

IN THE TAX APEAL TRIBUNAL

NORTH CENTRAL ZONE

HOLDEN IN JOS

ON THURSDAY 14TH SEPTEMBER, 2023

APPEAL NO: TAT/NCZ/005/2022

BEFORE:

HON. RICHARD UMAR BALACHAIRMAN/COMMISSIONER

HON. ZAIDU ABDULLAHICOMMISSIONER

HON. UKERA SEUNGWA EMMANUELCOMMISSIONER

HON. OGBAENYI CHIKWENDU IVANCOMMISSIONER

**HON. SAIDU AHMED
COMMISSIONER**

BETWEEN

STANBIC IBTC BANK PLCAPPELLANT

AND

NIGER STATE INTERNAL REVENUE SERVICERESPONDENT

JUDGMENT

The Appellant filed this Appeal on the 13th day of May 2022 , seeking the following reliefs from this Honorable Tribunal:

- “i. An Order of the Tribunal restraining the respondent from levying a warrant of distraint on the premises and property of the Appellant.

- ii. An Order of the Tribunal restraining the Respondent from making any publication including pasting on the walls or premises of the Claimant any notice labelling the Appellant as a contravener of the Personal Income Tax and/or any other tax regulations applicable in Niger State.
- iii. An Order of the Tribunal restraining the Respondent from sealing up, disturbing normal banking business activities or further harassing the Appellant, and its staff by way of a warrant of distraint for the allegation that the Appellant has outstanding obligations of N6,288,437.48 (Six Million, Two Hundred and Eighty Eight Thousand, Four Hundred and Thirty Seven Naira, Forty Eight Kobo) only or any sum at all to the Respondent from June 2011 to 2021 or any other period at all until the matter is determined by the Tribunal or same are reviewed jointly, agreed upon and resolved amicably by the parties.
- iv. An Order of the Tribunal nullifying and discharging any purported warrant of distraint obtained by the Respondent to be levied against the Appellant.
- v. A declaration that the threat of the Respondent's intention to levy warrant of restrain is premature, oppressive and unconstitutional.

BACKGROUND TO THE APPEAL

This Appeal emanated from certain events dating back to 2021. To be precise the case of the Appellant is that the Respondent in two separate letters dated January 11th , 2021 and March 19th, 2021, requested from the Appellant, certain documents for the purposes of tax audit for the 2018 - 2020. Appellant through their tax consultants, Pedabo, responded through their letter dated 30th March, 2021 wherein, Respondent's tax consultant informed the Appellant that the tax audit for 2018 had already taken place but nevertheless allegedly forwarded the documents requested by the Appellant. Again, Respondent through a

letter dated 27th April, 2021 demanded from the Appellant the sum of **N54, 245,812.38(Fifty Four Million, Two Hundred and Forty Five Thousand, Eight Hundred and Twelve Naira, Thirty Eight Kobo)** as unremitted Pay-As-You-Earn (PAYE) for the 2018 -2020 tax years. Appellant objected to this demand through their tax consultant, Pedabo vide their letter dated May 21, 2021 but the Respondent promptly notified the Appellant in their letter of June 23rd, 2021 that the demand must be paid within 7 days or face enforcement action since the Appellant failed to object within statutorily allowed period of 30days. Series of correspondences later ensued between the Appellant and the Respondent regarding the validity of Appellant's objection and other related issues which compelled the Respondent and the Appellant to hold several meetings including one held on the 25th day of August, 2021 to resolve all grey areas. Sequel to the resolution reached at one of such meetings, Appellant forwarded the necessary documents to the Respondent vide their letter dated 27th October, 2021 and Respondent raised a revised assessment demanding payment of the sum of **N6, 395,447.48 (Six Million Three Hundred and Ninety Five Thousand, Four Hundred and Forty Seven Naira, Forty Eight Kobo)** from the Appellant for non-filing /late filing of monthly returns on new customer accounts for the period of June 2011 – March 2021. Appellant again objected to this particular demand for including matters that were already settled at the August 25th, 2021 meeting. Respondent finally issued the Appellant a Notice of Refusal to amend dated 24th December, 2021 with a further threat to execute distraint against the Appellant consequent upon which the Appellant instituted this Appeal seeking the reliefs stated above.

Appellant's Notice of Appeal was accompanied with a List of Documents to be relied upon at the hearing together with a List of Witness and Witness Statement on Oath of Appellant's Sole Witness, Mr Victor Omachonu. Respondent upon being served filed its reply to the Petition consequent upon which the matter proceeded to hearing. Appellant called its sole witness, Mr Victor Omachonu

and tendered documents admitted by the Tribunal and marked Exhibits AWD1 – AWD26 after which it closed its case. Respondent cross-examined Appellant's sole witness but elected to rest its case on that of the Appellant.

ISSUES FOR DETERMINATION

Appellant Counsel, S.O Yakubu Esq in his Final Written Address settled on behalf of the Appellant and filed on the 5th of July, 2023 formulated a lone issue for the determination of this Appeal to wit:

Whether the Respondent's Assessment of the Appellant was final and conclusive?

Counsel submitted that where there are valid objections and an appeal, as in the instance case, the respondent assessment is not final in that the Respondent was still making reference to the June 2011 – March, 2021 periods in his demand letters of 5th November, 2021, and 22nd November, 2021 which according to counsel were issues that were raised at the meeting of August 25th, 2021, and the Respondent had not placed any issue before the Tribunal that the issue was resolved one way or the other before issuing the Notice of Refusal to amend. He finally submitted that the Appellant having filed a valid objection to the demand notice, the assessment cannot be said to be final. Counsel relied on the case of *Addax Petroleum Dev Nig Ltd v. FIRS (2013) 1 NTTLR page 19 @20*.

Counsel further submitted that a plaintiff seeking declaratory reliefs must succeed on the strength of his case. Counsel relied on the case of *Marine Int'l Ltd v. Ayetoro Bay Agency (2016) 4 NWLR PT 1502 Pg313 @319*.

In opposition to the issues canvassed by the Appellant Counsel, Respondent Counsel, A.G Yirvoms Esq in his Final Written Address filed on the 12th day of July, 2023 formulated a lone issue for the final determination of this Appeal to wit:

Whether having regard to the Appellant's reliefs and evidence adduced before the Tribunal, the Appellant has proved its claim to be entitled to the reliefs sought?

It is the contention of Mr A.G Yirvoms on behalf of the Respondent that Appellant's appeal before the Tribunal is rather frivolous and academic, therefore incapable of moving the Tribunal to decide otherwise.

Counsel further submitted that the reliefs sought by the Appellant from this Honorable Tribunal as contained at pages 4 and 5 of Appellant's Notice of Appeal and reproduced at pages 2 and 3 of the Appellant's Brief of Argument are injunctive and declaratory in nature which must succeed on the strength of Appellant's case and not the weakness of the Respondent. Counsel submitted that the Appellant particularly failed to challenge Respondent's assessments of the Appellant which triggered this Appeal. This, according to learned counsel was confirmed during cross examination by Appellant's sole witness Mr Victor Omachonu.

Respondent Counsel further argued at paragraph 3.5 of Respondent's Brief of argument that the Appellant having not challenged the basis of the said assessment has by implication failed to activate the jurisdiction of this Honourable Tribunal. Counsel relied on Paragraph 13(1) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007 to submit that a tax payer is conferred with the right to approach the Tribunal only if aggrieved with the decision of the service as it relates to a tax assessment and not tax enforcement or distraint. That the admission by the Respondent's lone witness that the reliefs sought before this Tribunal does not pertain to tax assessment renders Appellant's reliefs speculative and not grantable.

Counsel submitted with respect to Appellant's prayer for injunctive relief against Respondent's threat to distraint the Appellant pursuant to Section 104 of the Personal Income Tax Act, 2011 that same is equally speculative as Appellant

failed to place before the Tribunal any material facts nor the purported warrant of distraint before this Tribunal to suggest otherwise. Counsel relied on the decision in **A.G Anambra State v. A.G Federation (2005) 9 NWLR (Pt.931) 572** to anchor his argument that Appellant's claim for injunctive order must be backed by evidence. Counsel also relied on the case of **Ativie v Kabelmetal(2008) 10 NWLR (Pt.1095) 399.**

Respondent Counsel had also submitted at the onset of Respondent's Final Written Address at paragraph 3.2 that Respondent resolved to rest its case on that of Appellant on the Strength of the fact that, the Appellant's Appeal before this Honorable Tribunal is frivolous and academic , therefore incapable of moving the Tribunal to decide otherwise. Counsel relied on the case of **Akanbi v. Alao (2002) 9 NWLR (Pt.773) 521** on the implication of a defendant resting his case on that of the Plaintiff or Appellant herein to the effect that when a defense counsel announces that he is resting his case on that of the Plaintiff, he is understood to be saying either (a) that the plaintiff has not made out any case for the defendant to answer(b) that the defendant admits the facts of the case as stated by the plaintiffs; or (c) the defendant has a complete answer in law to the plaintiff's case.

Counsel therefore submitted that the Appellant has not placed any evidence before this honorable Tribunal to be entitled to the reliefs sought and this Honorable Tribunal should so hold with punitive cost against the Appellant.

RESOLUTION OF ISSUES

In order to properly address the grievances of the parties to this Appeal and advance the course of justice, we have adopted the issue for determination as formulated by Respondent's Counsel, that is:

Whether having regard to the Appellant's reliefs and evidence adduced before the Tribunal, the Appellant has proved its claim to be entitled to the reliefs sought?

The law is that issues for determination must arise from the grounds of appeal and must acquaint the court with the grievances of the parties in the appeal and assist the court in doing substantial justice in the determination of the issue. **See Gankon v. Ugochukwu Chemical industries Ltd (1993) LPELR - 1303(SC); and Imo Rubber Estates Ltd v. Pamol (Nig) Ltd (2018) LPELR – 44339 (CA)**

The reliefs sought by the Appellant from this Honourable Tribunal are injunctive and declaratory in nature. The law is that declaratory reliefs are not granted as a matter of course and on the platter of gold. They are granted when credible evidence has been led by the person seeking them. **See Mbodan v. Daba (2019)LPERL – 46739(CA)**. Furthermore, it is a requirement of law that a person seeking the declaratory reliefs must plead and prove his claim for declaratory reliefs without relying on the evidence of the opposing party. **See Iliya & Anor v.Lamu & Anor (2019) LPELR-47048 (CA), see also Marine Int'l Ltd v. Ayetoro Bay Agency (2016) 4 NWLR PT 1502 Pg313 @319** cited by Appellant Counsel . It is equally trite that an injunctive remedy is intended to protect the existing right of a person from unlawful invasion by another, or stop the repetition or continuation of the particular wrongful act complained of with a view to supporting Respondent's established legal rights . **See Tukur v Sadiq & Anor (2016) LPELR -40318(CA)** .Both declaratory and injunctive rights are equitable reliefs granted by the courts to a person seeking them to protect a right known in law or equity, and may be granted by the Tribunal or court after judicious exercise of its discretion based on credible evidence led by the person seeking them from the court. **See Oladeji v Anakwe (2013) LPELR – 22160(CA); see also Ejike & anor v Onuzulike & Anor (2013) LPELR – 21220 (CA).**

In the instant appeal, it is apparent that the grievances of the Appellants stemmed from the Respondent's Demand Notices dated 5th November 2021, 22nd November, 2021 and more particularly Respondent's Notice of Refusal to Amend (NORA) dated December 24th, 2021. This is because after the Tax reconciliatory meetings held between the representatives of the parties to this Appeal on several dates including the 25th day of August, 2021, and 22nd – 25th September, 2021 respectively, the Respondent revised its initial tax claim made against the Appellant vide Respondent's letter dated 27th April, 2021 in the sum of **N54, 245,812.38 (Fifty Four Million, Two Hundred and Forty Five Thousand, Eight Hundred and Twelve Naira, Thirty Eight Kobo)** for the 2018 -2020 tax years and other fines imposed on the Appellant for the said period, and consequently issued a revised assessment in the sum of **N6, 395,447.48 (Six Million Three Hundred and Ninety Five Thousand, Four Hundred and Forty Seven Naira, Forty Eight Kobo)** vide Respondent letter dated 5th November, 2021 for non-filing /late filling of monthly returns on new customer accounts for the period June 2011 – March 2021 requesting the Appellant to pay same to the Respondent within seven (7) days. It was this NORA dated 24th December, 2021 that became the bone of contention or should we say the last straw that broke the camel's back. It must, however, be noted that no evidence was placed before this Honourable Tribunal to prove that the Appellant made an objection against the revised assessment of 5th November, 2021 within the statutory period of 30days as permitted by Statute.

Looking at the Appellant's Notice of Appeal, particularly the two Appellant's Witness Statements on Oath of Mr Victor Omachano, it is apparent that the Appellant failed to attack the legal validity or otherwise of the Appellant's NORA of 24th December, 2021 neither was there a specific prayer made by the Appellant requesting this Honourable Tribunal to quash the NORA in question. Instead, the Appellant dissipated so much man hours and industry on an

alleged threat by the Respondent to shut down and seal the business premises of the Appellant in Minna, Niger State. With regards to the alleged distraint, it needs to be clarified that the Respondent has a right to distraint any tax defaulter the moment the tax assessment becomes final and conclusive, and an *ex parte* order to execute distraint has been secured by the Respondent from the State High Court – See **Section 104 Personal Income Tax Act, 2011, and Independent Television/Radio v. Edo State Board of Internal Revenue Service (2014) LPELR -23215(CA)**. See also **Aboud v. Regional Tax Board (1966) LPELR – 25342 (SC) , and Mobil Oil (Nig) Ltd v FBIR (1977) LPELR – 24896(SC)** on when a tax assessment becomes final and conclusive to warrant distraint under Section 104 of PITA.

We have earlier pointed out that no evidence was led by the Appellant to show that it validly objected to Respondent's assessment of 5th November, 2021 which formed the basis of Respondent's NORA dated 24th December, 2021. Indeed, no evidence was led to prove that there was a pending distraint against the Appellant on the basis of the Respondent's letters of 5th November, 2021 and 24th December, 2021. Furthermore, if there is any doubts in the pleadings of the Appellant that it had no objection against Respondent's assessment of 5th November, 2021, or the NORA dated 24th December, 2021, the oral testimony of Appellant's lone witness Mr Victor Omachonu during cross examination cleared such doubt. Appellant's lone witness Mr Victor Omachonu responded to questions put to him by Respondent's Counsel, Mr Dariyem as follows:

Dariyem: I believe you are familiar with all the reliefs you are seeking before the Tribunal?

Witness: Yes

Dariyem: Will I be correct to say that based on the Appellant's reliefs with particular reference to relief 1-5, you are not challenging the assessment leading to this Appeal; is that correct?

Witness: yes, I am not challenging the assessment

Dariyem: I will therefore be correct to say that the assessment leading to this appeal by the Respondent is correct since you are not challenging same?

Witness: No.

Dariyem: That will be all for the Witness.

From the foregoing analysis therefore, we are inclined to agree with learned Counsel to the Respondent that the Appellant has not placed any evidence before this honorable Tribunal to be entitled to the reliefs sought hence Respondents Counsel's decision to rest its case on that of the Appellant. To be clear, this Honourable Tribunal finds justification in the decision of the Respondent's to rest its case on that of the Appellant. See the case of **Akanbi v. Aloa(2002) 9 NWLR (Pt. 773) 521** cited by the Appellant. See also **Mezu v.CXCB (Nig) Plc (2013) 3 NWLR Pt 13 -14**. Consequently reliefs 1 -5 as prayed by the Appellant are refused and the appeal is dismissed for lack of merit. Respondent's Counsel's request for punitive costs is refused as cost is ordered to remain in the cause.

We so hold.

Dated this 14th day of September, 2023.

SIGNED

.HON. RICHARD UMAR BALA .

CHAIRMAN/COMMISSIONER

SIGNED

HON. ZAIDU ABDULLAHI

COMMISSIONER

SIGNED

HON. UKERA SEUNGWA EMMANUEL

COMMISSIONER

SIGNED

HON. OGBAENYI CHIKWENDU

COMMISSIONER

SIGNED

HON. SAIDU AHMED

COMMISSIONER