty Eight Million, Two Hundred and Five Thousand Two Hundred Fifty One Naira Only) on the 30<sup>th</sup> day of July 2013. The Parties were advised to meet and settle the issue of penalty and interest.

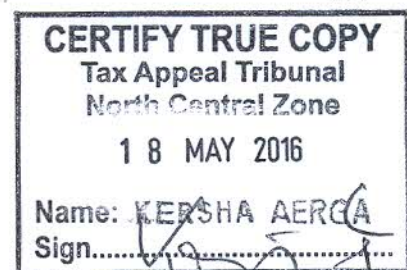
The matter was adjourned severally for the parties to settle these issues and report back to the Tribunal.

However, when this matter came up on the 20<sup>th</sup> day of April 2016, both parties were represented. The effect of their report to the Tribunal was that they were still to reach a settlement in the matter. The Counsel to the respondent sought for another adjournment as the Attorney General of the State was still discussing with the Chief Executive. Counsel for the Appellant urged that we rule on the issue of Penalty and interest.

We have given consideration to the happenings in this Appeal particularly the fact that since Judgment was entered on the agreed principal sums parties failed to reach a settlement on the penalty and interest.

When this matter came up on the 18<sup>th</sup> of February 2016, Counsel to the Appellant advised the Tribunal that the penalty and interest due from the Respondent to the Appellant are as follows:

- “1. Capital Gains Tax  
Penalty is N5,911,445.10K  
Interest is N11,822,890.20k
2. Education Tax  
Penalty is N839,065.34K  
Interest is N1,678,130.68K
3. Company Income Tax  
Penalty is N15,191,901.45K  
Interest is N30,383,802.90K”.





Counsel to the Respondent was in Court on that day and did not object to the fact that those were the sums due as penalty and interest, but sought further adjournment until the appointment of an Attorney General for the State. Our understanding of what has been happening is that the Respondents want either a complete waiver or a reduction on the sums due to the Appellant as penalty and interest on the unremitted taxes.

The issue of penalty and interest is raised in the Appellants particulars of Claim *b, c, f, g, h and i* quoted at the beginning of this judgment.

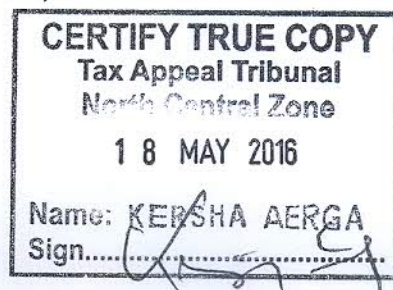
We have decided to invoke our powers under paragraph 15 (8) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act 2007. The said paragraph 15 (8) provides *"The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce increase or annul the assessment or make any such Order as it deems fit."*

The parties did not give a breakdown of the sum agreed by them to be due as principal sum for which the Tribunal gave Judgment in the sum of N28,205,251,00 on 30<sup>th</sup> July, 2013 i.e. which was the Principal for Capital Gains Tax, Education Tax and Income Tax respectively.

However particulars of Claim *b, c, f, g, h and i* all claim some amount of interest on the principal sums due on the various taxes either as penalty or interest.

On heads of claim on Penalty which the Appellant's Counsel states as N5,911,445.10 (Five Million, Nine Hundred and Eleven Thousand, Four Hundred and Forty Five Naira, Ten Kobo) for Capital Gains Tax; N839,065.34 (Eight Hundred and Thirty Nine Thousand and Sixty Five Naira Thirty Four Kobo) for Education Tax and N15,191,901.45 (Fifteen Million, One Hundred and Ninety One Thousand, Nine Hundred and One Naira, Forty Five Kobo) as Company Income Tax, making a total of N21,945,411.80 (Twenty One Million, Nine Hundred and Forty Thousand, Four Hundred and Eleven Naira, Eighty Kobo), we hold that the Respondents should jointly and severally pay to the Appellants 5% of the total penalty i.e N10,971,205.90 (Ten Million, Nine Hundred and Seventy One Thousand, Two Hundred and Five Naira, Ninety Kobo).

On heads of claim for the Interest on the unremitted principal taxes to which they apply at the rate of 20% per annum and which is calculated by the Appellant as N11,835,890.20 (Eleven Million, Eight Hundred and Twenty Two Thousand, Eight Hundred and Ninety Naira, Twenty Kobo) as Capital Gains Tax; N1,678,130.68 (One Million, Six Hundred and Seventy Eight Thousand, One Hundred and Thirty Naira,

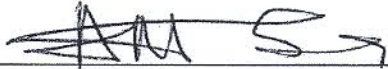


Sixty Eight Kobo) as Education Tax; N30,383,802.90 (Thirty Million, Three Hundred and Eighty Three Thousand, Eight Hundred and Two Naira, Ninety Kobo) as interest, making a total of N43, 884,823.80 (Forty Three Million, Eight Hundred and Eighty Four Thousand, Eight Hundred and Twenty Three Naira, Eighty Kobo), we hold that the Respondent should jointly and severally pay to the Appellant 10% of the total accrued interest, which is N15, 191, 901.40 (Fifteen Million, One Hundred and Ninety One Thousand, Nine Hundred and One Naira, Forty Kobo). That will be our judgment.

Representation

- Nasiru Ahmad Esq with Talatu Aliyu (Miss) for the Appellant.
- N.N Adangu, with B. Haruna and A.G. Lawal for the Respondents.

DATED AT JOS, THIS 18<sup>th</sup> DAY OF MAY 2016

  
HON. ABRAHAM N. YISA MON  
Chairman

