IN THE TAX APPEAL TRIBUNAL

NORTH CENTRAL ZONE

SITTING AT JOS

ON THURSDAY 2nd JUNE 2016

BEFORE THEIR HONOURS

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

APPEAL NO: TAT/NCZ/009/2014

BETWEEN

FEDERAL INLAND REVENUE SERVICE.....APPELLANT

AND

KABBA MICRO FINANCE BANK LTD.....RESPONDENT

JUDGEMENT

The Appellant by her Notice of Appeal dated the 18th day of August 2014 is seeking for the following Reliefs:-

a. ***"The Sum of N3,032, 186.55 (Three Million, Thirty Two Thousand One Hundred and Eighty Six Naira and Fifty Five Kobo Only) as the sum of Value Added Tax for the period of January- December 2008 to January – December 2012.***

b. ***Penalty on the unremitted Value Added Tax of N3,032, 186.55 (Three Million, Thirty Two Thousand One Hundred and Eighty Six Naira and Fifty Five Kobo Only) at the rate of 10% per annum from January- December 2008 to January – December 2012 till the total debt is completely liquidated.***

c. ***Interest on the unremitted Value Added Tax of N3,032, 186.55 (Three Million, Thirty Two Thousand One Hundred and Eighty Six Naira and Fifty***

Five Kobo Only) at the rate of 21% per annum from January – December 2008 to January – December 2012 till the total debt is completely liquidated.

d. *Penalty for non filing of VAT Returns at the rate of N5,000 (Five Thousand Naira Only) per month for the period of 2008 until the Judgment sum is liquidated*

e. *The sum of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira and Seven Kobo Only) as Company. Income Tax for the period of 2007 – 2011 years of assessment.*

f. *Penalty on the unremitted CIT of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira and Seven Kobo Only) at the rate of 10% per annum from the month of July 2013 until the Judgement sum is liquidated.*

g. *Interest on the unremitted Company Income Tax of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira and Seven Kobo Only) at the rate of 21% per annum from the month of July, 2013 until the Judgment sum is liquidated.*

h. *The sum of N41,181.02 (Forty one Thousand One Hundred and Eighty One Naira and Two Kobo Only) as Education tax for the period of 2007-2011 years of assessment.*

i. *Penalty on the unremitted EDT of N41,181.02 (Forty one Thousand One Hundred and Eighty One Naira and Two Kobo Only) at the rate of 5% per annum from the month of July 2013 until the Judgment sum is liquidated.*

j. *Interest on the unremitted Education Tax of N41,181.02 (Forty one Thousand One Hundred and Eighty One Naira and Two Kobo Only) at the rate of 21% per annum from the month of July 2013 until the Judgment sum is liquidated."*

In proof of their claim before us, the Appellant called one witness in the person of Dennis Tagurum who testified as Appellant witness No. 1 when this matter came up for Hearing on the 30th day of September 2015.

The witness gave evidence that he is the Head of Filing and Debt Enforcement Unit, Lokoja MSTO. His schedule includes recovery of debts from tax payers that have defaulted and that he has worked with the Appellant for five years.

He testified that he knew the Respondent in the normal course of his work. He remembered making a Statement on Oath before the Tribunal, which he could indentify by his signature on it.

The witness identified the Statement and urged the Tribunal to use the Statement as his evidence in chief before it in this case.

He testified that in paragraph 6 of the said Statement on Oath he made reference to a letter of outstanding penalty for VAT dated 21/7/2013.

He said he could identify the letter if he saw it. It had the signature of C.N Njoku the Tax Controller and it was on their office letterhead. Witness was shown a document, which he identified to be the document referred to in paragraph 6 of his witness Statement on Oath. He testified that he was not the maker and that the maker is not available but that he had custody of copies of the letters.

The said document was on application by counsel to the Appellant which was not objected to by Respondent's Counsel admitted in evidence.

– "Document headed **Value Added Tax Act (as amended) 2007 Outstanding Penalty for non Submission of VAT Return N810,000.00 dated 24th July 2013**" admitted and marked Exhibit 1"

Both Counsel to the Parties agreed that all documents stated in the witness Statement on Oath be admitted as the Respondents did not object.

The Counsel to the Appellant informed the Tribunal that the relevant documents are mentioned in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

The Counsel to the Appellant told the tribunal that in:-
Paragraph 7 is Document Titled "***Reminder Value Added tax (as amended) 2007 –Re-Penalty for non – submission of VAT return of N810,000 dated 13th November, 2013.***"

Paragraph 8 ***"Third Reminder Value Added Tax (as Amended) 2007 Re-Penalty for non submission of VAT returns dated 27th November, 2013."***

Paragraph 9 – VAT Re- assessment Notice LKT 01/005551 2368-0001/FIDE/2013/001 dated 24th October 2013.

Paragraph 10 – Assessment Notice Ref No LKT 01/BA08/CIT/AUD/13/41 dated 23rd July, 2013.

Paragraph 11 – Assessment Notice LKT 01/BA10/CIT/AUD/13/43 dated 23rd July, 2013.

Paragraph 12 – Assessment Notice Ref No LKT 01/BA11/CIT/AUD/13/44 dated 23rd July, 2013.

Paragraph 13 – Assessment Notice Ref No LKT 01/BA12/CIT/AUD/13/45 dated 23rd July, 2013.

Paragraph 14 – Assessment Notice Ref LKT 01/BA09/CIT/AUD/13/42 dated 23rd July, 2013.

Paragraph 15 – Assessment Notice with reference No LKT 01/BA08/EDT/AUD/13/035 dated 23rd July, 2013.

Paragraph 16 – Assessment Notice Ref No LKT 01/BA09/EDT/AUD/13/031 dated 23rd July, 2013.

Paragraph 17 – Assessment Notice Reference No LKT 01/BA10/EDT/AUD/13/037 dated 23rd July, 2013.

Paragraph 18 – Assessment Notice with Reference No LKT 01/BA11/EDT/AUD/13/038 dated 23rd July, 2013.

Paragraph 19 – Assessment Notice Ref No LKT 01/BA12/EDT/AUD/13/039 dated 23rd July, 2013.

Paragraph 20 Letter Ref No LKT /01/00512368-0001/FDE/2013/002 dated 11th November, 2013 titled final Reminder.

The Counsel after listing the above documents sought to tender them in evidence and Counsel to the Respondents did not object.

The Tribunal admitted the documents listed seriatim from paragraphs 7-20 both paragraphs inclusive and admitted them as exhibits "2", "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", and "15" respectively.

The witness urged the Tribunal to enter Judgment for the total liability of CIT EDT and VAT as claimed.

Under cross examination by Counsel to the Respondent Miss Akinmade the witness testified that the assessment is an Audit assessment. He testified that an Audit team visited the Respondent's office to carry out the Audit exercise. He testified that upon their comparison of what the Respondent was supposed to have paid to what had been paid the previous years, they found out that the Respondent did not pay her complete liability.

He testified that they netted the liability paid by Respondent to arrive at the balance now being claimed by Appellant. He testified that they notified the Tax payer by giving them 30 days to pay. They wrote reminders as is the usual practice, where the Taxpayer fails to pay. They followed this practice in the case of the Respondent and that the VAT assessments start from January 2008 while the other taxes started from 2007.

He testified that Company Income Tax and Education Tax are subject to the accounting period of the company.

He testified that he deals with Micro Finance Banks and not Community Banks.

He testified that what they did was an audit and that can date six years back, he would not be surprised to hear that the Respondent paid something on Education Tax and Company Tax.

He testified that what the Appellant did was simply to determine what Respondent paid as opposed to what they should have paid. That was the end of the witness testimony and there was no re-examination.

The Counsel to the Respondent sought for time to open their defence and the matter was adjourned to 14th October 2015 for defence. When the matter was mentioned in Court on the said 14th October 2015 Counsel to the Respondent was absent and same was further adjourned to the 18th day of November 2015 for defence. On the 18th November 2015 when this matter was mentioned Counsel to the Respondent was not ready to proceed and sought another adjournment and matter was fixed for defence on the 9th day of December 2015. Both Respondents and their Counsel were neither in Court nor represented on the said 9th day of December 2015 and the Tribunal Ordered that a fresh Hearing Notice be issued on them notifying them of a new date of 20th January 2016.

On the 20th day of January, 2016 Counsel for the Respondent appeared in Court; not to represent the Respondent but to move an application to withdraw from the matter; the Tribunal Ordered that the Respondent should be put on Notice of their Counsel's desire to withdraw their representation and the matter was adjourned to the 18th day of February, 2016 when Counsel to the respondent moved their application to withdraw. Same was granted and the matter adjourned to the 30th day of March, 2016 with an Order that the Respondent be served with a fresh Hearing Notice and a Copy of the Order granting Learned Counsel to the Respondent leave to withdraw.

On two subsequent adjournments the Respondents were absent and unrepresented and there was no explanation for their absence having been served with the Tribunal's order granting Counsel leave to withdraw as well as the Hearing Notices.

In view of the above happenings the Tribunal on application by Nasir Ahmed Counsel to the Appellant that Judgment be delivered based on the evidence so far before us, feels constrained to do so, as there must be an end to litigation.

Furthermore in the course of this proceeding the Respondents were granted an extension of time to file a Defence to the Appeal.

The Respondent did not put forth any witness to prove its Claims or Defence as contained in the Respondent's Defence. The Defence itself proffered no evidence to the Tribunal, the veracity of which could be tested by cross-examination, which therefore goes to no issue.

It follows that we will have to decide this Appeal based on the evidence of the lone witness supplied by the Appellants. The evidence of the said Appellant's witness No. 1 was recapitulated at the beginning of this Judgment.

From the said evidence we formulated the following issues for determination.

(1) Whether the Respondent is liable to pay Taxes and if he is, what Taxes are those?

(2) Whether those Taxes are liable to penalty and interest.

Issue 1 "Whether the Respondent is liable to pay Taxes and if he is, what Taxes are those.

The Appellant witness in his testimony before us had made reference to a witness Statement on Oath made by him before the Tribunal which he urged us to adopt as his evidence in chief before us at this Trial. In paragraph 4 of the Appellant witness Statement on Oath of Tagurum Dennis he deposed:-

"That the Respondent is a limited liability company and is duly registered with Federal Inland Revenue Service with Registration No 00512368-0001 and has duty to deduct Value Added Tax to the Appellant"

The said witness in paragraph 5 of his witness Statement on Oath stated the various Taxes that are due from the Respondent which the said Respondent is recalcitrant in paying despite being served various Notices of assessment. He states that the Respondent:

5. "is currently owing Value Added Tax of N3,032,186.55 (Three Million and Thirty Two Thousand One Hundred and Eighty Six Naira Fifty Five Kobo Only), and Company Income Tax of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira and Seven Kobo Only) and Education Tax of N41,181.02 (Forty One Thousand one Hundred and Eighty One Naira and Two Kobo Only) and Penalty for Non filing of VAT Return of N810,000.00 (Eight Hundred and Ten Thousand Naira Only) respectively."

The witness testified as to the non-payment of the various Taxes and through him the various exhibits relating to the Taxes due from the Respondent to the Appellant, were tendered.

The witness was cross-examined by Counsel to the Respondent after his testimony. Counsel did not question the witness on any of the documents mentioned by him in his Statement on Oath which were ultimately admitted as Exhibits.

There was no document countering the witness testimony introduced by Counsel during cross-examination; even though they did not present an independent witness

We are left with no option than to believe the testimony of the Appellant's witness as to the Taxes due from the Respondent to the Appellant.

We also believe the witness testimony that despite various reminders sent to the Respondent particularly as evidenced by Exhibits 2, 3 and 15, the Respondent has failed to meet its Tax obligations to the Appellant.

We resolve issue 1 in favour of the Appellant, i.e. in the affirmative.

On issue 2 formulated by us in this Appeal which is ***"whether those Taxes are liable to Penalty and Interest?"***

As we have stated earlier in this Judgement the Respondent has not supplied any evidence to make us disbelieve that the Taxes claimed by the Appellant from them are not due and owing.

If anything during cross-examination the Appellant's witness testified that even if the Respondent paid some Taxes those being presently claimed are due and unpaid. The various Taxes claimed by the Appellant as soon as they become due attract certain percentage of interest and same attracts penalty for non-payment. The Respondent has not shown us otherwise i.e. cross-examined the Appellant witness to show that in the case at hand the Respondent should not or is not liable to penalty and interest.

By section 32 (1) of the Federal Inland Revenue Service (Establishment) Act 2007 ***"subject to subsection (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;

(b) In the Case of Naira remittances, the Tax due shall carry interest at the prevailing minimum rediscount rate of the Central Bank of Nigeria whichever is higher, plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of the Act relating to collection and recovery shall apply to the collection and recovery of the interest;"

There is evidence before us that Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 13, 14 and 15 were made available to the Respondent.

There is further evidence that the Tax liabilities contained in the said Exhibits have not been settled and still remain due and owing.

We believe that the sums on the various Exhibits not having been liquidated; the same will attract penalty and interest.

We resolve issue 2 in the affirmative in favour of the Appellant.

We hold that the Appellant have proved their Appeal against the Respondent having proved that Value Added Tax; Company Income Tax and Education Tax are due from the Respondent for various periods shown on Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 tendered before us. They have also shown by Exhibit 1 that penalty is due to them from the Respondent.

We enter Judgment for the Appellant against the Respondent on the following terms:

a. The sum of N3, 032, 186.55 (Three Million, Thirty Two Thousand, One Hundred and Eighty Six Naira, Fifty Five Kobo) only as the sum of the Value Added Tax for the period of January – December 2008;

b. Penalty on the unremitted Value Added Tax of N3,032, 186.55 (Three Million, Thirty Two Thousand One Hundred and Eighty Six Naira, Fifty Five Kobo) only at the rate of 10% per annum from January- December 2008 to January – December 2012 till the total debt is completely liquidated;

c. Interest on the unremitted Value Added Tax of N3,032, 186.55 (Three Million, Thirty Two Thousand One Hundred and Eighty Six Naira, Fifty Five Kobo) only at the rate of 21% per annum from January – December 2008 to January – December 2012 till the total debt is completely liquidated;

d. Penalty for non filing of VAT Returns at the rate of N5,000 (Five Thousand Naira Only) per month for the period of 2008 until the Judgment sum is liquidated;

e. The sum of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira, Seven Kobo) only as Company. Income Tax for the period of 2007 – 2011 years of assessment;

f. Penalty on the unremitted CIT of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira, Seven Kobo) only at the rate of 10% per annum from the month of July 2013 until the Judgement sum is liquidated;

g. Interest on the unremitted Company Income Tax of N617,725.07 (Six Hundred and Seventeen Thousand Seven Hundred and Twenty Five Naira, Seven Kobo) only at the rate of 21% per annum from the month of July, 2013 until the Judgment sum is liquidated;

h. The sum of N41,181.02 (Forty one Thousand, One Hundred and Eighty One Naira, Two Kobo) only as Education Tax for the period of 2007-2011 years of assessment;

i. Penalty on the unremitted EDT of N41,181.02 (Forty one Thousand, One Hundred and Eighty One Naira, Two Kobo) only at the rate of 5% per annum from the month of July 2013 until the Judgment sum is liquidated;

j. Interested on the unremitted Education Tax of N41,181.02 (Forty one Thousand One Hundred and Eighty One Naira, Two Kobo) only at the rate of 21% per annum from the month of July 2013 until the Judgment sum is liquidated.

That will be our Judgment.

Representation

- Nasir Ahmed Esq for the Appellant.
- Respondent not represented.

DATED AT JOS, THIS 2nd DAY OF JUNE 2016

HON. ABRAHAM N. YISA
Chairman

CERTIFY TRUE COPY
Tax Appeal Tribunal
North Central Zone
14 NOV 2016
Name: J.K NASH
Sign.....