IN THE FEDERAL HIGH COURT NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON TUESDAY THE 21ST DAY OF MAY, 2019 BEFORE THE
HONOURABLE JUSTICE A O. FAJI
JUDGE

SUIT NO. FHC/L/CS/1480/18

TWEEN:

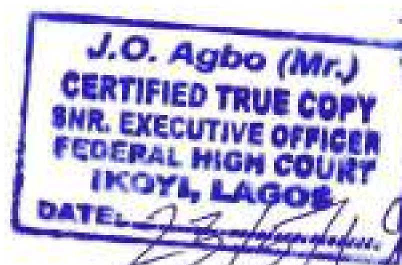
CHIEF AFOLABI IGBAROOLA
ALHAJI ADEMOLA OGUNSESAN
DEACON T. J ISHOLA
MR. GBENGA AFOLABI
MR. BIODUN ADEDEJI
(FOR THEMSELVES AND ON BEHALF OF LICENSED AND CONCERNED MEMBERS OF INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA) --- **PLAINTIFFS**

AND

FEDERAL INLAND REVENUE SERVICES (FIRS)
CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)
CHIEF CYRIL IKEMEFUNA EDE
MR. MARK ANTHONY DIKE
MR. ADEFISAYO AWOGBADE
(FOR THEMSELVES AND ON BEHALF OF LICENSED AND CONCERNED MEMBERS OF INSTITUTE OF CHARTERED INSTITUTE OF TAXATION OF NIGERIA) --- **DEFENDANTS**

JUDGMENT

e Plaintiffs commenced this suit by way of an Originating Summons dated h day of September, 2018 but filed on 11th day of September, 2018. On /2/19, the Plaintiffs filed an Amended Originating Summons which was emed properly filed and served on 7/3/19 having not been objected to by the



Defendants. The said Amended Originating Summons seeks the determination of the following questions and reliefs:

1. Whether by virtue of combined provisions of **S.55 6(a) & (b) Companies Income Tax Act, CAP.C21, Laws of THE Federation of Nigeria, 2004** (as **amended by the Companies Income Tax (Amendment) Act, 2007; S. 5(2) of Federal Inland Revenue Service (Establishment Act) 2007; Tax Administration (Self-Assessment) Regulation 2011; Ss. 1, 14 (1)(b) & (c)** and ***20 (3) of the Institute of Chartered Accountants of Nigeria Act;* Ss. 331-335, 337-338 and item 53 Schedule 2 of the Companies and Allied Matters Act and S. 24(f) of the 1999 Constitution of the Federal Republic** of **Nigeria (as amended)** the Plaintiffs are not qualified to practice, administer, hold themselves out, be consulted and file tax returns as Tax Agents/Practitioners in Nigeria without being members of the 2nd Defendant as a condition precedent.

2. Whether the Terms of Settlement purportedly filed in an Appeal to the Supreme Court of Nigeria in Suit No: SC/492/2013 **Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** on the 16th day of February 2015 at the Registry of the Supreme Court and which is not in the Court's file and pronounced upon by any panel of the Justices of the Supreme Court can be said to have a life of a judgment of the Supreme Court so as to be acted upon by anybody and any agency of the Federal Government of Nigeria.

3. Whether the unsigned Memorandum of Understanding translated into Terms of Settlement purportedly filed in Suit No: SC/492/2013 **Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** is not a mere process of intent which cannot be considered to represent the rights and liabilities of the parties concerned when the entire Suit known and referred to in Suit No: SC/492/2013 had been struck out without the formal adoption and pronouncement of the Apex Court on the said proposed terms of settlement filed on the 16th day of February 2015.

CERTIFIED TRUE COPY

4. Whether the judgment of the Court of Appeal, Lagos Division delivered on the 15th day of February 2013 in Suit No: **CA/L/673/07 Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** and which has not been upturned by the Apex Court is not subsisting, enforceable and to be obeyed by every citizen and agencies within the territorial space of Federal Republic of Nigeria.

5. Whether the letter dated 23rd day of April 2018 written by the office of the Executive Chairman of Federal Inland Revenue Services (FIRS) with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Tunde Fowler in favour of Chartered Institute of Taxation of Nigeria can be said to have passed through the processes of due diligence and whether it is superior to the combined provisions of S. 55 (6)(a) & (b) of Companies Income Tax Act; **S. 5(2) of Federal Inland Revenue Service (Establishment Act) 2007; Tax Administration (Self-Assessment) Regulation 2011;** Ss. 1, 14(1)(b) & (c) and 20(3) of the Institute of Chartered Accountants of Nigeria Act; Ss. 331-335, 337-338 and item 53 Schedule 2 of the Companies and Allied Matters Act and S. 24(f) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

If the answer to the above questions are in the affirmative, the Applicants shall seek the order of this Honourable Court granting the following reliefs:

1. A DECLARATION of this Honourable Court that the Plaintiffs are parts of the authorized tax practitioners/agents/consultants that are statutorily recognized in Nigeria in the light of the combined provisions of S. 55 (6)(a) & (b) of Companies Income Tax Act; **S. 5(2) of Federal Inland Revenue Service (Establishment Act) 2007; Tax Administration (Self-Assessment) Regulation 2011;** Ss. 1, 14(1)(b) & (c) and 20(3) of the Institute of Chartered Accountants of Nigeria Act; Ss. 331-335, 337-338 and item 53 Schedule 2 of the Companies and Allied Matters Act and S. 24(f) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

2. A DECLARATION of this Honourable Court that the Plaintiffs, members of the 2nd Defendant and other members of other professional bodies

CERTIFIED TRUE COPY

statutorily recognized to be tax practitioners/agents/consultants are all subject to the directives, rules and regulation; properly so made, by the Tax Authority in Nigeria as represented in this instance by the 1st Defendant.

3. A DECLARATION that the purported Terms of Settlement dated 12th day of February 2015 made by parties but which was not filed in Suit No: SC/492/2013 **Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** and which has not been formally adopted and pronounced upon by the Supreme Court before the suit was eventually dismissed is inchoate, not binding, unenforceable and of no moment on parties concerned.

4. A DECLARATION that the judgment of the Court of Appeal, Lagos Division delivered on the 15th day of February 2013 in Suit No: **CA/L/673/07 Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** and which has not been upturned by the Apex Court is still subsisting, enforceable and binding on all parties concerned.

5. A **DECLARATIVE ORDER OF THIS HONOURABLE COURT** that the Plaintiffs herein who were not parties to Suit No: M/476/2005 and Appeal No: CA/L/673/07 are qualified to administer, practice and hold themselves out as tax practitioners in Nigeria by virtue of combined provisions of **S. 55 (6)(a) & (b) of Companies Income Tax Act, CAP. C21, Laws of the Federation of Nigeria, 2004 (as amended by the Companies Income Tax (Amendment) Act, 2007; S. 5(2) of Federal Inland Revenue Service (Establishment Act) 2007; Tax Administration (Self-Assessment) Regulation 2011.**

6. **AN ORDER OF THIS HONOURABLE COURT** setting aside the letter dated 23rd day of April 2018 written by the office of the Executive Chairman of Federal Inland Revenue Services with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Tunde Fowler as being inconsistent with **S. 11(a) & (b) of Federal Inland Revenue Service**

CERTIFIED TRUE COPY

(Establishment Act) 2007; Tax Administration (Self-Assessment) Regulation 2011 and as an utter violation of the combined provisions of **S. 55 (6)(a) & (b) of Companies Income Tax Act, CAP. C21, Laws of the Federation of Nigeria, 2004 (as amended by the Companies Income Tax (Amendment) Act, 2007.**

7. AN **ORDER OF PERPETUAL INJUNCTION** restraining the 1st Defendant from implementing the content of the letter dated 23rd day of April 2018 to formally adopt and recognize the seal of the 2nd Defendant as the only professional seal on the tax returns form in Nigeria from the 2nd day of January 2019 to the exclusion and **from delisting the Plaintiffs from administering, practicing and holding themselves out as tax practitioners in Nigeria.**

A 46 paragraph Affidavit deposed to by the 1st Plaintiff with exhibits attached and a Written Address filed 11/9/18 along with the Originating Summons were adopted in support of the Amended Originating Summons.

Plaintiffs' Counsel formulated the following issues for determination in his Written Address to wit:

1. "Whether by virtue of combined provisions of **S.55 6(a) & (b) Companies Income Tax Act, CAP.C21, Laws of THE Federation of Nigeria, 2004 (as amended by the Companies Income Tax (Amendment) Act, 2007; S. 5(2) of Federal Inland Revenue Service (Establishment Act) 2007; Ss. 1, 14 (1)(b) & (c) and 20 (3) of the Institute of Chartered Accountants of Nigeria Act; Ss. 331-335, 337-338 and item 53 Schedule 2 of the Companies and Allied Matters Act and S. 24(f) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)** the Plaintiffs are not qualified to practice, administer, hold themselves out, be consulted and file tax returns as Tax Agents/Practitioners in Nigeria without being members of the 2nd Defendant as a condition precedent."

2. Whether the Terms of Settlement purportedly filed in an Appeal to the Supreme Court of Nigeria in Suit No: SC/492/2013 **Between:**

CERTIFIED TRUE COPY

INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN) on the 16th day of February 2015 at the Registry of the Supreme Court and which is not in the Court's file and pronounced upon by any panel of the Justices of the Supreme Court can be said to have a life of a judgment of the Supreme Court so as to be acted upon by anybody and any agency of the Federal Government of Nigeria.

3. Whether the unsigned Memorandum of Understanding translated into Terms of Settlement purportedly filed in Suit No: SC/492/2013 **Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** is not a mere process of intent which cannot be considered to represent the rights and liabilities of the parties concerned when the entire Suit known and referred to in Suit No: SC/492/2013 had been struck out without the formal adoption and pronouncement of the Apex Court on the said proposed terms of settlement filed on the 16th day of February 2015.

4. Whether the judgment of the Court of Appeal, Lagos Division delivered on the 15th day of February 2013 in Suit No: **CA/L/673/07 Between: INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)** and which has not been upturned by the Apex Court is not subsisting, enforceable and to be obeyed by every citizen and agencies within the territorial space of Federal Republic of Nigeria.

5. Whether the letter dated 23rd day of April 2018 written by the office of the Executive Chairman of Federal Inland Revenue Services (FIRS) with Reference No: FIRS/EC/MISC/5435/18/57 and signed by Tunde Fowler in favour of Chartered Institute of Taxation of Nigeria can be said to have passed through the processes of due diligence and whether it is superior to the combined provisions of S. 55 (6)(a) & (b) of Companies Income Tax Act; S. 5(2) of Federal Inland Revenue Service (Establishment Act) 2007; Ss. 1, 14(1)(b) & (c) and 20(3) of the Institute of Chartered Accountants of Nigeria Act; Ss. 331-335, 337-338 and item

CERTIFIED TRUE COPY

53 Schedule 2 of the Companies and Allied Matters Act and S. 24(f) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Counsel submitted with respect to issue one that both Institute of Chartered Accountants of Nigeria (ICAN) and Chartered Institute of Taxation of Nigeria (CITN) are not Tax Authorities or Tax Practitioners in Nigeria; rather they are Institutes created by different Statutes with their respective objectives. The most important part of their objectives is to regulate strictly their members and provide for matters connected therewith. The answer as to who is a Tax Agent/Practitioner/Consultant in relation to tax regime in Nigeria can only be found in various statutory laws.

It was in line with ***Section 24(f) of the 1999 Constitution of the Federal Republic of Nigeria*** and the need not to flout the law that it became necessary to bring in professionals like auditors, accountants who are financial experts to help individuals and organizations to audit their financial statements so as to be able to declare their income honestly as required by law. The respective definition of 'audit', 'tax returns and tax audit' and 'an accountant' by Black's Law Dictionary, (Eighth Edition) were reproduced by counsel to support the fact that it is only the Auditors and Accountants that are allowed to carry out tax audit and keep accounting records. Counsel further referred the court to ***Section 19 of the Interpretation Section of Institute of Chartered Accountants of Nigeria Act, Cap III LFN, 2004, Sections 331, 332, 333, 334, 335, 337 and item 53 schedule 2 of the Companies and Allied Matters Act*** to further buttress the point.

From the wordings of ***Section 55(6)(a) & (b) of Companies Income Tax Act, Cap. C21, Laws of the Federation of Nigeria, 2004 (as amended by the Companies Income Tax (Amendment) Act, 2007***, it is the prerogative of every company to designate, appoint, choose, engage and elect a representative of its choice who shall answer every query relating to tax matters of the company. Where the wordings of an enactment are clear and unambiguous, it should be given ordinary meaning. See ***OLATUNDE VS. OBAFEMI AWOLOWO UNIVERSITY (1998) 4 S.C. 91; UNION BANK OF NIGERIA VS. OZIGI (1994) 3 NWLR (Pt. 333) 385***. The person so designated by the company shall be approved by the Federal Inland Revenue Service (the Service).

CERTIFIED TRUE COPY

The procedures on how a taxpayer could file his tax returns are stated in ***Section 5(1) & (2) of the Federal Inland Revenue Service (Establishment) Act 2007*** as follows:

(1) A taxpayer must file returns under the Self-Assessment Regime in person or engage the services of accredited agents to file returns on his behalf.

(2) For an agent to carry out the services required under this Regulation, the agent must be fully certified by any one of the under listed bodies, that is –

(a) The Association of National Accountants of Nigeria

(b) The Chartered Institute of Taxation of Nigeria; and

(c) The Institute of Chartered Accountants of Nigeria.

The said agent must have been certified by one of the mentioned bodies and must have the accompanying seals of such body. The Plaintiffs herein who are certified professional members of Institute of Chartered Accountants of Nigeria are among tax agents that could file tax returns having been certified by their own Institute.

It would not be out of place to situate the Plaintiffs and members of Chartered Institute of Taxation of Nigeria in the light of various judgments already alluded to in this matter. The judgment delivered in Suit No. M/476/05 was a subject of Appeal in Appeal No. CA/L/673/07 where the Appellate Court specifically set aside reliefs 3 and 5 on grounds of non-joinder, fair hearing and jurisdiction.

The Plaintiffs were not parties to Suit No. M/476/05 which was before the Lagos State High Court and cannot be bound by the judgment therefrom. The implication of setting aside a judgment is that the said judgment becomes ineffective and nugatory that nothing can cure it. The parties are to return or revert to the position of things prior to the judgment. See ***IBRAHIM VS. OJONYE (2012) 3 NWLR (Pt. 1286) page 108.***

In the instant case, nothing was determined in Suit No. M/476/05 against the members of the Institute of Chartered Accountants of Nigeria, the Plaintiff. Reliefs 1, 2 and 4 were not set aside in the judgment and do not affect the Plaintiffs, Institute of Chartered Accountants of Nigeria. It is the law that a

CERTIFIED TRUE COPY

judgment obtained on merit cannot be set aside by a court lower to it in the judicial ladder or of concurrent jurisdiction even if there is a mistake or error of law. See ***IBRAHIM V. GWANDU (2015) NWLR (Pt. 1451) page 1 and MARK V. EKE (2004) 5 NWLR (Pt. 865) 54.*** Judgment of a court of competent jurisdiction subsists until set aside on appeal and while it subsists, every person aaffected by it must obey it even if it appears wrong. See ***NGERE V. OKURUKET "XIV" (2014) 11 NWLR (Pt. 1417) page 147.*** A judgment of a court is a conclusive proof of the fact it decided. See ***Section 54 of the Evidence Act, 2011 and AKOMA V. OSENWOKWO (2014) 11 NWLR (Pt. 1419) page 462.***

Counsel urged the court to determine issue one in favour of the Plaintiffs since there is no provision of law or judgment disabling them from practicing taxation in Nigeria.

On issues two and three argued together, counsel submitted that though parties to a suit are allowed to amicably settle or compromise their disputes out of court, the court must pronounce upon same for it to be binding on the parties and thereby put an end to the dispute. In the instant case, there was no terms of settlement filed by the parties in Suit No. SC/492/2013 before the Supreme Court. The Supreme Court did not breathe life into the purported terms of settlement and same could not crystalize into a "consent judgment." Counsel referred to Exhibit D, Terms of Settlement vis a vis Exhibit F. From the search conducted at the Supreme Court Registry as deposed to by the 1st Plaintiff in the affidavit in support, it was discovered that the terms of settlement was never filed at all. The pronouncement in Exhibit F was made by the Supreme Court in the presence of the Counsel to the parties on record and none of them drew the attention of the court to any terms of settlement because none was filed.

Counsel urged the court to hold that the Terms of Settlement purportedly filed in an Appeal to the Supreme Court in Suit No: SC/492/2013 Between: ***INSTITUTE OF CHARTERED ACCOUNTS OF NIGERIA (ICAN) V. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN) ON 16/2/15*** which is not in the Court's file and pronounced upon by any panel of the Justices of the Supreme Court does not have a life of a judgment of the

CERTIFIED TRUE COPY

Supreme Court. Exhibit D is not a Consent Judgment and is inchoate to be referred to as Terms of Settlement.

On Exhibit E, Memorandum of Understanding, counsel referred to the definition in Black's Law Dictionary (Eight Edition) and submitted that it is not meant to be binding and courts ordinarily do not enforce it. It is a document of intention. The said Memorandum of Understanding is not signed by the parties. Unsigned document does not have any legal value. See ***G. S & D IND. LTD V. NAFDAC (2012) 5 NWLR 9Pt. 1294) page 511 @ 538 para. H.*** It cannot be taken as out of court settlement since it bears the inscription of the Supreme Court, Suit No. and the stamp of the Registry of the Supreme Court.

Assuming the court is not persuaded by the arguments proffered in respect of Exhibits D & E, then the following questions should emerge:

1. Why was the terms of settlement not respected?
2. Why did the 5th Defendant write letter dated 20th day of October 2017 so as to exclude members of Institute of Chartered Accountants of Nigeria from the practice of taxation in Nigeria in the light of Agreement No: 2 of the Terms of Settlement?
3. Which of the judgments is the letter of the 1st Defendant dated 23rd day of April 2018 referring to?
4. Could it be the Judgment in Suit No: M/476/05 or Court of Appeal Judgment in Appeal No: CA/L/673/07 or a non-existing Terms of Settlement purported to have been filed at the Supreme Court on the 16th day of February 2015 but which was not in the Court's file before the entire Appeal was dismissed on the 16th day of March 2015?.

Counsel urged the court to hold that the unsigned Memorandum of Understanding translated into Terms of Settlement purportedly filed in Suit No: SC/492/2013 Between: Institute of Chartered Accounts of Nigeria (ICAN) V. Chartered Institute of Taxation of Nigeria (CITN) is a mere process of intent.

In respect of issue four, counsel submitted that the judgment of a Court of competent jurisdiction subsists until set aside on appeal and every affected person must obey it even if it appears wrong until set aside. See ***NGERE V.***

CERTIFIED TRUE COPY

OKURUKET (supra) and AKOMA V. OSENWOKWU (supra). It therefore follows that the judgment in Appeal No: CA/673/07 which is strictly between Institute of Chartered Accountants of Nigeria and Chartered Institute of Taxation of Nigeria (who are not tax practitioners but rather institutes) subsists in perpetuity not withstanding any error of law or facts therein until, and unless, it is set aside or vacated by a Court of competent jurisdiction. See ***PURIFICATION TECHNIQUE LTD V. JUBRIL (2012) 18 NWLR page 109.*** Counsel referred to the reliefs In Suit No: M/476/05 and stated that reliefs 3 and 5 were set aside which means that nothing was determined against the members of Institute of Chartered Accountants of Nigeria.

Since rights and liabilities of parties concerned had been determined by the Appellate Court in CA/L/673/07 and since the judgment has not been appealed against or upturned, same subsists until it is vacated. The court was urged to hold that judgment obtained on merit cannot be set aside by a court lower in the judicial ladder.

As it concerns issue five, counsel submitted that by virtue of Section 55(6)(a) and (b) of Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria, 2004 (as amended by the Companies Income Tax (Amended) Act, 2007, it is clear that it is the prerogative of every company to designate, appoint, choose, engage and elect a representative of its choice who shall be able to answer every query relating to tax matter of the Company. Counsel also referred to Sections 5(1) and (2), 5(2), (3) & (11) and of the Federal Inland Revenue Service (Establishment) Act 2007 and submitted that where a provision of the Act prescribed a particular way of doing something, any other way employed contrary to the prescribed method will be declared as not passing the due process.

Counsel therefore urged the court to grant the reliefs sought by the Plaintiffs.

The 1st Defendant in response to the Originating Summons filed a 21 paragraph Counter Affidavit sworn to by Olufemi Asekun, Staff of the 1st Defendant with a Written Address on 21/12/18. Counsel adopted and argued the issues raised by the Plaintiffs.

CERTIFIED TRUE COPY

Counsel submitted that the Plaintiffs are not qualified to practice, administer, hold themselves out, be consulted and file tax returns as Tax Agents/Practitioners in Nigeria without being members of the 2nd Defendant as a condition precedent. In addition to this, the Plaintiffs must acquire the 2nd Defendant's stamp and seal before they can hold themselves out as tax agents. Section 1(1)(c) of the Chartered Institute of Taxation of Nigeria Act (CITN Act) empowers CITN to regulate and control the practice of the profession of taxation in all ramifications. This provision has been reaffirmed by the Court of Appeal in ICAN V. CITN CA/L/673/07 upholding the High Court decision in CITN V. ICAN M/476/2005.

Pursuant to the power as above, CITN issued the Public Notice after due consultation with FIRS who had acted pursuant to its own powers under Section 55(6)(b) of the Companies Income Tax Act, Cap. C21 LFN 2004. Apart from the 2nd Defendant, the 1st Defendant is also empowered to regulate some aspects of tax practice particularly with respect to tax administration as it affects the functions and powers of the 1st Defendant. The letter from the 1st Defendant to CITN is meant to regulate tax practice and was written in compliance with decisions of the courts.

Reference by the Plaintiffs to Section 5 of the Federal Inland Revenue Service (Establishment) Act is either an unfortunate omission or a ploy to disguise the legal status of the Income Tax (Self Assessment) Regulations 2011 which is a subsidiary legislation. Mere Regulation cannot stand side by side with an Act of the National Assembly. Regulation 5 of the Self-Assessment Regulation is in conflict with Section 1(c) of the CITN Act and the decision of the Court of Appeal. None of the authorities cited by the Plaintiffs backs up their position that they are qualified to practice, administer, hold themselves out, be consulted and file tax returns as Tax Agents/Practitioners in Nigeria without being members of the 2nd Defendant as a condition precedent.

Membership of an institution and practice of a profession are two different things. A person can be a member of a professional body without actually practicing the profession. An example is Nigerian Bar Association (NBA). Being a member of NBA is not tantamount to the authority to file processes in court. An NBA member needs to obtain the stamp and seal of the Association.

CERTIFIED TRUE COPY

This is exactly what the 2nd Defendant has done in the instant case. While the CITN may not be empowered to regulate members of ICAN practicing accountancy, it has powers to determine the process for any member of ICAN that is interested in practicing taxation which implies being a member of CITN as a prerequisite.

Counsel also submitted that the issue at hand is not about who prepares financial statements but who has the power to file tax returns. A tax return is not the same as a financial statement. Financial statements are prepared for a plethora of reasons and tax return is not the end result. The definition of accountants as an auditor does not translate to the statutory backing of accountants who are not members of 2nd Defendant to file tax returns without affixing the practice seal of the 2nd Defendant. It only talks about preparation of financial statements and accounts. Counsel referred to the definitions of a financial statement and tax return in Black's Law Dictionary 9th Edition. Furthermore, financial statements are prepared in accordance with the International Financial Reporting Standard (IFRS) Rules and accounting Rules while tax returns are prepared in accordance with the extant tax laws such as the Companies Income Tax and the Personal Income Tax.

The requirements of a tax system are quite different. See US Supreme Court case of ***THOR POWER TOOLS COMPANY V. COMMISSIONER OF INTERNAL REVENUE 58L Ed. 2d.785 at 802 (1979).*** The treatment of the word "taxation" is very different from the treatment of "financial accounting" and by implication does not adhere to accounting rules or principles. Counsel referred to Section 55(1) of the Companies Income Tax Act. A tax return includes audit accounts, tax and capital allowances as calculated under the 2nd Schedule to the CITA, statement of profits as calculated under Section 31 of the CITA, self-assessment form and evidence of payments of tax. In addition, the tax returns shall include deductibles as may be calculated under Sections 24-26 of the CITA.

The end result of a financial statement is not necessarily tax returns. Though accountants may have being filing tax returns prior to the time CITN was set up, from the effective date of CITN Act, an accountant can no longer lawfully carry out tax practice without being a member of the CITN. The regulating

CERTIFIED TRUE COPY

law states who could be tax agents just like judicial decisions. From the date of enactment of the CITN Act, there has been created a distinct profession known as taxation which is different from accountancy.

Counsel further submitted in respect of Section 55(6)(a) and (b) of the CITA that while the section cited gives the company the prerogative of every company of appointing an agent for the purpose of answering any query relating to tax matters, the provision also states that the person so appointed shall be subject to the approval of the 1st Defendant from time to time. The law requires not only the knowledge of taxation but also the approval of FIRS.

As regards the decision of the Court of Appeal striking out reliefs 3 and 5 and granting the remaining three reliefs, counsel submitted that the decision cannot avail the Plaintiffs since they were not parties as a decision can only affect those who were parties to the suit. The Plaintiffs cannot cherry pick the decisions of the courts. They cannot argue on one hand that they were not parties to the suit while at the same time claiming that the decision was in their favour. The Plaintiffs cannot approbate and reprobate at the same time.

As regards issue 2 and 3, counsel submitted that the issues are academic and is not relevant for the purpose of determining this case. Counsel referred to ***OKE V. MIMIKO (NO.1) (2013) LPELR SC.153/2013.*** The arguments of the Plaintiffs' counsel on the Terms of Settlement and Memorandum of Understanding are academic. This is because whether or not the Terms of Settlement were filed or adopted is irrelevant in the light of a valid and subsisting judgment of the Court of Appeal which recognizes the powers of the 2nd Defendant to regulate and control the practice and profession of taxation in Nigeria. Counsel referred to 1st Defendant's letter of 23/4/18 to the 2nd Defendant and stated that there is no reference in the said letter to the Terms of Settlement rather, the 1st Defendant's letter was premised solely on the decision of the Court of Appeal in Appeal No CA/L/673/07. The Terms of Settlement and MOU referred to by the Plaintiffs contain no reference to affixing of the 2nd Defendant's stamp or seal to tax returns which is the crux of the Plaintiffs' action. The issues therefore are academic. Counsel referred to ***UGOCHUKWU V. FRN (2016) LPELR-40785 CA and AJAO 7 OR V. ALAO & ORS [1986] LPELR-285(SC).***

CERTIFIED TRUE COPY

On issue four, counsel submitted that the 1st Defendant only acted in obedience to the judgment of the court which recognized the 2nd Defendant as the only body with the power to among other things regulate the practice of taxation in Nigeria. The action of 1st Defendant is in accordance with the extant laws and a reinforcement of the judgment of the Court of Appeal as there is no pending appeal at the apex court barring it from doing otherwise. To agree with the courts that the 2nd Defendant is the only body empowered to regulate practice of taxation in Nigeria and turn round to state that people can practice taxation without certification of the 2nd Defendant is illogical. The court could not have approbated and reprobated. See ***KADZI INTERNATIONAL LTD V. KANO TANNERY CO. LTD (2004) 4 NWLR (Pt. 864) 545.***

With respect to issue five, counsel submitted that all the statutory provisions referred to by the Plaintiffs' counsel in the Written Address do not help the case of the Plaintiffs. The letter written by the Executive Chairman of the 1st Defendant is in accordance with the relevant statutory provisions and complies with the judgment of the Court of Appeal. The Executive Chairman in writing the letter was acting within his powers as stipulated in the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA). Counsel referred to Sections 11(c) and 53 of the FIRSEA, Section 55 and more particularly subsection (6)(b) of the CITA and the case of ***THE MILITARY GOVERNOR OF LAGOS STATE V. OJUKWU (1986) LPELR-SC241/1985.***

Assuming without conceding that the Plaintiffs are qualified to be appointed by a company under Section 55(6)(b) of the CITA, that qualification for appointment as a company's representative for the purpose of answering every query relating to tax matters of a company is different from that for being qualified to file tax returns on behalf of the company for a fee. The Plaintiffs' counsel argued that a taxpayer can appoint an accredited agent to file returns on his behalf and that the agent must be certified by one of the professional bodies including ICAN. Also that the letter written by Tunde Fowler, Executive Chairman of the 1st Defendant seeking to delist the members of ICAN was not done in consultation with ICAN and same amounts to connivance, collusion and economic conspiracy against the members of other professional bodies. All these arguments are referring to the provisions of the Tax Administration (Self-Assessment) Regulation No. 117 Volume 98 of 2011

CERTIFIED TRUE COPY

which was made by the 1st Defendant pursuant to its powers under Section 61 of the FIRSEA. These provisions of the FIRSEA are in conflict with the provisions of the Chartered Institute of Taxation of Nigeria (CITN) Act which provides that CITN is the body with the exclusive prerogative to regulate the practice of taxation in Nigeria and Court of Appeal decision. The court was urged to take judicial notice of the Court of Appeal decision which is binding on it.

The court was urged to dismiss the Originating Summons with substantial costs.

In response to the Originating Summons also, the 2nd to 5th Defendants on 23/10/18, filed a 44 paragraph Counter Affidavit deposed to by the 5th Defendant with exhibits attached and a Written Address. Counsel formulated the following issues for determination to wit:

a. Whether by a combined reading of Sections 1 and 10 of the CITN Act, Cap. C10, LFN, 2004, reliefs (a), (b) and (c) of the Lagos High Court judgment affirmed by the Court of Appeal on 15th February, 2013 and paragraphs 4.1, 4.2, 4.3 and 5 of the Memorandum of Understanding dated 12th February, 2015 and executed by representatives of the parent-body of the Plaintiffs (ICAN) and the 2nd Defendant (CITN), the Plaintiffs are not quacks in relation to the practice of the taxation profession in Nigeria.
b. Whether the Plaintiffs can practice taxation as a profession without compliance with the specific provisions of the CITN Act that regulates the taxation profession as affirmed by the Court of Appeal Judgment of 15th February, 2013 and the Memorandum of Understanding executed between the representatives of ICAN and CITN dated 12th February, 2015.
c. Whether the 2nd Defendant's letter to the 1st Defendant dated 20th October, 2017 and the 1st Defendant's response letter dated 23rd April, 2018 are not within the statutory functions of the 1st and 2nd Defendants for which the court lacks the jurisdiction to abate.
d. Whether the Plaintiffs are not caught up by the principle of cause of action and issue estoppel in view of their wholesome reliance on the judgment in the proceedings between CITN and ICAN.

CERTIFIED TRUE COPY

On issue one, counsel referred to Sections 1 and 10 of CITN Act and reliefs (a), (b) and (d) granted by Lagos High Court Judgment and affirmed by the Court of Appeal and submitted that the position of law is trite on the principles that should govern the court when its jurisdiction is invoked to interpret provisions of statutes as in this case. Counsel referred to ***ALL NIGERIA PEOPLES PARTY V. GONI (2012) 7 NWLR (Pt. 1298) 147, pages 187-188, paras C-D***, where words of legislation are clear, plain and unambiguous as in the instant case, the appropriate rule of interpretation the court is called upon to adopt and apply is the Literal Rule. See ***DAGANA V. USMAN (2013) 6 NWLR (Pt. 1349) 50, 80-81, paras. H-D; IZEDONMWEN V. UNION BANK OF NIGERIA PLC (2012) 5 NWLR (Pt. 1295) 1, page 24, paras. G-H.***

The law is trite that once the court has decided a dispute between the parties, it becomes *functus officio*. See ***GUINESS NIGERIA PLC V. S.K. AJAYI NIGERIA LIMITED (2012) 18 NWLR (Pt. 1331) 179, page208, ratio 11***. The court of first instance delivered its considered judgment and the Court of Appeal upheld three reliefs and set aside two. The findings and reasoning of that court are on all fours and remains good law. See ***ADEWALE OLATUNJI V. ADEREMI WAHEED (2012) 7 NWLR (Pt. 1298) 24, p.51, para. C, para, F.***

The Plaintiffs in paragraphs 18, 25, 26, 27 and 28 of their affidavit in support, sought to benefit from same judgment they misunderstand as not binding on them. It is clear that the Plaintiffs are privies of their parent-body (ICAN) which was party to **Suits M/476/2005 and CA/L/673/07**. Counsel referred to the definition of a privy in Black's Law Dictionary, 9th Edition at 1320. The parent-body of the Plaintiffs being a juristic person determines who can be deemed a Chartered Accountant. The action taken by such corporate sole is in the interest of the people related to it just as an incorporated company's shareholders and directors are bound by effects of action for or against its activities or interest.

Assuming without conceding that the Plaintiffs are not bound by the decision of the Court of Appeal because members of ICAN were not joined by the 2nd Defendant in the suit that culminated to the Appeal, no life remains in the reliefs that stand in favour of the Plaintiffs because their interests have been compromised by virtue of the Memorandum of Understanding executed

CERTIFIED TRUE COPY

between the 2nd Defendant and ICAN, the parent-body of the Plaintiffs. Counsel referred to ***ABEY V. ALEX (1999) 14 NWLR (Pt. 637) 148.***

On issue two, counsel submitted that the practices of accountancy and taxation in Nigeria are purely statutory and are regulated by their enabling statutes, namely, the ICAN Act and the CITN Act as opposed to regulation by common law or doctrine of equity. Counsel referred to Sections 1(1) & 14(1) of the ICAN Act and Sections 1(1) & 10(1) of the CITN Act.

Concerning the argument of the Plaintiffs that Section 55(6)(a) and (b) vested them with rights to practice taxation because of their knowledge of taxation, counsel submitted that same cannot remove the statutory powers conferred on the 2nd Defendant by virtue of Section 1(a) of the CITN to regulate taxation practice in all ramifications. The position of the law is that where general provisions of a law are in conflict with the special provisions of another law, such special provisions will prevail on the principle of *generaliaspecialibus non derogant*. See ***NIGERIA DEPOSIT INSURANCE CORPORATION (NDIC) V. THE GOVERNING COUNCIL OF THE INDUSTRIAL TRAINING FUND (2012) 9 NWLR (Pt. 1305) 252, page 273, paras. A-C; 273-274, paras. H-C; 274, paras. F-G. SALVADOR V. INDEPENDENT NATIONAL ELECTORAL COMMISSION (2012) 7 NWLR (Pt. 1300) 417, page 442, paras. G-H; 443, paras. D-E.***

Counsel therefore submitted that the 2nd Defendant's enabling statute CITN Act being a specific statute that created the 2nd Defendant and vested it with power to regulate profession and taxation practice, supersedes the ICAN Act being the Plaintiffs' parent-body's enabling statute or any other statute that is general in nature in relation to the practice of taxation and the taxation profession.

As regards issue three, counsel submitted that the letter of the 2nd Defendant dated 20/10/17 is in exercise of the powers conferred on it by Sections 1 and 10 of CITN Act. The letter by the 1st Defendant dated 23/4/18 in response to the 2nd Defendant's letter is also in exercise of the 1st Defendant's statutory functions and power pursuant to Section 61 of the Federal Inland Revenue Service (Establishment) Act. The Tax Administration (Self-Assessment)

CERTIFIED TRUE COPY

gulation, 2011 made pursuant to Section 61 of the FIRS Act during the ndency of the suits between the 2nd Defendant and the parent-body of the intiffs (ICAN) was in order and valid as 1st Defendant was expected to intain a positive regulatory control pending the outcome of the legal process ween ICAN and the 2nd Defendant. This was the basis of recognizing three ofessional bodies as tax practitioners or agents by the 1st Defendant in gulations 5, 10 and 11 of the said Regulations.

suming without conceding that the current Tax Administration (Self-sessment) Regulation, 2011 (the FIRS Regulation) is of any moment, it is in nflict with sections 1,8 and 10 of the CITN Act. As a subsidiary legislation, effect cannot override statutory provisions made by the lawmakers in the tant case, the National Assembly. See ***N. N. P. C. V. FAMFA OIL LIMITED 012) 17 NWLR 188, pages 195-196; OGULAJI V. A. . RIVERS STATE (1997) NWLR (Pt. 508) 209***.

ncerning issue four, counsel answered the question in affirmative and erred to ***SULGRAVE HOLDING INC. V. FEDERAL REPUBLIC OF GERIA (supra) 309 at pages 333-334, paras. H-B; NIGERIA PORTS PLC V. ECHAM PHARMACEUTICAL PTE LTD (2012) 18 NWLR (Pt. 1333) 455, ges 480-481, paras. H-B; 482, paras. E-F; 499-500, paras. G-B and ABOYEJI V. TEJU (2012) 3 NWLR (Pt. 1288) 434, page 451, para. E*** on the legal concept cause of action. The facts and the reliefs sought by the Plaintiffs' parent-dy in both Suit No. M/476/2005 and Appeal No. CA/L/673/07 are the me with the facts and reliefs sought by the Plaintiffs in the instant suit. The intiffs therefore have not established any different cause of action for this urt to adjudicate upon.

is an application of the rule of public policy and in the interest of the mmon good that there should be an end to litigation – *interest Reipubicae Ut finislitium.* See ***EMEKA AGUOCHA V. EZENWA AGUOCHA (2004) PELR-7357(CA), page 13, para D and NATIONAL INSURANCE OMMISSION & ANOR V. FIRST CONTINENTAL INSURANCE COMPANY 'D (2006) LPELR-5935(CA).***

CERTIFIED TRUE COPY

The action of the Plaintiffs is also caught by the doctrine of estoppel. Counsel referred to ***BWACHA V. IKENYA (2011) 3 NWLR [Pt. 1235], 610, page 625; THE EXECUTIVE GOVERNOR DELTA STATE, ASABA & ANOR V. STEVE OMOJAFOR (2011) LPELR-5011(CA), pages 16-17, paras. D-A and RESURRECTION POWER INVESTMENT COMPANY LIMITED V. UNION BANK OF NIGERIA PLC (2013) LPELR-21262(CA).***

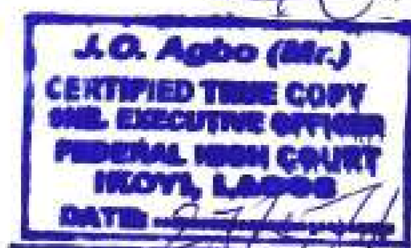
The Plaintiffs on 15/11/18 filed a 31 paragraph Further Affidavit with exhibits attached in support of the Originating Summons along with Reply on Points of Law to the 2nd – 5th Defendants' Written Address in support of their Counter Affidavit.

Counsel submitted that the 2nd – 5th Defendants cannot formulate separate questions for determination under Originating Summons. The court is only bound to determine the questions for determination formulated by the Plaintiffs and cannot be swayed by arguments to determine issues differently formulated by the Defendants. This is because there is nothing known as Counter-Claim in Originating Summons or Counter Originating Summons in law. See ***ISA V. ABACHA (2012) 12 NWLR (Pt. 1314) page 406; ACHU V. C.S.C. CROSS RIVER STATE (2009) 3 NWLR (Pt. 1129) page 475.***

The Plaintiffs in the instant suit did not bring to this court for determination of the provisions of Chartered Institute of Taxation (CITN) Act or the Institute of Chartered Accountant of Nigeria (ICAN) Act. Taxation being a distinct profession from Accounting is not an issue for determination before this court. A court is bound and must confine itself to the issues formulated by the Plaintiffs in the Originating Summons. See ***SHOBOYODE V. MINISTRY OF LANDS AND HOUSING WESTERN NIGERIA (1974) N.S.C.C. Vol. 9 page 264 @ 369.*** The court was urged to discountenance all issue formulated for determination by the 2nd – 5th Defendants and all the legal arguments thereof and determine the issues brought forward for determination by the Plaintiffs.

Counsel reiterated his earlier position that judgment of a court of law remains valid until it is set aside. Same represents the rights and liabilities of parties involved in the dispute strictly submitted for determination in that suit. See

CERTIFIED TRUE COPY



ADENIRAN V. IBRA 92014) ALL FWLR (Pt. 720) page 1302, 1330 paras. D-E among others. Only parties to an agreement can be bound by the terms of such agreement - *pacta sunt servanda*. See ***A.G. NASARAWA V. A.G. PLATEAU STATE (2012) ALL FWLR (Pt. 630) page 1262 and A.C.E. LTD V. COLE (2016) ALL FWLR (Pt. 861) page 1201***. It therefore follows that right of non-party to a judgment cannot be compromised. The MOU does not refer to the members which include the Plaintiffs herein in any form rather it was a voluntary agreement entered into by Institute of Chartered Accountants of Nigeria (ICAN) with/and Chartered Institute of Taxation of Nigeria (CITN). The Respondents and the personalities that executed the MOU did same in their official capacities as directing minds of ICAN. The Plaintiffs herein are not parties to M/476/05 and CA/L/673/07 and therefore cannot compromise same.

It is the principle of law that once there is a condition precedent in the MOU such MOU becomes ineffective until the condition is fulfilled/satisfied. See ***D.P.M.S. LTD V. LARMIE (2000) 5 NWLR (Pt. 655) page 138 @ 154***. Though an MOU freely entered by parties are strictly binding on the parties, however such MOU will be unenforceable where the express terms of the agreement is not fulfilled. Paragraph 9 of the MOU dated 12/2/15 provides as follows:

> ***"That the terms of settlement incorporating clauses 1, 2, 3 and 5 above shall be executed by both parties and filed at the Supreme Court for adoption by the Supreme Court in the pending Appeal No. SC/492/13."***

Counsel submitted that it is only when the MOU is transmitted into Terms of Settlement and filed at the Supreme Court for adoption that the MOU can be binding and enforceable. Counsel referred to ***OKAFOR V. OKAFOR (2000) FWLR (Pt. 1) page 17 ratio 1***; Exhibit CITN 5A, MOU dated 12/2/15 and the recital of the MOU. The validity of the Terms of Settlement therefore is hinged upon being filed and entered as the judgment of the Supreme Court.

Mr. Gabriel Foluso Fasoto (the then President of Chartered of Institute of Taxation of Nigeria) who signed the MOU as President of Association of Professional Bodies of Nigeria (APBN), is the same person who deposed to Exhibit K attached to the Plaintiffs' Further Affidavit in support of the Originating Summons. The same Gabriel Foluso Fasoto who championed and

CERTIFIED TRUE COPY

stirred the dispute against Institute of Chartered Accountants of Nigeria (ICAN) was the same man who sat as arbitrator for the parties. The question therefore is: can the same Gabriel Foluso Fasoto coordinate a peace meeting in a matter where his interest was part of the dispute? The law is that when the doctrine of natural justice is breached, whatever decision reached is a nullity and not binding. See ***ADIGUN V. A.G. FOR OYO STATE (1987) 1 NWLR (Pt. 53) 678.*** Parties cannot waive statutorily given rights or constitutional rights. See **ODUA INVESTMENT CO. LTD V. TALABI (1991) 1 NWLR (Pt. 170) page 761 @ 780.**

The principle of law is that relevancy and admissibility are essential in respect of any document before the court for determination of issues. See ***ANAJA V. U.B.A. (2011) ALL FWLR (Pt. 600) page 1289.*** The 2nd – 5th Defendants that alleged that the MOU and the Terms of Settlement were filed at the Supreme Court have the onus of bringing the certified true copies of same as public documents to the court. In other words, the burden of proof on existence of the MOU and Terms of Settlement as public documents lies on the party who makes a positive assertion of its existence. See ***Section 133 of the Evidence Act 2011; UGBORU V. UDUAGHAN (2011) ALL FWLR (Pt. 577) page 650 and AGAGU V. MIMIKO (2009) ALL FWLR (Pt. 462) 1122 @ 1145.*** In absence of certified true copy of public documents, it will amount to speculation which this court is not allowed to do. See ***EKPETO V. WANOGHO (2004) 11-12 SC.***

The court was urged to discountenance the MOU and Terms of Settlement that were not brought before this court in their admissible forms.

Admission of fact by a party who is in position to deny same is the best evidence that court can rely upon for just determination of issues before it. See ***ATANDA V. ILIASU 92013) ALL FWLR (Pt. 681) page 1469.*** At paragraph 5 of the 2nd – 5th Defendants' Counter Affidavit, they admitted that the 1st Defendant herein is the foremost Tax administration agency. They equally admitted that the Plaintiffs were tax agents before now and that reliefs (iii) and (v) of the judgment of the court in Suit No. M/476/05 were set aside because of non-joinder in Appeal No. CA/L/673/07. The implication of the above admission is that the Plaintiffs have been tax agents recognized by 1st Defendant pending the correspondences that led to notice making of 2/1/19 as

CERTIFIED TRUE COPY

the implementation date of the policy when the Plaintiffs will be affected in their practice of being a tax agent. The principle of law is that parties cannot read their personal meanings/opinions outside the judgment.

The law is that clear and unambiguous words of statutes are to be interpreted literally. See ***SARAKI V. F R N (2016) ALL FWLR (Pt. 836) page 395***. Section 5(1) & (2) of Federal Inland Revenue Service (FIRS) Act 2007 deals with appointment of tax agents in Nigeria. There is no provision for the appointment of tax agent in Nigeria in CITN Act and ICAN Act. It is only the 1st Defendant's Act that provides for procedure, mode and qualification of would-be tax agents. The specific law on the appointment of tax agents in Nigeria therefore would be the one provided for by the 1st Defendant's Act which has a force of law. The principle of interpretation to the effect that a specific law will have an overriding effect over a general law is more applicable to the case of the Plaintiffs than the case of the 2nd – 5th Defendants. So the principle of *generalia Specialibus non derogant* is in favour of the Plaintiffs than the Defendants.

Counsel submitted that going by the doctrine of implied repeal, even if there is any provision of the appointment of tax agents in Nigeria by Chartered Institute of tax in Nigeria (CITN) Act, since CITN Act was made in 1992 and FIRS Act was enacted in 2007, the FIRS Act has impliedly repealed the position of CITN Act on the appointment of tax agents. See ***OLU OF WARRI V. KPERGEBEYI (1994) 4 NWLR (Pt. 339) 416***.

The letter dated 23/4/18 cannot override the provisions of the FIRS Act. See ***LABIYI V. ANRETIOLA (1992) 10 S.C.N.J. 1***.

Exhibits CITN 7 and CITN 8 are computer generated evidence. The 2nd – 5th Defendants have not complied with Section 84(I) & (II) of the Evidence Act. See ***DICKSON V. SYLVA & ORS (2016) LPELR-41257(SC)***. CITN 9 being a bill before the National Assembly is qualified to be regarded as a public document. By virtue of Section 102 of the Evidence Act 2011, CITN 9 is a public document and it is only the certified true copy of the CITN 9 that can be tendered for admission by this court.

CERTIFIED TRUE COPY

The cause of action came into being by virtue of letter dated 23/4/18 by the 1st Defendant and by virtue of Section 6(6)(c) of the 1999 Constitution of the Federal Republic of Nigeria, parties who are aggrieved can bring a action for the purposes of determination by the court. Counsel referred to ***OJUKWU V. REG. T.A.L.B.O.N (2016) ALL FWLR (Pt. 829) page 1198*** and urged the court to discountenance the arguments of the 2nd – 5th Defendants.

On 14/1/19, the Plaintiffs filed a Reply on Points of LAW TO THE 1ST Defendant's Counter Affidavit. Counsel urged the court to discountenance the 1st Defendant's Counter Affidavit and the attached Written Address for being an abuse of court process and for not being supported by any provision of law. The 1st Defendant is on record on 10/12/18 that the Counter Affidavit filed on 16/11/18 is meant to be the 1st Defendant's Counter Affidavit against the Originating Summons of the Plaintiffs. Olomu Agodo, counsel who represented the 1st Defendant got an adjournment on the ground that 1st Defendant had not filed their Counter Affidavit to Plaintiffs' Motion for Interlocutory Injunction and insisted that Counter Affidavit dated 16/11/18 is to all intent and purposes the 1st Defendant's Counter Affidavit to the Originating Summons. This therefore puts two Counter Affidavits filed by the 1st Defendant in exercise of a single right. The processes are incompetent and the court cannot countenance same. See ***R-BENKAY (NIG.) LTD V. CADBURY (NIG.) PLC (2012) ALL FWLR (Pt. 631) 1450 @ 1452-1453.***

It is the principle of law that facts admitted need no further proof. See ***NWOKEARU V. STATE (2013) ALL FWLR (Pt. 689) 1040; OGANUHU V. CHIEGBOKA 92013) ALL FWLR (Pt. 703) 1925 and GENEVA V. AFRIBANK (NIG.) PLC (2013) ALL FWLR (Pt. 702) 1652 @ 1656 -1657.*** In the 1st Defendant's Counter Affidavit to which response is being made, the 1st Defendant admitted paragraphs 1, 3 - 7, 9, 12, 14, 16, 18, 19, 21 – 28 & 36 of the Plaintiffs' Affidavit in Support of the Originating Summons by implication. The position of the law is that uncontroverted affidavit evidence by a person who is in position to controvert or deny same is deemed admitted. The 1st Defendant failed to controvert facts deposed to in paragraphs 13 & 38 of the Plaintiffs' affidavit in support. The facts are not properly and specifically met and the law will not deem it as being properly denied. Counter Affidavit is to Originating Summons what Statement of Defence is in Writ of Summons and

CERTIFIED TRUE COPY

Statement of Claim. Facts therefore must be properly traversed. See ***MUSARI V. BISIRIYU (2014) ALL FWLR (Pt. 735) 387 @ 388.***

Also the 1st Defendant failed, refused and neglected to controvert paragraphs 10, 11, 20, 29, 30, 32 – 35, 37, 40 - 46 of the Affidavit in the Originating Summons and therefore those depositions/averments are deemed admitted by the 1st Defendant. See ***EDET V. IBOM (2014) ALL FWLR (Pt. 745) 352 @ 355.***

Plaintiffs' counsel admitted to have made mistake by making reference to Federal Inland Revenue (Establishment) Act 2007 as against the Federal Inland Revenue (Establishment) Act 2007: Tax Administration (Self-Assessment) Regulation 2011 but submitted that where a relief or remedy is provided for by any written law or by common law or equity, that relief or remedy if properly claimed by the party seeking it cannot be denied to the Applicant simply because he has applied for it under the wrong law. See ***FALOBI V. FALOBI (1976) 1 NWLR 169***. No legal injury was complained to have been occasioned by this mistake.

Counsel also reiterated his earlier argument on the effect of combined provisions Section 55(6)(a) & (b) of the Companies Income Tax Act, Section 5 of the FIRSEA 2007: Tax Administration (Self-Assessment) 2011, Sections 1, 14(1)(b) & (c) and 20(3) of the ICAN Act, Sections 331-335, 337-338 and item 53 Schedule 2 of CAMA and Section 24(f) of the 1999 Constitution of the Federal Republic of Nigeria as amended. Counsel referred to ***ABDUL GANIYU ADENIRAN & ANOR V. HRH OBA ABDULGANIYU AJIBOLA IBRAHIM delivered on Friday 14th December, 2018 in SC/516/2012*** where Section 19 of the Interpretation Act was considered in relation to equal status of Rules of the Supreme Court with substantive legislation.

On issue 2 & 3 of the 1st Defendant's Written Address, counsel referred to ***EKE V. AKUNNE (2009) ALL FWLR (Pt. 466) page 2023 @ 2041 paras. C-E*** and submitted that both the Plaintiffs and the 2nd – 5th Defendants have joined issues on the existence and legal effect of the MOU and Terms of Settlement it is therefore out of place for the 1st Defendant to regard these issues as mere academic exercise. Counsel are expected not to suppress or omit relevant facts, they are bound to state all relevant facts including facts unfavourable to their

CERTIFIED TRUE COPY

case. It is unethical to suppress, by omission relevant facts before the court. See ***AKINDIPE V. THE STATE (2012) 6-7 MJSC 1 (Pt. iii).*** The 1st Defendant has failed, neglected and refused to bring to the attention of this court relevant portion of provisions of the Federal Inland Revenue Service (Establishment) Act 2007, provisions of Tax Administration (Self-Assessment) Regulation 2011, provisions of National Tax Policy and other enabling tax laws.

Counsel urged the court to hold that the submission about academic and hypothetic issues as raised by the 1st Defendant are misconceived and should be discountenanced as of no moment to live issues submitted for determination by the Plaintiffs herein.

Counsel also reiterated his position on the validity of a judgment of the court until set aside.

In ***LABIYI V. ANRETIOLA (1992) 10 SCNJ 1 @ 17,*** the court held that there is no place whatsoever for letter in the hierarchy of laws in Nigeria. The 1st Defendant's letter dated 23/4/18 is not in accordance with any extant law and cannot supersede various statutory provisions in relation to the issue in the instant suit. The Tax Administration (Self-Assessment) Regulations 2011 is an extant law validly made in pursuance of Section 61 of FIRSEA 2007. The letter dated 23/4/18 was written as an attempt to execute the judgment of the Court of Appeal in Appeal No: CA/L/673/07 which is executory in nature and same cannot be executed as the 1st Defendant is trying to do through the said letter dated 23/4/18.

The 2nd – 5th Defendants on 2/11/18, filed a 9 paragraph Further Affidavit with exhibits attached in opposition to the Plaintiffs' Originating Summons. 2nd – 5th Defendant also on 17/12/18 filed a 32 paragraph Further and Better Counter Affidavit with exhibits attached a Written Address. The arguments of 2nd – 5th Defendants' counsel in this Written Address are virtually the same with the Witten Address in support of his Counter Affidavit of 22/10/18 and same having been read by me is taken as reproduced here.

The Plaintiffs also filed a Reply on Points of Law to Further and Better Counter Affidavit and the supporting Written Address of the 2nd – 5th

CERTIFIED TRUE COPY

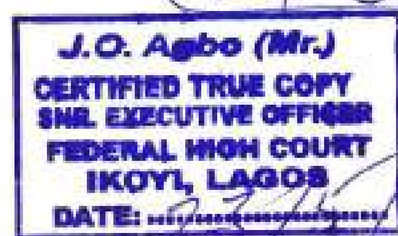
Defendants. I have also considered the additional deposition of Adefisayo Awogbade, additional exhibits attached and the arguments of counsel in the Written Address in support which are more of repetition of his earlier position. Same also is deemed reproduced here.

The 1st Defendant on 16/11/18 filed a Preliminary Objection seeking the striking out of the Plaintiffs' suit or in the alternative, striking out the name of the 1st Defendant. The sole ground for the application is that by virtue of Section 2 of the Public Officers Protection Act, LFN 2004 and Section 55(3) of FIRSEA 2007, an Applicant who intends to sue the Federal Inland Revenue Service must first issue and serve on the Service a 30-day pre-action notice which the Plaintiffs in this suit failed to comply with before instituting this suit. A 14 paragraph Affidavit with a Written Address was filed in support.

Counsel raised a sole issue for determination to wit:

> ***"Whether this Honourable Court can assume jurisdiction over this suit in respect of the Plaintiffs when the Plaintiffs/Respondents have failed, refused and neglected to issue and serve pre-action notice on the 1st Defendant as stipulated by Section 55(3) of FIRS Act and Section 2 of the Public Officers Protection Act?"***

Counsel submitted that Plaintiffs cannot commence any suit against the 1st Defendant until at least one month after written notice of intention to commence the said action has been served upon the 1st Defendant by the Plaintiffs or their agents. Counsel referred to ***NTIERO V. N P A (2008) LPELR-2073(SC); N.D.C.L. V. A.S.W.B. (2008) Vol. 5 MJSC 118 at 147 paras. B-E, (2008) 3-4 SC (Pt. II) 202 at 213 paras. 10-15.*** The rationale behind the jurisprudence of pre-action notice is to enable the Defendant know in advance the anticipated action and a possible amicable settlement of the matter between the parties without recourse to the adjudication by the court. Counsel referred to ***CHIEF (MRS.) VICTORIA OGUNDANA ADEDOTUN & ANORT V. F I R S & ANOR (2011) 4 TLRN page 88.*** Failure of the Plaintiffs to serve the 1st Defendant a pre-action notice entitles the Applicant to the reliefs sought which are striking out the entire suit or in the alternative, striking out the name of the 1st Defendant from the suit.



CERTIFIED TRUE COPY

On the rationale behind pre-action notice, counsel further referred to ***NTIERO V. N P A (supra) EZE V. OKECHUKWU (2002) 12 S.C. (Pt. II) 103; Section 55(3) & (4) of FIRSEA; Section 2 of the Public Officers Protection Act 2004.***

Pre-action notice is a condition precedent to the commencement of an action and non-compliance renders the action incompetent and robs the court of jurisdiction to entertain same. See ***NIGERCARE DEV. CO. LTD V. A.S.W.B. (2008) 9 NWLR (Pt. 1093) 498.*** Counsel urged the court to hold that the pre-condition to instituting this action as provided by Section 55(3) & (4) of FIRSEA; Section 2 of the Public Officers Protection Act 2004 has not been complied with. Counsel referred to unreported case of ***BEST CHILDREN INTERNATIONAL SCHOOL V. FIRS, SUIT NO: FHC/ABJ/CS/1004/16.***

Counsel urged the court to hold that where a condition precedent is established not to have been complied with as in the instant case, then the court will be unable to exercise its jurisdiction and the court should strike out the suit or the name of the 1st Defendant.

Plaintiffs in response to the 1st Defendant's Preliminary Objection filed an 8 paragraph Counter Affidavit with a Written Address. Counsel submitted with respect to the sole issue raised by the 1st Defendant that the Public Officers Protection Act is only designed to protect officers who are executing public duties. The provisions of Section 2 of the Public Officers Protection Act does not relate to public bodies. Counsel referred to the provisions of Section 2 of the Public Officers Protection Act and the case of ***O.S.B.I.R V. UNIVERSITY OF IBADAN (2014) ALL FWLR (Pt. 736) page 595 @ 609 paras. B-D where the Court of Appeal relied on the Supreme Court authority of IBRAHIM V. J S C (1998) 14 NWLR (Pt. 584) LPELR 1408(SC) 19.***

Counsel submitted that the defence of invoking Section 2 of the Public Officers Protection Act will only avail a public officer where:

i. The public officer acted pursuant to his duty as a public officer
ii. The public officer has not acted in bad faith,
iii. The act complained of must not be at variance with the law thereby occasioning a tinge of illegality.

CERTIFIED TRUE COPY

It is only after the above has been satisfied that such officer can seek to rely on the *defence available under Section 2 of the Public Officers Protection Act. See FAJIMOLU V. UNILORIN (2007) 2 NWLR (Pt. 1017) page 74.* In the instant case, the 1st Defendant herein is not an individual or a natural person as contemplated by Section 2 of the Public Officers Protection Act. Applying the literal rule of interpretation of the provision of statutes, there is nothing to suggest that agency of the Federal Government will be covered by the Public Officers Protection Act. The Act in reference is "Public Officers Protection Act" not "Public Agencies Protection Act". Counsel urged the court to hold that 1st Defendant is not a public officer within the contemplation of the Public Officers Protection Act but a public body or a Federal Government Agency.

Furthermore, the provisions of Section 2 of the Public Officers Protection Act will only be available to officer who has acted pursuant to the duties of his office. The complaint of the Plaintiffs against the 1st Defendant in the instant case is that 1st Defendant intervened in a matter between the Plaintiffs and the 2nd – 5th Defendants in a way that is inconsistent with the provisions of the FIRSEA 2007. Section 2 of the Public Officers Protection Act will not avail the 1st Defendant even if covered by Public Officers Protection Act having committed an infraction which amounts to an illegality. See ***KWARA CIVIL SERVICE COMMISSION & 2 ORS V. JOSHUA DADA ABIODUN (2009) ALL FWLR (Pt. 493) page 1315 @ 1376 paras. C-G ratio 15.*** The Applicant, 1st Defendant must show that the action complained of by the Plaintiffs against the Service is legal because the evidential burden rests on a party who makes a positive assertion. See ***Section 133 of the Evidence Act 2011 UGBORU V. UDUAGHAN (supra).*** The Plaintiffs have contended that the act of writing a letter as against following the stipulated procedure in the Act is unlawful and illegal.

The doctrine of *stare decisis* and provision of Section 287 of the 1999 Constitution is to the effect that this court lower in the ladder is bound to follow the decision of the Court of Appeal as regards the interpretation of Section 2 of the Public Officers Protection Act.

Counsel also referred to the provisions of Section 55(3) of FIRSEA and submitted that in the construction and interpretation of statute where words

CERTIFIED TRUE COPY

contained in the statute are plain, clear and unambiguous, effect will be given to their ordinary/natural meaning. See ***ASSOCIATED DISCOUNT HOUSE LIMITED V. AMALGAMATED TRUSTEES LIMITED (2002) ALL FWLR (Pt. 392) page 1781***. The above section specifically mentioned the names of officers that can benefit from Section 55(3) of FIRSEA. There are the Executive Chairman, Board members or any employee. There is no place in the provision/enactment where Federal Inland Revenue Service which is referred to as the 'Service' is mentioned. The latin maxim *expression unius est exclusion alterius* as explained in ***S.I.(NIG.) PLC V. U.E.C.C. (LTD) (2015) ALL FWLR (Pt. 801) page 1526 @ 1543-1544 paras. H-A*** therefore should apply.

The 1st Defendant herein is a service which can sue and be sued and is clothed perpetual succession. Where FIRSEA intended a pre-execution or pre-attachment notice be served on the Service, it expressly mentioned the Service. See Section 57 of FIRSEA.

The unreported case of ***BEST CHILDREN INTERNATIONAL SCHOOL V. FIRS*** cited by the Applicant cannot be relied upon by this court because it is a judgment of court of coordinate jurisdiction. The court can at best be persuaded but not binding on it. The circumstances and facts of the case was not made available for the parties to look at. Counsel urged the court to strike out the 1st Defendant's Preliminary Objection and award substantive cost against it in favour of the Plaintiffs.

1st Defendant filed a Reply on Points of Law to Plaintiffs' Counter Affidavit in opposition to Preliminary Objection dated 15/11/18 relying on ***IBRAHIM V J S C and ADO IBRAHIM V. MAIGIDA U. LAWAL & ORS (2015) LPELR – 24736(SC).***

The 2nd – 5th Defendants on 11/10/18 filed a Motion on Notice seeking for an order striking out the names of the 3rd – 5th Defendant from this suit. The said motion is supported by a 9 paragraphed affidavit with a Written Address.

The grounds of the application are:

1. the 2nd Defendant is a corporate legal personality separate from the 3rd to 5th Defendants who are its officials and officers.

CERTIFIED TRUE COPY

2. The 3rd, 4th and 5th Defendants are officials of the 2nd Defendant that acted in their official and not personal capacities with respect to matters involving the 2nd Defendant and at all times relevant to this suit.
3. The necessary or proper party to sue is the disclosed principal of the 3rd, 4th and 5th Defendants (that is the 2nd Defendant) for the acts of its officers.
4. In the circumstances, the Plaintiffs suit can be effectively determined without the need to join the 3rd, 4th and 5th Defendants.

Counsel raised a sole for determination to wit:

> ***"Whether the 3rd, 4th and 5th Defendants/Applicants are entitled to have their names struck off the suit being officers/agents of a disclosed principal (the 2nd Defendant)."***

Counsel submitted that companies, corporations and statutory bodies unlike natural persons are creations of law and therefore rely on human beings to carry out its business, functions and responsibilities conferred upon them by law. The human beings are the directing mind and will of corporate bodies such as the 2nd Defendant. By virtue of corporate legal personalities, corporate bodies are separate personalities and a company once duly incorporated, is an independent person with its rights and liabilities appropriate to itself. The liabilities include the ability to be sued on its own right without the need to drag officers who acted on its behalf into litigation fray especially where the 2nd Defendant has not denied the actions of the 3rd – 5th Defendants as its own. Counsel referred to ***SALOMON V. SALOMON & CO LTD [1897] AC 22; TRENCO (NIGERIA) LTD V. AFRICAN REAL ESTATE LTD (1978) 1 LRN 153; NIDB V. OLALOMI IND. LIMITED [2002] 5 NWLR [Pt. 761].***

In the instant case, the 3rd, 4th and 5th Defendants are principal officers (except the 4th Defendant who is a former President) of the 2nd Defendant who by virtue of its establishment Act CITN Act is a statutory body and can be sued for the acts of its principal organs or agents, which in this case include the 3rd, 4th and 5th Defendants. The alleged acts which were performed by the 3rd, 4th and 5th Defendants were performed by them in their official capacities. There is nothing on record to show the contrary neither are the Plaintiffs alleging that

CERTIFIED TRUE COPY

the 3rd, 4th and 5th Defendants derived any personal or direct benefits from the alleged acts. The 3rd, 4th and 5th Defendants are the agents of the 2nd Defendant since their alleged acts were performed in their official capacities on behalf of the 2nd Defendant.

A party can only be joined or made parties to a suit where it is shown that their presence is necessary for the complete or effectual determination of the issues in controversy. See ***GREEN V. GREEN 91987) 3 NWLR (Pt. 61) 480; BWACHA V. IKENYA (2011) 3 NWLR (Pt. 1235) 610 at 626***. There is nothing in the instant action to show that issues raised and claims cannot be effectively determined unless the 3rd, 4th and 5th Defendants are made parties to the action. All claims of the Plaintiffs are directed at the 1st and 2nd Defendants. There is actually no claim against the 3rd, 4th and 5th Defendants. Parties are not joined fort the fun of it. There must be cogent reasons why a person should be joined as a party to an action. See ***L.S.B.P.C. V. PURIFICATION TECHNIQUES (NIG.) LTD [2013] 7 NWLR 90***.

ORDER 9 Rule 14(1) & (2) empowers the court to even *suo moto* or on the application of either party strike out at any stage of the proceedings the names of any party or parties improperly joined.

Counsel referred the court to ***UKU V. OKUMAGBA (1974) 3 SC 35*** and urged the court to strike out the names of the 3rd, 4th and 5th Defendants in this suit.

The Plaintiffs in response to the 2nd – 5th Defendants Motion on Notice filed a 17 paragraph Counter Affidavit with a Written Address on 23/11/18. Counsel raised a sole issue for determination to wit:

> ***"Whether having regards to the capacities in which the 3rd, 4th and 5th Defendants have been sued whether the 3rd – 5th Defendants are sued as agents of a disclosed partner to warrant their names to be struck out from this suit".***

Counsel admitted that an agent of a disclosed principal will not be a proper party to be sued in some circumstances especially where such agent has not exceeded his agency responsibilities. It is clear that the 3rd, 4th and 5th Defendants have their personal interests as Tax Practitioners in Nigeria in the question of law that are submitted for resolution by the court. It is also clear

CERTIFIED TRUE COPY

that the 3rd, 4th and 5th Defendants will be affected by the outcome of this suit, hence their being joined as 3rd to the 5th Defendant. It is the law that the Plaintiffs have the freedom of choice to choose whoever they have a cause of action against to right whatever wrong that has been done to them by such person. See Section 6(6)(b) of the 1999 Constitution as amended. The 3rd to the 5th Defendants were sued for themselves in their personal capacities and then on behalf of the licensed and concerned members of the Chartered Institute of Taxation of Nigeria (CITN). Counsel referred to the front page of the Originating Summons as to the way and manner the Defendants have been designated.

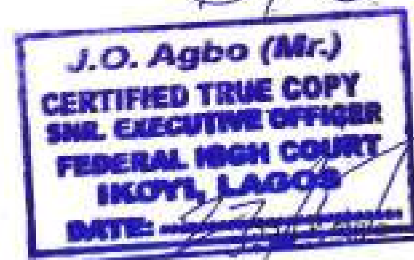
Counsel also referred to the definition of class action in Black's Law Dictionary 8th Edition; Order 9 Rule 12(1) of the Rules of this court; the cases of ***ATANDA V. OLANREWAJU (1988) 4 NWLR (Pt. 89) page 394 SC*** and the conditions or principles governing class action as enumerated in ***OLATUNJI V. REGISTRAR, COOPERATIVE SOCIETIES (1968) NMLR 393***. Except the second conditions listed, the other 3 are applicable in the instant suit. Counsel referred to paragraphs 12-14 of the Counter Affidavit of the Plaintiffs.

The Plaintiffs are allowed to sue as many Defendants that would be bound by the outcome of a case. See ***MINISTER OF LAGOS AFFAIRS V. ONIGBONGBO & ORS (1961) WNLR page 245***. Counsel also submitted that assuming without conceding that the 3rd to the 5th Defendant were misjoined, same is not fatal to this suit rather it will be fatal if their names are wrongly struck out by the court.

The 3rd - 5th Defendants are necessary parties to this suit as the outcome of the suit will affect them one way or the other. See ***U.BA. V. ACB (NIG.) LTD (2005) 2 NWLR (Pt. 939) 232 CA***.

Counsel urged the court to dismiss this application and ward substantial cost against the 2nd – 5th Defendants in favour of the Plaintiffs.

Those were the submissions of counsel.



CERTIFIED TRUE COPY

I must quickly observe that from Plaintiffs' Reply on Points of Law to 2nd to 5th Defendant's Further and Better Counter Affidavit, objection was raised to the said Further and Better Counter Affidavit for being an abuse since it is a repetition of the Counter Affidavit filed on 22/10/18. 2nd to 5th Defendants made no response to this and indeed adopted both processes on 7/3/19. It would therefore seem that the objection was conceded. The Further and Better Counter Affidavit of Adefisayo Awogbade sworn to on 17/12/18 is accordingly hereby struck out.

I will consider the objection filed by 1st Defendant on Public Officers Protection Act (POPA) and Section 55(3) of the Federal Inland Revenue Service (Regulation) Act 2007. It would seem that Plaintiff conceded that no pre-action notice was served on 1st Defendant. Section 55(1) and (3) of FIRSEA 2007 provide:

> ***"(1) Subject to the provisions of this Act, the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member, officer or employee of the service...***
>
> ***"(3) No suit shall be commenced against the Executive Chairman, a member of the Board, or any other officer or employee of the service before the expiration of a period of one month after written notice of the intention to commence the suit shall have been served on the service by the intending Plaintiff or his agent."***

This provision relates to pre-action notice and not the statutorily prescribed limitation of time for filing an action. It would thus seem that reference to POPA is mere surplussage. POPA does not regulate pre-action notice. The first part of Plaintiffs' arguments on the effect of POPA therefore goes to no issue.

On Section 55(3), Plaintiffs' Counsel submitted that it applies only to the Executive Chairman, Board members or any employee. FIRS i.e. the Service (1st Defendant) was not referred to. FIRSEA 2007 mentioned 'Service' in Section 57 on execution or attachment of process.

CERTIFIED TRUE COPY

Section 69 FIRSEA defines members as a member of the Board appointed under Section 3 of this Act and includes the Chairman. Officer means any person employed in the service.

It is obvious that no pre-action notice was served. It however seems that 1st Defendant is not among the category of persons contemplated by Section 55(3) FIRSEA 2007. The marginal note to the section referred to service. The words of the section are however clear and unambiguous. See ***THE REGISTERED TRUSTEES OF THE AIRLINE OPERATORS OF NIGERIA V. NIGERIAN AIRSPACE MANAGEMENT AGENCY (2014) 2 S.C. (Pt. II) 157 @ 198 and AIYELABEGAN V. L.G.S.C. ILORIN, KWARA STATE (2015) ALL FWLR (Pt. 802) 1697 @ 1732 paras. D-F.*** There was no legal requirement in the instant case for service of a pre-action notice on the service – the FIRS. The objection of 1st Defendant therefore lacks merit and is accordingly hereby dismissed.

The other objection filed by 2nd to 5th Defendants contends that they acted in their official and not personal capacities with respect to matters raised herein. They are agents of a disclosed principal i.e. the 2nd Defendant.

It however seems from paragraph 10 of the affidavit in support of the Amended Originating Summons that 3rd Defendant is the President of 2nd Defendant, 4th Defendant a past President and 5th Defendant the Registrar/Chief Executive Officer of 2nd Defendant. They are however sued for themselves and on behalf of licensed and concerned members of 2nd Defendant. They are not sued as agents or officials of 2nd Defendant per se but also in their individual capacities as licensed members of 2nd Defendant for themselves and on behalf of licensed and concerned members of 2nd Defendant. In that capacity, they are answerable to the 2nd declaratory relief in the Amended Originating Summons.

The suit is not per se against 3rd to 5th Defendants for acts done in their official capacity but also to bind them as licensed and concerned members of 2nd Defendant representing themselves and other members in that category. This is not a matter of agency but also capacity as people to be affected directly and as representatives of a group. The 4th and Defendants are also signatories to the Memorandum of Understanding subject of question 3 and relief 3 (in part).

CERTIFIED TRUE COPY

I agree with Plaintiffs' Counsel that, as regards 3rd to 5th Defendants, this is a representative action pursuant to Order 9 Rule 12(1) of the Federal High Court Rules. It is not, as submitted by Plaintiffs' Counsel, a class action governed by Order 9 Rule 4 of the Federal High Court Rules.

3rd to 5th Defendants seem to me to be necessary parties so that they can be bound by the decision in this case as they will be affected one way or the other being members of 2nd Defendant. See ***GREEN V. GREEN (supra).***

The Preliminary Objection of the 3rd to 5th Defendants therefore fails and is accordingly hereby dismissed.

The enactments to be considered by this Amended Originating Summons are reproduced hereunder. Section 55 (6)(a) & (b) of the Companies Income Tax Act CITA Cap C21 LFN 2004 as amended by CITA Amendment Act 2007 provides:

> "6 for the purpose of this Section
>
> (a) Every company shall designate a representative who shall answer every query relating to the companies tax matters;
>
> (b) A person designated by a company pursuant to paragraph (a) of this subsection shall be from members of the person knowledgeable in the field of taxation as may be approved from time to time by the Service."

Section 5(2) of FIRS (Establishment) Act 2007; Tax Administration (Self-Assessment) Regulation provides:

> "2 for an agent to carry out the services required under this regulation, the agent must be fully certified by any one of the underlisted bodies, that is –
>
> (a) the Association of National Accountants of Nigeria;
>
> (b) The Chartered Institute of Taxation of Nigeria; and
>
> (c) the Institute of Chartered Accountants of Nigeria.

Sections 1, 14(1)(b) & (c) and 20 of ICAN Act provide:
Section1 creates the ICAN and gives it power to regulate the practice of accountancy in Nigeria.

CERTIFIED TRUE COPY

Sections 14(1)(b) & (c) provides:

(1) Subject to subsection 2 of this section, a person shall be deemed to practice as an accountant if, in consideration of remuneration received or to be received and whether by himself or in partnership with any other person:

(b) he offers to perform or performs any service involving the auditing or verification of financial transactions, books, accounts or records or the preparation, verification or certification of financial, accounting and related statements; or

(c) he renders professional services or assistance in or about matters of principle or details relating to accounting procedure or certification of financial facts or data.

Section 20 is the Short Title.

Sections 331 – 335 CAMA regulate the keeping of accounting records and what accounting records should contain as well as financial statements both group and individual financial statements. Item 53 of 2nd Schedule to CAMA deals with particulars of taxes.

Section 24(f) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:

24. it shall be the duty of every citizen to –

(f) declare his income honestly to appropriate and lawful agencies and pay his tax promptly.

Question 1 requires an interpretation of these provisions in order to answer the question: are the Plaintiffs qualified to practice, administer, hold themselves out, be consulted and file tax returns as Tax Agents/Practitioners in Nigeria without being members of the 2nd Defendant as a condition precedent?

The 2nd Defendant is the Chartered Institute of Taxation of Nigeria. It would appear that having referred to the statute creating ICAN on behalf of whose members Plaintiffs have sued, legislation regulating the activities of 2nd Defendant is a relevant material for determining whether or not Plaintiffs must

CERTIFIED TRUE COPY

be members of 2nd Defendant before they can practice as Tax Agents/Practitioners.

It is also important that in the course of arguments legislative provisions outside those itemized for determination were referred to.

2nd to 5th Defendants seem to have re-couched the questions for determination. In as much as that is not appropriate, I am of the view that arguments on the said issues are relevant to determine the issues raised by Plaintiffs in the Amended Originating Summons. The court will therefore consider other statutory provisions which have a bearing on the question posed as question 1. It also seems that questions 1 and 5 can be treated together.

The issues for determination as couched by 2nd to 5th Defendants even though not similarly worded as Plaintiffs' issues seem to encapsulate the issues raised by the Plaintiffs for determination. The only issue that seems outside the purview of Plaintiffs' issues is the issue which relates to cause of action and issue of estoppel which seems to be a matter of defence.

The Plaintiffs have thrown up certain issues for determination. 2nd to 5th Defendants seem to be contending that unless some other statutory provisions are considered, the questions posed by Plaintiffs cannot be properly determined. I am of the view that even though not in Plaintiffs' issues for determination, those statutory provisions can be considered in the light of the arguments on the Amended Originating Summons on both sides.

The provisions are Sections 1,5,8 and 10 of CITN Act as well as Sections 11(c), 53 and 61 of FIRSEA.

Section 1 of CITN Act established CITN charged with determining the standards of knowledge and skill required by persons intending to become registered members of the taxation profession; to control and regulate the practice of the profession in all its ramification; to maintain discipline within the taxation profession and to carry out its functions through a council created under Section 4 CITN Act with powers conferred under Section 5. The

CERTIFIED TRUE COPY

Registrar of CITN compiles a register of members under Section 8 whilst the qualification for membership is outlined in Section 10.

Section 11(c) FIRSEA provides that the Executive Chairman of FIRS shall be responsible for the execution of the policy and day-to-day administration of the affairs of the service. Section 53 provides that actions of the council may be signified under the hand of the Executive Chairman.

Section 61 grants the Board power (with the approval of the Minister) to make regulations prescribing the forms for returns and the proceedure for obtaining information required under the Act.

By virtue of Section 55(6)(b) CITA, the person designated by a company to answer queries on its tax shall be a member knowledgeable in the field of taxation as may be approved by the FIRS. The FIRS therefore approves the tax agent of a company.

The ICAN Act regulates the practice of the accountancy profession just as the CITN Act regulates the profession of taxation practitioners. ICAN regulates the accountancy profession whilst the CITN regulates the taxation profession. They are separate professions.

The powers of the FIRS are carried out by the Executive Chairman or any other officer or employee.

Reference has been made to the decisions of the Lagos State High Court and Court of Appeal in Suit No: M/476/2005 CITN V. ICAN and Appeal No: CA/L/673/07. The Court of Appeal upheld the following 3 findings of Lagos State High Court to wit:

1. A declaration is made that taxation is legally recognized in Nigeria as a profession separate and distinct from the accountancy profession.
2. A declaration is made that the Claimant is vested with powers to regulate and control the practice of taxation in all its ramifications to the exclusion of the Defendants and any other professional body or institute in Nigeria.

CERTIFIED TRUE COPY

3. A declaration is made that it is unlawful for the Defendant to forestall or impede the Claimant's efforts to regulate tax practice.

These findings are in line with my own findings (supra) and I adopt them as mine.

It therefore seems to me that the Plaintiffs in order to practice as tax practitioners must be members of the 2nd Defendant.

My answer to question 1 is that Plaintiffs are not so qualified. It would appear that they must first be qualified to practice as tax practitioners before they can carry out the function. The CITN Act sets out the parameters for practice of the profession of taxation. Without being so qualified, a person cannot be appointed as a tax agent. The 1st Defendant itself must in setting out guidelines for appointing tax agents consider the legal regime for the practice of the profession of taxation. That regime is as per CITN Act. I do not think proficiency in profession A automatically qualifies a person to practice profession B if the rules of profession B were not complied with.

Much has been said about the Self-Assessment Regulations. These are subsidiary legislation which cannot override a principal enactment. See ***N N P C V. FAMFA OIL LTD (supra) and ALI V. OSAKWE (2009) 14 NWLR (Pt. 1160) 75 @ 139 para. B.*** It would also seem that the reference to court Rules is not apt. the Supreme Court Rules were made pursuant to powers conferred by the Constitution. See Section 236 of the 1999 Constitution as amended. In this case, the powers were conferred by Section 61 of FIRSEA under which FIRS can implement the provisions of CITA.

The Board of FIRS carries out its functions through the Executive Chairman. The letter of 23/4/18 made pursuant to powers conferred by FIRSEA and CITA was written in compliance with those laws. I do not think that the Regulations can override the provisions of CITN Act on the practice of taxation. It is clearly in conflict with the CITN Act and should have had that Act in contemplation when it was being drafted. Section 5(2) of the Regulation being inconsistent with the CITN Act cannot confer any benefit in that direction. The letter of 23/4/18 is therefore not superior to CITA and the

CERTIFIED TRUE COPY

Regulations but was made in exercise of powers conferred on the Executive Chairman of FIRS by enabling legislation.

Having found that the Regulations being subsidiary legislation if inconsistent with a principal enactment cannot stand, it would seem that the Regulations or that part of it which is in conflict with the CITN Act is null and void and of no effect.

In the hierarchy of laws, a subsidiary legislation is inferior to an Act of Parliament. In the case of conflict, the Act of Parliament prevails. See ***N N P C V. FAMFA OIL LTD (2012) 17 NWLR 188 @ 195-196; OGULAJI V. A G RIVERS STATE (1997) 6 NWLR (Pt. 508) 209.***

It would also seem that the CITN Act being a specific legislation on a subject, a general legislation cannot override it. See ***OZONMA (BARR.) CHIDI NOBIS-ELENDU V. I N E C & ORS [2015] ALL FWLR (Pt. 812) 1505 @ 1529 paras. D-E and AIYELABEGAN V. L.G.S.C. ILORIN, KWARA STATE (supra) @ 1735-1736 paras. H-A***. The ICAN Act regulates the profession of accounting. If Plaintiffs feel that they have knowledge of taxation and ought to practice same, they must comply with the law dealing with tax practice. The Plaintiffs have not shown any pant of the ICAN Act giving ICAN power to regulate taxation practice or its members the authority to practice tax. The CITN Act recognizes the experience of ICAN members for purposes of registration as a member of CITN under Section 10 CITN Act. It also recognizes knowledge evidenced by a degree from a university majoring in taxation.

The CITN Act is thus a special legislation on the subject of taxation practice. Where there is a conflict with a general legislation such as the ICAN Act, the special legislation in this case, the CITN Act will prevail. See **NDIC V. THE GOVRENINING COUNCIL OF THE INDUSTRIAL TRAINING FUND (2012) 9 NWLR (Pt. 1305) 252.**

CITN Act is thus superior to ICAN Act on the issue of tax practice. The Self-Assessment Regulations being in conflict with the CITN Act is null and void. The Plaintiffs cannot practice as tax agents without first being members of 2nd Defendant. The 1st Defendant's Executive Chairman can, by letter designate

CERTIFIED TRUE COPY

those to practice as tax practitioners. Reliefs 1,2,6 & 7 being tied to questions 1 and 5 are hereby dismissed.

On issue of estoppel and for sake of completeness, the case of CITN V. ICAN though good authority on the status of ICAN and CITN as separate bodies regulating accounting and tax respectively, does not as regards the instant suit create an issue estoppel. This is because, the issue of whether or not members of ICAN must first be registered as members of CITN before they can practice tax was dismissed by the Court of Appeal. The reason being that members of ICAN were not parties to the suit. In the instant suit, they are parties. Indeed, members of CITN are also parties to this suit. That issue has also now been resolved in favour of CITN and against members of ICAN.

Question 4 seems to be straight forward. The parties have not challenged the binding nature of the Court of Appeal judgment in Appeal No: CA/L/673/07. That judgment is valid and subsisting and binding on the parties thereto. That it is valid and subsisting however has a bearing on questions 2 and 3 and relief 3.

It is not in issue that the Terms of Settlement were not made the judgment of the Supreme Court. They were not adopted and cannot have the life of a judgment of the Supreme Court. The Terms do not therefore have the force of a consent judgment. The Terms were to be effective only if entered as the judgment of the Supreme Court. That was not done. See Plaintiffs' Exhibits D and F. see also ***OKAFOR V. OKAFOR (supra)***.

The answer to question 2 therefore is that the Terms which were not adopted by the Supreme Court do not have the life of a judgment of the Supreme Court. They are therefore not binding. Question 2 is accordingly so answered and relief 3 refused. That is however not of much value. The issue of the Memorandum of Understanding itself suffers the same fate because its efficacy is dependent on adoption of the Terms of Settlement at the Supreme Court. That was not done. The Memorandum of Understating was also not signed. It is thus an unreliable document. It does not affect the rights of the parties. See ***BELLO V. SANDA (2011) LPELR -3705 CA***. Question 3 is answered to the

CERTIFIED TRUE COPY

effect that the Memorandum of Understanding being unsigned is of no effect. There is no relief tied to question 3.

Having however held as I did on questions 1,3 and 5, and refused reliefs 1,2,6 and 7, questions 2 and 3 pale into insignificance. Indeed, they are academic. See ***C P C V. I N E C & ORS (2011) 12 S.C. (Pt. V) 80 @ 153; TANIMOLA V. MAPPING GODATTA LTD (1995) 6 NWLR (Pt. 403) 617; OKE V. MIMIKO 9NO. 1) 2013 LPELR SC.153/2013; UGOCHUKWU V. F R N (2016) LPELR – 40785 CA.***

On the whole therefore, Plaintiffs' claim lacks merit. Questions 1, 4 and 5 are resolved against Plaintiffs. Reliefs 1, 2, 5, 6 and 7 are dismissed. Questions 2 and 3 being academic are also struck out. Relief 3 is refused. Relief 4 is a statement of law and does not affect Plaintiffs' case and is academic. In any event it is subsumed under the other reliefs. Relief 4 is therefore struck out.

The instant Amended Originating Summons therefore lacks merit. It is hereby dismissed.

A. O. FAJI
JUDGE
21/5/19

CERTIFIED TRUE COPY

COUSNEL:

O. GEORGE ESQ. WITH N. BAMIMORE ESQ.FOR THE PLAINTIFFS

J. A. UGESE ESQ. FOR THE 1ST DEFENDANT

R. A. FASHOGBEN ESQ. WITH C. EZE ESQ., B. N. EZE ESQ. AND T. ADEWALE ESQ. FOR THE 2ND TO 5TH DEFENDANTS

Pls Cashier
collect the sum of ₦1,290
for CTC Judgment
J-Agbo 23/5/19
3003 0218 4350 23/5/19