IN THE TAX APPEAL TRIBUNAL
SOUTH EAST ZONE
HOLDEN AT ENUGU

APPEAL NO. TAT SEZ/001/2012

BETWEEN

FEDERAL INLAND REVENUE SERVICES --- APPELLANT

AND

UNIVERSITY OF NIGERIA, NSUKKA ------- RESPONDENT

BEFORE THEIR HONOURS

Chairman: **Prof. C. J. Amasike**

Commissioners: **Ignatius Chibututu, Esq**
Dr. [Mrs] Josephine A. A. Agbonika
Prof. Eddy Omolehinwa
Ngozi I. Amaliri ,Esq.

RULING

The Appellant is a Federal Government Agency, established by the Federal Inland Revenue Services Act, 2007 and vested with the powers, inter alia,to administer and manage the Value Added Tax Act, 1993 (as amended), as well as the Withholding Tax Act [as amended]. It is empowered to do things as may be necessary for the proper assessment and collection of Value Added Tax and Withholding Tax on behalf of the Federal Government of Nigeria. The Respondent is a body established by the University of Nigeria Act, as a tertiary institution of learning.

The Appellant instituted an appeal before this Tax Appeal Tribunal on the 23rd day of March, 2012, claiming against the Respondent the sum of One Hundred

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Name: UKANDU CHARLES C
Designation: Deputy Manager (LEGAL)

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and Six Million, Three Hundred and Six Thousand, Nine Hundred And Fourteen Naira, Ninety Four Kobo (N106,306,914.94k) being outstanding of Value Added Tax and Withholding Tax covering the period between 2001 and 2006, accruable to the Federal Government from the Respondent.

Upon service on the Respondent of the Appellant's Notice and Grounds of Appeal, Motion on Notice and Affidavit in Support of Motion, Witness Statement on Oath, List of Witnesses as well as List of Documents, the Respondent filed a Preliminary Objection along with a Written Address on the 27th day of June, 2012, praying this Tribunal as follows:

1. That it is the law and condition precedent that an action can only be instituted against a legal or juristic person.
2. That the Respondent contends that the tribunal has no jurisdiction to entertain the matter because the action is incompetent, being statute barred under the Public Officers Protection Act Cap. P41, Laws of the Federation of Nigeria, 2004, and
3. That the Respondent contends that the Tribunal has no jurisdiction to entertain the matter because the action is incompetent, being statute barred under the Tax Appeal Tribunal (Procedure) Rules, 2010.

i. Instituting An Action Against A Non-Juristic Person.

Under this issue the Respondent argued that:

i. For a suit to be competent and a Court/Tribunal to have jurisdiction to entertain it, the Defendant/Respondent must be a juristic or legal person.

ii. The Respondent on record, University of Nigeria Nsukka is a non-Legal or juristic person that can be sued or sue under the University of Nigeria Act.

iii. Under the University of Nigeria Act Cap. U. II Vol. XV Laws of the Federation of Nigeria, 2004, Section 1(1) and (2) of the said Act provides:

> "the University of Nigeria (hereinafter in this Act referred to as the University) established by the University of Nigeria Law (hereinafter in this Act referred to as "the former law") shall continue in being as a body corporate with perpetual succession and a common seal."

"(2) The University may sue and be sued in its corporate name". (Emphasis supplied)

iv. The Appellant has purportedly sued the University of Nigeria, Nsukka which is not a legal person under the Act, the appeal or suit is incompetent; thus divesting the Tribunal of the jurisdiction to entertain the matter. Reference was made to the following cases:

a. **Trustees P. A. W. Inc. v Trustees A. A. C. C. (2002) 15 NWLR (Pt. 790) 424,** where the Court of Appeal held that the jurisdiction of a court to entertain a matter is conferred by the Constitution or the enabling Statute and no Court has the jurisdiction to entertain a suit in which the Plaintiff or the Defendant is not a legal person or a juristic person..., cited with approval in **Francis Chigozie Moneke v University of Nigeria Nsukka, Suit No. FHC/EN/M/307/2010 (Unreported), decided on 22/06/2011.**

b. **New Nigeria Bank PLC v Denclag Ltd (2005) 4 NWLR (Pt 916) 549;**

c. **Ogbodo v Ishokare (1964) NMLR 234**

2. **Instituting An Action That Is Statute Barred Under the Public Officers Protection Act CAP. P. 41 LFN, 2004.**

Under this subhead, the Respondent submitted that:

i. The Tribunal had no jurisdiction to entertain this matter because it was incompetent, being statute barred.

ii. That once an action was statute barred no resort to the merit of the case will operate to keep it in being. Reference was again made to **Fred Egbe v Hon Justice J A Adefarasin (1987) 1 NWLR (Pt 47) 1 at pp. 13, 20; Samuel Adigun v ID Ayinde (1993) 8 NWLR (Pt 313) 516 at 535**

iii. That the cause of action arose in October 2007 when the Respondent failed to observe the terms of agreement signed on 16/06/2007, wherein it agreed to pay in 4 instalments the sum

purportedly owed in VAT and WHT to the Appellant, starting from October, 2007 and not.

iv. That the action for recovery would have commenced within three months from October 2007, the period of the default. Reliance was placed on Section 2(a) of the Public Officers Protection Act and **Ibrahim v Judicial Service Committee, Kaduna State (1998) 14 NWLR (pt 584) 1, Victor Udofia v University of Nigeria (FHC/EN/CS/25/2005) delivered on 28/07/2005 (Unreported), Hon Justice Nwaogwugwu v The President of the Federal Republic of Nigeria & Ors (2007) 6 NWLR (Pt 1030) 237, Egbe v Adefarasin (Supra), University of Ilorin v Adeniran (2007) 6 NWLR (Pt 1031) 498 and NEPA v Olagunju (2005) 3 NWLR (Pt 913) 602 at 623 -624.**

v. That assuming, but without conceding that the cause of action arose on 07/03/2011, when the last letter of demand was written to the University, the time between the letter and the filing of the Notice of Appeal was more than three months and so the matter was statute barred.

3. **Instituting An Action That is Statute Barred Under the Tax Appeal Tribunal (Procedure) Rules, 2004:**

Here the Respondent contended that by Order 3 Rule 2 of the Tax Appeal Tribunal Rules, the suit was statute barred and that the Appellant had failed to put before the Tribunal cogent reasons why it could not file the Notice of Appeal within the time allowed by Law.

The Respondent concluded by submitting that it was trite law that the issue of jurisdiction can be raised at any stage of a proceeding. The Learned Counsel to the Respondent referred the Tribunal to **S.O. Akegbejo v Dr. D O Attaga (1998) 1 NWLR (Pt 534) 459 at 468 Para. B – D and Madukolu v Nkemdilim (1962) 1 All NLR (Pt 4) 587 at 595** and urged the Tribunal to uphold the objection, discountenance the appeal and strike out the suit for being manifestly incompetent.

APPELLANT'S REPLY

In his response to the Respondent's Preliminary Objection, the Appellant filed a Reply to the Respondent's Preliminary Objection on the 12th day of July, 2012, wherein Counsel raised the following issues for determination:

1. Whether An Action Can be Maintained Against University of Nigeria As University of Nigeria, Nsukka

2. Whether the Statute of Limitation can avail the Respondent despite admission of liability during negotiation and her willful refusal to comply with the terms of the agreement arising therefrom

3. Whether the Tax Appeal Tribunal (Procedure) Rules, 2010, can operate to bar the Tribunal from entertaining the present action.

In arguing the first issue, the Appellant's Counsel submitted that a legal action can be sustained against the University of Nigeria as University of Nigeria, Nsukka. That at worst, the addition of the word "Nsukka" can be treated as a misnomer, which can be corrected by the necessary application to the Tribunal. Counsel referred the Tribunal to **University of Nigeria v Orazulike Trading Company Limited, (1989) 5 NWLR (Pt 119) 19; Maersk Line Anor v Addide Investment Ltd & Anor (2002) 4 SCNJ 433; Ijomah v The Council of Federal University of Technology, Yola (2002) 3 FHCLR 91.**

Counsel further argued that though it was trite law that actions cannot be maintained against a non-juristic or non-existent person, the same cannot be said of the Respondent who was a sufficiently described legal entity with no doubt to its identity, even when such a description included elements not usually part of its name. Cited the case of **Maersk Line Anor v Addide Investment Ltd & Anor (supra).**

On the second issue Counsel posited that the Statute of Limitation cannot avail the Respondent, since it had admitted liability during negotiation and all that was left was for the Respondent to fulfil its part of the agreement reached at the negotiation. On this premise Counsel argued that the statutory period of limitation giving rise to the action cannot be said to have come to an end, as the wrongful act was continuous. Counsel referred the Tribunal to **Shell Development Limited v F. B. Farah & Ors (1995) 3 NWLR (Pt 382) 148, cited with approval in Nwadiaro v Shell Petroleum Development**

Community Nig.Ltd (1990) 5 NWLR (Pt. 150) 322; Eboigbe v NNPC (1994) 5 NWLR (Pt 347)660 D–E and Oluwa v NNPC (1997) 1 FHCLR 49. Counsel to the Appellant, while urging the Tribunal to discountenance the Respondent's argument on this issue, stated that doing otherwise would be allowing the respondent to deny the federal Government of revenue that rightly accrued to it, an act which would be contrary to public policy. Counsel referred the Tribunal to the decision of the Court of Appeal on this issue in **Phoenix Motors Ltd v Nigerian Provident Fund Management Board (1993) 1 NWLR (Pt 272) 718 at 731.**

Furthermore, Counsel to the Appellant on issue number three submitted that **Order 3 Rule 2 of the Tax Appeal Tribunal (Procedure) Rules 2010** which the Respondent sought to rely in holding that the Tribunal had no jurisdiction to entertain the matter and not avail the Respondent, as the appellant had fulfilled the condition precedent sequel to the proviso of the rule which states:

> "An appeal under the Rule shall be filed within a period of 30 days from the date on which the action, decision, assessment or demand notice being appealed against, was made, provided that the Tribunal may entertain an appeal after the expiration of the said period of 30 days if it is satisfied that there is a sufficient cause for the delay"

It was the submission of the Appellant's Counsel that the proviso gave the Tribunal the discretion to extend time for the Appellant within which to file the Notice of Appeal, so long as the Appellant fulfiled the condition precedent by seeking extension of time to do that which it failed to do within the time stipulated by Statute. Counsel referred the tribunal to the following cases: **Shell Development Company Limited v Councillor F. B. Farah & Ors (Supra) and Phoenix Motors Ltd v National Provident Fund Management Board (supra).**

Finally, the Appellant's Counsel urged the Tribunal not to rely on technicalities to dismiss the suit but that the Tribunal should discountenance, disregard, dismiss, ignore or jettison, in its entirety, the Respondent's Preliminary Objection and resolve the issue in its favour.

In his Reply on Points of Law filed on the 8th day of September, 2012, the Respondent more or less re-argued the same issues as raised in its Preliminary Objection and urging the Tribunal to strike out the suit for want of jurisdiction.

HAVING REGARD TO THE PROCESSES FILED AND ADDRESS ARGUED BY THE PARTIES AND IN ORDER TO AVOID NEEDLESS PROLIFERATION OF ISSUES, THE ISSUES ARISING FOR DETERMINATION IN THIS SUIT CAN BE SUCCINCTLY FORMULATED AS FOLLOWS:

(i) Whether the Defendant on record, University of Nigeria, Nsukka, is a legal entity that can be sued in the manner the Appellant had done in the present action?

(ii) Whether the Statute of Limitation to wit the Public Officer's Limitation Act, 2004 can avail the Respondent despite admission of liability.

(iii) Whether the Tax Appeal Tribunal [Procedure] Rules, 2010, can bar the Appellant from instituting this suit.

It is on the basis of these three (3) issues that we shall proceed to dispose of this matter. As noted hereinbefore, the parties filed and exchanged written addresses which were adopted by their respective Counsel. We will refer to the submissions contained in these written addresses as we consider relevant or necessary.

ISSUE No 1. Whether the Defendant on record, University of Nigeria, Nsukka, is a legal entity that can be sued in the manner the plaintiff had done in the present action?

It was forcefully argued on behalf of the Respondent that by virtue of the pleadings and the preliminary objection before the Tribunal, the respondent on record, University of Nigeria Nsukka was not legal person or entity known to law that can sue or be sued in that name, **citing the Trustees P.A.N. Inc v. Trustees A.C.C.C (2002) 15 NWLR (PT 790); Francis Chigozie Maneke v. UNN, Nsukka Supra. The case of Emecheta V. Oguerri (1996) 5NWLR pt (447) 227 and Ataguba & Company V. Gura Nigeria Limited(2005) All FWLR (PT.256) 1219 at 1228** to support the proposition that in order for an action to be properly constituted so as to vest the court with the jurisdiction to adjudicate, there must be a competent plaintiff and a competent defendant. It was submitted that University of Nigeria, Nsukka was not a competent

Respondent not being a juristic person and that this action ought to be struck out. The Respondent maintained that the proper party that could have been sued in this action was the 'University of Nigeria' simplicita since that was its corporate name.

> Reacting to the above submissions, it was contended on behalf of the Appellant that the addition of the word 'Nsukka' to University of Nigeria was merely descriptive of location and did not remove the juristic personality of the respondent having been sufficiently described. That such addition could only at best be considered a misnomer.
>
> The point to underscore here is that whilst it is desirable that an objection bordering on competence of a party in litigation, and ipso facto, the competence of the suit as constituted, ought to be raised timeously, we take the view that it was neither too late nor too early to raise such an objection. See **Madukolu V Nkemdilim (1962) 1 ALL NLR 587 at 595; Rossek V. ACB Limited (1993) 8NWLR (PT. 312) 382 AT 437,** among a host of other cases. That explains why the law allows such an objection to be raised even for the first time on appeal.

The question of whether or not there was a competent plaintiff or defendant capable of suing or being sued in an action had always agitated the courts from time to time and there is no paucity of dicta in this aspect of the law. It is a jurisdictional issue. A court can only exercise jurisdiction over a cause or matter where there are competent parties before it. It seems however, to us that the Respondent had completely misapprehended the legal principles decided in the cases relied upon. Whilst it is settled law that a non juristic person, generally, cannot sue or be sued eo nomine, the principle handed down in **ATAGUBA & COMPANY V. GURA NIGERIA LIMITED (2005)ALL FWLR (PT 256) 1219 at 1228; GANI FAWEHINMI V. NBA (NO. 2) (1989) 2 NWLR (PT 105) 558; AGBONMAGBE BANK LIMITED V. GENERAL MANAGER G.B. OLLIVANT LIMITED & ORS (1961)1 ALL NLR 166; (1961) 2 SCNLR 317** and other decisions in that category was not that where an entity clothed with legal personality was wrongly designated or described in a suit,

such an entity metamorphoses into an entity not known to law. In **AGBONMAGBE BANK LIMITED V. GENERAL MANAGER G.B. OLLIVANT LIMITED & ORS supra,** what the Supreme Court decided was that the title "General Manager, G.B. Ollivant Ltd." is not descriptive of a juristic person. The Defendant so named was therefore struck out of the action on a preliminary objection. It was further held that naming a non-juristic person as a Defendant is not mere misnomer and cannot be amended to substitute a juristic person. Similarly, in **GANI FAWEHINMI V. NBA (NO. 2) supra**, the Supreme Court held that the Nigeria Bar Association being an unregistered association could neither sue nor be sued. In order words, the Nigerian Bar Association was an entity unknown to law because it was neither a duly registered entity nor was it created by or conferred with powers or functions under any statute.

The Respondent's contention, as we understand it, is that although there is the entity described as **"University of Nigeria"** in Nsukka the addition of the word "Nsukka" robs it of its personality since that is not the duly registered legal entity. The contention is that "the proper party that could have been sued is the "University of Nigeria". It would seem therefore that the Respondent is concerned with the inappropriateness or error in the designation by which it is sued and not with whether the entity so improperly designated exist in fact and law. By the Respondent's own showing and contrary to the arguments pressed on its behalf, the Respondent is juristic entity perfectly known to law; and it will not lose its juristic personality or legal capacity merely because it has not been correctly designated in the present suit. This being so, the cases cited by the Respondent are inapposite and inapplicable.

It is important to underscore the point that it is not the designation by which a party sues or is sued in an action that determines whether that party is a juristic

entity or not. Rather, it is function of due registration and/or recognition under extant laws. The law, as we understand it, is that just as it is not enough to assume that an entity must be a limited liability company merely because the word 'limited' is attached to its name, it is also not enough to assume that an entity is not a limited liability company merely because of the omission of the word 'limited' in its name. See **BANK OF BARODA IYALABANI COMPANY LIMITED (2002) 13 NWLR (PT.785)551.** By mere parity of reasoning, it is not enough to assume that the Respondent not a juristic entity merely because of the addition of the words "Nsukka" in the designation by which it had been sued in the present action. See the case of **BAMBE & ORS V YESUFUADERINOLA & ORS [supra]** which states the preposition that an association registered or incorporated as trustees ought to sue or be sued in its corporate name. By the combined provisions of ss.673, 674 (1) (a) and 679 of the Companies and Allied Matters (CAMA), a trustee or trustees appointed by an association may apply to be registered as a corporate body and upon registration, they (i.e. the trustee or trustees) shall be a corporate body by the name described in the certificate of registration (which name must contain the words "incorporated trustees of") and shall have, inter alia, power to sue and be sued in its corporate name. It, however, occurs to us that where an association duly registered as trustees either sues or is sued in an action but the words "Incorporated trustees of" are omitted in the name stated in the writ of summons or other originating court process, this would amount to a mere misnomer or mis-description that should not ordinarily lead to nullification of the proceedings. Misnomer simply means a wrong use of a name; or 'a mistake in naming a person, place or thing, especially in a legal instrument'. See **Black's Law Dictionary (8th Edition), p. 1021.** Where there is a misnomer or mis-description in the title or caption of any proceedings, what the court will consider in order to nullify such proceedings are: (i) whether the mis-description in title has substantially misled the parties; and (ii) whether a

miscarriage of justice was thereby occasioned. See **BAYO V NJIDDA (2004) 8 NWLR (PT.876) 544; AJADI V AJIBOLA (2004) 16 NWLR (PT. 898) 91; BAJOGA V GOVERNMENT OF THE FEDERAL REBPUBLIC OF NIGERIA (2007) ALL FWLR (PT. 394) 273 at 311, (2008) 1 NWLR (PT. 1067) 126-127** (per Adekeye JSC as he then was).

In the content of litigation, a misnomer occurs where the entity suing or intended to be sued exists, but a wrong name is sued to describe that entity. See **MAERSK LINE v ADDIDE INVESTMENT LIMITED (2002) 11 MJSC 157 at pp. 179 & 196-197** (per Ayoola, JSC). Put differently, a misnomer is said to occur in legal proceedings when the correct person comes or is brought to court under a wrong name, but not when the wrong person sues or is sued in an action. See **EMESPOJ.CONTINENTAL LTD V CORONA S. MBH & CO (2006) 11 NWLR (PT. 991) 365 at 378** (per Mukhtar, JSC). The test which had been applied by the Courts to ascertain if the title of a party shown on the writ of summons is a misnomer is well settled. One factor that operates on the mind of the recipient of a document (writ) is whether there is or is not another entity to which the description on the document (writ) might refer. The test therefore is: **How will a reasonable person receiving the document take it?** If in all circumstances of the case and looking at the document (writ) as a whole, he would say to himself, **'of course it must mean me, but they have got my name wrong',** then there is a case of mere misnomer". If on the other hand, he would say, **'I cannot tell from the document whether they mean me or not and I shall have to make inquiries',** this then has gotten beyond the realm of misnomer. See **DAVIES V ELSBY BROTHERS LTD (1960) 3 ALL ER 672 at 676; MAILAFIA V VERITAS INSURANCE (1986) 4 NWLR (PT 38) 802 at 812** and **NWABUEZE V NIPOST (2006) 8 NWLR (PT 983) 480 at 526 – 527.**

Applying the above test, it seems to us that the Respondent could not have been in any doubt that it was the person sued in this action and that the plaintiff had merely described or stated its corporate name wrongly by adding the word "Nsukka" to the name "University of Nigeria". An application to amend a misnomer will readily be granted almost as a matter of course. See **JESSICA TRADING CO. LTD V BENDEL INSURANCE CO. LIMITED (1993) 1 SCNJ 240 (SC); ADEKANYE V GRAND SERVICES LTD (2007) ALL FWLR (PT. 387) 855 at 866-867.** A scenario not substantially dissimilar with the one we are confronted with here arose in **ODE & ORS V THE REGISTERED TRUSTEES OF THE DIOCESE OF IBADAN (1966) 1 ALL NLR 287.** In that case, the defendants objected on appeal that the Plaintiffs had sued in the wrong name by failing or neglecting to sue in the (proper) corporate name. The Plaintiffs successfully moved the Supreme Court to amend the title of the writ of summons to read "The Registered Trustees of the Diocese of Ibadan" on the ground that this was a misnomer due to a mistake on the part of the Plaintiffs' Solicitor; and that the amendment would not prejudice the Defendants. Also of binding force under the rule of precedence is the Court of Appeal case of UNIVERSITY OF NIGERIA V. ORAZULIKE TRADING COMPANY LIMITED (supra) cited by the Appellant's Counsel. The argument raised in that case by the Respondent who happens to be the same Respondent in this case was that the addition of "Nsukka" to its corporate name "University of Nigeria" was an aberration of it's name. This position was **overruled.** While the case of Federal High Court; FRANCIS CHIGOZIE MONEKE V. UNIVERSITY OF NIGERIA NSUKKA (supra) may be persuasive, that of the Court of Appeal is certainly binding on the Tribunal. In the absence of any appeal against the judgment In UNIVERSITY OF NIGERIA NSUKKA V. ORAZULIKE TRADING COMPANY LTD (supra), this Tribunal adopts the reasoning in that case by overruling the Respondent in Issue1. The argument of Respondent's Counsel that the decision was given per

incuriam a piece of Legislation, that is the University of Nigeria Act, will also not hold water since the Act was the basis upon which they relied on the name University of Nigeria.

The days of technicality are fast ending and Courts are more willing to adopt the use of substance in the application of justice. The Rules of this Tribunal endows it with discretionary power to make such orders as it considers necessary for the purpose of doing justice irrespective of whether or not the order has been expressly sought by the party entitled to the benefit. In **MAERSK LINE V ADDIDE INVESTMENT LIMITED supra,** the Supreme Court held, inter alia, that the power of a trial court to make amendment, suo motu, at any stage of the proceedings before judgment could be exercised by the court without any party applying for it. The courts generally lean towards granting an amendment save in situations where (i) the amendment sought will occasion injustice to the other party; (ii) the application is acting mala fide; or (iii) by his blunder the application has done some injury to the respondent which cannot be compensated by costs or otherwise. See **OJAH V OGBONI (1976) 1 NMLR 95 AT 99; ADELAJA V ALADE (1994) 7 NWLR (PT. 358) 537**. The courts have held that an amendment may be granted even if it is in consequence of an objection raised by the adverse party (see **ITA v DADZIE) (2000) 4 NWLR (PT. 652) 168 at 181),** and a suit commenced **by** or against a correct person in a wrong name may be amended to substitute or add a proper name provided the amendment is necessary for the determination of the real question in controversy and will not result injustice to the adverse party. See **NWABUEZEVNIPOST [supra] at page 529.**

In the case at hand, we are satisfied that the Respondent has not been misled by the wrong designation in the title or caption of this suit nor has any miscarriage of justice been occasion thereby. This is especially so as the Respondent truly resides in Nsukka and had indeed participated in a negotiation with the

Appellant. See **UGWU V. ARARUME (2007) 12 NWLR (PT.1048) 367 at 446 H.** This being so, in the overall interest of justice we shall not fail to excise our discretionary power under TAT Rules to amend this reasonable misdescription of the Respondent's name in these proceedings. On the authority of **MAERSK LINE V ADDIDE INVESTMENT LIMITED supra**, the title of the Respondent on record is hereby amended to read "University of Nigeria"; and the writ of summons and all other court processes in this suit, this ruling inclusive, will be and are hereby deemed to have been amended accordingly. This of course decides **Issue Number One,** which is hereby resolved in favour of the Appellant.

Issue No 2 - Whether the Statute of Limitation to wit the Public Officer's Limitation Act, 2004 can avail the Respondent despite admission of liability.

The Respondent being a Federal University is a Public Officer and should be protected accordingly for actions not initiated within three months.

In MOMOH V. OKEWALE (1977) 6 SC 81, it was held that for a defendant to avail himself of the protection afforded by section 2 of the Public Officers (protection) Law, he must as a public officer have done something whether by way of action, deed or neglect in the discharge or execution of his public duties for which he is sued, if the action was not instituted within three months next after the acts, neglects or defaults complained of.

Obviously, three months have elapsed in respect of Tax liability and interest from 2001 to 2006 which culminated in the total liability to the tune of ₦106,306,914.67.

In order to determine whether or not the rule of statute bar applies, one only has to look at the pleadings. See **BORNU HOLDING CO. LTD V. BOGOCO (1971) 1 ALL NLR 324, AGBODA V. ABIMBOLA (1969) 1 ALL NLR 287**

both referred to in IBRAHIM – OHIDA V. MILITARY ADMINISTRATOR KOGI STATE (2000) 12 NWLR P.25 at 42-43 para H.A.

It is the pleading of the Appellant that in 2007, both Appellant and Respondent had not only agreed on the liability but had worked out a modality for payment. Even though the Respondent argued that the matter was already statute barred at the time of the agreement on 16/6/2007, it did not stop the fact that the parties were in agreement in respect of the debt. At that point, there was no longer a contest as to the tax liability but as to payment of a sum due to the Appellant in agreed installments. It would be an afterthought to renege on that agreement by relying on statute bar.

The Court of Appeal in the case of PHOENIX MOTORS LTD V. NATIONAL PROVIDENT FUND MANAGEMENT BOARD (1993) 1 NWLR (PT. 272) pg. 718 at 73 stated as follows;

"No court of law should lend its hands to a person or body bent on beating the efforts of Government at collecting revenue by relying on technicalities of the law with a frugal aim to cheat the Government of its legitimate income"

In IBRAHIM OHIDA V. MILITARY ADMINISTRATOR KOGI STATE (supra), it was held that the Public Officers Protection Act does not automatically bar an action (Ratio 3). It is settled principle of law that where a party during negotiation has admitted liability, such admission in law is seen as an exception to the rule of statute bar. In the case of NWADIARO V. SHELL PETROLEUM DEVELOPMENT COMMUNITY NIGERIA LTD (1990) 5 NWLR (PT 150)322, this court per Kolawale JCA at p. 388 said:-

> "....if there has been an admission of liability during the negotiations and all that remains is the fulfillment of the

agreement, it cannot be just and equitable that the action would be barred after the statutory period of limitation giving rise to the action if the defendant were to rescind from his agreement during the negotiation."

The decision of the court in that matter applies directly to this case. There had been a negotiation and the Respondent had agreed to its liability. The only thing remaining was for them to fulfill the obligation under the agreement which arose from the negotiation. Now that they failed to so comply, this action cannot be statute barred by any statute of limitation under the authority of this Supreme Court decision. We align ourselves with this authority and resolve **Issue No 2** in favour of the Appellant.

Issue No 3 - Whether the Tax Appeal Tribunal [Procedure] Rules, 2010, can bar the Appellant from instituting this suit.

The Respondent also argued that issue of statute bar from the stand point of Order 3 Rule 2 of the Tax Appeal Tribunal (Procedure) Rules 2010, quote

" An Appeal under the Rule shall be filed shall be filed within a period of 30 days from the date on which the action, decision, assessment or demand notice being appealed against was made provided that the tribunal may entertain an Appeal after the expiration of the said period of 30 days if it is satisfied that there is a sufficient cause for the delay".

This proviso is one which gives discretion to the Tribunal to extend the period beyond 30 days if it is satisfied that there is a sufficient cause for the delay. Following the authority of **Nwadiaro V. Shell Petroleum Development Community Nig Ltd [supra]** it would be unjust to foreclose the opportunity to hear the appellant where the respondent clearly admits liability on the face of the processes but merely says that although it had previously agreed to pay , time has passed.

Since the Tribunal is revenue oriented, its rules are construed liberally to allow for revenue collection, and generation.

In the case of the **Phoenix Motors Ltd v. National Provident Fund Management Board (supra)** the court of Appeal held;

> **"If a statute is revenue based or revenue oriented, it will be part of sound public policy for a court to construe the provisions of the statute liberally in favour of revenue or in favour of deriving revenue for Government, unless there is a clear provision to the contrary. This is because it is in the interest of the generality of the public and to the common good and welfare of the citizenry for Government to be in revenue and affluence to cater for the people....."**

On the strength of this submission and all legal authorities cited in support thereof by the Appellant, the tribunal resolves this issue in favour of the Appellant.

The Tribunal dismisses in its entirety the preliminary objection raised by the Respondents as to its jurisdiction in this matter.

No orders as to cost.

Parties may appeal against this ruling.

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Signed:

Prof. C.J. Amasike

Chairman

Tax Appeal Tribunal

South East Zone

Dated: 26/06/2013

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SOUTH EAST ZONE
18 APR 2018
Sign:.....
Name: UKANDU CHARLES C
Designation: Deputy Manager (LEGAL)