

IN THE TAX APPEAL TRIBUNAL

NORTH CENTRAL ZONE

SITTING AT JOS

ON WEDNESDAY, 9th DECEMBER 2015

BEFORE THEIR HONOURS

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

CHAIRMAN
COMMISSIONER
COMMISSIONER
COMMISSIONER

APPEAL NO: TAT/NCZ/010/2014

BETWEEN

FEDERAL INLAND REVENUE
SERVICE.....APPELLANT

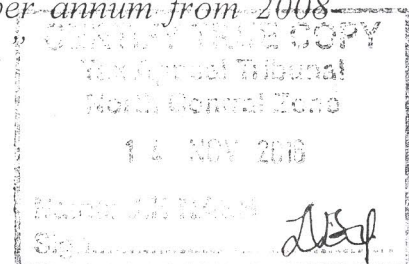
AND

AMURO MICRO FINANCE BANK.....RESPONDENT

JUDGEMENT

The Appellant by a Notice of Appeal dated the 9th day of December 2014 is claiming from the Respondent as follows:-

- a. *"The sum of N648, 318.00 (Six Hundred and Forty Eight Thousand, Three Hundred and Eighteen Naira, Five Kobo Only).*
- b. *Penalty on the unremitted Value Added Tax in the sum of N810, 000.00 (Eight Hundred and Ten Thousand Naira Only) for January to December 2008-2012 and January to June 2013.*
- c. *Interest on the Unremitted Value Added Tax N648,318.05 (Six Hundred and Forty Eight Thousand, Three Hundred and Eighteen Naira Five Kobo Only) at the rate of 21% per annum from 2008-2012 till the total debt is completely liquidated.*



The Respondent had on the 22nd day of July 2015 been granted an extension of time to file their Reply, Witness Statement on Oath and other accompanying documents. An Order was also made by this Tribunal deeming the already filed Witness Statement on Oath and other accompanying documents as having been properly filed and served. The matter was adjourned to the 26th day of August 2015 for hearing. On the said 26th day of August 2015 the Respondent was represented by one Mr D.N. Deb Esq holding brief for S. D Gazu Esq, Counsel for the Respondent, who was reported ill and they sought for, and were granted an adjournment to the 30th day of September 2015.

When the matter came up on two subsequent dates i.e. 30th September 2015 and 14th October 2015, the Respondents were neither present nor represented. When this matter came up for Hearing on the 18th day of November 2015 there was proof that the Respondents were on the 19th day of October 2015 served with a Hearing Notice, which made them aware of the adjourned date. The Respondents who were absent failed to explain their absence and the Appellant was ready to proceed to prove their claim and were called upon by the Tribunal to do so.

The Appellant called one Witness, Dennis Tagurum who testified as Appellant Witness No. 1. The Witness, a Christian, affirmed and testified in English Language. He testified that he is the Head of Filing and Debt Enforcement, Lokoja Micro and Small Tax Payers Office (MSTO). He stated that he knew the Respondent in the normal course of his job.

He further testified that he had made a Witness Statement on Oath, which was filed at the Tribunal. He identified the said Witness Statement on Oath and urged the Tribunal to adopt the statement as his testimony before it.

The Witness referred to Paragraph 8 of the said Witness Statement and to the document he mentioned in the statement, a VAT- RE ASSESSMENT NOTICE FORM VAT 2007 for 2008-2012 ASSESSMENT years which he said is a certified true copy. Upon application by Counsel to the Appellant, the said document VAT RE-ASSESSMENT NOTICE FORM VAT 2007 FOR 2008-2012 was admitted in evidence and marked as Exhibit 1.

In continuation of his testimony the Witness referred to Paragraph 9 of his Statement on Oath and to a document, which was a demand letter dated 27th November 2013. He was shown a certified true copy of the letter, which he identified. Counsel to the Appellant sought to tender the document in evidence. The Tribunal admitted "*Demand Note dated 27th November 2013*" as EXHIBIT 2.

In continuation of his examination-in-chief the Witness referred to a document in paragraph 10 of his Witness Statement. He testified that the document which is the final reminder letter dated 9th December 2013 was signed by him. He testified that the document shown to him is a certified true copy of the original. Upon application

by Counsel to the Appellant the said document i.e. *"Final Reminder Letter dated 9th December 2013"* was admitted in evidence and marked Exhibit 3.

The witness testified further that he made an additional sworn statement, which was filed in the Tribunal. He identified same by his signature and sought to adopt it as his testimony before the Tribunal. He referred to Paragraph 6 of the additional statement and identified a document as a certified copy of the letter explaining to the Respondent that Micro Finance Banks are Vat-able. Upon application by Counsel to the Appellant, the Tribunal admitted letter dated 22nd October 2012 and headed *Request for FIRS Clarification on VAT Obligation of Micro Finance Banks* as Exhibit 4.

The Witness in his resumed testimony urged the Tribunal to enter Judgment for the Appellant in the amount claimed. The Appellant closed its case with the Testimony of the lone Witness.

The only evidence before the Tribunal is that supplied by the Appellant through Dennis Tagurum, Appellant Witness No 1. The Respondents were granted ample opportunity to state their case but chose to ignore the same. The Respondent had as stated earlier in the judgment been granted an extension of time to file their Reply, Witness Statement on Oath and other accompanying documents. These documents, though before the Tribunal go to no issue, as the Respondent has supplied no evidence to buttress the documents. This being the case with regards to the Respondents' processes, what is left for the Tribunal is to look at the evidence supplied by the Appellant, evaluate the same and decide whether or not the Appellants have proved their claim which is quoted at the onset.

The Appellant had through the Appellant Witness No.1 testified that the Respondent is registered to pay Tax and had in Paragraph 7 of the additional Statement on Oath sworn that the Respondent is registered as No. 020268726-000 and had testified that the said registration covers all Federal Government Taxes which the Respondent is liable to pay. This registration number features prominently on Exhibit 1.

The Tribunal in the course of the testimony of the said Appellant Witness No. 1 admitted VAT- RE ASSESSMENT NOTICE FORM VAT 2007 for 2008-2012 Years of Assessment as Exhibit 1. The said exhibit shows that the sum of **N648, 318.05 (Six Hundred and Forty Eight Thousand, Three Hundred and Eighteen Naira, Five Kobo)** only is due from the Respondent as Value Added Tax. There is evidence before the Tribunal that the said Exhibit 1 was sent to the Respondent.

The Appellant Witness testified further that the sum stated on Exhibit 1 is liable to penalty which is **N810, 000.00 (Eight Hundred and Ten Thousand Naira)** only and that 21% interest is due on the principal sum; as contained in paragraph 7 of the Witness Statement on Oath, which had been adopted by the Tribunal as his testimony before it.

The Witness testified further that a demand letter dated the 27th day of November 2013 was sent to the Respondent, the said letter was admitted as Exhibit 2.

There is further evidence before the Tribunal that a final reminder admitted as Exhibit 3 was sent to the Respondent by the Appellant. The Witness in an additional Statement on Oath, which was also adopted as his testimony testified as to the existence of a letter advising the Respondent that they are not exempted from paying Value Added Tax. There is no evidence before us that the Respondents absolved themselves of the liability contained in the Exhibits before the Tribunal.

By virtue of Section 15 (1) of the Value Added Tax Act the Respondent is expected to deduct Value Added Tax and make rendition. The Section provides:

"A taxable person shall render to the Board, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time determine."

By Section 32 (1) of the FIRS (Establishment) Act 2007, failure to remit tax collected at the time due attracts a sum equal to 10 percent per annum of the amount of tax remitable, in addition to the tax due. The said Section provides:

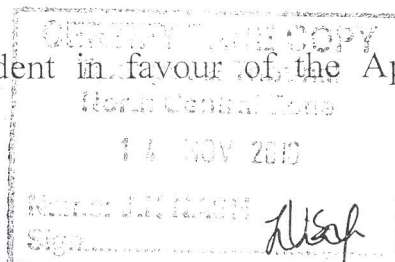
"32 (1) Subject to sub section (3) of this section, if any tax is not paid within the periods prescribed-

(a) a sum equal to 10 percent of the amount of the tax payable shall be added thereto, and the provisions of the Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;"

There is evidence before us as supported by Exhibit 4 that the Respondent is not exempted from Value Added Tax. In fact, Exhibit 3 has tried to differentiate Value Added Tax which is the subject of this claim from C. O. T. i.e. commission on turnover which correspondent Banks charge the Respondents for monies deposited with them.

From the totality of the Witness testimony, we believe that Value Added Tax is due and owing from the Respondent to the Appellant. We believe further that despite Exhibits 1-4 which were made available to the Respondent by the Appellant, the sums due are still unpaid.

We enter Judgement against the Respondent in favour of the Appellant in the following terms:



- a. The sum of N648,318.00⁵ (Six Hundred and Forty Eight Thousand, Three Hundred and Eighteen Naira) only for January to December 2008 – 2012 and January to June 2013.
- b. Penalty on the unremitted Value Added Tax in the sum of N810,000.00 (Eight Hundred and Ten Thousand Naira) only for the period January to December 2008 – 2012 and January to June 2013.
- c. Interest on the unremitted Value Added Tax of N648,318.00⁵ (Six Hundred and Forty Eight Thousand, Three Hundred and Eighteen Naira, Five Kobo) only at the rate of 21% per annum from 2008 to 2012 till the total debt is liquidated.

We noticed that the sum written in words by the Appellant against their Claim has increased the Claim by five kobo i.e. the figures differ from the Claim in words. The Claim in figures shall be the subject of our Judgment.

We shall make no order as to costs.

Representation

- Nasir Ahmed Esq, with F.A. Grema (Mrs) for the Appellant.
- John Samuel Opeyemi Esq, for the Respondent.

DATED AT JOS, THIS 9TH DAY OF DECEMBER 2015



Hon. Abraham N. Yisa, MON
Chairman

