IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT HIGH COURT NO. 44 (GENERAL CIVIL DIVISION)
BEFORE THE HON. JUSTICE L.A. OKUNNU
TODAY, MONDAY THE 12TH DAY OF MARCH 2007

SUIT NO. M/[illegible]/2005

BETWEEN:

THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA — CLAIMANT

AND

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA — DEFENDANT

JUDGMENT

By its Originating Summons filed herein on the 14th of October 2005, the Claimant has asked that the Court determine certain questions formulated by it, these being:

1. In view of sections 1 and 19 of the Institute of Chartered Accountants of Nigeria Act No 15 of 1965 Cap 111 LFN 2004 (ICAN Act) and section[s] 1 and ... 19(2) of the Chartered Institute of Taxation of Nigeria Act No. 76 of 1992 Cap C10 LFN 2004 (CITN Act), whether ... Taxation is legally recognised as a Profession separate and distinct from Accountancy.

2. In view of sections 1, 14 and 19 of the Institute of Chartered Accountants of Nigeria Act No 15 of 1965 Cap 111 LFN 2004 (ICAN Act) and sections 1, 10, 11, 16 & 19(2) of the Chartered Institute of Taxation of Nigeria Act No. 76 of 1992 Cap C10 LFN 2004 (CITN Act), whether or not the Claimant is vested with power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Defendant or any other professional body or Institute in Nigeria.

3. Having regard to of sections 1, 14 and 19 of the Institute of Chartered Accountants of Nigeria Act No 15 of 1965 Cap 111 LFN 2004 (ICAN Act) and sections 1(c) & 20(2) of the

Chartered Institute of Taxation of Nigeria Act No. 76 of 1992 Cap C10 LFN 2004 (CITN Act), whether it is lawful for any member of the Defendant who is not a member of the Claimant to practise or hold himself out to practise as a tax administrator or practitioner for or in expectation of reward in Nigeria.

The Claimant thereupon asked for the following relief:

1. **A DECLARATION** that Taxation is legally recognised in Nigeria as a [p]rofession separate and distinct from [the] Accountancy [p]rofession.

2. **A DECLARATION** that the Claimant is vested with power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Defendant or any other professional body or Institute in Nigeria.

3. **A DECLARATION** that it is illegal for any member of the Defendant who is not a member of the Claimant to practise or hold himself out to practise as a tax administrator or practitioner for or in expectation of reward in Nigeria.

4. **A DECLARATION** that it is unlawful for the Defendant to forestall or impede the Claimant's efforts to regulate tax practice.

5. **AN ORDER** restraining members of the Defendant who are not members of the Claimant from practicing, representing or holding themselves out as Tax Administrators or Practitioners in violation of the Chartered Institute of Taxation of Nigeria Act No. 76 of 1992 Cap. C10 LFN 2004.

In the written address filed in support of the Summons, learned Counsel for the Claimant, contended that under and by virtue of the Chartered Institute of Taxation of Nigeria Act ("the CITN Act"), tax practice in Nigeria has now been elevated to the status of a full-fledged profession. He argued that the Act, in so doing also, made provisions for minimum standards and qualifications to be met and had by tax administrators and practitioners, and for rules and regulations to be made to guide them in the conduct of their profession. Counsel urged that in interpreting the CITN Act, the Court should apply the literal rule of interpretation because the words used in the statute book are "clear and unambiguous".

He argued that the effect of that provision of the CITN Act [section 1(c)] which empowers the Claimant to regulate and control the practice of the new profession "in all its ramifications" is to create a "change or paradigm shift" s...

that it is the Claimant alone, to the exclusion of all other professional bodies, that can make any such rules or regulations for tax practice. Counsel submitted that because of this, and as is the clear intention of the Act, the Defendant can no longer lay claim to what he termed "concurrent or subsidiary" regulations, guiding the practice of tax by its (the Defendant's) own members.

He went on to contend that the CITN Act also makes it clear that for any one to be engaged in tax practice, he must have been registered as a member of the Claimant. He argued that just as it was not enough for anyone who studied law in the course of his professional training to seek, without more, to practise as a lawyer, it was, similarly, not enough for the Defendant's members who had studied taxation as part of their accountancy course, to lay claim to being tax practitioners without first fulfilling the requirements of the Claimant, and registering with it.

In response to the Claimant's claims, the Defendant filed a counter-affidavit and written address, and also filed a Counter-Claim, seeking, in turn, the determination of certain questions posed by it, and praying for certain forms of relief.

Regarding its arguments in opposition to the main action, learned Counsel for the Defendant, in his address, submitted that the Claimant has sought relief against unnamed members of the Defendant. He argued that as those members of the Defendant against whom the declarations and orders of injunction have been sought are necessary parties to the suit, the failure to state who they are is fatal to the case, and robs the court of jurisdiction to entertain the same.

Counsel went on to submit that the claims before the court are in the nature of equitable relief, but that the Claimant, who now appeals to the court of equity, has slept on its rights, having waited for some thirteen years after the CITN Act came into force before filing this action. He submitted that as "equity aids the vigilant and not the indolent", and because "he who comes to equity must come with clean hands", those declarations and order of injunction the Claimant seeks must be refused.

He also argued that because sections 19(2) and (4) of the CITN Act make it a criminal offence for anyone to hold himself out as a tax practitioner without having first registered with the Claimant, what the Claimant seeks to do, by this action, is to try the Defendant for a criminal offence. This, he stated further, the Claimant cannot do, as it is the Attorney-General of the Federation who can institute criminal proceedings. He submitted that since the Attorney-General has taken no such step, and in the absence of evidence that he delegated this power to the Claimant, the Claimant lacks the locus standi to bring this action.

It is the case of the Defendant that under and by virtue of the Institute of Chartered Accountants Act, Cap. 111 of the Laws of the Federation of Nigeria 2004 ["the ICAN Act"], the Defendant's Council is empowered to define and regulate the scope of the accountancy profession, and since the practice of

accountancy necessarily includes aspects of tax practice, then therefore, the Claimant's members do not have exclusive monopoly over tax practice and administration. Learned Counsel argued on its behalf that the CITN Act cannot take away the "vested rights" of the Defendant's members to continue to act as tax practitioners without necessarily becoming members of the Claimant. He argued that to interpret the CITN Act literally such as to destroy such "vested rights" would lead to an absurdity, and as the Court must not allow any such absurdity to be, it must jettison the literal rule of interpretation and, instead, employ another canon of interpretation that would allow for the Defendant's members who have elected not to join the Claimant to continue to exercise their right to act unimpeded as tax practitioners.

Defence Counsel went on to say that to compel the Defendant's members to join the Claimant would be to infringe upon their constitutional right to belong to a trade union or association of their choice. He said that courts are duty bound to construe statutes liberally where a strict interpretation would lead to the curtailment of a citizen's rights. He added that the courts have always leaned against giving retroactive effect to statutes, and this Court should do likewise, as to grant the Claimant's prayers would be to give retroactive effect to the CITN Act.

Finally on its arguments in opposition to the Originating Summons, the Defendant contended that whilst the CITN Act allows the Claimant to maintain a list of its members, it does not give it the power to circulate any such list to tax authorities in order to prevent the Defendant's members who are not registered with it from engaging in tax practice.

To these arguments, the Claimant filed a reply address. In it, Counsel submitted that this action is against the Defendant as a corporate entity which, just like the Claimant, has been given the statutory power to sue and be sued in its name. He said that it was the Defendant, as a body, that gave its members an ultimatum to withdraw from the Claimant or be expelled from ICAN, and as this action resulted from that ultimatum, it is the Defendant that is the proper party to this suit.

Regarding the contention that it does not have the standing to institute this action, the Claimant submitted that it has not, by this civil action, preferred a criminal charge against the Defendant. Rather, what it seeks is for the court "to clarify the laws and clear the confusion which the actions and pronouncements of the Respondent has created and continues to create in relation to the proper discharge of the duties of the Claimant under the CITN Act".

The Claimant's Counsel further contended that the equitable principles of *laches* and acquiescence do not apply to this case as the complaint here is that the acts complained about are completely illegal. He made mention of the legal maxim that "equity follows the law" in submitting that the words of a statute cannot be amended or repealed by acquiescence or delay. He added that an act of "[i]llegality cannot be made legal by continuous breach", but he also said

that even if equitable principles apply, the wrong complained of here is a continuous one, and that a valid cause of action arose in August 2005 (just before the institution of this suit), when the attempt to resolve the dispute between the parties was "stalled" by the Defendant.

On the matter of the vested rights of the Defendant's members to engage in tax practice unimpeded, the Claimant's Counsel contended that the issue is not so much about their competence to do so because of their professional training. but, rather, about the requirements of the law – the provisions of the CITN Act – which, he argues, has established the Claimant as that body which is to regulate "all persons, including Chartered Accountants, Economists, Lawyers, Business Administrators, etc that are considered qualified and competent to practice taxation". He submitted that the CITN Act did not destroy pre-existing rights, but only "prescribed a legal framework for [those rights] to be enjoyed as a regulated profession under the auspices of the CITN".

He submitted further that there was no provision in any of the laws relied upon by the Defendant – that is, the Constitution of the Federal Republic of Nigeria, the ICAN Act, the Companies and Allied Matters Act, and the Companies Income Tax Act – which authorises members of other professions to act as tax practitioners without them having registered with the Claimant.

On the issue of the Claimant's directive to the tax authorities not to deal with anyone not registered with it, the Claimant maintained that it is authorised by law – the CITN Act –not only to publish a list of its members, but also to circulate that list.

The Defendant, as I stated earlier, filed a Counter-Claim to the Originating Summons. By this cross-action, it has posed the following questions before the court, to wit,

i. Whether the Chartered Institute of Taxation Act of 1992 (an existing Law) is superior and capable of overriding the provisions of other existing Laws namely, The Institute of Chartered Accountants Act of 1965, the Companies and Allied Matters Act of 1990; the Association of National Accountants of Nigeria Act of 1993 and the Companies Income Tax Act of 1990 which regulate the functions/rights of [the] Defendant/Counter-Claimant's members to audit Financial Statements and deal with Tax related matters.

ii. Whether in the light of the roles/functions of members of the Defendant/Counter-Claimant in the Audit of Companies/Individuals and Tax in related matters as stipulated/cross-referenced in sections 1, 14(1)(b) & (c) and 20(3) of the Institute of Chartered Accountants Act, sections 331 – 335, 357 – 358, item 53 Schedule 2 of [the]

Companies and Allied Matters Act and section 24(f) of the 1999 Constitution of the Federal Republic of Nigeria, dealing with the functions/powers of the Defendant/Counter-Claimant's members, the Claimant can still insist that members of the Counter-Claimant must register with the Claimant as a condition for continuing to operate or hold themselves out as Tax Practitioners/Administrators.

iii. Whether the Claimant's contention that the Counter-Claimant's members must register with the Claimant as a condition for carrying on business as Tax Practitioners/Administrators is not in violation of the Counter-Claimant's members' constitutional right of the freedom to belong to a trade union or professional body of their choice.

It thereupon asked for the following relief:

1) A Declaration that the Chartered Institute of Taxation Act No. 76 of 1992 is an existing Law which is neither superior to nor capable of abolishing the vested rights of the Defendant/Counter-Claimant's members and of other Accounting bodies under other existing Law[s] (i.e., The Institute of Chartered Accountants Act, the Companies and Allied Matters Act, the Companies Income Tax Act, the Personal Income Tax Act) to act or hold themselves out as Tax Practitioners and Administrators.

2) A Declaration that the vested rights of the Counter-Claimant's members to act/hold themselves out as Tax Practitioners, Consultants and Administrators under and by virtue of the ICAN Act, Companies and Allied Matters Act and other enabling Statutes are valid and subsisting.

3) A Declaration that having regard to the vested rights of the Counter-Claimant's members to act as Auditors and be involved in Tax Accounting practice as specified in the ICAN Act, Companies and Allied Matters Act and other enabling Statutes, the Claimant's decision to compel the Counter-Claimant's members to register as members of the Claimant as a condition for enjoying their vested professional rights violates the freedom of the Counter-Claimant's members to associate and/belong (sic) to a Professional body of their choice as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria and [is] consequently null and void.

4) A Declaration that in the light of section 24(f) of the 1999 Constitution, the Counter-Claimant's members are

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entitled to act, advise and consult on matters that are referred to them by Tax Payers.

5) *A Declaration that pursuant to sections 335, 337 and Schedule 2 of the Companies and Allied Matters Act 1990, the Counter-Claimant's members are empowered and therefore entitled to prepare, Audit, Advise, consult on and defend [their] computation of financial facts and data, including taxation without being members of the Claimant.*

6) *An Order of Perpetual Injunction restraining the Claimant and her Officials from hindering or disturbing the Counter-Claimant's members who act as Tax Practitioners/ Administrators or insisting that members of the Counter-Claimant should register with the Claimant as a condition for carrying on their statutory functions or holding themselves out as Tax Practitioners, Administrators and Consultants.*

The Defendant, in its address on the Counter-Claim, submitted that taxation and tax practice are an integral part of the functions of an accountant, so that if accountants were to be denied their right to act as tax practitioners, the CITN Act would have contained clear words to that effect. Defence Counsel stated further that this right to act as tax practitioners is vested in the Defendant's members under and by virtue of sections 331 to 335, 357 and 358 of the Companies and Allied Matters Act ("CAMA"), together with clause 53 of the Second Schedule to CAMA. He argued that the provisions of sections 12(2) and 14(1) of the ICAN Act, sections 46 and 55(6) of the Companies Income Tax Act, and section 24(f) of the Constitution of the Federal Republic of Nigeria 1999 ("the Constitution"), all recognise the fact that accountants are necessarily engaged in tax practice by virtue of the nature of their calling as such. He submitted that all these laws are "existing laws" in the manner defined by section 315 of the Constitution, and since "[a]ll existing laws stand on the same pedestal" with no one law superior to the other, the CITN Act cannot be read such as to override or destroy the rights conferred on the Defendant's members by the other laws. To buttress this point, he referred to the definition of a "National Public Accountant" as stated in Rule 17(4) of the Association of National Accountants of Nigeria Rules, made under the Association of National Accountants of Nigeria Act, Cap. A26 of the Laws of the Federation of Nigeria 2004. By that definition, a national public accountant is said to include a person who holds himself out to be an expert in taxation.

Finally, the Defendant/Counter-Claimant submitted again that to compel its members to register with the Claimant would be to deny them of their constitutionally guaranteed freedom of association.

The Claimant has opposed the Counter-Claim, and in so doing, it filed a counter affidavit and written address. By those processes, it maintained its position in the main action that the only statutory provisions that govern tax practice in Nigeria are to be found in the CITN Act. Counsel submitted that the Defendant has not been able to identify the section of the laws referred to by its Counsel that it says explicitly confer on accountants the "unconditional" right to engage in tax practice. Instead, defence Counsel has only shown that taxation is one of the issues that are taken into consideration in preparing accounting records. He submitted further that even if there was an issue of conflict in existing laws, yet the rule of interpretation is clear that "if one of the conflicting statutes is a general provision and the other is a special provision, then the special provision must prevail". To him, it was not proper to look elsewhere (that is, at law dictionaries and other statutes) for the definition or description of an accountant when the ICAN Act itself has provided one. He stated that it was instructive that the ICAN Act, in this regard, did not state an accountant's function to include "the preparation and submission of tax returns", nor did it define an accountant as being a tax practitioner or administrator. Also instructive to him was the fact that the sections of CAMA relied upon by the Defendant in its counter-claim, neither make mention of taxation, nor do they impose upon accountants the requirement of preparing and submitting tax returns whilst performing the obligations imposed on them by that law.

For these and other reasons, he urged the Court to dismiss the Counter-Claim.

In his reply address on the Counter-Claim, defence Counsel submitted that the CITN Act did not make it compulsory for the Defendant's members to register with the Claimant. According to him, it only gives them a right to be so registered. He submitted that "the legislative purpose" of the CITN Act and the ICAN Act is to "regulate members of each professional body as opposed to curtailing or abolishing functions hitherto performed by ICAN members before the establishment of CITN". He argued that accounting principles can employed to ascertain profits, and the amount of tax that is payable on such profits, and so the Defendant's members who are not members of the Claimant cannot be excluded from tax practice. He also said that the vested rights of the Defendant's members to engage in such tax practice can only properly be overturned by clear words from a statute which repeals them, and no such clear words exist in the CITN Act. What is more, the argument continued, there were no clear words in the CITN Act compelling the Defendant's members to register with the Claimant before being able to perform tax-related services.

Finally, he urged the court to jettison the literal rule of construction, "as it would produce [an] absurd result if [the] CITN Act is used to destroy rights of ICAN members to act as Tax practitioners/render Tax related services, and the same Act is unable to destroy similar rights of ANAN members despite the fact that both are professional [a]ccounting bodies".

I have read, very carefully, all the processes and documents that were filed in this cause. I will say from the outset that I shall, in this Ruling, refer to the parties as they are in the main action (that is, as "the Claimant" and "the Defendant") even when considering aspects of the Counter-Claim. This is so as to avoid any confusion that may arise in the understanding of this Judgment.

I must also immediately commend Counsel on both sides (Professor Taiwo Osipitan, SAN, and Mr. Ade Ipaye) for their industry and extensive research in advocating their respective positions. Also worthy of note is the resort to the law court for adjudication on matters of this nature – that is, the main action and the counter-claim. It is worthy of particular mention because of the prevailing circumstance in the country in which the culture of respecting the rule of law has, very sadly, become more or less foreign to us. Law suits such as this, by which citizens seek the court's guidance, interpretation and declaration on the meaning and purport of our laws, must be encouraged if we are to truly progress as a nation. It is the civilized thing to do, and it should serve to reduce the abhorrent practice of resorting to "self-help".

Defence Counsel has raised certain threshold issues that I must first consider. The first of them is the contention that the main action is not capable of being enforced because the members of the Defendant against whom the Claimant seeks relief have not been made party to the suit. I, however, beg to differ. The main action, I find, has been brought against the Defendant as an umbrella body, which, as such, is constituted of all those persons that have been registered as its members. Each and every member of the Defendant union, therefore, will be bound by any Declarations and Orders made herein against the Defendant. Indeed, for this reason, the law has conferred upon the Defendant the status of an artificial person, capable of suing and being sued in its own name as an entity, without the need for it to be represented by its individual members. And, as has been argued by the Claimant, the wrong complained of is alleged to have been instigated by the Defendant as a body. But in any event, a proper reading of the forms of relief sought in the main action will show that they are capable of being enforced by a court of law. Those members of the Defendant against whom the Declarations and Order have been sought have been described. They are the "members of the Defendant who are not members of the Claimant" that are engaged in tax practice. They have, therefore, been identified, and can be readily ascertained, they being a particular class of the membership of the Defendant. The suit, in my view, stands validly constituted against the Defendant.

Professor Osipitan, SAN, has also argued that because the CITN Act makes it a criminal offence to engage in tax practice without being a member of the Claimant, this action could only have been instituted by the Attorney-General of the Federation, as he is the only person legally empowered to prosecute under the provisions of a federal law. Again, I do not agree with him. I do not, because the Claimant's suit – begun by way of an Originating Summons seeking clarification by way of judicial interpretation of certain laws – cannot properly be

described as an action by which the Claimant seeks to press a criminal charge against the Defendant. The court will be guided by the forms of relief that have been sought, as they determine, define and delimit the extent of its jurisdiction. And upon an investigation of those prayers made by the Claimant, it is clear to me that this action is wholly civil in nature. I will, therefore, discountenance this second issue raised by the defence.

Again, it has been contended on behalf of the Defendant that the Claimant has slept on its rights, having failed to take action for some thirteen years after the CITN Act came into force. On this score, defence Counsel has argued that the nature of the relief sought shows that the main action is rooted in equity, so that those equitable principles of *laches*, acquiescence and standing-by will apply to defeat this suit. To this, the Claimant has responded by saying that those maxims cannot be used in order to achieve the result of a back-handed repeal or amendment of a law – the CITN Act. It has argued that because "equity follows the law", the doctrine of *laches* and the like cannot be used to legitimise what it says is illegitimate. Again, I agree with the latter position. The right to seek a pronouncement on whether or not a particular course of action is in breach of statutory provisions (as the Claimant asserts by its action) cannot be defeated by those equitable principles. This is not a case of the court being called upon to exercise some discretionary power on the matter of the dispute before it. Then would the conduct of the Claimant be properly open to the court's scrutiny. This, rather, is a case of the court being asked to interpret – and enforce – a particular law. In such circumstances, the issue of an alleged delay in taking action cannot be found relevant.

Beyond this, I also share the view of Counsel for the Claimant, Mr. Ipaye, that what I have before me here is a case of a "continuing" breach, as alleged. As we speak, it is alleged that the Defendant's members continue to engage in tax practice even though they have either withdrawn their membership of the Claimant, or they have refused to take up such membership. The Defendant has freely admitted as much. In such circumstances, the Claimant cannot be said to be estopped from taking the action that it did in October 2005 when this suit was filed, particularly when the evidence before me shows that, until just before then, there had been on-going attempts to resolve the dispute between the parties. Indeed, it is the Defendant, which had been involved in the settlement talks, that would be estopped from raising such a contention as acquiescence or standing-by before the court!

Regarding the Claimant's counter affidavit in opposition to the Counter-Claim, I have been asked to strike out certain paragraphs thereof on the ground that they offend the provisions of section 87 of the Evidence Act. These are paragraphs 3, 5, 6, 7, 8 and 11. I have also been asked to disregard the newspaper pages exhibited therewith as they are public documents in the manner defined by section 109 of the Evidence Act, which must have been duly certified in order to be admissible in evidence.

Here, I am mostly in agreement with the learned Senior Advocate. Upon a consideration of the said counter affidavit, sworn to by a certain Gabriel Foluso Fasoto on the 16th of October 2006, I find that it is paragraphs 5, 6, 7, 8 and 11 thereof that contain legal arguments and conclusions, contrary to the provisions of section 87. Those offending paragraphs are, therefore, hereby struck out. Also, because the newspaper pages exhibited therewith and marked "CCITN 1" and "CCITN 2" have not been certified as true copies of the original by the relevant person, I must uphold the argument that by the combined provisions of sections 97(1)(e) and 97(2)(c) of the Evidence Act they are inadmissible in law. For that reason, I will ignore them both.

I think it necessary to state, at this juncture, that it was very wrong of the Presidents of both the Claimant and the Defendant to have commented publicly, as they did, on a matter that was *sub judice*. I had to deliberately refrain from reading those comments, published in a number of newspapers, so as to keep an open mind, and so as to ensure that I was influenced only by the evidence properly placed before me, when I came to determine the merits of this case.

Regarding the further submission that Exhibits "CCITN 3" and "CCITN 4" were authored by persons interested at a time when this action was either pending or anticipated, the evidence is before me (as contained in the Defendant's reply affidavit of the 13th of November 2006), that both the Attorney-General of the Federation and the Chairman of the Federal Inland Revenue Service are members of the Claimant. I agree that judging, also, by the date on both letters, they do appear to be "self-serving". I find, therefore, that they contravene the provisions of section 91(3) of the Evidence Act. And, indeed, I am also persuaded by the further argument that they lack probative weight. I am so persuaded because the advice or opinion of some other organ of State on a law becomes of very little relevance in the face of a law suit that has since been instituted to seek judicial interpretation of the meaning and effect of that same law. For both reasons canvassed by defence Counsel, those other exhibits will also be disregarded by me.

Having disposed of these preliminary matters, I will now proceed to consider the substance of the case – that is, the case on both sides.

In my humble view, the CITN Act has, very deliberately, created, for the first time, a profession out of tax practice. It came into being so as to bring together under one body of professionals, those persons that it says are engaged as "tax administrators and practitioners". It cannot be doubted that persons engaged as professionals in a particular field of endeavour, by virtue of being such (that is, being "professionals") owe a very high fiduciary standard of care to those who have entrusted them with assistance and advice on matters concerning that field in which they practice. The law imposes upon them such a duty of care that makes them accountable to their clients (to whom they render professional support for, or in expectation of, a reward), and for this reason, the law makes open to these clients the avenue of a claim for redress, rooted in the actionable

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It is, in my view, necessary for the law to ensure that all those engaged in tax practice come under the authority of the Institute of Taxation if the intention of that law (section 1(1) of the CITN Act) to ensure that the training and/or qualifying requirements that have been set by it is met, and that the code of conduct laid down by it is complied with, by all those engaged in tax practice. Then will there be uniformity in the standard of practice of the taxation profession, as I believe to be the intendment of the CITN Act, and indeed of any profession properly so called.

In so saying, it is very clear to me, from a reading of the plain, simple and unambiguous words of the Act, that by conferring on the Council of the Institute of Taxation the power to determine and/or influence the content of the qualifying examinations for persons wishing to engage in tax practice, and to otherwise determine who is eligible for membership of the Institute (see sections 10, 11 and 12 of the CITN Act), the CITN Act has, in effect, defined, by means of decisions of the Council in that regard, who is, and who is not, "a tax administrator or practitioner". In other words, the issue as to who is a person engaged in the tax profession will not be found in any other law in force in Nigeria or elsewhere, nor will it be left to the whims and caprices of any one person or body of persons. It will be as determined, defined and verified by the Council of the Institute of Taxation under and by virtue of the powers conferred upon it by the CITN Act. This is the new order of things which did not, hitherto, exist, as there was never, before the CITN Act, a taxation profession in Nigeria.

I, therefore, disagree with learned Council for the Defendant that the literal interpretation of the words of the CITN Act would lead to taking away the "vested rights" of members of the Defendant who, by virtue of being chartered accountants, are necessarily engaged in tax practice. In the first place, no such vested rights have been so defined in any law. I have, instead, been invited by him to infer that they exist from a series of circumstances, and by implication, just because chartered accountants have knowledge of taxation matters and have employed that knowledge in their accounting practice.

In my humble view, "vested rights" must be rights that the statute in question has expressly and explicitly conferred or bestowed upon a person, or which the courts have pronounced upon to exist. Defence Counsel has admitted as much when he argued, in his reply address of the 12th of December 2006, that "the word vested, covers property and non property rights. It extends to existing contractual and statutory rights". (The emphasis is mine) However, upon a perusal of the statutes which the Defendant relies upon here, I find no such express, categorical conferment of a vested right on accountants to act as tax professionals, and which conferment the CITN Act (as further argued by defence Counsel) now purports to repeal.

Taking first, section 24(f) of the Constitution, the meaning ascribed to the requirement that every citizen "declare his income honestly to appropriate and lawful agencies and pay his tax promptly" is, in my view, far from the intention of the draftsmen. That interpretation that has been given to it by learned Counsel

for the defence is not, at all, the purport of the sub-section. It cannot be said that in placing upon citizens the duty to declare their income and pay its tax, the Constitution has, thereby vested in accountants the right to engage in tax practice. With all due respect, it would be ludicrous for me to so hold. Section 24(f) of the Constitution does not seek to confer rights on any professional body to assist citizens in carrying out their legal obligation imposed upon them. All that it does, rather, is to state the weighty obligation placed on citizens of this country with taxable income to pay their taxes; it creates a pact, if you like, between Nigerians and their nation state that the former will pay their tax to the latter. No more than that should be read into the sub-section, particularly when, as I already stated, there is no other express statement of the law to the effect that chartered accountants are to be engaged by us citizens when we come to fulfill the obligation imposed on us by section 24(f). If there were any such other express statement of the law, then that other statutory provision would be read together with section 24(f) to create a vested right in chartered accountants to engage in tax practice.

I have also been referred to sections 331 to 335, and 357 and 358 of CAMA, and clause 53 of its Second Schedule. Again, my attention has been drawn to sections 12(2) and 14(1) of the ICAN Act, and sections 46 and 55(6) of the Companies Income Tax Act. I have read all these provisions of the law very carefully, but I find that none of them contains any words to the effect that chartered accountants are also tax administrators and/or tax practitioners. As rightly argued by the Claimant's Counsel, they say nothing about preparing and submitting tax returns. There is also nothing in them to show that the application of accounting principles and procedures will, or must, include rendering advice on tax matters.

As I stated earlier, the Defendant would prefer that the vested right that it claims be inferred from those statutory provisions. I am afraid that I cannot draw any such inference from provisions that have nothing to do with the definition of a chartered accountant, and which were not made in order to describe or define the scope of accountancy work, especially in circumstances where other persons (lawyers, economists, etc.) are also able to engage in tax practice in order to fulfill requirements of our different laws on taxation. Those provisions of CAMA and the Companies Income Tax Act are only – and all – about obligations placed on companies by the law. They are not at all about the nature and the scope of work of accountants, nor do they confer on accountants any right to engage in tax practice.

Rather than agree that the statutes referred to by defence Counsel "protect" vested rights (which have not been categorically conferred or bestowed on accountants by the law), all that I can say is that chartered accountants, by virtue of their knowledge of, and exposure in, their calling, are able to assist persons to discharge the duties imposed upon them by the said statutes.

And if one looks again at section 14(1) of the ICAN Act, it, likewise, makes no reference to taxation principles and procedures. I certainly cannot rely upon an inference in order to construe or interpret a piece of legislation – the CITN Act.

What is more, I do not know of any aspect of the common law, nor have I been referred to any judicial pronouncement, which categorically confers such vested rights on chartered accountants, under and by virtue of any of those "existing laws" referred to by defence Counsel.

I share the view of the Claimant's Counsel that the rule of construction is to the effect that where a statute treats a matter in a general manner, and another statute treats it as a special concern, the special words of the latter statute will prevail over more general statutory provisions.

Regarding the further contention that rule 17(4) of the Association of National Accountants of Nigeria Rules, made under the Association of National Accountants of Nigeria Act, Cap. A26 of the Laws of the Federation of Nigeria 2004, describes a practising public national accountant as including an expert in taxation, I find that as those Rules are in the nature of subsidiary legislation, they cannot be made to override the words of a principal enactment such as the CITN Act. Indeed, the law is trite that where there is a conflict between a superior enactment and an inferior one, the words of the inferior enactment must be declared null and void to the extent of their inconsistency with the superior law. In such circumstances, it matters not which came first in time.

Contrary to the defence position, it is my respectful view that the issue of the CITN Act destroying some vested right does not even arise at all, so that Counsel's arguments on the issue of "vested rights" cannot hold sway. Rather than abolish the ability of the Defendant's members to give advice on taxation matters, the Act, by making them fit and proper persons to join the new profession after they must have had, "immediately before the commencement of the Act, ... not less than one year's practical experience in accounting", actually recognises their background training and exposure in that regard. And so, after satisfying this minimal condition for membership of the Claimant – a condition which, I believe, would give the majority of the Defendant's members the right of automatic membership of the Claimant – those said members of the Defendant can continue with their tax practice.

I believe that it is very open to the law makers (as they have done) to determine the category of persons that can engage in tax practice, having upgraded such practice to the status of a profession. This, they have done, by providing for only such tax administrators and practitioners to be those who have been registered by the Claimant. As I stated earlier, they have conferred upon the Claimant the authority to determine the level of qualification and standard of knowledge of those persons "who are entitled ... to be enrolled as fellows, associate members, graduate members and student members" of the Claimant. See, again, section 8(2) of the CITN Act, and also, its section 10. In other words, the law has given to the Claimant the prerogative of determining who is, and who is not, engaged in

the new profession. No ambiguity will arise in such circumstances, as it is the Claimant that is fully "in charge" (by the provisions of the law) on the issue of defining and determining a member of the taxation profession.

The issue of some monopoly of the tax profession does not arise in such circumstances, as any such "monopoly" is to be enjoyed by all those (including members of the Defendant, members of the Association of National Accountants of Nigeria, legal practitioners, business administrators, etc.) who have met the criteria laid down by law to practice as professionals in a newly created professional field of endeavour. If the law has chosen to elevate tax practice to the status of a profession, then so be it. All that must be done to meet the standards of a profession, and ensure the discharge of the fiduciary duty of care of that professional to his clients, must be done in the manner required by that law.

No-one should be seen to stand against the "upping" of standards in whatever way this may be, because such "upping" of standards - the enhancement of the quality of service of those practising in a particular field of endeavour by turning that field into a profession – can only be for the Common Good. The law does not, of course, consider the interests of some category of members of the society to the exclusion of the interests of all others. It would, rather, consider a much-broader spectrum so that the interests, and welfare, of most are catered for. As the great jurist, Jeremy Bentham, proposed with his Utilitarian principle of law, laws are made to ensure "the most good for the most number of people".

It is for this reason also that I do not think that the issue of the curtailment of the Defendant's members' constitutional right to freedom of association properly arises, especially when it is remembered that one's fundamental rights may be curtailed in a manner permitted by law. In any event, it is at the election of the Defendant's members to join the Claimant, whilst their right to remain as members of the Defendant at the same time has not, at all, been taken away from them by the CITN Act. But certainly, whilst they stand as members of both the Claimant and the Defendant, their practice of the taxation profession will be governed by the Claimant, whilst their practice of accountancy will be governed by the Defendant. I do not believe that any confusion will arise; it is not a case of membership of two different bodies governing the same profession, but, rather, a case of membership of different bodies governing different professions. Tax practice is not the same as accountancy, but knowledge of accountancy gives one the ability to practice tax. I believe that it is in recognition of this fact that the Defendant (as explained by it in this suit) encouraged only that segment of its membership that wished to specialise in tax matters to form their own separate organisation – the Claimant – in order to protect and grow their area of specialty! That, in itself, is very telling as it shows that tax practice can be isolated from accountancy, and be "nurtured" into a profession that is all its own.

I should also explain that when the CITN Act, in its section 10, talks about a person being "entitled" to be registered as a member, it is only saying that

certain categories of persons (as defined in the Act) ought properly to be admitted to membership by the Council of the Institute. What it does, then, is to create an actionable wrong if such persons are denied membership for no just cause. The issue of eligibility for, or entitlement to, membership, therefore, does not amount to a back-handed recognition by the Act of the "vested rights" of the Defendant's members, as argued by defence Counsel. However, it protects the rights of all those who fulfil the laid-down criteria (and these will include chartered accountants) to be registered as members. It is those rights, I dare say, as now defined and conferred by section 10 that may properly be termed "vested rights". This is the new order that the CITN Act has come to create, and which new scheme of things must be accepted by all, and given due recognition by the courts.

I, again, do not agree with defence Counsel that because the Defendant has adequate means of ensuring that its own rules, regulations and disciplinary procedures will apply to any of its members that chooses to engage in tax practice, then therefore, there is no need for those members to be made to join the Claimant. In the first place, the CITN Act has created a clear distinction between the accountancy profession and the taxation profession. If the Council of the Institute of Taxation is to have overall superintendence of, and proper control over, **all** those who practice this newly created profession, as is the intendment of the Act, then it would, *au contraire*, lead to an absurdity, and to confusion, to have other bodies enforcing their own different rules and regulations, and disciplinary procedures, over them. The intended control that the Claimant has been given by law will be of no real use and effect, as its authority would be weak, and in its place will arise a Tower of Babel, with different governing councils speaking in different tongues on the same profession. That, I dare say, would not be in tandem with the intention of the law makers, as distilled from the clear, simple words of the CITN Act, by which they (the law makers) gave to the Claimant, the **sole** authority to regulate and control tax practice "in all its ramifications" (and here, I use the word "ramifications" advisedly), and to enforce discipline amongst tax administrators and practitioners.

Indeed, and looking at the letter received from the Chartered Institute of Taxation of the United Kingdom (exhibited with one Olubunmi Sowande's affidavit in support of the Counter-Claim, and thereon marked "S2"), I find that whilst conferring a "Recognised Status" upon chartered accountants engaged in tax practice, the Chartered Institute of Taxation of the United Kingdom also states, in Clause 44.14 of its "Schedule of Regulations for the Use of the Designatory Title 'Chartered Tax Advisers' by Firms and Companies", that:

> *The Institute's disciplinary rules **shall apply** to complaints against partners and directors in the tax practice who are **not** members of the Institute as it applies to complaints against members ....*

(The emphases are mine)

This, in my opinion, only stands to reason. If a person is to engage in a profession which is not by that profession's own code of conduct, he or she must be subject to the disciplinary rules of the professional body in question, if the standard of care that is demanded of all those practicing in that profession is to be met.

Using another analogy, the legal profession is a divided one in England and Wales. And so, whilst both solicitors and barristers have the same basic background in law, by choosing to veer into those separate routes, the solicitor will be governed by the rules, regulations and disciplinary procedures of The Law Society, whilst the barrister will be under the watchful eyes of the particular Inn of Court to which he or she belongs, as well as The General Council of the Bar. There is no absurdity, and there is no confusion – and this is so, notwithstanding the fact that Solicitors now have the right of audience in the smaller courts. Nor is there a duplication or merger, because, in the English context, solicitors' work and advocacy remain separate areas of practice.

But this, anyway, is not a case of some "divided" profession. As I stated already, the CITN Act, by making it mandatory for accountants engaged in tax practice to register with it, has not prevented those same accountants from continuing with their practice in accountancy. The Act makes provision for the Council of the Institute of Taxation to define what amounts to tax practice (or who is, and who is not, a tax administrator or practitioner) so that there will be no ambiguity or absurdity in determining when a person acts as a tax practitioner (for the purpose of coming under the Claimant), and when he or she acts as a chartered accountant, in which case, the professional rules of the Defendant will be applied.

There has also been a difference of opinion between the parties as to whether or not the Claimant can circulate its membership list to the various tax offices. In my opinion, it can do so, even though it has not been expressly conferred with the power to do so. It can do so because the circulation of the list is necessarily incidental to the power given to it to regulate and control the taxation profession "in all its ramifications".

I have made it plain, in this judgment, that I have followed the literal rule of construction. The law enjoins that I do so – unless such a step would lead to an absurdity. Indeed, the law makes it clear that the Literal Rule is the preferred option, so that the other rules of construction (the Golden Rule or the Mischief Rule) will only ever come to be applied as rare exceptions to the general trend. This only makes sense, as the Literal Rule ensures certainty – and there must be certainty in the law and in what it says if we are to prevent people from choosing to interpret laws in the way that it suits them, thus leading to a break down of law and order, and, in the end, anarchy.

I do not see that there will be any ambiguity or absurdity in applying the Literal Rule here, and for that reason, I am of the opinion that it is the only canon of construction that is open to my consideration, judging from the statutes in issue in this case.

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What is more, by adopting the Literal Rule, the law also enjoins that I do not look [illegible] previous state of the law. This I think again makes sense if laws are to be dynamic in order to meet with the challenges of a fast-changing society, especially in these present times when the world has more or less collapsed into one big "Global Village".

As was held by the Supreme Court in Victor Adegoke Adewumi & Anor. v The Attorney-General of Ekiti State & Ors. [2002] 2 NWLR (Pt. 751) 474, 512,

> In cases of statutory construction the court's authority is limited. Where the statutory language and legislative intent are clear and plain, the judicial inquiry terminates there. Under our jurisprudence, the presumption is that ill-considered or unwise legislation will be corrected through [the] democratic process. A court is not permitted to distort a statute's meaning in order to make it conform with the Judge's own view of sound social policy.

See also the more recent case of Nze Bernard Chigbu v Tonimas (Nigeria) Limited & Anor. [2006] 9 NWLR (Pt. 984) 189, 210.

I cannot but end by quoting the words of Lord Diplock in the case of Duport Steels Limited v Sirs & Ors. [1980] 1 WLR 142, 157, as referred to me by the Claimant's Counsel, as they are so apt. His Lordship stated as follows:

> My Lords, at a time when more and more cases involve the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British Constitution, though largely unwritten, is firmly based upon the separation of powers; Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is **confined** to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous, it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable.

Under our constitution it is Parliament's opinion on these matters that is paramount.

(The emphasis is mine)

The very same principles of law apply here in Nigeria.

In the final analysis, the main action herein succeeds, whilst the Counter-Claim fails. I, therefore, hereby pronounce as follows:

I. A DECLARATION IS MADE that taxation is legally recognised in Nigeria as a profession separate and distinct from the accountancy profession.

II. A DECLARATION IS MADE that the Claimant is vested with power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Defendant and any other professional body or Institute in Nigeria.

III. A DECLARATION IS MADE that it is illegal for any member of the Defendant who is not a member of the Claimant to practise, or hold himself out as practicing, as a tax administrator or tax practitioner for, or in expectation of, a reward in Nigeria.

IV. A DECLARATION IS MADE that it is unlawful for the Defendant to forestall or impede the Claimant's efforts to regulate tax practice.

V. AN ORDER OF PERPETUAL INJUNCTION IS MADE restraining members of the Defendant who are not members of the Claimant from practising, representing, or holding themselves out as tax administrators or practitioners in violation of the Chartered Institute of Taxation of Nigeria Act No. 76 of 1992, Cap. C10 of the Laws of the Federation of Nigeria 2004.

VI. The Counter-Claim, on its part, stands dismissed.

This is the judgment of the Court.

LATEEFA ABISOLA OKUNNU
JUDGE
m-476-003*

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