

LITIGATION UPDATE

JUNE, 2017



ADVOCAT
LAW PRACTICE

3RD FLOOR, LAW UNION & ROCK HOUSE,
14 HUGHES AVENUE,
ALAGOMEJI, YABA,
LAGOS,
NIGERIA.

In our Litigation update for this month, we shall be reviewing 2 important cases. The first case is on the adjudication of tax related disputes – who has the power to adjudicate tax matters? Is it the courts or the tax appeal tribunals? The second case relates to the right of appeal from the industrial courts to the appeal courts. It has long been the case that there was no right of appeal from the National Industrial Court to the appeal courts save for where the case hinges on the breach of fundamental human rights but the case under review may have changed this notion given the supreme court's pronouncement on same.

THE TAX APPEAL TRIBUNAL (TAT) HAS JURISDICTION TO ADJUDICATE OVER TAX RELATED DISPUTES IN NIGERIA: APPEAL NOS. CA/L/1144/2015 AND CA/L/1145/2015 - CNOOC EXPLORATION & PRODUCTION NIGERIA LIMITED & ANOR. V. NIGERIAN NATIONAL PETROLEUM CORPORATION & ANOR.

Background

Section 59 of the Federal Inland Revenue Service (Establishment) Act 2007 (“FIRS Act”) establishes the Tax Appeal Tribunal (“TAT”) to settle disputes arising from the operation of the FIRS Act and operation of other tax laws to wit: **Companies Income Tax Act, Personal Income Tax Act, Petroleum Profit Tax Act, Value Added Tax Act, Capital Gains Tax Act** and other similar laws as may be made by the National Assembly from time to time.

In recognizing the powers of the TAT to determine tax disputes, the Appellant in the

case under review brought an action before the TAT challenging the wrongful computation and assessment of petroleum profit tax in respect of profits derived from the petroleum operations on Oil Mining Lease (OML) 130 (the operator being Total Upstream Nigeria Limited) by the Federal Inland Revenue Service.

The case under review seeks to examine the jurisdiction or otherwise of the TAT to adjudicate over tax related disputes arising from the FIRS Act and other Tax laws made thereunder.

Facts

The facts of the case was that CNOOC Exploration & Production Nigeria Limited (CNOOC) and South Atlantic Petroleum Limited (SAPL) as Appellants had prepared Petroleum Profits Tax (PPT) returns and forwarded them to the Nigerian National Petroleum Corporation (NNPC) for onward transmission to the Federal Inland Revenue Service (FIRS) as provided for under the Production Sharing Contract in respect of OML 130. NNPC, without recourse to the Appellants however transmitted a differently

computed PPT returns to the FIRS. The FIRS subsequently assessed the Appellants to additional Petroleum Profits Tax (PPT) and additional Tertiary Education Tax (EDT) based on the PPT returns prepared by NNPC to the tune of US\$931,230,356.50 (Nine Hundred and Thirty One Million, Two Hundred and Thirty Thousand, Three Hundred and Fifty Six United State Dollars, Fifty Cents) and contained in its Notice of Assessment – NOA PPBTA 37.

The Appellants disgruntled with the additional PPT and EDT assessments of the FIRS, filed notices of objection which was refused by the FIRS. The Appellants dissatisfied instituted an appeal at the Tax Appeal Tribunal (TAT) challenging the additional PPT and EDT assessments. At the TAT, NNPC was made a party to the tax appeal following an application by the FIRS alleging that NNPC was a necessary party who ought to be joined as a party for the effectual resolution of the issues in dispute. NNPC however objected to the Orders seeking to join it as a party to the Tax appeal and also challenged the jurisdiction of the TAT to hear the tax disputes on the ground that the subject matter of the dispute was within the exclusive jurisdiction of the Federal High Court. In its decision on the NNPC objection, the TAT ruled that it had powers to determine the tax dispute but all the same struck out the name of NNPC from the proceedings at the TAT.

NNPC, dissatisfied by the decision of the TAT on its objection then appealed against the rulings of the TAT striking out NNPC as a party, on the ground that the TAT could not determine the matters before it in its absence since the TAT had stated that NNPC was a necessary party; and that in any event, the TAT did not have jurisdiction to determine tax matters, as such matters were within the exclusive jurisdiction of the Federal High Court. The Federal High Court in its judgment found in favour of NNPC and held that the TAT lacked the jurisdiction to entertain the Appellants' appeals because the purport of Section 251(1) of the 1999 Constitution (as amended), was to vest the Federal High Court with exclusive jurisdiction in matters pertaining to the revenue of the federal government including taxation. Consequently, the TAT could not adjudicate on matters pertaining to taxation.

Dissatisfied with the judgment of the Federal High Court, the Appellants further appealed to the Court of Appeal. The issue before for the Court of Appeal was whether the TAT has jurisdiction to adjudicate on tax disputes. In its decision on the issue of whether the TAT's has jurisdiction to hear tax appeals the Court of Appeal held that *"The procedure for resolving claims and objections such as in the instant matter, are spelt out. When an assessment is made and the party is not satisfied, it can serve a Notice of Objection with the FIRS. It can also file a Notice of refusal to amend the assessment as desired where it disagrees with FIRS. The party may also then appeal against the assessment to the Tax Appeal Tribunal. If the party is still dissatisfied with the decision of the Tax Appeal Tribunal, then it can approach the Federal High Court, The Court of Appeal and the Supreme Court."* The Court of Appeal in its decision referred to its previous decisions on this subject in **Shell Nigerian Exploration and Production & Ors. v. FIRS & Anor. (Unreported judgment, Appeal No. CA/A/208/2012).**

Commentary

This decision affirms the jurisdictional limits of the TAT to determine tax disputes arising from the various tax laws made by the National Assembly as was expressly provided for in Article 11(1) of the Fifth Schedule to the FIRS Act. It must be pointed out that the commencement of tax proceedings before the TAT does not in any way encroach on the constitutional powers of the Federal High Court in Section 251(1)(a) and (b) but rather a matter of administrative procedure put in place to ensure that tax disputes, as technical as they appear are resolved effectively. The FIRS Act further provides that where a party is dissatisfied with the decisions of the TAT, that party can appeal to the Federal High Court where the decision of the TAT will either be affirmed or overturned. Further appeals can lie to the Court of Appeal and the Supreme Court as the case may be. It will no doubt appear that the process of arriving at a final decision on any tax disputes may be unnecessarily prolonged considering the time frame for appeals to the Supreme Court but this remains the position of the law until there is an amendment to this effect.

Key Contacts



George U. Ukwuoma

Mid-Level Associate

george.ukwuoma@advocaat-law.com



Kolade Owolabi-Davids

Associate

kolade.owolabi-davids@advocaat-law.com

This publication is for general information purposes only and should not be taken as a substitute to seeking detailed legal advice. For specific legal advice on any aspect of the contents herein, please contact George Ukwuoma or Kolade Owolabi-Davids or alternatively call us on +234 1 4531004, 4547932, 2714042 or email at the above email addresses or info@advocaat-law.com.

THE JURISDICTION OF THE COURT OF APPEAL TO HEAR AND DETERMINE ALL CIVIL APPEAL ON DECISIONS OF THE NATIONAL INDUSTRIAL COURT IS NOT LIMITED TO ONLY FUNDAMENTAL HUMAN RIGHTS: [Mainstreet Bank Limited \(now Skye Bank Plc.\) V. Victor Anaemen Iwu \(Unreported SuitNo.SC/885/2014\)](#)

Background

We had in our December, 2016 edition of our Litigation update highlighted that the Court of Appeal's decision in **The Governing Board RUGIPOLY, Ondo State & Anor V. Abodunrin Moses Ola & 31 Others**, where it was held that an appeal shall lie from the decision of the NIC as of right to the Court of Appeal only on questions of fundamental rights as contained in Chapter IV of the Constitution and as it relates to matters upon which the NIC has jurisdiction.

The t Court of Appeal's decision was premised on section 243(2) of the Constitution which provides that ***"An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has***

jurisdiction". The Court of Appeal in its decision upheld the Notice of Objection raised by the Respondent against the Appeal went further to hold that none of the grounds formulated by the Appellants in their Notice of Appeal were competent enough to sustain the appeal and consequently denied the appeal.

The position of the law as provided in the Court of Appeal's decision in that matter hashowever, been varied by the very recent decision of the Supreme Court in **Mainstreet Bank Limited (now Skye Bank Plc. v. Victor Anaemen Iwu in unreported SuitNo.SC/885/2014**, where the apex court has held that the jurisdiction of the court of appeal to hear and determine appeals on decisions from the National Industrial Court is not limited to only fundamental human rights but indeed all civil appeals arising therefrom.

Facts

The facts of this case arose from the decision of the National Industrial Court (NIC) granting judgment in favour of the Respondent Mr. Victor Anaemen Iwu against Mainstreet Bank Limited (now Skye Bank Plc.). Dissatisfied with the decision of the NIC, Skye Bank Plc. appealed the decision of the NIC to the Court of Appeal. In the course of hearing the appeal, the Lagos Division of the Court of Appeal referred the appeal to the Supreme Court seeking a resolution of the substantial question of law on the finality of the decisions of the NIC before it can proceed to determine the appeal. It must be noted that there numerous Court of Appeal decisions were of the view that the right to Appeal a decision of the NIC does not exist based on extant laws, until the National Assembly passes a law granting litigants right of appeal with leave. The Court of Appeal has also held that the right of Appeal from decisions of the NIC to the Court of Appeal is limited only to decisions of the NIC relating to fundamental human rights.

In a well-considered majority decision of the Justices of the Supreme Court, it was held that there was no constitutional provision divesting the Court of Appeal of jurisdiction to hear appeals emanating from the NIC. The apex court also held that the right of appeal was not limited to fundamental human rights cases as was previously held by the Court of Appeal in a plethora of decided appeals. The apex court also noted that no constitutional provision expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the trial court which includes the various Federal and States High Courts as well as the NIC.

Commentary

The decision of the Supreme Court no doubt has finally put to rest the controversy over the various conflicting decisions of the Court of Appeal on the right to appeal against a judgment of the NIC. By this decision, appeals against the decision of the NIC is not limited to only fundamental rights as enshrined in Chapter IV of the 1999 Constitution (as amended) but on all decisions in relation to civil appeals.

The practical implications of this decision would be that most employers with the financial wherewithal will now embark on appeals against the decisions of the NIC thereby frustrating disgruntled employees who may not be able to afford the high cost of prosecuting appeals to the Court of Appeal and even to the Supreme Court.

Key Contacts



George U. Ukwuoma

Mid-Level Associate

george.ukwuoma@advocaat-law.com



Eniola Durojaye

Associate

eniola.durojaye@advocaat-law.com

This publication is for general information purposes only and should not be taken as a substitute to seeking detailed legal advice. For specific legal advice on any aspect of the contents herein, please contact George Ukwuoma or Eniola Durojaye or alternatively call us on +234 1 4531004, 4547932, 2714042 or email at the above email addresses or info@advocaat-law.com.