

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

APPEAL NO:SC/
APPEAL NO:CA/L/673/20

BETWEEN

**INSTITUTE OF CHARTERED ACCOUNTANTS
OF NIGERIA** }

APPELLANT

AND

**CHARTERED INSTITUTE OF TAXATION
OF NIGERIA** }

RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being dissatisfied with the decision of the Court of Appeal, Lagos Judicial Division dated 15th February, 2013 delivered by Adamu J. C.A, Rita Nosakhare Pemu J.C.A and Fatima Omoro Akinbami, J.C.A doth hereby appeal to the Supreme Court upon the grounds set out in Paragraph 3 and will at the hearing of the Appeal seek the reliefs set out in Paragraph 4.

AND THE APPELLANT further states that the names and addresses of the persons directly affected by the Appeal are those set out in Paragraph 5.

2. PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF.

That part of the decision wherein the Lower Court declared that the Respondent is vested with power to regulate and control the practice of taxation in all its ramifications to the exclusion of the Appellant or any other Professional body or Institute in Nigeria AND that it is unlawful for the Appellant to forestall or impede the Respondent's effort to regulate tax practice.

3. GROUNDS OF APPEAL

1 The Learned Justices of the Court of Appeal erred in law in refusing/neglecting to set aside the Judgment of the trial Court on grounds of lack of territorial jurisdiction by trial Court to make Countrywide declarations affecting practice of Taxation throughout Federal, State and Local Government levels.

PARTICULARS OF ERROR

- (A) The cause of action was the involvement of Members of the Appellate and the Respondent in Tax Administration at Federal, State and Local Government levels.
 - (B) Lagos State High Court lacks the jurisdiction to make declarations in respect of practice of Administration of Tax Profession throughout the whole of Nigeria.
 - (C) The Jurisdiction of Lagos State High Court is restricted to persons and issues within Lagos State respectively.
- II The Learned Justices of the Court of Appeal erred in law refusing/neglecting to set aside the Judgment of the trial Court on ground of want of jurisdiction over the subject matter of the Suit and over parties.

PARTICULARS OF ERROR

- (A) The parties to the Suit, are Professional bodies, through which Federal Government of Nigeria regulates two professions namely Accountancy and Tax Professions.
 - (B) The parties to the Suit are Agencies of Federal Government by virtue of their being the regulators of Accountancy and Taxation Professions.
 - (C) The cause of action in the trial Court deal with the regulatory powers and the exercise of powers conferred on two Agencies of Federal Government by the various enabling Federal Laws/Statutes.
 - (D) By virtue of Section 251(1) Q, R & S of the 1999 Constitution (as Amended) disputes involving exercise of powers of Federal Agencies are within the exclusive Jurisdiction of the Federal High Court.
- III The Learned Justices of the Court of Appeal erred in law, when after finding that necessary parties, namely, Appellant's members were not joined as parties, declined to strike out the suit filed by the Respondent.

PARTICULARS OF ERROR

(B) Having found that all necessary parties (Appellant's members) were not joined as parties to the Suit in the trial Court, Learned Justices of the Court of Appeal have the abiding duty to follow the decision in *AG LAGOS STATE v A-G FEDERATION* (2003) 12 NWLR (Pt. 833) pg 1 cited in the Appellant's brief by striking out the Suit on grounds of incompetence/improper constitution.

(B) By virtue of the doctrine of stare decisis, learned justices of the Court of Appeal are bound by the Supreme Court decision in the use of *AG LAGOS STATE v A-G FEDERATION* (2003) 12 NWLR (Pt. 833) pg1 cited to them by the Appellant.

IV The Learned Justices of the Court of Appeal erred in law when they upheld the declarations made by the trial Court that *"the Claimant is vested with power to regulate and control the practice of Taxation in all ramifications to the exclusion of the Defendant or any other Professional body or Institute in Nigeria"*.

PARTICULARS OF ERROR

(A) The Respondent's cause of action was not limited to the Appellant.

(B) The Respondent's cause of action covered other Professional bodies.

(C) No other Professional body except the Appellant was sued by the Respondent.

(D) Respondent's action was improperly constituted on account of non-joinder of other Professional bodies to the Suit.

(E) Learned Justices of the Court of Appeal ought to have struck out the Suit for want of all necessary and proper parties.

V The Learned Justices of the Court of Appeal erred in law, by holding that the Respondent's cause of action was *"constituted by the confusion surrounding the interpretation and application of the CITN Act which necessitated the Respondent to go to Court for a proper interpretation."*

PARTICULARS OF ERROR

- (A) Contrary to the decision of the Court of Appeal the Respondent's cause of action was the involvement of non-members of the Respondent in Tax Practice and Tax Administration despite the provisions of CITN Act.
- (B) Respondent's cause of action arose in 1992 when notwithstanding the provisions of Section 19 of the CITN Act non-members of the Respondent continued to act as Tax Practitioners and Tax Administrators.
- (C) Respondent did not commence an action in High Court of Lagos State until October 2005.
- (D) By virtue of Limitation Law of Lagos State, the Respondent's cause of action had become time barred.
- (E) The Court of Appeal ought not to have confirmed the Judgment of the trial Court in respect of a cause of action that had become time barred.

VI The Learned Justices of the Court of Appeal erred in law, by holding that the Respondent by virtue of CITN Act, is vested with exclusive right to control/regulate Taxation, Tax Practice and Tax Administration in Nigeria.

PARTICULARS OF ERROR

- (A) In arriving at their decisions learned Justices of the Court of Appeal relied wholly and exclusively on the provisions of the CITN Act.
- (B) Learned Justices of Court Appeal failed/neglected to specifically pronounce on the legal effect of other existing Laws namely Sections 334-335, 337 and Item 53 of the Second Schedule to the Companies and Allied Matters Act, on the non-exclusiveness of Tax Practice to Respondent's members. Section 55 of the Companies Income Tax Act.
- (C) The C.I.T.N Act is not superior to other existing Laws.

them on the right of other Professions to be involved in Tax Practice/Tax Administration.

- VII Learned Justices of the Court of Appeal erred in law by holding that CITN Act and ICAN Act are not taxing statutes or revenue generating statutes but rather they regulate the two respective professional bodies. The contention that the action before the lower Court related to the Revenue of the Federal Government is not correct and of no moment.

PARTICULARS OF ERROR

- (A) Contrary to the decision of the Court of Appeal, both statutes especially C.I.T.N Act focus on Tax Practice and Tax Administration.
 - (B) Tax Practice and Tax Administration deal with issues of revenue Federal and State Governments.
 - (C) Ascertainment of Taxes payable by Taxable persons by members of the Professions is fundamental to C.I.T.N Act and other existing Laws.
- VIII The Learned Justices of the Court of Appeal erred in Law by upholding the locus standi of the Respondent to rely on Section 19 of C.I.T.N Act as basis of declaratory action.

PARTICULARS OF ERROR

- (A) Section 19 of the C.I.T.N Act renders it criminal for any person to carry on business as a Tax Practitioner/Tax Consultant without being a member of the Respondent.
- (B) Section 19 C.I.T.N Act creates a public interest litigation right.
- (C) Public Law rights and public Law interest claims are improperly constituted without the Attorney-General of the Federation being a Claimant.
- (D) The Respondent lacks the locus standi to seek declaration and injunction in respect of C.I.T.N Act.

the Appellant's members still upheld the declaration and injunctions made by the trial Court.

PARTICULARS OF ERROR

- (A) An action is either properly constituted or not.
 - (B) Once the necessary parties are not before the Court, it is incumbent on the Court to strike out the Suit in its entirety.
 - (C) Learned Justices of the Court of Appeal having found that all necessary parties were not before the Court ought to have struck the Suit.
- X. The Learned Justices of the Court of Appeal erred in Law by not upholding the defence of waiver raised by the Appellant.

PARTICULARS OF ERROR

- (A) There was evidence on record that between 1992 and 2005 when the CITN Act was enacted and when the Respondent sued the Appellant, Appellant's members to the knowledge of the Respondent carried on business/was Tax Practitioners.
- (B) The Respondent by her admission had an understanding with the Appellant whereby Appellant's members who are not Respondent's members carried on business as Tax Practitioners.
- (C) Respondent waived her right to seek declaration against the Appellant and members on exclusivity of Respondent's right to regulate practice of Taxation/exclude non-members of the Respondent from Tax Practice.

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL:

- i. An Order setting aside the declaratory and injunctive orders granted by the trial Court and confirmed by Court of Appeal.
- ii. An Order dismissing the Respondent's Claim.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

THE APPELLANTS

**INSTITUTE OF CHARTERED
ACCOUNTANTS OF NIGERIA**

C/O THEIR COUNSEL

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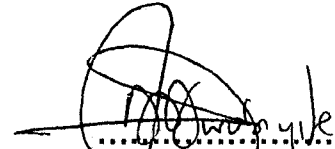
THE RESPONDENT

**CHARTERED INSTITUTE OF
TAXATION OF NIGERIA**

C/O THEIR COUNSEL

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DATED THIS 14TH DAY OF MAY, 2013



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