

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE BAUCHI JUDICIAL DIVISION
HOLDEN AT BAUCHI

ON TUESDAY THE 26TH DAY OF OCTOBER, 2017

BEFORE HIS LORDSHIP

HONOURABLE JUSTICE M. SHITU ABUBAKAR

JUDGE

SUT NO. FHC/BAU/CS/50/2016

BETWEEN

AL-MASEER LAW FIRM-----PLAINTIFF

AND

FEDERAL INLAND REVENUE SERVICE-----DEFENDANT

(Micro & Small Tax Office Bauchi)

JUDGMENT

By an originating summons filed on 9th day of December, 2016, the plaintiff's Legal Firm, sought the interpretation and or determination of the following three questions:

1. Whether or not by virtue of the provision of section 8 of the

Valued Added Tax Act Cap VI 2004 (as amended) legal practice; is

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PAUL MAGARY KACURA, HCD (Lit)
FEDERAL HIGH COURT,
BAUCHI
29-11-2017

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PAU/ MARGARET KACHUA, HCD (Lit)
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a business venture and thus is required to register with Federal Inland Revenue Service Board for the purpose of collecting Tax as its agent and remitting the amount collected on monthly basis.

2. Whether or not a legal practitioner duly called to the Nigeria bar and who practice as such, fall within the class of persons contemplated under section 46 of the VAT Act Cap VI 2004 (as amended) to bring him under any obligation to render VAT return on the professional fees charged in compliance with section 15 of the Act.


3. Whether or not the purported letters served on the plaintiff demanding it to render any monthly VAT return not being a business venture is irregular and of no legal effect whatsoever. Upon favourable determination of the questions, the plaintiff then sought for the following five reliefs:

1. A Declaration that by virtue of the provision of Sections 2 and 46 of the VAT Act, CAP VI LAWS OF FEDERATION OF NIGERIA 2004, the plaintiff as a legal practice outfit is not a taxable person within


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the contemplation of the Act and is not under any obligation to render any VAT or any other return to the Board.

2. A Declaration that the plaintiff does not fall within the category of persons contemplated under section 46 of the VAT Act Cap VI LFN 2004 to bring him under any obligation to render VAT return in compliance with section 15 of the Act.
3. A Declaration that the purported letters for non-rendition of Monthly VAT return served on the plaintiff is irregular and of no legal effect whatsoever.
4. An order of perpetual injunction restraining the Defendant either by themselves, their privies, cohorts or any person driven authority from them from further serving on the plaintiff any such letter on the subject.
5. Any further order or orders as the court may deem fit to make in the circumstances.


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In compliance with the Rules of this Honourable Court, the originating summons was supported by a four paragraph affidavit to which tow exhibits, namely Exhibits A and B were attached.

Learned counsel for the plaintiff who doubles as the principal partner in the plaintiff's firm, Rilwan A. Jibrin Esq. filed a written address in support of the originating summons.

In reaction the defendant filed a counter affidavit on 12/1/2017 and their counsel, A.A. Alhashim Esq. filed a written submission in opposition to the plaintiff's case. Finally learned counsel for the plaintiff filed a further affidavit and reply address in furtherance of his argument that the plaintiff is not a taxable person within the meaning of the VAT Act.

At hearing both counsel adopted their address and placed reliance on their respective affidavits and urged the court to agree with their respective arguments.

In the supporting affidavit it was deposed for the plaintiff by one Hussain Abubakar that sometime in the month of May, 2016 the


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defendant served the plaintiff with a letter title NON- RENDITION OF VAT RETURN wherein the plaintiff was required to charge his client's Vat at 5% of his professional fees and remit same to the defendant.

That the plaintiff was served with another letter by the defendant requiring her to pay the sum of ₦100,000.00 as VAT based on the best of Judgment Assessment.

In the address learned counsel for the plaintiff formulated tow issues for determination as follows:

1. Whether the plaintiff falls within the class of taxable persons as contemplated by the Value Added Tax Act Cap. VI, LFN 2004.
2. Whether the defendant has the statutory power to impose tax on the plaintiff.

Arguing issue one learned counsel for the plaintiff referred to the VAT Act and argued that the Act did not mention a legal practitioner as a taxable person. He argued that in interpreting the Act, the court should consider the words used in order to discover the ordinary meaning and the intention of the parliament and that where there is no


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ambiguity in the words used, the court should give them their ordinary meaning.

Counsel argued that it is a settled principle of interpretation that the mention of a specific in a statute excludes the ones that are not specifically mentioned. Counsel referred to ***P. & C.H.S.C. LTD VS MIGFO NIG. LTD AND ANOR. (2012) MJSC 205.***

It is the further argument of the counsel that for a person to register with the defendant as the agent for collection of VAT from his customer or consumer and remitting same to the defendant, he or she must engage in activity relating to production, distribution and consumption of goods and services as well as buying of goods and services. Counsel therefore submitted that legal practitioner like the plaintiff does not belong to such category of people. Counsel referred to the following cases to support his submission.

1. FBIR VS INTEGRATED DATA SERVICES LTD (2009)3 NMLR P. 169 at 179.


2. SHELL PETROLEUM VS FBIR (1996)9-10 S.C.N.J 231 at 522.

3. AHMADU VS GOV. OF KOGI STATE (2009) 319 at 323 ratio 5.

On issue two, counsel referred to the VAT Act and argued that throughout its provision there is no provision expressly or impliedly that empowers the defendant to impose tax on the plaintiff. Counsel therefore referred to Sections 14 and 34 of the Act and submitted that the defendant lacks power to impose tax on the defendant.

Counsel cited the cases of **MARWA & ANOTHER VS NYAKO & ORS (2012)2 SCM 67 at 77** and **RUSSEL VS. SCOTT (1984) A.C. 422** to support his submission. Counsel finally urged the court to hold that the plaintiff is not a taxable person and has no obligation to register with the defendant as a VAT collection agent within the meaning of the Act.

In controverting the supporting affidavit it was deposed for the defendant in paragraph 5 of their counter affidavit that the plaintiff willingly registered with the defendant as a VAT Collecting Agent on 19th December, 2014 vide a VAT Registration Form No. 001 which is exhibited as Exhibit FIRS 1.



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That as a consequence of the registration, Tax Identification Number (TIN) No. 18616296-0001 was generated for the plaintiff. The VAT identification number is annexed as Exhibit FIRS 2.

It was further deposed for the defendant that the plaintiff on her own tagged herself as taxable person. it was also deposed in paragraphs 8 and 9 of the counter affidavit that it was the failure of the plaintiff to comply with the defendant's letter of 26th May 2016 that led the defendant to assess her on best of judgment for the period of January, 2015 to August 2016. It was finally deposed that the same best of judgment method of assessment was used in assessing many legal firms in Bauchi metropolis and the compliance level was high.

Also in his address learned counsel for the defendant formulated two issues for determination as follows:


1. Whether the plaintiff professional service is taxable as contemplated by the Value Added Tax Act Cap. VI, LFN 2004, as amended.


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2. Whether the plaintiff's professional service is exempted within the meaning and context of the First Schedule (Goods & services).

Arguing the two issues together counsel referred to sections 2 and 3 of the VAT Act and First Schedule to the Act and argued that the plaintiff's professional legal services is taxable because it is not one of the service exempted by First Schedule to the Act.

Learned counsel for the defendant also contended that the Argument of the plaintiff counsel that only person who is engaged in the business of production, distribution or sell of consumable goods and services shall pay VAT is a misconception of the law. This according to him is because the legal services which the plaintiff renders is taxable within the meaning of section 46 of the Act. It is the further argument of the learned counsel for the defendant that the plaintiff has duly registered with the defendant as VAT collector and for this reason the Chairman of the defendant Board or any of its senior staff has power under section 42 of the Act to demand from or impose tax on the plaintiff.


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Counsel finally argued that it is quite clear from the Act that the plaintiff is not exempted from being a VAT collecting agent for the defendant and he urged the court to so hold and dismiss the case.

Having read the oral and written submission of both counsel for the parties and having reviewed same, albeit briefly, three issues arose for determination as follows:

1. Whether having regard to the provisions of Sections 2, 3 and 8 of the Value Added Tax Cap. VI, LFN, 2004 read together with part II of the 1st Schedule to the Act, the plaintiff legal firm is exempted from registering with the defendant as its Value Added Tax Collection Agent.
2. If the answer to issue (1) above is in the negative whether having regard to section 8 of the Act, the plaintiff is legally bound to register with the defendant and collect Value Added Tax from her clients and remit same to the defendant.
3. Whether having regard to section 42 of the Act the defendant has the statutory power to demand VAT from the defendant.

For a better understanding of these issues I reproduced hereunder the relevant provisions of the Act.

Section 2:


"The tax shall be charged and payable on the supply of all goods and services in this act referred to as ("taxable goods and services") other than those goods and services listed in the First Schedule of this Act."

Section 3:

"There shall be exempt from the tax the goods and services listed in the First Schedule to this Act."

Section 8:

- (i) *"A taxable person shall, within six months of the commencement of the Act or within six months of the commencement of the business, whichever is earlier register with the board for the purpose of the tax."*


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- (ii) Without prejudice to the provision of section 32 of this act, a taxable person who fails or refuse to register with the board within the time specified in sub-section 1 of this section shall be liable to pay as penalty and amount of-
- (a) N10,000.00 for the first month in which the failure occurs,
- and
- (b) N5,000.00 for each subsequent month in which the failure continues."


Section 42:

"Anything required to be done by the board under this Act may be signified under the hand of the chairman or any other senior officer assigned to do so by him"

Part 2 of the 1st Schedule to the Act.

SERVICE EXEMPT

1. Medical Services.


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2. Services rendered by Community Banks, People's Bank and Mortgage Institutions.
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.


The gravamen of the submission of the plaintiff's counsel is that the Act did not mention a legal practitioner as a taxable person because legal practitioner does not engage in activity relating to production, distribution and consumption of goods and services.

In resolving issue 1 it is necessary to examine and interpret the provision of Sections 2 and 3 and part 2 of the 1st Schedule to the Act. It is a settled law that the purpose of interpretation of a statute is to ascertain the mind of the parliament. It is also the law that in doing so the whole statute must be read together and simple and direct meaning must be given to the words used in the statute. See the case of **A.G Federation V. A.G Lagos (2013)16 NWLR (Pt. 1380) S.C 249 at 266** ratio 10.

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Applying these principles of law therefore, I am of the considered legal view that the list of "services" exempted from paying VAT by the aforesaid Schedule clearly did not include "legal service" which the plaintiff firm renders to the society. In other words, legal services, unlike medical services, is chargeable for the purpose of payment of Value Added Tax. In the circumstance therefore the argument of the learned counsel for the plaintiff that because legal practitioner does not engage in production or distribution or consumption of goods and for this reason should not be VAT collection Agent is baseless. This is because rendering service of professional expertise is what is in issue and not production or consumption of consumable goods.

I therefore resolve issue 1 in the negative and hold that the plaintiff is not exempted from registration with the defendant for the purpose of charging or collection of Value Added Tax on the professional fees she collects from her clients. I would like to make it clear to the plaintiff that Value Added Tax is paid by the client in addition to the professional fees. See S. 12 of the Act.


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In fact S. 8 of the Act made it mandatory for the plaintiff to register with the defendant failing which the plaintiff will be sanctioned. Consequent upon this section I also resolved issue 2 in favour of the defendant and against the plaintiff.

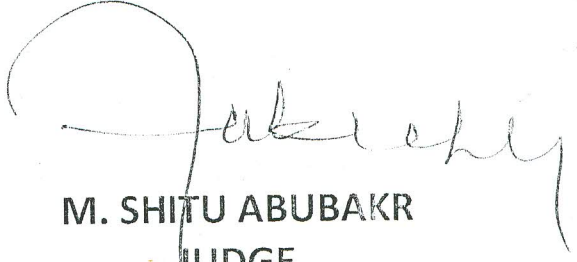
The 3rd issue is whether the defendant has statutory power to demand payment of VAT from the plaintiff. This question is answered by the clear and unambiguous provision of S. 42 of the Act which provided that the chairman of the defendant Board or any Senior Staff of the defendant can write to taxable person like the plaintiff and demand for payment of VAT. In fact this provision was re-enforced by S. 15 of the Act which stated in plain and clear terms that it is mandatory for the plaintiff being a taxable person to render a return to the defendant on all legal services she rendered to the public. Therefore the argument of the learned counsel for the plaintiff that there is no provision in the Act which empowers the defendant to demand for VAT from the plaintiff is without legal foundation and therefore baseless. Consequently I hold that the letters of the defendant to the plaintiff


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demanding the plaintiff to render monthly returns on VAT is quite proper and in order. Issue 3 is also resolved in favour of the defendant and against the plaintiff.

In the final analysis, I dismiss the case of the plaintiff for lack of merit.


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BAUCHI 27-11-2017


M. SHITU ABUBAKR
JUDGE
26/10/2017