

IN THE TAX APPEAL TRIBUNAL  
IN THE LAGOS ZONE  
HOLDEN AT LAGOS

APPEALNO.TAT/LZ/VAT/038/2015

BETWEEN

EDMUND CHINONYE OBIAGWU

..... PLAINTIFF

AND

1. LAGOS STATE GOVERNMENT

2. LAGOS STATE INTERNAL REVENUE SERVICE ..... DEFENDANTS

JUDGMENT

This action was commenced by way of Originating Summons brought by "the Plaintiff" against Lagos State Government and Lagos State Internal Revenue Service (LIRS) described as "Defendants". It is seeking the determination of the following questions:

1. Whether sections 1[1][b] and 2 of the Hotel Occupancy and Restaurant Consumption Law No. 30, Vol. 42, Laws of Lagos State 2003 providing for 5% taxation on consumable good [sic] and services in hotels and restaurants constitute double taxation and therefore [sic] inconsistent with the provisions of section [sic] 1, 2 and 4 of the Value Added Tax Act No. 102, 1993 [as amended]
2. Whether the Hotel Occupancy and Restaurant Consumption Law No. 30, Vol. 42, Laws of Lagos State 2003 violates the doctrine of covering the field and therefore unconstitutional. [sic]
3. Whether the imposition of 5% consumption tax on the Plaintiff for purchase of consumable goods or services in a restaurant in Lagos by the Lagos State Government in addition to VAT paid on the same goods and services is unlawful.

In summary the action seeks to challenge the imposition of 5% Lagos State Consumption Tax in addition to the 5% charge as Value Added Tax on the goods

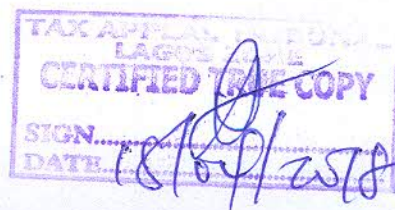


purchased at the Marcopolo Oriental Cuisine. The Reply by the Respondents was a preliminary objection urging this tribunal to strike out the action for:

- a. The subject matter of dispute in this case is filed at the wrong jurisdiction [sic] as the amount charged is regulated by the Hotel Occupancy and Restaurant Consumption Law of Lagos State.
- b. A matter of this nature cannot be resolved by Originating Summons at the Tax Appeal Tribunal
- c. That condition precedent [sic] was not fulfilled by Mr. Edmund Obiagwu in this case as stipulated by the Hotel Occupancy and Restaurant Consumption Law of Lagos State.
- d. This matter is an abuse of the Tribunal's process, as the amount being claimed is charged in respect of Hotel Occupancy and Restaurant Consumption Law administered by the Lagos State Government.
- e. The Tax Appeal Tribunal as presently constituted does not have the jurisdiction or mandate to entertain matters in relation to the constitutionality or otherwise of laws that is the Hotel Occupancy and Restaurant Consumption Law 2009.
- f. The Applicant is not entitled to the orders sought and contained in its processes as the Supreme Court of Nigeria has already delivered judgment in favour of Lagos State with respect to administration of the Hotel Occupancy and Restaurant Consumption Law of Lagos State.

The Respondents have distilled 3 issues for determination in this matter namely:

- i. Does the Tribunal have the right to assert [sic] on the validity of the Hotel Occupancy and Restaurant Consumption Tax Law of Lagos State?
- ii. Whether this Tribunal has jurisdiction to entertain the Appeal filed by the Applicant taking into consideration that the Appeal relates to a law validly made by the Lagos State Government.
- iii. Whether the Applicant's failure to fulfill the condition precedent does not rob this Tribunal the authority to hear the Appeal.





We adopt these issues as the Appellant has not formulated any issues for determination.

### ANALYSIS

We shall take issues 1 and 2 together.

The question that is raised for determination by both issues relates to whether this Tribunal has the jurisdiction to entertain this action. This is a threshold issue which requires a proper evaluation of the subject - matter of the action vis-à-vis the remit of the Tax Appeal Tribunal which is a creation of statute.

It is clear that the grouse of the Appellant is with the Hotel Occupancy and Restaurant Consumption Law No. 30, Vol. 42, Law of Lagos State 2003.

The Appellant seeks to challenge the validity of the Hotel Occupancy and Restaurant Consumption Law and not the Value Added Tax Act. The remit of the Tax Appeal Tribunal is as contained in section 11 of the Fifth Schedule of the Federal Inland Revenue Service [Establishment] Act No 13 of 2007 which provides as follows:

- [i] The Tribunal shall have power to adjudicate on disputes and controversies arising from the following tax laws [hereinafter referred to as 'the tax laws'] -
- Companies Income Tax Act, CAP. 60 LFN; 1990
  - Personal Income Tax Act No. 104, 1993
  - Petroleum Profits Tax Act CAP. 354 LFN; 1990;
  - Value Added Tax Act No. 102; 1993;
  - Capital Gains Tax Act CAP. 42 LFN; 1990 and
  - Any other law contained in or specified in the First Schedule to this Act or other laws made or to be made from time to time by the National Assembly. [underlining supplied]
- [ii] The Tribunal shall apply such provisions of Tax laws referred to in subparagraph (i) of this paragraph as may be applicable in the determination or resolution of any dispute or controversy before it.

The Hotel Occupancy and Restaurant Consumption Law is not mentioned in this Act. Furthermore, the omnibus provision in section 11 [i][vi] is circumscribed by the phrase "other laws made or to be made by the National Assembly". We therefore hold



that the Hotel Occupancy and Restaurant Consumption Law No 30. Vol. 42 Laws of Lagos State is not within the jurisdiction of the Tax Appeal Tribunal as set out by its enabling statute.

This conclusively determines the question of the jurisdiction of this tribunal. It is statutory and is not unlimited. It does not encompass adjudication of statutes made by the state legislatures. We therefore have no jurisdiction to entertain the action. We find it unnecessary to delve into the other interesting questions raised in the preliminary objection.

In the result, we strike out this action for want of jurisdiction.


LEGAL REPRESENTATION:

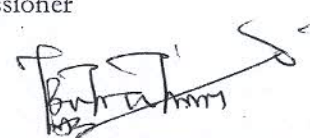
E. C. Obiagwu Esq. with Ms J. O. Aladesanmi for the Appellant.

Femi Asekun Esq. with Mrs O. Olutayo and Ms Kemi Onabowale for the Respondent

DATED AT LAGOS THIS 13TH DAY OF JANUARY 2016

  
KAYODE SOFOLA, SAN (Chairman)

  
CATHERINE A. AJAYI (MRS)  
Commissioner

  
MUSTAFA BULU IBRAHIM  
Commissioner

  
D. HABILA GAPSISO  
Commissioner

  
CHINUA ASUZU  
Commissioner

