IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY THE 19TH DAY OF SEPTEMBER, 2023
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE I. E. EKWO
JUDGE

SUIT NO: FHC/ABJ/TA/1/2021

BETWEEN:

JOSEPH BODUNRIN DAUDU SAN..... APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE ..... RESPONDENT

JUDGEMENT

In the Amended Notice of Appeal, the Appellant expresses dissatisfaction with the judgement of the Tax Appeal Tribunal (hereinafter referred to as TAT) sitting in Abuja delivered on 23rd June, 2021, coram Hon. Iriogbe Ayo Alice (Chairman), Hon. Ishola Rufus Akintoye, Hon. Ajayi Julius Bamidele, Hon. Al Mustapha Aliyu and Hon. Nasiru Kuliya, and appeals to the Federal High Court upon the grounds of error of law as follows:

1. The Tax Appeal Tribunal Abuja fundamentally erred in law when it assumed jurisdiction in respect of the Personal Income Tax of the Appellant in the absence of a valid Notice of Assessment issued to the Appellant.
2. The Tax Appeal Tribunal Abuja erred in law when it assumed jurisdiction in respect of the Appellant's Personal Income Tax when indeed the Appellant's purported notices of assessment were issued in flagrant violation of the extant laws.

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3. The Tax Appeal Tribunal erred in law in venturing into determining whether the 'Notice of Assessment' issued by the FIRS was valid or not, when under the Personal Tax Act, Federal Inland Revenue (Establishment) Act and other relevant legislation, FIRS has no powers to assess for Personal Income Tax except for certain category of persons specifically identified by the enabling legislation, which the Appellant does not fall into.

4. The Tax Appeal Tribunal was in error, which affected its jurisdiction to adjudicate fairly as expected in law when faced with uncontroverted evidence of an unlawful collaboration between FIRS and the EFCC which led to the conjuration of the disputed Notices of Assessment that have led to this appeal.

5. Tax Appeal Tribunal Abuja erred in law and rendered the entire proceedings a nullity when at various stages of the hearing and determination of the Appellant's appeal it sat with differently constituted panels such that a member Hon. Nasiru Kuliya who did participate or attend on certain dates when crucial and critical aspects of the proceedings took place turned around to participate in the deliberation and delivery of the final judgment and by so doing violated elementary but fundamental principles of fair hearing.

6. The Tax Appeal Tribunal Abuja erred in law and acted without jurisdiction, when although improperly constituted, assumed jurisdiction to adjudicate over the appeal lodged by the Appellant and rendered its decision on the 23rd of June 2021 in the manner it did as if it was a Court or Tribunal

created under the 1999 Constitution (as amended) that was acting in compliance with the provisions of section 36 (1) and 1 (2) of the said Constitution (as amended).

7. The Tax Appeal Tribunal Abuja misdirected itself on the law as it relates to the identification of the issues for determination relevant to the resolution of the questions thrown up by this appeal when it abandoned the issues formulated by the Parties in the matter i.e. Appellant and Respondent herein and in its place, proceeded on a voyage of its own discovery by formulating 5 (five) unrelated and irrelevant issues and based its judgment thereon thereby misapprehending the case before it and occasioned a grave miscarriage of Justice in the circumstances.

8. The Abuja Division of the Tax Appeal Tribunal erred in law when in resolving its own self-styled issue of "Whether or not the dispute on residence/domicile of the Appellant can be entertained and validly determined by this Tribunal" it held as follows:

> 'The Personal Income Tax Act in section 86 and Paragraph 10 (1) and (2) of the first schedule to the Personal Income Tax Act Cap P8 LFN 2011 as amended makes it abundantly clear, that where, as in this instant case there is a dispute on the issue of a Tax Payer's residence, the matter should be referred to the Joint Tax Board... It is very clear from the above provision that it is the Service (Authority) that should refer the matter to the JTB in the event of a disagreement on a taxpayer's residence or domicile for

the purpose of Personal Income Tax and we so hold that the Service (Respondent) should refer the PIT issue Assessment in this appeal to the Joint Tax Board for resolution.'

9. The Tax Appeals Tribunal Abuja erred in law when in dealing with the issue of the Appellant's domicile or residence, it held as follows: "The Appellant endorsed on his Notice of Appeal that he resided on (sic) House 3, No 16 Mafemi Crescent, Utako, Abuja, the Respondent printed out from the internet a document reflecting that the Appellant's Head office is located at House 3, No 16 Mafemi Crescent, Utako, Abuja, with 2 other offices located in Kaduna and Zaria (see exhibit JB13) On the Business Registration document submitted shows that his Head Office is at KV 12 Ibrahim Taiwo Road, Corner Chanchangi, Tudun Wada Kaduna. Upon series of cross examination of the Appellant and his other witnesses, the issue of residence was bandied here and there."

10. The Tax Appeal Tribunal erred in law when it held whilst validating the Notices of Assessment in respect of Value Added Tax and Withholding Tax that the collaboration between the EFCC and the Respondent was lawful and consequently the Notices of Assessment were also lawful.

11. The Tax Appeal Tribunal Abuja further erred in law when it justified the admitted collaboration between the Respondent and the EFCC as a condition precedent to performing its tax assessment duties and by so doing put the cart before the horse and acted prematurely, unlawfully, and illegally.

12. The Tax Appeal Tribunal erred in law when it held concerning the assessments in respect of Value Added Tax and Withholding Tax as follows in the following passage of its judgment thus: "it is therefore the holding of this Honourable Tribunal that the Appellant was validly issued with BOJ Assessments of Value Added Tax and Withholding Tax since the Appellant failed to file returns and also refused to attend the Tax Investigation at the invitation of the Respondent".

13. The Honourable Tribunal fundamentally erred in law when it held that the Appellant from evidence led was approbating and reprobating in respect of deductions on Withholding Tax that the Appellant having registered with the Respondent, has subjected himself to the payment of Value Added Tax (VAT) and Withholding Tax.

14. The Honourable Tribunal fundamentally erred in law when it held that the Appellant failed to attend a tax audit and also failed to make documents available to the Respondent for the purpose of tax auditing hence the finality of the Notices of Assessment being challenged before the Tribunal.

The reliefs sought are as follows:

1. An Order of this Honourable Court allowing the appeal and setting aside in its entirety the judgment of the Tax Appeal Tribunal delivered on the 23rd of June 2021.

2. An Order of this Honourable Tribunal setting aside the following Notices of Assessment issued by the Respondent to the Appellant for being null and void:

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26/9/2023

i. Notice of Personal Income Tax Assessments from 2010 - 2017.

ii. Notice of Withholding Tax Assessments from 2010 - 2017.

iii. Notice of Value Added Tax Assessments from 2010 - 2017.

The Appellant is a Legal Practitioner, carrying on legal practice in the name and style of J. B. Daudu & Co. The Respondent on 7th June 2018 served him with Exhs. JB '4' and '5' and the notices of attachment dated 4th June 2018 and assessed him as being indebted to the 'service' in the total sum of N1,225,115,562.33 (One Billion, Two Hundred Twenty-Five Million, One Hundred and Fifteen Thousand, Five Hundred and Sixty-Two Naira, Thirty-Three Kobo) broken down in the following manner:

a. Notice of Personal Income Tax Assessments from 2010 - 2017 - N977,561,982.08 (Nine Hundred and Seventy-Seven Million, Five Hundred and Sixty-One Thousand, Nine Hundred and Eighty-Two Naira, Eight Kobo);

b. Notice of Withholding Tax Assessments from 2010 - 2017 - N71,987,564.52 (Seventy-One Million, Nine Hundred and Eighty-Seven Thousand, Five Hundred and Sixty-Four Naira, Fifty-Two Kobo);

c. Notice of Value Added Tax Assessments from 2010 - 2017- N176,565,016.74 (One Hundred and Seventy-Six Million, Five Hundred and Sixty-Five Thousand, Sixteen Naira, Seventy-Four Kobo).

After going through the trial, the Tribunal entered judgement for the Respondent by affirming two out of the three notices of assessment and the main findings of the Tribunal were as follows:

i. On Personal Income Tax: The Respondent was ordered to refer the issue of Residency in this matter to the Joint Tax Board for Resolution within a reasonable time of the decision in line with the provisions of the Personal Income Tax Act.

ii. On Value Added Tax: The Appellant was found liable to the VAT Assessments from 2010 - 2017 in the sum of N176,566,015.73 (One Hundred and Seventy-Six Million, Five Hundred and Sixty-Six Thousand, Fifteen Naira, Seventy-Three Kobo), and

iii. On Withholding Tax: The Appellant was found liable to WHT Assessments from 2010 - 2017 - N71,987,564.52 (Seventy-One Million, Nine Hundred and Eighty-Seven Thousand, Five Hundred and Sixty-Four Naira, Fifty-Two Kobo). It also found the Appellant liable to interest on the judgement sum and interest at the prevailing CBN rediscount rate from the date of judgement until the judgement debt is liquidated.

The Appellant formulates seven (7) issues for determination to wit:

1. *Whether or not the entire proceedings before the trial Tribunal is not nullified and rendered null and void consequent upon the haphazard participation of one of its member in the person of Hon. Nasiru Kuliya whose inconsistent participation caused the TAT to sit with differently constituted panels at various stages of the hearing and determination of the Appellant's appeal? (Ground 5 of the Amended Notice of Appeal).*

2. *Whether the decision of the Tax Appeal Tribunal Abuja on the issue of the Notice of Assessment issued by the Respondent for Personal Income Tax is not a nullity and therefore null and void, particularly when it purported to exercise jurisdiction to adjudicate over letter dated the 21st of May 2018 titled "RE: JOINT*

INVESTIGATION ACTIVITIES OF EFCC & FIRS ON SPECIALIZED PROFESSIONALS" LETTER OF INTENT TO RAISE ASSESSMENT. 2010 - 2017? (Grounds 1, 2, and 3 of the Amended Notice of Appeal).

3. *Whether the Tax Appeal Tribunal, having regard to the purported Notices of Assessment issued by the Respondent and the uncontroverted and overwhelming evidence led by the Appellant was correct when it held exercised jurisdiction to determine the Appellant's residence/domicile by adjudging as it did that it is a matter for the Joint Tax Board to determine the domicile of the Appellant? (Grounds 8 & 9).*

4. *Whether the Tax Appeal Tribunal Abuja was right when it abandoned the issues formulated by the Parties in the matter i.e., Appellant and Respondent herein and in its place, proceeded on a voyage of its own discovery by formulating 5 (five) unrelated and irrelevant issues and based its judgement thereon? (Ground 7).*

5. *Whether the Appellant was validly issued with Best of Judgment (BOJ) Assessments in relation to Value Added Tax and Withholding Tax? And if answered in the negative, whether the said Notices of Assessment are not invalid, ultra vires, unlawful, null and void? (Grounds 4, 10, 11 and 12).*

6. *Whether the Tax Appeal Tribunal had rightly exercised jurisdiction and could be said to have correctly concluded that the Respondent rightly charged the Appellant Value Added Tax (VAT) and Withholding Tax? (Ground 13).*

7. *Whether the Tax Appeal Tribunal, having regard to the evidence on record and the provisions of section 26 of the FIRS Act, could be said to have rightly held that the Appellant failed to attend a*

tax audit and also failed to make documents available to the Respondent for the purpose of tax audit? (Ground 14)

The submission on issue 1 which stems from ground 5 of the Amended Notice of Appeal is that the entire proceedings is incompetent on the ground that the right to fair hearing of the Appellant had been violated as a member of the trial Tribunal in person of Hon. Nasir Kuliya was absent from the three days proceedings. This happened at the stage of the proceedings when the Respondent opened its case and its witness by name Olabode Simeon Olatunji (a Deputy Director, Tax) in the employment of the Respondent was extensively cross-examined by the Appellant. It happened again when parties addressed the trial Tribunal and made extensive submissions on the merit or otherwise of the appeal. It also happened when the written addresses were adopted and adumbrated upon. Yet he took part in the delivery of the judgement and endorsed same as though he participated in all the stages of the trial (See pages 1038 - 1066 of the printed record). This has been held to violate the Appellant's right to fair hearing as enshrined in S. 36 (1) of the 1999 Constitution (as amended) and amounts to a nullity; reliance is placed on *Muideen v. Nigerian Bar Association & Anor.* (2021) LPELR - 55885 (SC), *Kalejaiye v. L.P.D.C.* (2019) 8 NWLR (Pt. 1674) 365, and *Gabriel Gbenoba Esq v. Legal Practitioners Disciplinary Committee & Anor.* (2021) LPELR - 53064 (SC). The appropriate order to make in the circumstance by this Court is to declare the whole proceedings a nullity and consequently order that the TAT Appeal be struck out. It is not quorum as provided in para. 4 of the Fifth Schedule to the Federal Inland Revenue Act that the Appellant is challenging but rather his Constitutional right to fair hearing which was violated by the absence of the member of the Tribunal who gave a judgement against him; reliance is placed on *Oyetola v. Senator Ademola Nurudeen Adeleke & Ors*

(2019) LPELR - 47529 (CA). The Court is urged to resolve this issue in favour of the Appellant.

Issues 2 and 3 are argued together and predicated on grounds 1, 2, 3, 8 and 9 of the Amended Notice of Appeal. The submission thereof is that *ab initio* the Respondent lacked the requisite powers to have issued and served notices of assessment in respect of Personal Income Tax on the Appellant and conclude *suo motu* on the tax to be paid (Exhs. JB 4 and JB 5). Even if the Notices were issued one way or the other, the Tribunal did not have any right or jurisdiction to contrive a dispute of residency of where the Registered Office of the Appellant was located such that the Respondent would be claiming the benefit of being the recipient of the Appellant's Personal Income Tax as by Exhs. JB1 and JB6. The Appellant is a tax resident of Kaduna State and subject to tax by Kaduna State Internal Revenue Service and not Abuja and subject to tax by the Respondent. The Tribunal erred when it ignored the issue of residence and held that it was a matter for resolution by the Joint Tax Board (hereinafter referred to as JTB) (an administrative body) and directed the Respondent to refer the Personal Income Tax issue of residence in this appeal to the JTB which makes the Respondent a Judge in its own cause. Mere administrative measures or channels for resolution of tax disputes do not bar an aggrieved taxpayer from proceeding to the TAT or the Courts, particularly where the Notices are invalid, null and void and it is no longer within the jurisdiction of the JTB to determine the propriety of the notices; reliance is placed on *Oando Supply & Trading Limited v. FIRS* (2011) 4 TLRN 113, *General A. A. Shuaibu (Rtd) & Anor. v. Otunba (Mrs) Felicia Koleosho* (2021) LPELR - 53435 (CA), and *Longe Medical Centre & Anor. v Attorney General, Ogun State & Anor.* (2020) LPELR- 49751 (CA). The Respondent alleged that Appellant was resident in Abuja and that he owns landed property in the FCT but was unable to supply evidence to substantiate its claims. The

Respondent lacks the jurisdiction to assess the Appellant's Personal Income Tax as the Appellant is not resident in the FCT, thus the Respondent lacked the power to demand for or collect Personal Income Tax from FCT residents except for the category expressly stated in the Act; reference is made to Ss. 2 (1) and (2), and 108 of the Personal Income Tax Act, 2015 (hereinafter referred to as PITA 2015; reliance is placed on *Ecodrill Nigeria Limited v. Akwa Ibom Board of Internal Revenue* (2014) LPELR- 23502 (CA), *Sam Anyaogu v. Commissioner of Internal Revenue* Vol 1 All Nigerian Tax Cases of 67, *Chairman of the Board of Inland Revenue v. Joseph Rezcallah & Sons Ltd.* Vol 1 All Nigerian Tax Cases of 117, *Federal Board of Inland Revenue v. Animashaun* Vol 1 All Nigerian Tax Cases pg. 411, and *Federal Board of Inland Revenue v. Omotesho* Vol 1 All Nigerian Tax Cases pg. 379. Assuming without conceding that the Appellant resides in the FCT, the relevant tax authority is the FCT-IRS Internal Revenue Service and not the Respondent. The law is well settled that a Court of law, whether of first instance or in its appellate jurisdiction has a duty to consider and resolve all issues submitted to it for adjudication and the failure to do so would amount to a denial of fair hearing; reliance is placed on *Garba v. Mohammed* (2016) 16 NWLR (Pt. 1537) 114 at 162, and *Okonji v. Njokanma* (1991) 7 NWLR (Pt. 202) 131 at 150. The Court is urged to hold that reference by the Tribunal to the JTB is null and void and to resolve the issues in favour of the Appellant.

Issue 4 is predicated on ground 7 of the Amended Notice of Appeal, and the submission thereon is that the TAT Abuja erred when it abandoned the issues formulated by the parties in the matter, the Appellant and Respondent herein and proceeded to formulate 5 (five) unrelated and irrelevant issues and based its judgement thereon. Issues are questions that define the disputed to be determined; reliance is placed *Adeogun & Ors. v. Fashogbon & Ors.* (2008) LPELR-131 (SC), and *Elebute v. Faleke* (1995) 2 NWLR (Pt. 375) 82. It is

submitted that it is only where the issues formulated by the Appellant are not properly couched, prolix, or vague, or do not properly address grave errors that the Court would be at liberty to formulate its own issues that it perceives properly address the grievance of the Appellant. The test for this is objective and not subjective. The Tribunal's issues were disconnected from the Appellant's Grounds of Appeal and the evidence so far led before the Tribunal because from the onset, the Tribunal failed to understand the critical issues placed before it for adjudication and by so doing transgressed the Appellant's right to fair hearing. The Tribunal's action led to a misapprehension of the Appellant's case and/or the germane issues placed before it and thereby occasioned a breach of the latter's fundamental rights and consequently a grave miscarriage of justice in the circumstances which makes its decision liable to be set aside by this Court. The Tribunal did not have any legal arguments and never considered any legal arguments of the parties but merely cited a few inapplicable statutory authorities and reached its irrelevant but destructive conclusions. It is the primary obligation of every Court to hear and determine issues in controversy before it, and as presented to it by the litigants. The Courts cannot *suo motu* formulate a case for the parties; reliance is placed on *Nwokoro v. Onuma* (1990) 3 NWLR (Pt. 136) 22 at 35, *Ugo v. Obiekwe* (1989) 1 NWLR (Pt. 99) 566, *Kotoye v. C.B.N.* (1989) 1 NWLR (Pt. 98) 419, and *Odetayo v. Bamidele* (2007) 17 NWLR (Pt. 1062) 77.

Issues 5, 6 and 7 are predicated on grounds 4, 10, 11, 12, 13 and 14 of the Amended Notice of Appeal. The submission thereon is that the verdict of the Tribunal that the Appellant was validly issued with Best of Judgement (BOJ) Assessments of Value Added Tax and Withholding Tax is erroneous as the Appellant contended that the use of its account by the Respondent in isolation of any input or consultation with the Appellant or with his tax consultants and bankers in computing the purported Withholding Tax and

Value Added Tax is a breach of the Appellant's right to fair hearing enshrined and guaranteed by S. 36 (1) of the 1999 Constitution (as amended) and in consequence thereof, all the Notices of Assessments are null and void and in violation of S. 26 of the FIRS Act, 2007 and Ss. 46 and 54 (2) and (3) of PITA and S. 18 of VAT Act, 1993 as there is no evidence such as tendering the said statement of the account to establish the said assessment which makes the assessment speculative. It is trite law that where trial is by pleadings, the judgement of the Court must be based on the pleadings and not on speculations; reliance is placed on *Incar (Nig.) Ltd. v. Benson Trans Ltd.* (1975) 3 SC 117, *Solana v. Olusanya* (1975) 6 S.C. 55, *Metal Construction (W.A) Ltd. v. Migliore* (1979) 6 - 9 SC 163, and *Kano v. Oyelakin* (1993) LPELR-1662 (SC). There is no evidence that the Respondent invited the Appellant for a tax audit and that he failed to attend the same. The only letter of invitation emanating from the Respondent was Exh. JB10 dated 9th January 2019 which was sent to the Appellant after the issuance of purported Notices of Assessment (Exhs. JB 4 and JB 5) during the pendency of the appeal before the Tribunal which was lodged on 2nd July 2018. It is also submitted that by a combined reading of the provisions of Ss. 46 and 109 of the PITA, S. 46 of the VAT Act, Ss. 1, 8 (1) and (2), 47 and 69 of the FIRS Act, it is only the relevant tax authority that can exercise the tax powers stipulated under S. 26 of the FIRS Act, S. 54 (2) and (3) of the PITA, S. 46 of the PITA, S. 18 of the VAT Act, 1993 to call for tax returns and make assessments and not the EFCC as was done in Exhs. JB 2 and JB 3; reliance is placed on *NDDC v. Rivers State Board of Internal Revenue* (2019) LPELR-49046 (CA). It is trite that where the law prescribes a particular method of exercising a statutory power, such power must be exercised accordingly and no other method is permissible; reliance is placed on *Nigeria Social Insurance Trust Fund Management Board v. Klifco Nigeria Ltd.* (2010) LPELR-2006 (SC), *Ogualaji v. A-G Rivers State*

(1997) 6 NWLR (Pt. 508) 209, and *Amadi v. NNPC* (2000) 10 NWLR (Pt. 674) 76. Consequently, the TAT's finding that the Appellant refused to attend a Tax Audit was therefore perverse. It is the law that BOJ should be made by the Tax Authorities from turnover in bank statements or aggregate value of properties; reliance is placed on *FBIR v. Omotesho J.A* Vol 1 All NTC Pg. 379, and *Theodak Nig. Ltd. v Federal Inland Revenue Service* (unreported) judgement of the Lagos Division of the Federal High Court delivered by Chikere, J on 29th November 2018 and the decision of the Federal High Court sitting at Warri in *Ama Etuwewe Esq. v. Federal Inland Revenue Service & Guaranty Trust Bank Plc.* (unreported) Suit No. FHC/WR/CS/17/2019 delivered on 30th September 2019. The power of the Board is not to be exercised by determining a company's assessable profits according to its BOJ but rather to determine total profit to which the applicable tax rate is applied. The onus of establishing proper assessment is on the Respondent; reliance is placed on *Ikpeazu v. Ogah & Ors.* (2016) LPELR- 40843 (CA). The Respondent failed to establish that the Appellant indeed earned taxable income or turnover for the relevant periods or establish the nature and value of the taxable services rendered by the Appellant during the period in question i.e., 2010 to 2017. The Court is urged to set aside the judgement of the Tribunal which is *ultra vires* as it ought to abide by the law establishing it being an administrative body that is also bound by the rules of fair hearing; reliance is placed on *Psychiatric Hospital Management Board v. Ejitagha* (2000) 11 NWLR (Pt. 677) 154 at 163, *Adeniyi v. Governing Council of Yabatech* (1993) LPELR-128 (SC), *Denloye v. Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306, and *Baba v. Nigerian Civil Aviation & Anor* (1991) LPELR-692 (SC). The Respondent acted *ultra vires* and in breach of the law when it issued demand notices for payment of Withholding Tax on Professional Services vide Exhs. JB4 and JB5 even when the Appellant is a sole proprietor and not a

company and thus not within the category of persons who are to pay Companies Income Tax on professional/legal services they rendered to clients; reference is made to S. 73, PITA and reliance is placed on *Ama Etuwewe Esq. v. Federal Inland Revenue Service & Guaranty Trust Bank Plc* (supra), *Prime Merchant Bank Ltd. v. Man-Mountain Co. Ltd.* (2000) FWLR (Pt. 9) 1514 at 1524, and *U.N.T.H.M.B v. Nnoli* (1994) 8 NWLR (Pt. 363) at 413. The Appellant was not validly issued with Assessments of Value Added Tax. The 1999 Constitution (as amended) has specifically designated the taxes that the Federal Government is empowered to impose and collect under items 58 and 59 of the Exclusive Legislative List, (Second Schedule, Part I) and items 7 and 8 of the Concurrent Legislative List (Second Schedule, Part II). The legislative competence of the National Assembly to impose tax or duties on capital gains, incomes or profits of persons and on documents or transactions by way of stamp duties do not extend to and include the power to levy or impose any form of Sales Tax, including Value Added Tax and Withholding Tax. The Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998, now Act, in so far as it purports to legislate in respect of the responsibility for collection of taxes and levies, assessment and collection of taxes other than as provided for under items 58 and 59 of the Exclusive Legislative List, (Second Schedule, Part I) and items 7 and 8 of the Concurrent Legislative List (Second Schedule, Part II) is unconstitutional, null and void; reliance is placed on *A.-G., Rivers State v. FIRS* (unreported) Suit No. FHC/PH/CS/149/2020 delivered by Pam, J on 9th August 2021. The Appellant urges this Court to nullify the purported Notices of Assessment for Value Added Tax having been made without the requisite jurisdiction and set aside the decision of the Tax Appeal Tribunal and resolve issues 5, 6 and 7 in his favour.

In conclusion, the Appellant urges this Court to resolve all the issues formulated above in its favour, allow the appeal and nullify all the actions taken against the Appellant, with substantial costs.

The reaction of the Respondent to issue 1 is that none of the cases cited and relied upon by the Appellant is applicable to this case. Proceedings before the Tax Appeal Tribunal are informal, appearances before the Tribunal are not restricted to legal practitioners, chartered accountants and tax advisers do represent parties in proceedings before the Tribunal. The Chairman of Tribunal ordinarily chairs its proceedings. In his absence members are at liberty to appoint one of them as acting Chairman. The decision of the Tribunal is valid where signed by the Chairman alone; reference is made to Orders XXI (4), V (5) and, XXVII of Tax Appeal Tribunal (Procedure) Rules 2021. The Appellant's allegation of violation of right to fair hearing does not automatically void proceedings and judgement of a Court or Tribunal as the burden of proving same is on the party who alleges it; reliance is placed on *Imaseun v. University of Benin* (2010) 3 NWLR (Pt. 1182) 591 at 617, *Maikyo v. Itodo* (2007) 7 NWLR (Pt. 1034) 443 at 465, *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 at 196, and *Ogbu v. Nnaji* (1999) 4 NWLR (Pt. 597) 87 at 95. Mere variation in the composition of the Tribunal i.e., absence of one member, when RW1 whose testimony had no influence on the decision of the Tribunal since it was not decided on oral evidence is incapable of rendering the judgement of the Tribunal whose quorum is ordinarily three out of its five void. Dispute as to residence can only completely be resolved by the JTB and not by the Tax Appeal Tribunal and a decision referring parties to this Tax Appeal Tribunal has nothing to do with evaluation of evidence. The issue of JTB being a subterfuge and therefore not in a position to ensure fair hearing by the Chairman of FIRS is not part of the issues placed before the Tribunal below and therefore not part of its judgement. Issues for determination

cannot be formulated outside the grounds of Appeal and the address or brief must be related to the Notice of Appeal, if otherwise, it must be ignored. An issue not distilled from any of the grounds of Appeal is incompetent and must be discountenanced together with the argument or arguments advanced and struck out; reliance is placed on *Odeh v. F.R.N.* (2008) 13 NWLR (Pt. 1103) 1, *Dantata & Sawoe Const. v. Hassan* (2001) 5 NWLR (Pt. 705) 129, and *E.F.C.C. v. Yanaty* (2017) 3 NWLR (Pt. 1552) 171. Thus, the Appellant's address on Federal Capital Territory Internal Revenue Service Act of 2015 as the extant Law which regulates Personal Income Tax in FCT and not the Respondent is alien to the proceedings and judgement of the Tribunal as same was not raised before the Tribunal and the Tribunal did not pronounce on same and this has nothing to do with seeing witnesses or believing them and does not provide the platform for alleged violation of right to the Appellant's fair hearing.

The submission on issues 2 and 3 is that the residence of a taxpayer is resolved on the basis of facts of each case and is therefore a question of fact or at best it raises issues of mixed law and facts; reliance is placed on *U.N.N. v. Orazulike Trading Co.* (1989) 5 NWLR (Pt. 119) 19. The Appellant's right of appeal to this Court is limited to grounds of law; reference is made to Order XXVI (1) of the Tax Appeal Tribunal (Procedure) Rules 2021. Thus, grounds 1, 2 and 3 of the Amended Notice of Appeal which deals with issue of residence of the Appellant is an incompetent ground of Appeal and the Court is urged to decline jurisdiction over the ground of Appeal; reliance is placed on *I.N.E.C. v. Action Congress* (2009) 2 NWLR (Pt. 1126) 524, and *Sehindemi v. Gov., Lagos State* (2006) 10 NWLR (Pt. 987) 1. In the light of the provisions of S. 40 of the FIRS (Establishment) Act and the decision of Taiwo Taiwo, J of the Federal High Court in (unreported) Suit No. FHC/ABJ/CS/866/2018 between *Joseph Bodunrin Daudu v. FIRS & Ors.* which is binding on the Lower Tribunal until it

is set aside by a higher Court, the Lower Tribunal did not decide and could not have decided the issue of residence of the Appellant but instead referred same to the JTB due to the principle of estoppel and adherence to judicial precedence. The decision of a Court is valid and binding until set aside by a Superior Court; reliance is placed on *Edilcon Nig. Ltd. v. UBA Plc.* (2017) 18 NWLR (Pt. 1596) 74, *C.B.N. v. Aribo* (2018) 4 NWLR (Pt. 1608) 130, *Sani v. President, F.R.N.* (2010) 9 NWLR (Pt. 1198) 153, and *Adone v. Ikebudu* (2001) 14 NWLR (Pt. 733) 385. The Appellant admitted that the FCT was also his residence and for tax purposes the FCT has the status of a State by S. 299 (a) and (b) of the 1999 Constitution (as amended); reliance is placed on *Bakari v. Ogundipe* (2021) 5 NWLR (Pt. 1768) 1, and *Ibori v. Ogboru* (2005) 6 NWLR (Pt. 920) 102. The Respondent is the appropriate Tax authority to assess the Appellant's Personal Income Tax Liability by virtue of FCT Internal Revenue Act, 2015. The Court is urged to discountenance the Appellant's argument on the FCT Internal Revenue Act, 2015 as it has a prospective and not retrospective effect otherwise the Appellant would have successfully avoided paying Personal Income Tax for those years to the Respondent; reliance is placed on *N.C.C. v. Motophone Ltd.* (2019) 14 NWLR (Pt. 1691) 1, and *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 61) 377. An adjudicatory body such as the Lower Tribunal has the option of either adopting the issue formulated by adverse party (Respondent) or formulating issues for the parties; reliance is placed on *Alikor v. Ogwo* (2019) 15 NWLR (Pt. 1695) 331, and *Enekwe v. I.M.B. (Nig.) Ltd.* (2006) 19 NWLR (Pt. 1013) 146. The Court is urged to hold that given the circumstance of the case where there are claims/reliefs and cross claims/reliefs by both the Appellant and the Respondent, the Lower Tribunal rightly formulated the issues for determination which was reflective of all issues placed before it by the parties. A person whose case was considered by the Tribunal before resolution of

same against him cannot complain of want of fair hearing. The Appellant cannot complain of breach of fair hearing merely because he did not raise the issue. Both the Appellant and Respondent are entitled to fair hearing.

The response to issue 4 is that the Tribunal rightly exercised its power to reformulate issues for determination and reformulate the proper issues for determination which adequately reflected issues in controversy between the parties; reliance is placed on *Yadis (Nig.) Ltd. v. G.N.I.C. Ltd.* (2007) 14 NWLR (Pt. 1055) 584.

The reaction to issues 5, 6, and 7 is that most of the Appellant's submissions and the corresponding Amended Grounds of Appeal differ from the issues placed by the parties before the Tax Appeal Tribunal which the law does not allow; reliance is placed on *C.A.C. v. R.T.C.C.C.* (2009) 11 NWLR (Pt. 1151) 40, and *Oyo State v. Fairlakes Hotel Ltd.* (1988) 6 NWLR (Pt. 92) 1. This Court is urged to discountenance Grounds 1, 2, 3, 8 and 10 of the Amended Notice of Appeal was they do not form part of the issues raised in the Court below. The assessment of the Respondent is correct and in line with the law and unchallenged and the Tribunal held that the assessments were conclusive and final in line with S. 73 (5) of PITA, S. 40 of the FIRS (Establishment) Act and the decision of the Court of Appeal in *Al-Maseer Law Firm v. FIRS* (2019) LPELR-48628. On the issues joined by the parties, the decision of the Tribunal is correct. The Appellant is required to pay tax and tax legislations are subservient to and cannot override the Constitution which is the supreme law; by virtue of Ss. 1 and 24 (f) of the 1999 Constitution (as amended); reliance is placed on *Kennedy v. I.N.E.C.* (2009) 1 NWLR (Pt. 1123) 614, and *Udeogu v. F.R.N.* (2022) 3 NWLR (Pt. 1816) 41. The Appellant who was afforded the opportunity of self-assessment, filing of returns and right of Appeal within specific days, but failed to avail himself of these opportunities cannot complain of violation of his right to fair hearing and is

estopped from challenging a decision on the ground of want of fair hearing; reference is made to S. 36 (1) of the 1999 Constitution (as amended) and reliance is placed on *C.M. & E.S. Ltd. v. PAZAN Services Nig. Ltd.* (2020) 1 NWLR (Pt. 1704) 70, *Ayero v. Agundi* (2021) 16 NWLR (Pt. 1802) 347, and *Emeka v. Okoroafor* (2017) 11 NWLR (Pt. 1577) 410. The tax laws give discretion and did not impose a mandatory obligation on the Respondent with respect to procedural issues of assessment; reference is made to S. 26 of the FIRS Act, and Ss. 7 (3), 41, 46 and 54 (2) of PITA; reliance is placed on *Ekunola v. C.B.N.* (2013) 15 NWLR (Pt. 1377) 224, *Jukok Int'l. Ltd. v. Diamond Bank Plc* (2016) 6 NWLR (Pt. 1507) 55, and *7-up Bottling Company Plc. v. LS IRB* (2000) 3 NWLR (Pt. 650) 565. The assessments are official acts and enjoy presumption of regularity, therefore, the burden of showing that they are incorrect is on the Appellant; reliance is placed on *MBA SW v. Comm. for Internal Revenue* Vol. 1. All NTC 151, *Fed. Board of Internal Revenue v. Solanke* FM Vol. 1 All, NTC 417, *Mai Surdu v. Commissioner of Income Tax* Vol. 13 All NTC 591. The Appellant's submissions on the taxing powers of the Respondent, constitutionality of power of Federal Government over Value Added Tax and Withholding Tax and constitutionality of the Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 are extraneous to the judgement of the Court below and the issues placed before the Lower Court and the issues placed before the Lower Tribunal. An appeal must address issues traceable to the judgement; reliance is placed on *Oguebego v. P.D.P* (2016) 4 NWLR (Pt. 1503) 446, and *Okpulor v. Okpulor* (2020) 8 NWLR (Pt. 1727) 427. This Court is urged to dismiss this appeal.

I have noted the reply brief of the Appellant filed on 29th April, 2022.

I have also noted the following unreported cases by this Court in the Port Harcourt Division which summary the Appellant has given, that is;

1. *Emmanuel Chukwuka Ukala, SAN v. A. - G., Fed. & Anor.* (unreported) Suit No. FHC/PH/CS/30/2020 delivered by Oshomah, J., on 11th December, 2020 and
2. *A. - G., Rivers State v. FIRS & Anor.* (unreported) Suit No. FHC/PH/CS/149/2020 delivered by Pam, J., on 9th August, 2021.

The crucial preliminary issue to be determined at this point is whether the rule of fair hearing is applicable to the proceedings of the Tax Appeal Tribunal. The Tax Appeal Tribunal is established by S. 59 of the FIRS Act, 2007 and is given power to settle disputes arising from the operations of the Act and under the 1st Schedule to the Act. In the said 1st Schedule, is a list of enactment and laws over which it has primary jurisdiction to settle disputes. It is also to have primary settlement jurisdiction on all regulations, proclamations, government notices or rules in terms of the legislations mentioned therein. This makes the TAT an administrative agency created by statute and endowed with judicial powers. The power to exercise primary jurisdiction to settle disputes means that it has authority to inquire and can take decisions that are likely to affect the civil rights and obligations of a person or persons undergoing proceedings before it. Simply put, it performs quasi-judicial functions. It was stated in *Gyang v. C.O.P. Lagos State* (2014) 3 NWLR (Pt. 1395) 547 at 558 that:

> "It has long been settled in a line of cases decided by this court that administrative bodies or tribunals, acting judicially in the determination or imposition of a decision that is likely to affect the civil rights and obligations of a person, are bound and enjoined to strictly observe the principles of fair hearing. See *R v. Electricity Joint Commission* (1968) NMLR 102; *Adeyemi v. Attorney-General Federation* (1984) 1 SCNLR p. 525; *Adigun v. Attorney-General Oyo State & 18 Ors* (1987) 1 NWLR (Pt. 53) 678; *Oyeyemi v. Com.*

for Local Government Kwara State (1992) 2 NWLR (Pt. 226) 661 at 67; *Akibu v. Oduntan* (2000) 13 NWLR (Pt. 685) p. 446; *State v. Ajie* (2000) 11 NWLR (Pt. 678) 434 and *Akande v. Nigerian Army* (2001) 8 NWLR (Pt. 714) P. 1. This principle often expressed by the latin maxim "*audi alteram partem*" meaning "*hear the other side*," has been for long enshrined in our jurisprudence."

It was also stated in *Board of Management, F.M.C. Makurdi v. Abakume* (2016) 10 NWLR (Pt. 1521) 536 at 575 that:

"It remains to add that the doctrine of fair hearing is so expansive and all-encompassing to the extent that non-judicial bodies, that is, administrative tribunals or bodies, are willy-nilly, bound to give persons fair hearing-before reaching a decision affecting their rights, obligations and interests, see *L.P.D.C. v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300; *Olaniyan v. University of Lagos* (supra); *F.C.S.C. v. Laoye* (supra); *Iderinia v. R.S.C.S.C.* (supra); *CBN v. Igwillo* (supra); *Oloruntoba-Oju v. Abdul-Raheem* (supra); *Ziideeh v. R.S.C.S.* (supra); *Eze v. Spring Bank Plc.* (2011) 18 NWLR (Pt. 1278) 113; J.S.C., *Cross Rivers State v. Young* (2013) 11 NWLR (Pt. 1364) 1."

There is therefore no doubt that since the TAT is given the power under the law which establishes it to determine or impose a decision that is likely to affect the civil rights and obligations of a person or persons undergoing proceedings before it, it is bound and enjoined to strictly observe the principles of fair hearing. It is also the law that the doctrine of fair hearing is expansive. This means that it has a variation of ramifications and is nebulous in nature. This is the reason that the Court will look at the details of the events and circumstance upon which the allegation of the breach is hinged in order to uncover the nature of the breach and come to a proper conclusion.

The Appellant complains that a member of the TAT, Hon. Nasir Kuliya was absent from three days of the proceedings and this happened at the stage where the Respondent opened its case and called its witness, one Olabode Simeon Olatunji (a Deputy Director, Tax) in the employment of the Respondent and was extensively cross-examined by the Appellant. It happened again when parties addressed the trial Tribunal and made submissions on the merit or otherwise of the appeal. It also happened when the written addresses were adopted and adumbrated, that is 13th and 14th April 2021 and 25th May, 2021. Despite this, the said Hon. Nasir Kuliya, took part in the delivery of the judgement and endorsed same as though he participated in all the stages of the trial (pages 1038 - 1066 of the record). The Respondent's side is that proceedings before the TAT are informal, the Chairman of Tribunal ordinarily chairs its proceedings. In his absence members are at liberty to appoint one of them as acting Chairman. The decision of the Tribunal is valid where signed by the Chairman alone going by Orders XXI (4), V (5) and, XXVII of Tax Appeal Tribunal (Procedure) Rules 2021. It is also the stance of the Respondent that the Appellant's allegation of violation of right to fair hearing does not automatically void proceedings and judgement of a Court or Tribunal as the burden of proving same is on the party who alleges it. It is then submitted that mere variation in the composition of the TAT such as the absence of one member had no influence on the decision of the Tribunal since it was not decided on oral evidence. Upon saying all that, it is important to note that the Respondent is not denying that the allegation of the Appellant is not true. This is therefore a case of admission.

Upon looking at the submission of the Respondent, it is pertinent to answer; *whether it is mandatory for the members of the TAT to be present throughout the proceedings?* The answer in my opinion, is yes. The reason is

that it would be wrong for any member of the TAT to sit in the panel whenever it is convenient for him. The entire process would by that account manifest itself as a derision of the statutory nature of the panel. The TAT decides the rights, duties and liabilities under tax laws, the consistency in the panel during the proceedings of a case must be mandatory. The next issue not considered by the Respondent when making submission on this point is the statutory and constitutional effect of the outcome of its proceedings of the TAT. It cannot be denied that apart from being present in the proceedings by all members of the panel, the members of the TAT would require to deliberate on the processes and proceedings before coming to its conclusion or decision on the matter. By endorsing the judgement in pages 1038 - 1066 of the Record, Hon. Nasir Kuliya is telling the world that he participated in all the stages of the proceedings, he took part in the deliberations with other members of the panel thereafter and that is the conclusion he has reached with the other members. This is a grave error on the part of the TAT. Part of the ramification of the rule of fair hearing is that a man cannot be a judge in a matter he never heard or never fully heard. A member of an administrative tribunal such as the 1st Respondent must be consistent in the proceedings. For any defence to have effect on issue of this nature, the onus is on the Respondent to show that the law allows a member of the TAT to attend proceedings as such member pleases and still take part in the deliberations that resulted in the final decision of the panel. It does not portend good grasp of the law for the learned Counsel for the Respondent to argue that the Chairman of Tribunal ordinarily chairs its proceedings. In his absence members are at liberty to appoint one of them as acting Chairman, and the decision of the Tribunal is valid where signed by the Chairman alone and made reference to Orders XXI (4), V (5) and, XXVII of Tax Appeal Tribunal (Procedure) Rules 2021, and the Appellant's allegation of violation of right to

fair hearing does not automatically void proceedings and judgement of a Court or Tribunal. If the attendance of the proceedings by any member of the panel of the Respondent is optional going by the position of the learned Counsel, then such absent member does not have to take part when the other members are deliberating and taking a decision. If he does, then he has participated in taking a decision in a matter he was not part of. I am saying this to show the lack of tact and elucidation of the correct position of the law by the said learned Counsel. There was no point for the learned Counsel to make submissions against the flow of evidence on the Record of Appeal; see *Niger Construction Ltd. v. Okugbeni* (1987) 4 NWLR (Pt. 67) 787; *Obodo v. Olomo* (1987) 3 NWLR (Pt. 59) 111, and *Obidike v. State* (2014) 10 NWLR (Pt. 1414) 53.

On the whole, I find that the failure of the Tribunal to observe the principle of fair hearing has the consequence of nullifying the entire proceedings and in fact has so done. By this conclusion, I make an Order nullifying the proceedings of the TAT for not complying with the principles of fair hearing. Therefore ground 5 upon which this issue is predicated is resolved in favour of the Appellant. By this decision all other issues of lack of fair hearing raised and argued by the parties are hereby over taken by event.

Despite this decision, this Court still finds it pertinent to address the substantive issues in this case.

Issues 2 and 3 predicated on grounds 1, 2, 3, 8 and 9 of the Amended Notice of Appeal concern the power of the TAT to assess Personal Income Tax on the Appellant and serve notice of same to the Appellant (Exhs. JB4 and JB5). It is argued that the Appellant is resident in Kaduna State and subject to tax by Kaduna State Internal Revenue Service and not Abuja and therefore not subject to being taxed in Abuja. It also contested that the TAT erred when it ignored the issue of residence and held that it was a matter for resolution by

the JTB. The Respondent lacked the power to demand for or collect Personal Income Tax from FCT residents except for the category expressly stated in Ss. 2 (1) and (2), and 108 of the PITA 2015.

The response of the Respondent is that issues 2 and 3 are on residence of the Appellant are matters of fact and not law as provided for in Order XXVI (1) of the Tax Appeal Tribunal (Procedure) Rules 2021, therefore, incompetent.

I have to beg to differ with the Respondent. The issue here is that of Personal Income Tax provided for by the PITA 2015. The tax is levied where the person resides. However, in the light of judgement of my brother, Taiwo Taiwo, J in (unreported) Suit No. FHC/ABJ/CS/866/2018 between *Joseph Bodunrin Daudu v. FIRS & Ors.,* I will decline jurisdiction on this issue. It is binding on the TAT until it is set aside by a Court.

The submission of the Appellant on issues 5, 6 and 7 which are predicated on grounds 4, 10, 11, 12, 13 and 14 of the Amended Notice of Appeal is that by a combined reading of the provisions of Ss. 46 and 109 of the PITA, S. 46 of the VAT Act, Ss. 1, 8 (1), and (2), 47 and 69 of the FIRS Act, it is only the relevant tax authority that can exercise the tax powers stipulated under S. 26 of the FIRS Act, Ss. S. 46 and 54 (2) and (3) of the PITA, and S. 18 of the VAT Act, 1993 to call for tax returns and make assessments and not the EFCC as was done in Exhs. JB2 and JB3 and reliance is placed on *NDDC v. Rivers State Board of Internal Revenue* (2019) LPELR-49046 (CA). The power of the Board is not to be exercised by determining a company's assessable profits according to its BOJ but rather to determine total profit to which the applicable tax rate is applied. The Respondent failed to establish that the Appellant indeed earned taxable income or turnover for the relevant periods or establish the nature and value of the taxable services rendered by the Appellant during the period in question i.e., 2010 to 2017.

The next argument of the Appellant is that he was not validly issued with Assessments of Value Added Tax as the 1999 Constitution (as amended) has specifically designated the taxes that the Federal Government is empowered to impose and collect under items 58 and 59 of the Exclusive Legislative List, (2nd Schedule, Part I) and items 7 and 8 of the Concurrent Legislative List (2nd Schedule, Part II) thereof. The legislative competence of the National Assembly to impose tax or duties on capital gains, incomes or profits of persons and on documents or transactions by way of stamp duties do not extend to and include the power to levy or impose any form of Sales Tax, including Value Added Tax and Withholding Tax. The Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 (now Act), in so far as it purports to legislate in respect of the responsibility for collection of taxes and levies, assessment and collection of taxes other than as provided for under items 58 and 59 of the Exclusive Legislative List, (2nd Schedule, Part I) and items 7 and 8 of the Concurrent Legislative List (2nd Schedule, Part II) of the 1999 Constitution (as amended) is unconstitutional, null and void and reliance is placed on *A.-G., Rivers State v. FIRS* (unreported) Suit No. FHC/PH/CS/149/2020 delivered by Pam, J on 9th August 2021. The Appellant urges this Court to nullify the purported Notices of Assessment for Value Added Tax having been made without the requisite jurisdiction and set aside the decision of the TAT and resolve issues 5, 6 and 7 in his favour.

In my opinion, the crucial issue canvased by the Appellant that must first be decided before any other issue here is that there is a pending judgement of this Court, that is, *A.-G., Rivers State v. FIRS* (unreported) (supra) which held that the legislative competence of the National Assembly to impose tax or duties on capital gains, incomes or profits of persons and on documents or transactions by way of stamp duties do not extend to and include the power to levy or impose any form of Sales Tax, including Value Added Tax and

Withholding Tax. Therefore, the Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 (now Act), in so far as it purports to legislate in respect of the responsibility for collection of taxes and levies, assessment and collection of taxes other than as provided for under items 58 and 59 of the Exclusive Legislative List, (2nd Schedule, Part I) and items 7 and 8 of the Concurrent Legislative List (2nd Schedule, Part II) of the 1999 Constitution (as amended) is unconstitutional, null and void. The response of the Respondent to this assertion is that the Appellant's submissions on the taxing powers of the Respondent, constitutionality of the power of the Federal Government over Value Added Tax and Withholding Taxes and constitutionality of the Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 are extraneous to the judgement of the TAT and the issues placed before the TAT, an appeal must address issues traceable to the judgement.

As I ruminate on the submission of the Respondent on the issue of the Respondent's power over Value Added Tax and Withholding Tax, I find it not just antithetical but equally incongruous. It appears the Respondent did not peruse page 1065 of the Record which contains the decision of the TAT. It is expressly stated that the TAT decided as follows:

> "**On Personal Income Tax:** The Respondent was ordered to refer the issue of Residency in this matter to the Joint Tax Board for Resolution within a reasonable time of the decision in line with the provisions of the Personal Income Tax Act.
>
> **On Value Added Tax:** The Appellant was found liable to the VAT Assessments from 2010 - 2017 in the sum of N176,566,015.73 (One Hundred and Seventy-Six Million, Five Hundred and Sixty-Six Thousand, Fifteen Naira, Seventy-Three Kobo), and

Withholding Tax: The Appellant was found liable to WHT Assessments from 2010 - 2017 - N71,987,564.52 (Seventy-One Million, Nine Hundred and Eighty-Seven Thousand, Five Hundred and Sixty-Four Naira, Fifty-Two Kobo).

It also found the Appellant liable to interest on the judgement sum and interest at the prevailing CBN rediscount rate from the date of judgement until the judgement debt is liquidated.

This is the judgement of this Honourable Tribunal."

I have stated the gravamen of the issues of the Appellant. In *A.-G., Rivers State v. FIRS* (unreported) (supra), this Court examined the provisions of Items 58 and 59 of Part 1 of the 2nd Schedule to the 1999 Constitution (as amended) and held that law has specifically designated the taxes that the Federal Government is empowered to impose and collect to the exclusion of other taxes like Value Added Tax, Withholding Tax, Education Tax, and Technology Tax. Earlier, this Court in *Emmanuel Chukwuka Ukala, SAN v. A. - G., Fed. & Anor.* (Unreported) (Supra) per Oshomah, J., had given a similar decision. In my candid opinion, these decisions have knocked the bottom off the decision of the TAT. It must be noted that these decisions are by Courts of Coordinate jurisdiction. They express the jurisprudence on the subject to my satisfaction and I am thereby persuaded. I have no reason therefore to make a conflicting decision to them. The Respondent ought to have been guided by the decision in *Emmanuel Chukwuka Ukala, SAN v. A. - G., Fed. & Anor.* (Unreported) (Supra) being that it was decided on 12th December, 2020 long before the TAT gave its decision on 23rd June, 2021 per page 1038 of the Record. However, learned Counsel for the Respondent failed to draw the attention of the Court to this previous decision. Clearly, he had a duty in law to do so; see *Global Trans. S.A. v. Free Enter. (Nig.) Ltd.* (2001) 5 NWLR (Pt.

706) 426 where it was stated that it is the duty of Counsel to draw the Court's attention to previous decision of the Court on the same subject matter.

As it is, the subject matters of this suit are issues that have been determined by this Court prior to the events that gave rise to them. It is then safe to say that the issues canvassed by the parties have been answered by previous decisions of this Court which I have stated.

Consequently, I answer the issues formulated by the Appellant as follows:

i. Issue 1 in the positive,
ii. Issue 2 in the positive,
iii. Issue 3 in the negative,
iv. Issue 4 is overtaken by event,
v. Issue 5 is overtaken by event,
vi. Issue 6 in the negative, and
vii. Issue 7 is overtaken by event.

I make an Order setting aside the entire judgement of the Tax Appeal Tribunal delivered on 23rd June, 2021.

This is the Order of this Court.

I. E. Ekwo
Judge
19/9/2023

Emmanuel C. Ukala, SAN, (with O. J. Onoja, SAN, Messrs O. J. Iheko, Adedayo Adedeji, E. A. Oni, Praise Ahiaba, Shalom Emmanuel, E. C. Onyekwere Jnr., Peter Daudu and Aishetu Isa) for the Appellant.

Olatunji Salawu, Esq., (with Tobi V. Olorundare, Esq.) for the Respondent.