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COURT OF APPEAL
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28 SEP 2022
OKEDARA A. ADEJOKE (MRS)
SENIOR REGISTRAR
LAGOS, NIGERIA

filed on 28/9/22 @ 1.47pm
IN THE COURT OF APPEAL OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

APPEAL NO: CA/L/CV/1210/19

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

BETWEEN:

1. CHIEF AFOLABI IGBAROOOLA
2. ALHAJI ADEMOLA OGUNSESAN
3. DEACON T. J ISHOLA
4. MR. GBENGA AFOLABI
5. MR. BIODUN ADEDEJI

APPELLANTS/APPLICANTS

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*(For themselves and on behalf
of Licensed and Concerned members
of Institute of Chartered Accountants of Nigeria)*

AND

1. FEDERAL INLAND REVENUE SERVICES (FIRS)
2. CHARTERED INSTITUTE OF TAXATION OF NIGERIA (CITN)
3. CHIEF CYRIL IKEMEFUNA EDE
4. MR. MARK ANTHONY DIKE
5. MR. ADEFISAYO AWOGBADE

RESPONDENTS

*(For themselves and on behalf
of Licensed and Concerned members
of Chartered Institute of Taxation of Nigeria)*

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 6 RULE 1 OF THE COURT OF APPEAL
RULES 2021, SS.6 (6) & 241 OF THE FEDERAL REPUBLIC OF NIGERIA
(1999) CONSTITUTION (AS AMENDED), AND UNDER THE INHERENT
JURISDICTION OF THIS COURT

TAKE NOTICE that this Honourable Court shall be moved on theday
of..... 2022 at the hour of 9 o'clock in the forenoon or soon so thereafter as

Counsel to the Appellants/Applicants can be heard on a Motion praying the Honourable Court for the following orders:

AN ORDER of this Honourable Court for the grant of injunction pending Appeal which had been filed on the Judgment delivered on the 21st day of May 2019 by his Lordship: Hon. Justice A.O Faaji in Suit No: FHC/L/CS/1480/18 Between CHIEF AFOLABI IGBAROOOLA & 4 ORS V. FEDERAL INLAND REVENUE SERVICES (FIRS) & 4 ORS.

AND FOR SUCH further or other orders as this Honourable Court may deem fit to make in the circumstances in this case.


GROUNDS OF APPLICATION

1. There are serious issues of law for determination in view of the trial Court's judgment delivered on 21st day of May 2019 in this Suit.
2. The trial court is bound to determine only the issues formulated by the Appellants/Applicants and cannot be swayed to determine issues separately formulated by the Respondents as there is nothing known as Counter-claim in Originating Summons or Counter-Originating Summons in law.
3. The determination of the provisions of Chartered Institute of Taxation Act being a distinct profession from Accounting is not part of the issues for determination brought by the Appellants/Applicants before the trial court as same had already been determined in both M/476/2005 and CA/L/673/07.
4. That the issues determined in M/476/05 and CA/L/673/07 are declaratives in nature which do not affect the rights of the Appellants/Applicants as tax agents recognised by the 1st Respondent i.e. Federal Inland Revenue Service.
5. That the trial Court is bound by principle of stare decisis which are incorporated as a Constitutional matters by reference.
6. The non-consideration of the Reply on Point of Law filed by the Appellants/Applicants to the 2nd – 5th Respondents' Counter affidavit and written address has made the judgment of the court to be lacking in character of a legitimate adjudication.

7. Non consideration the Appellants/Applicants' Reply on Point of Law dated 15th November 2018 to the Counter affidavit and written address of the 2nd – 5th Respondents has raised issue of fair hearing.

Dated this 26th day of Sept 2022

Prepared by:



Olaniyi George Esq.,

Olaniyi George & Co.,

Appellants/Applicants' Counsel,

34, Oyo Road, Leventis Bus-Stop,

Cocacola Area,

Ibadan, Oyo State.

08037866716; 08059278794

georgeolaniyi@nigerianbar.ng

FOR SERVICE ON:

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Zone 5 Wuse, Federal Capital Territory, Abuja,

OR

2, Catholic Mission Street, Lagos Island, Lagos State;

2nd – 5th RESPONDENTS

Prof. Abiola Sanni,

Emeka Ihebie, Esq.,

Chukwuemeka Eze Esq.,

ASCO Suite,

Moore House (Second Floor),

151 Herbert Macaulay Way,

Adekunle Yaba, Lagos.

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5. MR. ADEFISAYO AWOGBADE

*(For themselves and on behalf
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AFFIDAVIT IN SUPPORT OF APPLICATION

I, Raji I. Adebisi, Male, Muslim, a Legal Practitioner with Olaniyi George & Co and a Nigerian of No 34 Oyo Road, Leventis Bus Stop, Cocacola Area, Oyo State of Nigeria do hereby make oath and state as follows:

1. I am a Legal Practitioner with Olaniyi George & Co, a firm of Legal Practitioners retained by the Appellants/Applicants in this Suit and by virtue of my aforesaid

position and unrestricted access to the file of this case I am conversant and familiar with the facts and circumstances of this case.

2. I have the permission, authority and consent of the Appellants/Applicants and that of my principal Counsel to depose and swear to this affidavit in support of the present application.
3. I know that Originating Summons was taken out by the Appellants/Applicants against the Respondents herein on the 10th day of September 2018 seeking the indulgence of the Court for the interpretations of some questions of law amongst many other things which include reliefs, order of specific performance and injunction.
4. I know that after exchange of processes among the parties, the Amended Originating Summons was heard and Judgment was delivered by the trial Court on the 21st day of May 2019 against the Appellants/Applicants when the lower Court dismissed the Amended Originating Summons of the Appellants/Applicants. *Attached herewith is a copy of Certified True Copy of Judgment in this Suit delivered on the 21st day of May 2019 and marked as **EXHIBIT A.***
5. I know that after the judgment the Appellants/Applicants and other stakeholders met to discuss the judgment of this court and later took decision to appeal the judgment delivered by the lower Court on the 21st day of May 2019 and consequently further briefed Olaniyi George of counsel with instruction to take up the prosecution of the Appeal and to file all necessary processes from the 28th day of May 2019.
6. The Appellants/Applicants being dissatisfied with the said judgment delivered by the lower Court on the 21st day of May 2019 against them quickly caused the firm of Olaniyi George & Co to file a Notice of Appeal in respect of the judgment. *A copy of the Notice of Appeal filed is attached hereto and marked as **EXHIBITS B.***

7. I know that the Appellants/Applicants also filed an application for an injunction pending appeal before the lower court against the Respondents in the judgment delivered in Suit No: **FHC/L/CS/1480/18**.
8. I know that Olaniyi George of Counsel who is my principal informed me on the 24th day of September 2022 in his chamber at the hour of 2 O' clock in the afternoon and I verily believe him as follows:
 - (a) That there is need to file application for injunction pending Appeal before this Court as the lower Court has become functus officio upon the entry of the Appeal in the Court of Appeal and the earlier filed injunction pending appeal before the said lower Court has been overtaken by event; hence this present application with this affidavit.
 - (b) That this application for an injunction pending appeal before this Honourable Court is not an abuse of Court process.
 - (c) That there is need to file Notice of Appeal in respect of the judgment to encompass all issues to be ventilated before the Court of Appeal.
9. I know that Olaniyi George of Counsel further informed me on the 24th day of September 2022 in his chamber at the hour of 2 O' clock in the afternoon and I verily believe him as follows:
 - (a) That he had read the final judgment of the lower Court delivered on the 21st day of May 2019 and that there exist grounds of appeal therein.
 - (b) That the Court inadvertently omitted to consider the Appellants/Applicants' Reply on Point of Law which is a complete answer to all the issues raised by the Respondents in their Counter Affidavits and Written Addresses.

- (c) That the Court is bound to determine questions brought for determination by the Appellants/Applicants and not counter formulation of issues brought by the Respondents.
 - (d) The cases of **N. N. P. C. V FAMFA OIL (2012) 17 NWLR PT. 118) 195** and **ALI V. OSAKWE (2009) 14 NWLR (PT. 1160) 75** **relied upon by the Court are inapplicable and are** distinguishable from the facts and circumstances of the case before the court.
 - (e) The cases of **N. N. P. C. V FAMFA OIL (2012) 17 NWLR PT. 118) 195** and **ALI V. OSAKWE (2009) 14 NWLR (PT. 1160) 75** are applicable where there is conflict in a statute and the subsidiary legislation made thereunder and not the subsidiary legislation made under another legislation.
 - (f) The appropriate authority relevant in the instant case is that of **ABIA STATE UNIVERSITY, UTURU V. ANYAIBE (1996) 3 NWLR (PT. 439) 646** where it was held that a rule made under an enabling provision has the same status as the enabling statute in case of conflict with another statute.
 - (g) That this Court has duty to always preserve "res"
10. I verily believe that the Notice of Appeal contained substantial and arguable grounds of law.
 11. I know that the Respondents did not counterclaim in the suit and the Respondents are threatening to enforce the said judgment.
 12. It is a fact that unless restrained by this Honourable Court, the Respondents will take steps to enforce the judgment against the economic interest of the Appellants/Applicants.

-
13. I know that immediately after the judgment the Respondents had continued to say it loud and clear that they would go ahead to enforce the judgment and that heaven will not fall regardless of our post judgment application.
 14. The Respondents have vowed through their agents not to respect the order of Court in any post judgment application in respect of this matter.
 15. The Appellants/Applicants undertake to compensate the Respondents in damages in the unlikely event that the appeal is unsuccessful.
 16. I verily believe that irreparable damage will be done to the Appellants/Applicants if the said judgment is enforced before the appeal is heard.
 17. Olaniyi George Esq. informed me also in his chambers on 24th day of September 2022 in his chamber at the hour of 2 o' clock in the afternoon and I verily believe him as follows:
 - i. An injunction restraining the Respondent herein is desirable in that the appeal is competent and arguable on its merits;
 - ii. An injunction will preserve the subject matter of this action; and
 - iii. Unless an injunction is granted, the appeal before this Honourable Court if successful will be rendered nugatory and the Appellants/Applicants will suffer irreparable damage.
 18. The Respondents will not be prejudiced if this application is granted.
 19. It is in the interest of justice that for the appeal before this Honourable Court to be made meaningful, this Honourable Court needs to restrain the Respondent from enforcing the judgment of the lower Court pending the final determination of the appeal.
 20. The interest of justice will be better and more expeditiously served if this application is granted.
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21. I swear to this affidavit in good faith and in accordance with the provisions of the Oaths Act in force.

[Signature]
DEPONENT

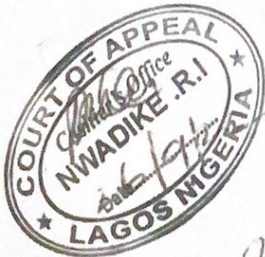
Sworn to at the Court of Appeal Registry,
Court of Appeal, Lagos.

This 26th day of September 2022.

BEFORE ME

OKEDARA A. ADEJOKE (MRS)
SENIOR REGISTRAR
COMMISSIONER FOR OATHS
APPEAL
LAGOS

Motion	-	₦3,000.00
Costs filing	-	₦ 300.00
Order	-	₦ 500.00
Exch's	-	₦ 200.00
W/H	-	₦1,000.00
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		₦6,000.00



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*(For themselves and on behalf
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4. MR. MARK ANTHONY DIKE RESPONDENTS
5. MR. ADEFISAYO AWOGBADE

*(For themselves and on behalf
of Licensed and Concerned members
of Chartered Institute of Taxation of Nigeria)*

**APPELLANTS/APPLICANTS WRITTEN ADDRESS IN SUPPORT OF
APPLICATION FOR INJUNCTION PENDING APPEAL**

1.0 INTRODUCTION

- 1.1 This is a post judgment application brought pursuant to Order 6 Rule 1 of the Court of Appeal Rules 2021, Ss.6 (6) & 241 of the Federal Republic of NIGERIA (1999) Constitution (as amended), and under the inherent jurisdiction of this court. The application is praying this court for an order of injunction

pending appeal filed against the final judgment delivered by the lower Court on the 21st day of May 2019.

1.2 The Application is supported with a-21 paragraph Affidavit sworn to by Raji I. Adebisi, and attached to the said Affidavit are 2 (two) Exhibits.

2.0 **BACKGROUND FACTS**

2.1 The facts relevant to the just determination of this application are as contained in the Affidavit in support of this Application my Lords.

3.0 **ISSUE FOR DETERMINATION**

3.1 The Appellants/Applicants formulated a lone issue for determination of this court:

“Whether in view of the available facts and the state of the law, the Appellants/Applicants are not entitled to the grant of injunction pending appeal against the judgment delivered on the 21st day of May 2019.

- 3.1 We submit that a post judgment application of this nature falls within the discretionary power of the Court. It is not granted as a matter of course as the onus is on the Applicants who desire the grant or exercise of this discretionary power in his favour to persuade the Court on compelling, serious and convincing grounds why application for injunction pending the Appeal should be granted. Needless to say the discretion of the Court needs not to be exercised in vacuo but to be exercised both judicially and judiciously.
- 3.2 We submit that Appellate Courts had captured factors to be considered when Courts are faced with this kind of application. In the case of **MBADIWE V. I.N.E.C (2010) ALL. F.W.L.R Pt. 547 Pg. 745 PP 7.63 Paras E-H** the Court dealt with some special circumstances that must be established to warrant a grant of the application for injunction pending appeal.
- 3.3 The circumstances are to be interpreted disjunctively and not conjunctively; in other words, it is sufficient if the Applicants can establish a prima facie evidence in respect of one of them. It is not part of the duty or burden of the Applicants at this stage to show or demonstrate beyond reasonable conclusion that the points or grounds ventilated on appeal has hundred percent (100%) success rate. It is

sufficient and suffices for the Applicants to create and cast a doubt on issues that tilt the judgment against them initially.

- 3.4 In the instant case the Applicants before this Court have filed Notice of Appeal dated 30th day of May 2019. It is therefore our submission that an application for an order of injunction pending appeal necessarily presupposes that the Applicants must have a right of Appeal which is being or is to be exercised; also, the Applicant must have a valid and pending Notice of Appeal. The Applicants herein had filed their Notice of Appeal and same are exhibited as **Exhibit B**. we are quick to say that the right of appeal being exercised by the Applicants herein is a right conferred upon them by the Constitution specifically by virtue of the provisions of S. 241 (1) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)
- 3.5 The Notice of Appeal dated 30th day of May 2019 contained serious issues bothering on fair hearing; which is a very fundamental threshold issue in our adversarial judicial system and can be raised at any time; even on Appeal for the first time. The complaint on issue of fair hearing can lead to nullity of the decision of the lower court if upheld by the Appellate Court. SEE: **ZIDDEEH V. RIVERS STATE CIVIL SERVICE COMMISSION (2007) LPELR-344 (SC)** which is to the effect that any decision reached in breach of the rules of natural justice will be set aside.
- 3.6 In effect, one of the cardinal principle of our judicial system is the adoption of equal treatment, equal opportunity, and equal consideration to all parties and matters concerned before the court. This is because justice must not only be done it must manifestly and undoubtedly be seen to have been done. SEE: **ADIGUN V. A. G. OYO STATE (1987) 1 NWLR (PT. 53) 678.**
- 3.7 We therefore urge this Court to allow the Applicants/Appellants herein to test this issue of fair hearing which is already ventilated via a Notice of Appeal referred to as **Exhibit B** at the Appellate Court in the interest of justice because this ground alone discloses serious or substantial issue of law for determination. We cannot also run away from the fact that this ground of Appeal is substantial and arguable.

- 3.9 It is not in doubt that the parties were in ad idem and this is supported by CITN Act that members of ICAN are qualified to practice as Tax Practitioners/Agents. It will seem to be right to allow this matter and the judgement to be tested at the Appellate Court. The veering of the court into the judgement of the Court of Appeal in Appeal No: CA/L/673/07 between CITN V. ICAN is totally misapplied and more importantly the Court of Appeal Judgement in favour of CITN are declarative in nature which do not affect the rights of the Appellants/Applicants in the present case.
- 3.10 We therefore urge this Court to grant this application so that this and other issues that tilt judgment against the Appellants/Applicants could be tested and recaptured by the Appeal Court. We urge my Lord to grant this application in the interest of justice.
- 3.11 Also, issue of subsidiary legislation is made a serious issue by virtue of ground nine of the notice of appeal and what is supposed to be a proper approach of interpretation by the court. This is particularly captured by the particulars of error underground nine of the notice of appeal
- 3.12 We therefore urge this court to allow the applicant/appellant in this instant case to test whether issue of subsidiary legislation will apply vertically or horizontally, that is whether inter or intra and this is a serious recondite issue of law in view of the approach of the court in the judgment being appealed.
- 3.13 It is also contended in favour of this application that where there is need to preserve the res so as not to render the decision of the appellate Court nugatory. It is desirable to grant such application. **The present case qualifies to enjoy the luxury of this discretion because the Respondents in this suit did not win the case it is only that the Appellants/Applicants Amended Originating Summons was dismissed.** This is so because the Appellants/Applicants according to the Court did not discharge the onus to grant their reliefs; however, the Respondents herein did not counterclaim and they did not have anything to lose if this order is granted. For the purposes of this appeal already filed and in line with plethora

authorities we hereby urge this Court to grant this application so as to preserve the res pending the final determination of the appeal.

3.14 We submit sir that it will be in the interest of justice to grant this application having regard to facts and circumstances of this case. The chiefest of the all issues for this application are contained in all the grounds of appeal attached to this present application. Also, attention of this Court is drawn to ground seven of the Notice of Appeal.

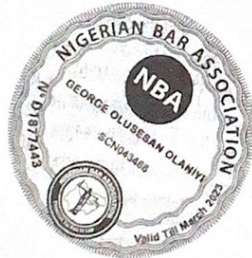
3.15 Finally, we enjoin the Court to be persuaded by authority in **MRS.VERONICA OLOJEDE & ORS V. MR. ADEOLA A.B OLALEYE & ORS (2010) 4 NWLR Pt. 1183 1 @ 12-13**

One of the cardinal factors that guarantee the grant of injunction pending appeal is the existence of a valid appeal. Furthermore, the grounds of appeal must be substantial and arguable or raise recondite points of law which are capable of swaying pendulum of justice one way or the other and at best in favour of the Appellant/Applicant.

3.16 We hereby urge my Lord to grant this application to essentially protect the res pending the final determination of the appeal lodged against the judgment of this Court delivered on the 21st day of May 2019.

We are most obliged.

Dated this 26th day of Sept 2022



George Olaniyi
Olaniyi George Esq.,
Olaniyi George & Co.,
Appellants/Applicants' Counsel,
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FOR SERVICE ON:

1st RESPONDENT

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OR**

2, Catholic Mission Street, Lagos Island, Lagos State;

2nd – 5th RESPONDENTS

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Adekunle Yaba, Lagos.