

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

Appeal No: TAT/LZ/CIT/007/2015

Between

Phalax Technologies Ltd

Appellant

And

Federal Inland Revenue Service

Respondent

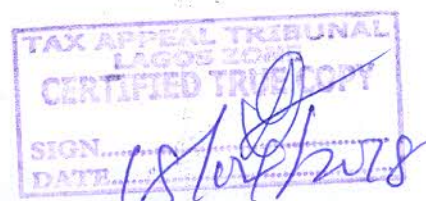
Ruling

The Appellant moves the Tribunal to adjourn the hearing of this appeal to a date after 1 October 2015, principally because, until then, the Appellant awaits the Rivers State Government's permission to introduce vital contractual documents the Appellant believes it will need to prosecute the appeal.

The Appellant does not seek adjournment so that it can obtain the documents—presumably, the Appellant already has the documents. (The Respondent completely misconstrues the application.)

The Appellant alleges that those contractual documents contain confidentiality clauses forbidding disclosure to third parties. On the Appellant's intervention, the Rivers State Government is now considering permitting the use of these documents in these proceedings. The Appellant claims that a decision is not expected until the end of September 2015.

In its submissions, the Appellant casts the issue for determining this application as whether the Appellant's fair-hearing rights will be breached by failing to adjourn hearing as the Appellant requests.



The short answer is no.

On the constitutional guarantee of fair hearing, the Appellant cites *Alhaji v Ma'ji* [2002] 4 NWLR (Part 756) 46, 59H-60B per I. T. Muhammad JCA. The passage quoted by the Appellant from this case emphasizes *opportunity* to be heard. In *Aladetoyinbo v Adewunmi* [1990] 6 NWLR (Part 154) 98, 107D-F, also cited by the Appellant, the Court of Appeal (per Salami JCA), relying on the Supreme Court decision in *Otapo v Sunmonu* [1987] 2 NWLR (Part 58) 587, equally stressed *opportunity*.

The Appellant has had too much opportunity to present its case. The Appellant initiated this appeal and should have been better prepared to prosecute it.

Besides, the Appellant has not supplied sufficient information or material to enable the Tribunal exercise the adjournment discretion in the Appellant's favor:

1. The Appellant does not quote the confidentiality clause to enable the Tribunal assess its ambit.
 - a. The confidentiality clause itself cannot be confidential, else the Appellant would not resort to it as it now does.
 - b. Typically, confidentiality clauses contain exceptions for legal proceedings—this one might well do and the Appellant has not alleged or suggested otherwise.
 - c. The confidentiality clause does not bind the Appellant as the Appellant is not a party to the contract containing the clause.
2. The Appellant does not exhibit MPD's written request to the Rivers State Government seeking permission for the use of the contractual documents in these proceedings.



3. The Appellant is not a party to the contracts in question and does not allege that it is bound to respect its confidential clause for ethical or legal reasons.


In the premises, we refuse and dismiss the application.


Legal Representation


Chima Umezuruike for the Appellant

Ugochi Ekunwe (Mrs) for the Respondent


Dated at Ikeja, Lagos this 24th day of July 2015


KAYODE SOFOLA, SAN
Chairman


CHINUA ASUZU Esq
Commissioner


CATHERINE AJAYI (Mrs)
Commissioner


D. H. GAPSISO Esq
Commissioner


MUSTAFA BULU IBRAHIM
Commissioner

