

# LITIGATION UPDATE

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**ADVOC**CAAT  
LAW PRACTICE

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**TAX ASSESSMENT AND FAILURE TO PAY TAX – ONUS OF PROOF IS ON THE PARTY ALLEGING FAILURE TO PAY TAX AS AND WHEN DUE: [DR. OKEZIE VICTOR IKPEAZU V. DR. SAMPSON UCHECHUKWU OGAH & 3 ORS. \(2017\) 6 NWLR \(PT. 1562\) Pages 502 – 516](#)**

**Background**

The shared obligation of an employer and the relevant tax authority to recover assessed tax from any emolument paid or from any payment made on account of emolument by the employer to the employee is guaranteed under **Section 81 of the Personal Income Tax Act LFN 2004 (PITA)**. The provision of **Section 58 PITA** however allows an employee or any taxable person to dispute any assessment. He may object in writing to the tax authority for review of the tax assessment in consonance with the provisions of **Section 58**.

**Section 59 of PITA** provides that no tax assessment will be quashed or deemed void or voidable for want of form or be affected by reason of mistake, defect or omission if same is in substance and in conformity with and in accordance with the intent of the act and the person assessed is designated therein to common intent and understanding.

**Facts**

The facts of this case are that the 1<sup>st</sup> Respondent instituted an action against the Appellant, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents claiming amongst other reliefs that the Appellant was not qualified to contest for the primaries held on the 8<sup>th</sup> December, 2014 by virtue of Article 14(a) in Part IV of the 2<sup>nd</sup> Respondent's electoral guidelines and that by the breach of Article 14(a) of the guidelines including INEC form CF0001 i.e. failure to pay tax in 2011, 2012, and 2013, the Appellant violated section 31(5) and (6) of Electoral Act. The trial court in its judgment *coram* Justice Abang found that the Appellant did not pay tax in 2011, 2012 and 2013 and therefore should be disqualified. Dissatisfied with the judgment of the

By the above provision, there is a presumption that upon assessment of tax, the assessment cannot be declared void by reason of a mistake as to name of the taxable person, description of income and the amount of any income tax charged. The implication of section 59 is that where there is a challenge as to the veracity for payment of tax, the onus is on the party who alleges the failure to pay tax.

The case under review seeks to examine who has the onus to prove payment of tax upon service of a notice of assessment to a taxable person.

trial Court, the Appellant appealed to the Court of Appeal. The issues which border on tax at the court of appeal was on who had burden of proof of allegation for failure to pay tax as and when due.

The Court of Appeal unanimously allowed the appeal and held that the onus of proof is squarely on the party asserting that tax was not paid. Where there is no assessment of tax payable to any payer, no tax is due or payable. The court relying on the trite legal principle of “he who asserts must prove” stated that the 1<sup>st</sup> Respondent had the burden of proving what he claimed or asserted. Thus a party who alleges failure to pay tax as and when due must necessarily prove the following:-

- a. that the person earned a taxable income during the period in question;
- b. that there is proper assessment of that income during this period;
- c. that the notice of assessment was served on the person to pay his tax and he defaulted; and
- d. that the person failed to pay the tax assessed within two (2) months after the issuance of the notice of tax assessment.

However, on a further appeal to the Supreme Court the decision of the Court of Appeal was affirmed. The Supreme Court in its decision on the issue reaffirm its earlier decisions in ***Lanto v. Wowo (1999) 7 NWLR (Pt. 610) 227*** and ***Ukachukwu v. PDP (2014) 17 NWLR (Pt. 1435) 134*** and held that on proof of non-compliance with tax payment requirements, it is the plaintiff who must establish the four basic elements - that the person earned a taxable income during the period in question; that there was proper assessment of tax covering the period; that notice of assessment was served on the person to pay his tax and he defaulted; and that the person failed to pay the tax assessed within the time prescribed for him to do so after the notice of the tax assessment.

### Commentary

Going by this decision the apex Court has not only reiterated the trite rule of evidence that “he who asserts must prove” but also provided the ingredients required in proving or disproving tax payments.

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