

IN THE TAX APPEAL TRIBUNAL

NORTH CENTRAL ZONE

SITTING AT JOS

ON WEDNESDAY 18th 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/007/2014

BETWEEN

FEDERAL INLAND REVENUE
SERVICE.....APPELLANT

AND

GAINS MICRO FINANCE BANK LTD.....RESPONDENT

JUDGEMENT

The Appellant's claim against the Respondent in this Appeal is as follows:-

- (a) *"The sum of N1,816,956.36 (One Million Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) as Companies Income Tax for the period of 2007 to 2011 years of assessment.*
- (b) *Penalty on the unremitted sum of N1,816,956.36 (One Million Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) as Companies Income Tax for the period of 2007 to 2011 years of assessment.*



- (c) *Interest on the unremitted Companies Income Tax in the sum of N1,816,956.36 (One Million Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) at the rate of 21% per annum from 2007-2011 till the total debt is liquidated.*
- (d) *The sum of N121,129.74 (One Hundred and Twenty One Thousand One Hundred and Twenty Nine Naira and Seventy Four Kobo) as Education Tax for the period of 2007-2011 years of assessment*
- (e) *Penalty on the unremitted Education Tax in the sum of N121,129.74 (One Hundred and Twenty One Thousand One Hundred and Twenty Nine Naira and Seventy Four Kobo) for the period of 2007-2011 years of assessment.*
- (f) *Interest on the unremitted Education Tax in the sum of N121,129.74 (One Hundred and Twenty One Thousand One Hundred and Twenty Nine Naira and Seventy Four Kobo) at the rate of 21% per annum from 2007-2011 till the total debt is liquidated.*
- (g) *The sum of N1,270,000.00 (One Million Two Hundred and Seventy Thousand Naira) as Value Added Tax for the period of January 2007-December 2007 year of assessment.*
- (h) *Penalty on the unremitted Value Added Tax in the sum of N1,270,000.00 (One Million Two Hundred and Seventy Thousand Naira) for the period of January 2007-December 2007 year of assessment.*
- (i) *Interest on the unremitted Value Added Tax in the sum of N1,270,000.00 (One Million Two Hundred and Seventy Thousand Naira) at the rate of 21% per annum from January 2007-December 2007 till the total debt is liquidated."*

When this matter came up for hearing on the 29th day of April 2015 Counsel to the Respondent was absent and the Respondent was unrepresented. The Appellant through counsel informed the Tribunal that their witness had already testified and urged that Judgement be delivered based on the testimony already before the Tribunal. The Tribunal however granted one final adjournment to give the Respondents an opportunity to be heard in the interest of justice.

When the Respondent's Counsel appeared on the adjourned date, the Tribunal granted an application brought by the Respondent to recall the Appellant's witness for cross-examination and the said witness was cross examined by the Respondents' counsel on the 18th day of November, 2015. The Appellant having closed their case, it was left for the Respondents to present their defence.



On the 30th day of March, 2016 when this matter came up, Counsel to the Respondent rested their case on the Appellants' case and the matter was adjourned to the 20th day of April 2016 for the adoption of written addresses which were to have been filed and exchanged by Parties before the return date of 20th day of April 2016.

On the said return date of 20th April 2016 when Parties were supposed to adopt their written addresses, Counsel to the Appellant informed the Tribunal that no written address was served on them and urged us to enter Judgment based on the testimony before us. Counsel to the Respondent on their part informed the Tribunal that they did not carry out the Order to file an address because they had a letter seeking out of Court settlement. The Tribunal declared that neither the Tribunal nor Appellant's Counsel had seen the letter, so could not act on same.

In view of the above, the Tribunal adjourned the matter to the 18th day of May 2016 for Judgement. The case cannot continue indefinitely, it has to come to an end, so here is our Judgment.

The Appellant called one witness who testified as Appellant witness No 1 in the name Denis Tagurum who affirmed and testified in English Language. The witness testified that he is Head of the Filing and Debt Enforcement Unit of the Appellant at MSTO Lokoja.

He testified that he remembered making a statement on oath which he said he could identify by his signature and urged the Tribunal to use the statement as his evidence in chief.

The witness was referred to paragraph 7 of his said witness statement on oath; he said he could identify a letter dated the 4th day of April, 2012 which was signed by Mrs Uzoatuegwu A. A. C, who was away in Lagos. Counsel to the Appellant sought to tender the document in evidence. The document was upon objection by Counsel to the Respondent, ultimately ruled as relevant and admissible. *"Document signed by Uzoatuegwu A. A. C dated 4th April, 2012 was admitted in evidence and marked Exhibit 1."*

The witness testified further that he could identify the document stated in paragraph 8 of his witness statement on oath which was signed by Mr Oyeniyi currently in Kaduna attending a national programme. The witness testified that the said document is in his custody. Upon application document titled.



"The Federal Republic of Nigeria Companies Income Tax assessment Notice of Assessment for year of Assessment 2007 dated 2nd October, 2012 was admitted as Exhibit 2."

In the same paragraph the witness made mention of similar assessment for 2008 which he identified and the Tribunal on application admitted *"year of Assessment form for 2008"* as Exhibit 3.

The witness also testified on the same paragraph 8 and identified *"year of Assessment form for 2009" which was admitted as Exhibit 4.*" The witness testified as to an assessment form dated 2nd October 2012 and on Counsels application. *"The Assessment form for 2010 was admitted and marked Exhibit 5."* The witness also identified the assessment form for 2011; on application by Counsel; the *"year of Assessment form for 2011"* was admitted as Exhibit 6.

The witness testified further that he made mention in paragraph 9 to Assessment Notice form EDTI for 2007, 2008, 2010 and 2011 all dated 2nd October 2012 which he identified and upon application by Appellant's Counsel *"Assessment Notices EDT 1 for 2007, 2008 2010 and 2011 were admitted in evidence and marked exhibits 7, 8, 9 and 10 respectively."*

The witness testified that he made mention of VAT RE-ASSESSMENT Notices in paragraph 10 of his witness statement which he identified from the signature and the control No. Counsel tendered same in Evidence which Respondent did not object to; so VAT RE-ASSESSMENT NOTICE OF JANUARY – DECEMBER 2007 was admitted as Exhibit 11.

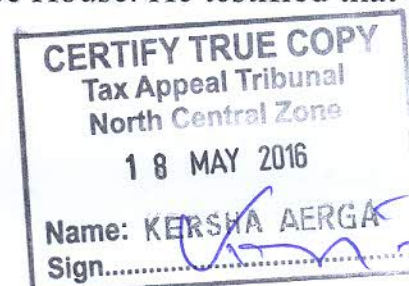
The witness testified further on documents stated in paragraphs 11, 12 and 13 and since the Respondent Counsel was not objecting Appellant tendered them from the Bar.

The Tribunal admitted the following documents:

- (1) Payment Agreement dated the 28th day of May, 2013 was admitted as Exhibit 12;
- (2) Payment Agreement dated 3rd June 2013 was admitted as Exhibit 13;
- (3) Reminder letter dated the 20th day of September 2013 was admitted in evidence as Exhibit 14.

The witness urged the Tribunal to enter Judgment for the Appellant and to compel the Respondent to pay up.

Under cross examination the Appellant witness No. 1 testified that he had worked with the Appellant for almost five years and that he knew the Respondent. He testified that all that is contained in his witness Statement on Oath which is adopted by the Tribunal is true. He said that the Respondent is a Finance House. He testified that the Respondent



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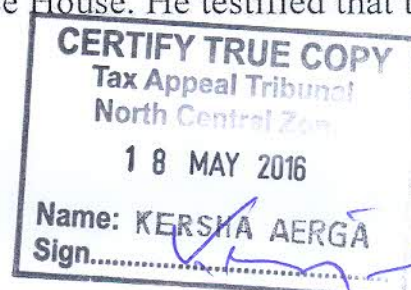
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is into financial services like banking. He testified that he did not make the assessment but knows the person who made it and the basis of the said assessment.

He testified further that he remembered they had a meeting with the Respondent in 2014 not 2013 on the Tax liability of the Respondent. He could not remember if the Agreement for instalmental payment of the liability was drawn up on FIRS headed paper or not but had to do with instalmental payment. He said he was not part of the negotiation team and they did not force the Respondent into the agreement. He testified that even though he was not part of the negotiation team he was briefed by the Tax controller Robin L Njoku and he also spoke with the then M/D of the Respondent. He could not remember the exact date but he met with the present M/D of the Respondent in 2015.

He testified that the Respondent had only one office and that the Respondent claimed they had closed 16 of their branches. He testified that he is not interested in the number of Branches owned by the Respondent but in their Tax liability. He testified that at the time of assessment all the branches of the Respondent were running but only visited six Branches as their assessment is based on assumptions; it is an audit assessment which is based on verification of the tax payers books. He testified that the Respondent had in the past paid part of their tax and not paid some. He testified that he had received training on how to do his job since he joined the Appellants.

He testified that the audit was done in the office of the Respondent based on their accounting books. He testified that they received self-assessment return from the Respondents up till 2013; after that there was no other returns. He testified that the Respondent's liability is audit liability and that he was not part of the team that did the tax audit.

He testified that he could not recall the date of the visit but that an Audit report was given to the Respondent and that the Appellant received the Statement of the Respondent's Account for the period covered by the Audit.

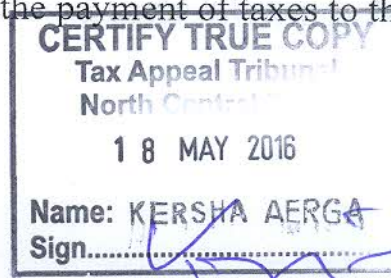
The Appellant Counsel did not re-examine the witness.

The Respondent did not call any witness but rested its case on that of the Appellant.

The only evidence before the Tribunal is that supplied by the Appellant through Appellant witness No 1; the sole witness Denis Tagurum.

In determining this matter, the Tribunal shall formulate the following issues for determination in this Appeal.

1. Whether the Respondent is liable to the payment of taxes to the Appellant?



2. If the Respondent is liable to payment of Taxes, what Taxes are those and has the Respondent discharged its tax liabilities to the Appellant?
3. Whether Taxes due from the Respondent to the Appellant if any are liable to Penalty and interests?

On issue 1 *Whether the Respondent is liable to the payment of Taxes to the Appellant.* There is evidence as adduced by the Appellant witness No. 1 that the Respondent owes the Appellant various sums as evidenced by the various exhibits tendered through the witness. The said witness had urged that his witness Statement on Oath be taken as his evidence in-chief before the Tribunal. The said witness had in paragraph 4 of the said Statement on Oath deposed to the fact that Respondent is registered with the Appellant with Registration No. 11022121- 0001 and has a duty to deduct and remit its Value Added Tax collected to the Appellant.

There is no evidence at all from the Respondent to counter this assertion. The witness in paragraph 5 of his said Statement on Oath and also in his oral evidence testified that various sum are owed the Appellant as Value Added Tax, Education Tax and Companies Income tax. This evidence was not shaken in cross examination.

We believe the evidence of the witness, which is supported with documents. We will therefore answer issue 1 in the affirmative and hold that by the mere fact that the Respondent is registered with the Appellant, they are liable to pay Taxes.

With regards to issue No 2 which is formulated in this Appeal i.e. *“if the Respondent is liable to payment of Taxes, what are those and has the Respondent discharged its tax liabilities to the Appellant?”*

The Appellant in its bid to establish the tax liabilities of the Respondent called Appellant witness No. 1 in the person of Denis Tagurum. The witness testified that the various taxes as contained in paragraph 5 of his witness statement on Oath are due from the Respondent. Paragraph 5 states:- *“That the Respondent has been recalcitrant in discharging its tax obligations despite being served with various notices of assessment and letters of reminder. It is currently owing Companies Income Tax in the sum of N=1,816,956.36 (One Million Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) for 2007-2011 years of assessment, Education tax in the sum of –N121,129.74 (One Hundred and twenty One Thousand One Hundred and Twenty Nine Naira And Seventy Four Kobo) for the 2007-2011*



years of assessment, Value Added Tax in the sum of -N=1,270,000.00 (One Million Two Hundred and Seventy Thousand Naira) for the January 2011-December 2011 year of assessment."

The witness during his testimony tendered Exhibits 2, 3, 4, 5 and 6, which represent the Companies Income Tax assessment forms in respect of the Respondent for the 2007 to 2011 years of assessment.

The witness further testified that Education Taxes are due from the Respondent to the Appellant as is evidenced by "*Assessment Notices EDT1 for 2007, 2008, 2010 and 2011*" which were admitted in evidence as exhibits 7, 8, 9 and 10 respectively.

The witness testified further that Value Added Tax is due to the Appellant from the Respondent, the said witness tendered VAT RE-ASSESSMENT NOTICE of January to December 2007 as Exhibit 11.

The witness further mentioned payment agreements dated 28th May, 2013 which was admitted as Exhibit 12; and also another payment agreement dated 3rd June 2013 admitted as Exhibit 13. The sums on these exhibits are still unpaid.

We believe the evidence of the Appellant witness No 1. We believe that sums evidenced by the Exhibits are due from the Respondent to the Appellant. There is no evidence before the Tribunal to indicate that the Respondent in any way objects to the fact that the various sums as testified to by the Appellant witness and evidenced by the Exhibits tendered are due. The evidence of the witness is uncontroverted, unchallenged and uncontested. If anything the cross examination of the witness by counsel to the Respondent further strengthened the Appellants' claim.

We hold that the Respondent is liable to pay Companies Income Tax as per Appellant witness testimony and Exhibits 2, 3, 4, 5 and 6 to the Appellant.

The Respondent is also by the Testimony of the Appellant witness coupled with the assessments as shown on Exhibits 7, 8, 9, and 10 liable to pay Education Tax to the Appellant. He has not objected to the assessment. The Respondent has a VAT REGISTRATION No 11022121-001 with the Appellant. The Respondent having registered himself under S. 8 of the VAT ACT 1993, he is liable to make rendition to the Appellant and to pay tax. The assessment made by Appellant as contained in Exhibit 14 is due and owing from the Respondent to the Appellant.



We resolve Issue No 2 in favour of the Appellant.

Issue 3 is *“whether the taxes due from the Respondent to the Appellant if any are liable to penalty and interests.”*

The Tribunal has resolved issues 1 and 2 in the affirmative i.e. in favour of the Appellants.

What is left is to decide whether these Taxes due from the Respondent to the Appellant are liable to penalty and interest. The cumulative effect of the evidence before the Tribunal is that these taxes are due and owing from the Respondent to the Appellant.

There is evidence that the letter dated 20th September, 2013 admitted as Exhibit 14 amongst others have not jerked the Respondent into fulfilling his obligations to the Appellant as the sums on that Exhibit is what is being claimed.

With regards to the sums due as taxes from the Respondent to the Appellant, paragraph 15 (8) of the Fifth Schedule to the Federal Inland Revenue Services (Establishment) Act 2007 provides:

Para. 15 (8):- *“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 Appeal of the Appellant in this matter includes claims for Companies Income Tax, Value Added Tax and Education Tax which are amongst the laws listed in the first schedule of the Federal Inland Revenue Services (Establishment) Act 2007; above referred to. Under the above provision, the Tribunal has the powers to confirm, reduce, increase or annul the assessment or make any such order as it deems fit. We order that the interest and penalty charges on the taxes due are owing and payable to the Appellant. We also answer the issue 3 formulated in the affirmative and resolve same in favour of the Appellant.

We enter Judgment for the Appellant against the Respondent in the following terms.

1. The sum of N1,816,956.36 (One Million, Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) being unpaid Companies Income Tax for the period of 2007 -2011 years of Assessment.



- (a) Penalty on the Unremitted Companies Income Tax in the sum of N1,816,956.36 (One Million Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) for the period of 2007-2011 at the rate of 10%.
 - (b) Interest on the Unremitted Companies Income Tax of N1,816,956.36 (One Million Eight Hundred and Sixteen Thousand Nine Hundred and Fifty-Six Naira and Thirty Six Kobo) for the period of 2007-2011 at the rate of 21%.
2. The sum of N121,129.74 (One Hundred and Twenty One Thousand, One Hundred and Twenty Nine Naira and Seventy Four Kobo) being unremitted Education Tax for the period of 2007-2011 years of assessment.
- (a) Penalty on the unremitted Education Tax in the sum of N121,129.74 (One Hundred and Twenty One Thousand One Hundred and Twenty Nine Naira And Seventy Four Kobo) for the period 2007-2011 at 10%.
 - (b) Interest on the unremitted Education tax in the sum of N121,129.74 (One Hundred and twenty One Thousand One Hundred and Twenty Nine Naira And Seventy Four Kobo) for the period 2007-2011 at the rate of 21%.
3. Value Added Tax in the sum of N1,270,000.00 (One Million Two Hundred and Seventy Thousand Naira) for the period January, 2007-December 2007 years of assessment.
- (a) Penalty on Unremitted Value Added Tax in the sum of N1,270,000.00 (One Million Two Hundred and Seventy Thousand Naira) for the period of January 2007-December 2007 at the rate of 10%.
 - (b) Interest on the Unremitted Value Added Tax in the sum of N1, 270,000.00 (One Million Two Hundred and Seventy Thousand Naira) for the period of January 2007 to December 2007 at the rate of 21%.

Representation

- Nasiru Ahmad Esq with Talatu Aliyu (Miss) for the Appellant.
- T. B. Quidon (holding the brief of J.E. Usman for the Respondent.

DATED AT JOS, THIS 18th DAY OF MAY 2016



HON. ABRAHAM N. YISA MON
Chairman

