

RESPONDENT

IN THE COURT OF APPEAL OF NIGERIA
IN THE JOS JUDICIAL DIVISION
ON FRIDAY, THE 24TH DAY OF MAY, 2019.

BEFORE THEIR LORDSHIPS:

UCHECHUKWU ONYEMENAM	-	JUSTICE, COURT OF APPEAL
HABEEB OLUMUYIWA A. ABIRU	-	JUSTICE, COURT OF APPEAL
BOLOUKUROMO MOSES UGO	-	JUSTICE, COURT OF APPEAL

APPEAL No. CA/J/179/2018

BETWEEN:

AL- MASEER LAW FIRM**APPELLANT**

AND

FEDERAL INLAND REVENUE SERVICE**RESPONDENT**
(MICRO & SMALL OFFICE BAUCHI)

JUDGMENT

(Delivered by BOLOUKUROMO MOSES UGO, J.C.A)

This appeal is from the decision of the Federal High Court of Justice (Bauchi Division) delivered by Shitu Abubakar, J., on the 26th day of October 2018.

By an originating summons the appellant as plaintiff sought from the Federal High Court determination of the following three questions:

1. Whether or not by virtue of the provisions of Section 8 of the Value Added Tax Act Cap. VI 2004 (as amended) Legal Practice is 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 Nigerian Bar and who practices as such falls 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 in compliance with section 15 of the Act.
3. Whether or not the purported letters served on the plaintiff demanding it to render monthly VAT return not being a business venture is irregular and of no legal effect whatsoever.

She sought the following reliefs should the Court determine the said question in her favour:

1. A Declaration that by virtue of the provisions of Sections 2 and 46 of the Act, the plaintiff as a Legal Practitioner is not a taxable person within 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 under the category of persons contemplated under section 46 of the VAT Act VI 2004 (as amended) 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 deriving 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 circumstance.

In a 4-paragraph affidavit in support of her summons deposed to by her Litigation Secretary, one Hussaini Abubakar, appellant put forward the reasons for her objection to Respondent's assessment and demand for remission of Value Added Tax thus:

3. (a) The plaintiff has never registered as VAT collecting agent of the defendant.

(b) ~~The plaintiff does not engage in kind of business for the~~
purpose of making profit thus it does not need to register as a VAT collecting agent of the defendant.

- (c) That the plaintiff was served with letter sometime in May 2016 with title NON-RENDITION OF VAT RETURN wherein he is required to charge his client VAT at 5% of the professional fees charged to them despite not being a business venture. The letter is attached to this affidavit and marked "EXT ALMASEER A".

- (d) The plaintiff couldn't see where a legal practitioner is captured anywhere in the Act as taxable person and the defendant cannot just tag him as such without any backing of the law.
- (e) The plaintiff was again served with another letter and is required to pay the whooping sum of ₦100,000.00 as Based of Judgment Assessment (VAT) without citing any law in that regard that qualified the plaintiff as taxable person. The letter is attached and marked "EXT ALMASEER B".
- (f) That the provision has no relevance to the plaintiff being a Legal Practitioner and does not affect him in any way whatsoever.
- (g) That the defendant has no power to impose tax or charge the plaintiff when the law does not expressly provided (sic) that he should be charged.

In answer, Respondent caused its Legal Officer Mr. Ali A. Alhashim to swear to a 13-paragraph counter affidavit, where it stated that:

5 (a). That contrary to the appellant's averment in paragraph 3(a) and (b), appellant registered willingly with it on 19th December 2014 vide a VAT Registration Form (VAT 001) which was duly signed by her and same duly served and received by respondent. It annexed and marked the said VAT Registration as Exhibit "FIRS 1".

- (b) That consequently a VAT Identification Tin No 18616296-0001 was generated for appellant and same served on appellant through one Usman Bappah Darazo with proof of service on 19th December 2014.
- (c) That it is appellant's failure to respond and comply with its earlier reminder on it for VAT assessment that compelled it to served Best of Judgment (BOJ) Assessment on her.
- (d) That similar BOJ was raised on all law firms within Bauchi metropolis and there was high compliance by the said law

firms, in support of which it annexed some receipts as Exhibits 3 and 4.

Appellant in a Further and Better Affidavit denied ever registering with respondent for payment of VAT.

Written submissions were filed along with their processes by parties and adopted by them before the court. There appellant, in line with her depositions in her affidavits, argued that she never registered with respondent as VAT collection agent; that Legal

Practice is not a business venture or a person carrying on any business or trade within the meaning of the Value Added Tax Act to require registration with the Respondent; that the Respondent failed to show where the Act defined Legal Practitioner as a taxable person in its provisions; that Value Added Tax under the Act is only collectable by business individuals or persons that engage in trade or business activities for profit and it is such persons that are required to register with Respondent under the Act; that VAT Act does not empower the respondent to impose

any tax on a registered agent or any person as that can only be done through a valid legislation.

The Respondent on the order hand argued that appellant, being a Legal Practitioner and engaged in providing services to her clients for profit, is taxable within the meaning and context of Sections 2, 3 and 15 of the value added Tax Cap VI LFN 2004, in so far as such service is not exempted services specified in the First Schedule of the Act. It also contended that the appellant had applied willingly to be registered as VAT agent and was duly registered as VAT collection agent.

The lower court in its judgment agreed with Respondent's position and dismissed appellant's summons.

Dissatisfied with that judgment, appellant filed the instant appeal of three grounds, from which she distilled the following two issues for us to determine:

1. Whether in the circumstance of the case the trial court was right when it held that she is not exempted from registration

with Respondent for the purpose of charging or collection of value added tax on the professional fees she collects from her clients.

2. Whether the trial court was right when it held that respondent had statutory power to demand payment of VAT from her.

On its issue 1, appellant submitted that it is rudimentary that in interpreting the provisions of the statute a court must be given its ordinary meaning. It is also obvious and settled, she also

~~submitted, that tax laws, unlike other laws, are construed~~

narrowly, for which it cited *F.B.I.R v. HALIBURTON (W.A.) Ltd*

(2004)4 NWLR (Pt. 1501) PG. 53 @ 65 and *Okupe v. F.B.I.R.*

(1974)4 SC. 93. It is equally elementary principle of interpretation

that the mention of specific in a statute excludes any other thing

not specifically mentioned, she argued, and cited *P. & C.H.S.C.*

Ltd & Ors v. MIGFO Nig. Ltd & Anor (2012) SCM 205.

Reproducing Section 46 of the VAT Act defining taxable person

as "a person who independently carries out in any an economic

activity as a producer, wholesale trader, supplier of goods,

supplier of services (including mining and other related activities) or person exploiting tangible and intangible property for the purpose of obtaining income there from by way of trade or business; and includes a person and an agency of Government acting in that capacity," she submitted that not only does this provision not mention a law firm, the definition also shows that for any person to qualify as a taxable person he/she must be engaged in an activity relating to production, distribution and ~~consumption of goods and services; that a person can only be~~ classified as taxable where he engages in the business of buying and selling of goods and services. A lawyer or legal practice does not engage in any money-making adventure of the nature stipulated by the Act so it is not required to remit value added tax, she argued. The lower court, she also argued, was not mindful of differences inherent in tax legislation and failed to make any attempt to distinguish tax legislation from ordinary legislations. Section 14 of the Value Added Tax Act which says *'taxable person shall on supplying taxable goods or services to his*

accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services and at the rate specified in section 2 of this Act' she argued is clear and the courts are enjoined to give it literal meaning where it is clear and unambiguous as she argued was in this case.

Under the Value Added Tax Act, she also submitted, a taxable person is required to collect the charge on behalf of the respondent and remit same. She said where a statute prescribes

a procedure for doing an act only that procedure will suffice; that the provision of section 2 and 3 are general in nature while section 14 deals in particular with business partners and agents of the taxable person is specific therefore, the latter provision overrides the former for *generallibus specialia derogant* (special things derogate from general things).

Assuming without conceding that she is a taxable person, she is only enjoined to register with the respondent and collect the said tax from his business partners on behalf of the respondent, she

further argued. In other words, that it is a condition precedent that the appellant must have registered with the respondent before the respondent can rightly demand any payment from her since the tax to be paid by the client. She said she had consistently denied registration with the respondent; that she even tendered evidence before the lower court in this regard but, surprisingly, the lower court failed to make any pronouncement on that and instead went ahead to hold that "..... in fact section 8 of the Act, makes it ~~mandatory for the plaintiff to register with the defendant filing~~ which the plaintiff will be sanctioned...." She submitted that the issue for consideration is not whether VAT Act made it mandatory for her to register with Respondent but whether she actually registered with it. That issue, she submitted, was not resolved yet the lower court went ahead to make its findings against her. Section 101(1) of the Evidence Act, she argued, empowers the court to compare writing or signature, that this court can compare and contrast the signatures on exhibits FIRS 1, 2, FIRS K-1, FIRS K-3, Exhibits AL-MASEER D, AL-MASEER "E" at pages 24, 25,

- 41, & 42 of the records to ascertain their authors as that does not involve appraising credibility of oral evidence. She described the judgment of the trial court perverse and urged us to intervene and resolve issue one in her favour.

Appellant practically repeated her aforementioned arguments in support of her issue 2. She restated that there is no provision in the Value Added Tax (VAT) Act empowering Respondent to impose tax on her the Act having not categorized her as a taxable

person. Assuming without conceding that she is a taxable person, a taxable person under the provisions of the VAT Act is only under an obligation to collect tax from his/her customers or business agents and not from the registered agent, that Respondent has no power to impose tax on its agent. She again relied on Section 14 of VAT Act for this submission. She submitted that the mere fact that one is recognized as a tax collection agent does not qualify it as a taxable person. Unless Respondent can show that she is a trader or is among the

persons mentioned by the Act and had refused to collect tax, which she says is not the case here, Respondent cannot hold her liable for any breach of VAT Act. She is not a registered agent of the Respondent and has never applied to be its agent and has no reason whatsoever to do so because she doesn't fall within the class of persons that are required to register under the Act, she argued and finally urged us to answer this issue too in the negative and hold that the purported letter served on her by Respondent is irregular and has no backing of the law.

The respondent on its part formulated the following two issues:

1. Whether the findings of the lower Court and the consequent dismissal of the case on grounds that the Appellant is not exempted from registration with the Respondent for the purposes of charging or collection of Value Added Tax on the professional fees collected from her Clients is incorrect and perverse.

Cap V1 Laws of the Federation of Nigeria, 2004. Legal practice and law firms having not been mentioned in the Exemption List, it argued, appellant is a taxable person within the meaning and contemplation of the Value Added Tax as it is 'a body of individuals or a person who carries out in a place an economic

2. Whether the lower Court was incorrect in holding that the Appellant is a taxable person and therefore liable to render return to the Respondent on all legal services rendered to the public.

Respondent submitted on its issue 1 that the finding of the lower Court that Appellant is not exempted from registration with it for purposes of charging or collection of Value Added Tax on professional fees from her clients is faultless. By the enabling statute, it argued, tax is chargeable and payable on "taxable goods and services" except for those goods and services enumerated in the First Schedule to the Value Added Tax Act Cap V1 Laws of the Federation of Nigeria, 2004. Legal practice and law firms having not been mentioned in the Exemption List, it argued, appellant is a taxable person within the meaning and contemplation of the Value Added Tax as it is 'a body of individuals or a person who carries out in a place an economic activity for the purpose of obtaining income there from by way of trade or business' within the meaning of "Taxable person" under

- Section 46 of the Act. If legal services or practice was intended to be excluded from taxation or registration with the Respondent for purposes of Value Added Tax the Act would have expressly stated so in its First Schedule, it submitted. The express mention of one thing entails the exclusion of the other, it submitted. It is erroneous as submitted by the Appellant, it further argued, that because Legal Practitioner is not captured directly as a taxable person appellant is not covered by the Act. The mischief which ~~the Value Added Tax was enacted to address is to impose and~~ charge Value Added Tax on certain goods and services and the statutory obligation of the Appellant as a taxable person to be registered with the Board of the Respondent is further underscored by the provisions of Section 8(1) of the Value Added Tax which provides that A taxable person shall, within six months of the commencement of the Act or within six months of commencement of business, whichever is earlier, register with the Board for the purpose of the tax, it submitted. It argued that the meaning being ascribed to Section 14(1) of the Value Added Tax

by appellant is misconceived, that the said provision imposes additional statutory obligation on appellant on collection of tax on services rendered.

On its issue 2, Respondent argued that Appellant being a taxable person is under a legal obligation to render returns to it under the VAT law. Such tax obligation, whenever in default, is a statutory debt and recoverable by the Respondent through appropriate legal remedy or sanction and cited Section 20 of the Value Added Tax Act. Being a taxable person, it argued, Appellant had a statutory obligation to collect tax on the professional services rendered by it. It cited section 14 of VAT Act to buttress its argument and submitted that the failure of Appellant to render the necessary returns or non-remittance of tax attracts penalty and interest, citing in support of that Sections 18 and 19 of the Value Added Tax Act. Where a duty is imposed by law the subject has to comply with it in the manner provided, it submitted, citing

Ojukwu v. Kaine & 4 Ors (2005) 15 NWLR (Part 691) 516, 523F-G and *Sa'ad & Anor v. Maifata & Ors* (2008) LPELR-4915.

Resolution of issue

The thrust of appellant's case in the lower court and here is whether as a law firm which provides services to members of the public for profit she is actually a taxable person within the meaning of the Value Added Tax Act Cap V1 of 2004 and so liable to collect value added tax from her clients and remit to respondent. The learned trial Judge thought she was and dismissed her case for lacking in merit. After first stating the trite position that the primary rule of interpretation is that words be given their ordinary meaning, His Lordship Abubakar, J. resolved that issue this way:

"Applying the 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 circumstances, therefore, the argument of 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 services 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.

"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 resolve issue 2 in favour of the defendant and against the plaintiff.

His Lordship also resolved against appellant the consequential issue of respondent's right to demand Value Added Tax from appellant, saying:

"The 3rd issue is whether the defendant has the statutory power to demand payment of VAT from the plaintiff. this question is answered in 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 the provision was reinforced 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 VAT from the plaintiff is without legal foundation and therefore baseless. Consequently, I hold that the letters of the defendant to the plaintiff demanding the plaintiff to render monthly returns on VAT is proper and in order."

This decision is undoubtedly well-rooted in the provisions of the Value Added Tax Act Cap IV of 2004 and I do not see how I can fault it. The Value Added Tax Act, which also states in its section

7 that the Respondent shall be responsible for administration of value added tax and shall do all such things as it may deem necessary and expedient for the collection and assessment of the tax and shall account for all amounts so collected in accordance with the provisions of the Act, provides in its sections 1, 2 and 3 that:

1. There is hereby imposed and charged a tax to be known as the Value Added Tax (in the Act referred to as 'the tax') which shall be administered in accordance with the provisions of this Act.

2. Tax shall be chargeable and payable on the *supply of all goods and services* (in this Act referred to as "*Taxable goods and services*" other than goods and services listed in the First Schedule to this Act.

It is worthy of note that, contrary to appellant's argument, the Act does not limit itself to only suppliers of goods but extends the duty of collection and remission of VAT to also those who only supply services. A lawyer or firm of lawyers in private practice undoubtedly supplies legal services to the public for a fee and so caught by this provision and bound to charge and remit to ~~respondent value added tax as stipulated by the Value Added Tax~~ Act on the fees they charge their clients. In fact section 46 of the same VAT Act (as amended) puts this beyond doubt by its definition of the terms 'supply of services,' 'taxable goods and services' and "taxable person" which it defined thus:

"Supply of services" means any service provided for consideration.

"taxable goods and services" means the goods and services not listed in the First Schedule to this Act.

"taxable person" includes an individual or body of individuals, family, corporations sole, trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible and intangible property for the purpose of obtaining

income there from by way of trade or business or a person or agency of Government acting in that capacity.

The same statute imposes an obligation on taxable persons (including lawyers and law firms) to charge and collect from their customers or clients value added tax and remit to respondent, thus:

"14. Collection of tax by taxable person

- (1) A taxable person shall on supplying taxable goods or services to his accredited distributor, agent, *client* or consumer, as the case may be, collect the tax on goods or services at the rate specified in section 2 of this Act"
-

"15. Taxable person to render returns:

- (1) A taxable person shall render to the Board, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine."

What is more, section 8 of the statute makes registration with respondent by taxable persons like appellant mandatory. It reads:

- 8(1) A taxable person shall, within six months of the commencement of the Act or within six months of commencement of business, register with the Board for the purpose of this Act.

Subsection 2 of the same section goes on to impose on defaulting persons penalties of ₦10,000 for the first month of failure and ₦5,000 for each subsequent month.

The goods and services that are exempted from the collection of VAT are also specifically listed in the First Schedule to the Act thus:

~~PART 1: GOODS EXEMPT:~~

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials.
4. Baby products.
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exports.
7. Plant, machinery and goods imported for use in the export processing zone or free trade zone: Prided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.

8. Plant, machinery and equipment purchased for utilization of gas in down-stream petroleum operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.

PART II: Services exempt

1. Medical services.
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 export services.

PART III

Zero-rated goods and services.

1. Non-oil exports.
2. Goods and services purchased by diplomats.
3. Goods purchased for use in humanitarian donor funded projects.
"humanitarian donor funded projects" includes projects undertaken by non-Governmental Organizations and religious and social clubs or societies recognized by law whose activities is not for profit and in the public interest.

8. Plant, machinery and equipment purchased for utilization of gas in down-stream petroleum operations.
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Legal Practitioners and law firm is not mentioned here. The rule of interpretation is that when something is specifically mentioned in a statute the intendment is that it excludes whatever is not mentioned: *P. & C.H.S.C. Ltd & Ors v. MIGFO Nig. Ltd & Anor* (2012) SCM 205. That is just as it is also the law that whenever a word or expression is defined in a statute, that definition applies for the purposes of that statute to the exclusion of any other meaning that same expression may have.

As for the 'issue' of the lower court's alleged failure to decide whether appellant actually registered with Respondent, I do not see how that impacts negatively on the decision of the lower court in real terms, for there is nothing in the VAT Act that suggests that registration by a taxable person per se is a precondition for payment of VAT and or that the duty to pay VAT does not arise until a taxable person is registered. Besides, a resolution of that 'issue' was not even necessary for proper determination of the

three questions appellant posed in her originating summons for determination.

For all of the foregoing reasons I fail to see merit in this appeal; accordingly, I hereby dismiss it in its entirety and uphold the judgment of the Federal High Court dismissing appellant's originating summons.

There shall be costs of ₦60,000.00 in favour of the Respondent.



**BOLOUKUROMO MOSES UGO
JUSTICE, COURT OF APPEAL**

COUNSEL

Rilwan A. Jibrin Esq. for Appellant.

A.M. Hassan Esq., holding the brief of Ezenwa Ibegbunam Esq., the Respondent.

APPEAL No. CA/J/179/2018
UCHECHUKWU ONYEMENAM, JCA

I have had the benefit of reading in draft the leading judgment just delivered by my learned brother **BOLOUKUROMO MOSES UGO, JCA**. I agree with his reasoning and conclusion that the appeal is devoid of merit. It is hereby dismissed for lacking in merit.

I uphold the judgment of the Federal High court, Bauchi delivered on 26th October, 2018 by Shitu Abubakar, J. in Suit No. **FHC/BAU/50/2016**.

I abide by the order as to costs.



UCHECHUKWU ONYEMENAM
JUSTICE, COURT OF APPEAL

CA/I/179/2018

JUDGMENT

(DELIVERED BY HABEEB ADEWALE OLUMUYIWA ABIRU, JCA)

I have had the privilege of reading before now the lead judgment delivered by my learned brother, Boloukuromo Moses Ugo, JCA. His Lordship has ably considered and resolved the issues in contention in the appeal. I agree with the reasoning and abide the conclusion reached therein. I have nothing more to add


HABEEB ADEWALE OLUMUYIWA ABIRU
JUSTICE, COURT OF APPEAL
