

IN THE COURT OF APPEAL
LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
ON FRIDAY THE 15TH DAY OF FEBRUARY, 2013
BEFORE THEIR LORDSHIPS:

ADAMU JAURO

JUSTICE, COURT OF APPEAL

RITA NOSAKHARE PEMU

JUSTICE, COURT OF APPEAL

FATIMA OMORO AKINBAMI

JUSTICE, COURT OF APPEAL

CA/L/673/07

BETWEEN:

**INSTITUTE OF CHARTERED
ACCOUNTANTS OF NIGERIA**

.....

APPELLANT

AND

**CHARTERED INSTITUTE OF
TAXATION OF NIGERIA**

.....

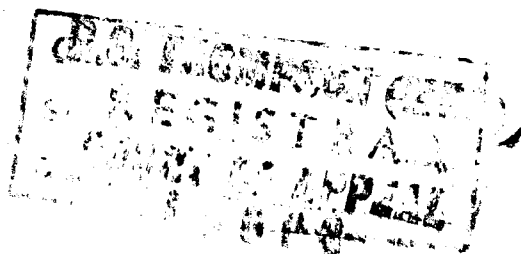
RESPONDENT

JUDGMENT
(DELIVERED BY ADAMU JAURO, J.C.A.)

This is an appeal against the judgment of the High Court of Lagos State, Lagos Judicial Division delivered on 12th day March, 2007 by Hon. Justice L. A. Okunnu in Suit No.M/476/2005.

Simply put, the facts culminating in this appeal can be summarised as follows: Both the Appellant and the Respondent are professional bodies established by statutes namely, the Institute of Chartered Accountants of

CA/L/673/2007



Nigeria (ICAN) Act of 1965 (now Cap.111, Laws of the Federation 2004) and Chartered Institute of Taxation of Nigeria (CITN) Act No.76 of 1992 (now Cap.C10 LFN 2004). Before the establishment of the Chartered Institute of Taxation in 1992, tax practice was generally unregulated and carried on by Lawyers, Accountants, Economists, Actuaries and other professionals and non professionals alike. The CITN Act was promoted by members of the Appellant herein with Lawyers, Tax Administrators and other professionals, in order to have a common platform for the regulation of tax practice in Nigeria. Many members of the Appellant interested in tax practice joined the Respondent in their individual capacity upon satisfying the conditions prescribed by the Respondent.

In 2004, a dispute arose between the two professional bodies and the Appellant was of the view that its members should not have to register with the Respondent before engaging in tax practice. Attempts to resolve the dispute failed and the Respondent forwarded all the names of its registered members to tax authorities in Nigeria for their notice and appropriate action and directed them not to deal with anyone not registered with it. In reaction to the steps taken by the Respondent, the Appellant called for an Extra Ordinary General Meeting in Abuja, where a resolution calling on all its members to withdraw from the Respondent and continue with their tax practice, was adopted. Consequent upon the resolution, several members of the Appellant resigned their membership of the Respondent and continued holding themselves as tax practitioners. Several efforts to resolve the dispute proved futile and abortive, as the

Respondent insisted that members of the Appellant must be registered with it before engaging in tax practice.

Based on the foregoing, the Respondent as Claimant by an Originating Summons dated 14th October, 2005 asked for the determination of following questions:

- "1. In view of sections 1 and 19 of the Institute of Chartered Accountants of Nigeria Act No15 of 1965 Cap.111 LFN 2004 (ICAN Act) and sections 1 & 19(2) of the Chartered Institute of Taxation of Nigeria Act No.76 of 1992 Cap.C10 LFN 2004 (CITN Act), whether or not 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 and sections 1, 10, 11, 16 & 19 of the Chartered Institute of Taxation of Nigeria Act No.76 of 1992 Cap.C10 LFN 2004, whether or not the claimant is vested with the 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.
3. Having regard to section 1, 14, and 19 of the Institute of Chartered Accountants of Nigeria Act No.15 of 1965 Cap.111 LFN 2004 (ICAN Act) and section 1(c) & 20(2) of the Chartered Institute of Taxation of Nigeria Act No.76 of Cap.10 LFN 2004, whether it is lawful for any member of the Defendant who is not a member of the Claimant to practice or hold himself out to practice as a tax administrator

or practitioner for or in expectation of a reward in Nigeria.”

The Respondent thereupon asked for the following reliefs:

- “1. **A DECLARATION** that Taxation is legally recognised in Nigeria as a profession separate and distinct from Accountancy Profession.
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 response to the Claimants claims in the Originating Summons, the Defendant now Appellant filed a counter affidavit, written address and a

counter claim seeking in turn for the determination of the following questions.

- 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."

The Defendant now Appellant, thereupon asked for the following reliefs:

- (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 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] compilation 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 Claimant filed a reply address to the Defendant and in opposition to the counter-claim filed a counter affidavit and a written address. The Defendant also filed a reply address on the counterclaim. Both parties adopted their respective addresses on 13th December, 2006, and in a

judgment delivered on 12th March, 2007, the lower court dismissed the counterclaim and entered judgment in favour of the claimant as follows:

"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. AND 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."

The Defendant evidently displeased and dissatisfied with the decision of the lower court, challenged same vide a notice of appeal and notice of additional grounds of appeal dated 13th March, 2007 and 11th June, 2007 respectively. In strict compliance with the Rules of Court, briefs of argument were filed and exchanged. The appellant's brief of argument is dated 4th February, 2008 and filed on 8th February, 2008 but deemed properly filed and served on 11th June, 2008. The Appellant's Reply Brief is dated 14th May, 2010 and filed on 17th May, 2010 but deemed properly filed and served on 8th March, 2011. The Respondent's brief of argument dated 6th October, 2009 and filed on 7th October, 2009 but deemed properly filed and served on 10th February, 2010.

Prof. Taiwo Osipitan SAN leading Mrs. Olayemi Badewole and Ayodeji Awobiye Esq., for the Appellant, adopted the Appellant's brief and the Reply Brief in urging the court to allow the appeal. Learned Senior Counsel argued that the lower court went beyond its jurisdiction in making a nationwide order and the non-joinder of ICAN members is also fatal to the case as parties whom the order was made against were not before the court. Learned Senior Counsel submitted that the lower court was wrong, as only the Hon. Attorney General of the Federation can enforce the provisions of Section 19(4) of the CITN Act, which criminalises certain actions. It was urged on behalf of the Appellant that the appeal be allowed. Dr. Abiola Sanni leading Kunle Akinpelu Esq., for the Respondent adopted and relied on the Respondent's brief in urging the court to dismiss

the appeal with substantial costs and affirm the judgment of the trial court. Learned Counsel argued that the appeal related to the interpretation of the statutes involving the two professional bodies whose offices are within Lagos and has nothing to do with either the Revenue of the Federation or the prosecution of anybody. Learned counsel contended that Order 2 Rule 4(1) of the High Court of Lagos Civil Procedure Rules 2004, neatly disposes the matter of jurisdiction. In concluding, the Respondent urged the court to dismiss the appeal with substantial costs.

The Appellant distilled ten issues for determination from the grounds of appeal filed. The said issues as contained on pages 4 and 5 of the Appellant's brief, are hereby reproduced thus:

- "(1) Whether the learned trial Judge has jurisdiction to entertain the Respondents suit which deals with the interpretation of CITN Act, (an Act within the exclusive legislative competence of the National Assembly).
- (2) Having regard to Section 270(1) and 272(2) of the 1999 Constitution which restricts the territorial Jurisdiction of Lagos State High Court to Lagos State, to the geographical boundary of Lagos State, whether the Court below has or lacks Jurisdiction to entertain an action against all members of Appellant who are engaged in Tax Practice all over Nigeria and their relationships with Federal and all State Tax Authorities/Bodies.
- (3) Whether the Learned trial Judge has or lacks the jurisdiction to entertain the Respondent's Suit which deals with the ascertainment of Taxes payable by individuals and corporate

bodies across the Country and the revenue of Federal and State Governments.

- (4) Whether having regard to the criminal nature of the Respondent's cause of action i.e. alleged contravention of the provisions of Section 19(4) of Chartered Institute of Taxation of Nigeria Act, the Learned trial Judge rightly or wrongly upheld the *locus standi* of the Respondent to institute preventive declaratory action and to seek injunctive reliefs against the Appellant and Appellant's members with a view to enforce criminal Law.
- (5) Whether the Respondent, not being a body empowered to act as Tax Practitioner/Administrator, has the *locus standi* to seek declaration and injunction aimed at preventing the Appellant's members who are not the Respondent's members from acting or holding themselves out as Tax Practitioners/Administrators.
- (6) Whether the Respondent's action was properly or improperly constituted having regard to the non-joinder of Appellant's members, who are not the Respondent's members and against whom reliefs were sought in and granted by the court below.
- (7) Whether in the light of the principle of *stare decisis*, learned trial Judge, rightly or wrongly ignore the binding decision of the Supreme Court in **AG. of Lagos State vs. AG. of the Federation (2003) 12 NWLR (Pt.833) P.140** on the need to join persons who are

likely to be affected by the order/decision of the court as parties to the Suit.

- (8) Whether the learned trial Judge rightly or wrongly held that the Respondent's action was neither time-barred nor unaffected by equitable principles of laches and acquiescence.
- (9) Whether the Learned trial Judge correctly construed the CITN Act as a statute which wholly and exclusively regulates Tax Practice in Nigeria and which has clearly and unequivocally abolished the rights of Appellant and her members and other Professional bodies to be involved in Taxation, Tax Practice in and Tax Administration in Nigeria.
- (10) As construed by the Learned trial Judge, whether the provisions of the CITN Act which compels the Appellant's members to register as members of CITN as a condition for acting and continuing to act as Tax Practitioners/Administrators does not violate the rights of Appellant's members to freely belong to body or Association of their choice.

The Respondent on its part, nominated five issues for determination in response to the Appellant. The said issues are as follows:

"ISSUE NO.1

Whether the Lagos High Court lacked jurisdiction to entertain the Respondent's originating summons?

ISSUE NO.2 – LOCUS STANDI

Whether the Respondent has locus standi to enforce the penal provisions of the CITN Act.

ISSUE NO.3 – NON JOINDER

Whether the declaratory orders by the Trial Court are vitiated by non-joinder of individual members of the Appellants?

ISSUE NO.4 – WAIVER & EQUITABLE PRINCIPLE OF LACHES

Whether the Respondent's action can be defeated by the equitable principle of laches?

ISSUE NO.5 – INFRINGEMENT OF FREEDOM OF ASSOCIATION

Whether the CITN Act impinges upon the right of Appellant members to associate?"

The issues for determination submitted by both parties to the appeal are virtually identical, hence the issues formulated by the Appellant will be adopted in the resolution of the appeal.

Issues 1, 2 & 3: SUBJECT MATTER/TERRITORIAL JURISDICTION

The issues herein challenged the jurisdiction of the lower court and it was contended that jurisdiction can be raised for the first time on appeal or by the court *suo motu*. In support, reference was made to **Bronik Motors v. Wema Bank Ltd. (1983) 6 SC 272**, **Galadima v. Tambai (2002) 6 SC (Pt.1) 196**. The Appellant posited that the two aspects of jurisdiction relevant to this appeal are subject matter and territorial

jurisdiction. In support, reference was made to **Tukur v. Govt. Of Gongola State (1989) 4 NWLR (Pt.117) 517 at 560 – 561**. It was also contended that by Section 6(1), Section 270(1) and Section 272(1) of the 1999 Constitution, Lagos State High Court lacks extra territorial jurisdiction, hence it has no jurisdiction over persons and causes of action which arise outside the geographical boundary of Lagos State. In support, reference was made to the following cases: **Rivers State Govt. & Anor v. Specialist Konsult (Swedish Group) (2005) 2 SC (Pt.1) 121, N.B.C. v. Nwaneri (2000) 14 NWLR (Pt.686) 30 at 39, Nweke v. Udobi (2001) 5 NWLR (Pt.706) 445, Ibori v. Ogboru (2005) 6 NWLR (Pt.920) 136, Nnodim v. Amadi (1993) 1 NWLR (Pt.271) 568 at 584, Ibidokun v. Adaralode (2001) 12 NWLR (Pt.727) 268 at 311, Ngige v. Capital Bancorp Ltd. (1997) 71 at 80 – 81.**

On territorial jurisdiction, the Appellant stated that its members reside and practice in all States of the Federation and the Federal Capital Territory. It was further contended that the Respondents cause of action can be traced to Extra Ordinary General Meeting of the Appellant held in the Federal Capital Territory, Abuja in 2005. The Appellant argued that the High Court of Lagos State lacks country wide jurisdiction over all persons and subject matter beyond the geographical boundary of Lagos State.

On the subject matter jurisdiction, it was contended that by Section 4(2) and item 49 of the 2nd schedule, Part 1 of the 1999 Constitution and CITN Act, the regulation of Taxation profession is within the legislative competence of the Federal Government. It was submitted that by Section 7 (1)(i) of the Federal High Court Act as amended by Section 2 of the

Federal High Court (amendment) Decree No.60 of 1991, matters within the legislative competence of the National Assembly are outside the jurisdiction of the State High Court. In support, reference was made to **Omnia (Nig) Ltd. v. Dyktrade Ltd. (2007) 15 NWLR (Pt.1058) 576 at 604 paragraphs E-F.** Based on the foregoing, it was argued that Lagos State High Court lacked jurisdiction to entertain the suit.

It was contended that Tax Practice involves computation and ascertainment of Taxes payable to Federal Taxing Authorities and invariably impact on the Revenue of the Government of the Federation. It was submitted that issues affecting Taxation of companies subject to Federal Taxes and Revenue of the Federal Government are by virtue of Section 251(a) of the 1999 Constitution within the exclusive jurisdiction of the Federal High Court. Based on the foregoing, it was argued that a State High Court lacks jurisdiction to entertain issues which will affect the revenue of the Government of the Federation and Taxation of companies and persons subject to Federal Taxes. In support, reference was made to **NPA v. Eyamba (2005) 12 NWLR (Pt.939) 409 at 441, FHA v. John Shoy International Ltd. (2005) 1 NWLR (Pt.908) 637 at 630.**

In response and by way of introduction, cause of action was defined to mean a totality of material facts necessary to establish a legal right in each particular case. In support, reference was made to **Lasisi Fadare & Ors. v. Att. Gen of Oyo State (1982) 4 SC 1 at 67.** It was submitted that the contention that the Extra Ordinary General Meeting was the cause of action, was a misconception. It was argued that it was when the Appellant's members turned up at the Respondent's office in Lagos to

submit their resignation letters which crystallised the dispute. Hence it was posited that the cause of action arose in Lagos not in Abuja and the Lagos State High Court rightly exercised jurisdiction by virtue of Order 2 rule 4(1) of the High Court of Lagos (Civil Procedure) Rules 2004. The said provision, Respondent stated is to the effect that all other suits may be commenced in the judicial division in which the Respondent resides or carries on business. It was further argued that irrespective of where the Appellant held its Extra Ordinary General Meeting, it cannot be denied that both parties had and still have their headquarters in Lagos and their principal officers are resident in Lagos. The cause of action, Respondent posited was a disobedience of CITN Act.

On the nature of the subject matter, it was contended that the issue before the trial court was in no way related to the computation and ascertainment of taxes payable to the Federal Government. The Respondent argued that the issue before the court was about construction of CITN Act, the scope of the powers of the Respondent to regulate taxation profession in Nigeria and not Taxation or revenue of Government. On the definition of revenue, reference was made to **Mokelu v. Federal Commissioner for Works & Housing (1976) 3 SC 35**. It was further submitted that the ICAN Act and CITN Act, whose provisions were called into question are not taxing statutes or revenue generating statutes. It was argued that if there is a dispute between the parties on the extent of powers conferred by their respective statutes, the jurisdiction falls on State High Courts.

It was also submitted that the Federal High Court (Amendment) Decree No.60 of 1991 has been superceded by Decree No.16 of 1992 and finally by Section 251 of the 1999 Constitution. Hence it was posited that the jurisdiction of the Federal High Court is entrenched in Section 251 of the 1999 Constitution. It was further submitted that the Federal High Court Act, Cap F12 Laws of the Federation of Nigeria 2004 does not contain any provision which vest exclusive jurisdiction on the Federal High Court on matters within the Legislative competence of the National Assembly. It was contended that Decree No.60 of 1991 is not an existing Law and that the purport of Section 315 of the 1999 Constitution is not to revive a repealed or a dead law, but a transition arrangement to ensure that no vacuum is created. In support, reference was made to "The Constitutional Law of India" by H.M. Servai, Volume 2 page 1228 and **Attorney General of Benue State v. Ogwu & Anor (1983) 4 NCLR 213.** It was submitted that Section 7(1)(i) of the Federal High Court Act as amended by Section 2 of the Federal High Court (Amendment) Decree No.60 of 1991 is inconsistent with Sections 251 and 272 of the constitution and therefore null and void to the extent of its inconsistency with the said provisions. In support, reference was made to **Western Steel Works v. Iron & Steel Works Union of Nigeria & Ors. (1987) 1 NSCC 133 at 140.**

It was also contended that the said Section 7(1)(i) of the Federal High Court Act as amended by Decree No.60, has been declared to be inconsistent with the provisions of the 1999 Constitution. In support, reference was made to, **Honourable Minister for Works & Housing v.**

Tomas Nig. Ltd. (2002) 2 NWLR (Pt.752) 740 at 776. On the case of **Omnia (Nig) Ltd. v. Dyktrade Ltd (supra)**, the Respondent argued that it not only predates the 1999 Constitution but relates to Trademarks and passing-off which are matters within the exclusive competence of the Federal High Court by Section 251(1)(f) of the constitution. In concluding, it was urged that the State High Court had jurisdiction.

The Appellant contended that the lower court lacked the jurisdictional competence to adjudicate over the matter. Learned Senior Counsel for the Appellant, argued the jurisdictional incompetence from both the territorial as well as subject matter perspective. The contention of the Appellant is that the cause of action arose in Abuja, pursuant to the Extra Ordinary General Meeting of the Appellant. A brief consideration to determine the cause of action in the instant appeal will be made anon. Cause of action has been defined to mean fact or facts which establish or give right to a right of action. It is the factual situation which gives a person a right to judicial relief. See **Egbe v. Adefarasin (1987) 1 SC 1 at 34**, **Oshoboja v. Amuda (1992) NWLR (Pt.250) 690**, **Adah v. NYSC (2004) 13 NWLR (Pt.891) 639**; **Sanda v. Kukawa Local Govt. (1991) 2 NWLR (Pt.174) 379**, **Peacegate Oil & Gas Ltd. v. Hydrive (Nig) Ltd. (2012) 17 NWLR (Pt.1329) 391 at 403.** The cause of action was not the Extra Ordinary General Meeting of the Appellant. Rather, the 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. The cause of action therefore cannot be said to have arisen in Abuja. As for the parties, there are two parties on

record before the lower court, namely the Respondent, Chartered Institute of Taxation of Nigeria (CITN) as claimant and the Appellant, Institute of Chartered Accountants of Nigeria (ICAN) as Defendant. Both parties have their Head Offices in Lagos. See, Order 2 Rule 4(1) of the High Court of Lagos (Civil Procedure) Rules 2004. Territorially therefore, I do not see any problem in relation to the parties and the cause of action.

On the subject matter jurisdiction, it was contended that the action related to the Revenue of the Federal Government, hence by Section 251(1)(a) of the 1999 Constitution, it falls within the jurisdiction of the Federal High Court. The issues before the lower court, squarely rested on the interpretation and construction of the CITN Act, the scope and powers of the Respondent to regulate Taxation and Tax Practices as a profession in Nigeria. Both the CITN Act and the 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.

The Appellant also made reference to Section 7(1) of the Federal High Court Act as amended by Decree No.60 of 1991. The jurisdiction of the Federal High Court has been provided for in Section 251 of the 1999 Constitution. Therefore Section 7(1)(a)(1) of the Federal High Court Act as amended by the Federal High Court (Amendment) Decree No.60 of 1991 must be curtailed by the aforesaid constitutional provision. See **Minister for Works v. Tomas (Nig) Ltd. (2002) 2 NWLR (Pt.752) 740 at 776.** I have carefully perused the Federal High Court Act as contained in Chapter

F12, of the Laws of the Federation of Nigeria 2004. I cannot actually see the provision relating to matters within Legislative Competence of National Assembly. Rather what is contained in Section 7(1) of the Federal High Court Act Cap.12 LFN 2004, is virtually a reproduction of Section 251(1) of the 1999 Constitution. The High Court has jurisdiction over the subject matter, the issues herein therefore fail and are resolved against the Appellant.

Issues 4 & 5: LOCUS STANDI

The Appellant contended that the Respondent invoked the civil jurisdiction of the Lagos State High Court to enforce criminal law as contained in Section 19(4) of CITN Act against the Appellant and its members who are not members of the Respondent. It was submitted that the enforcement of criminal law either through declaratory or preventive actions is within the exclusive competence of the Attorney General of the Federation or of a state as the case may be, as crime is a public wrong. The Appellant argued that an individual or a professional body lacks the *locus standi* to enforce criminal law. In support, reference was made to the following cases: **Gouriet v. Union Post Office Workers (1977) 3 All ER 119, A.G. v. Bastow (1957) 1 QBD 514 at 522, Cutler v. Wandsworth Stadium AL 398 at 408, A.G. v. Able & Ors. (1984) QBD 795, Attorney General v. Harries (1960) 3 All ER 938.** The court was urged to hold that the Respondent lacks the *locus standi* to enforce criminal provisions of Section 19(4) of CITN Act. The Appellant submitted that in the circumstance, the lower ought to have dismissed the

claim. In concluding, it was urged that the issues be resolved in favour of the Appellant.

In response, it was contended that from the title of the case and the reliefs sought, the case was civil in nature and the declaratory and injunctive orders granted did not impose criminal liability or sanction on anyone. It was submitted that the action was aimed at interpreting and clarifying the position of the parties as regards the body authorised by relevant laws to regulate tax practice in Nigeria. It was argued that the Respondent has the *locus* to seek interpretation of its enabling Act and the fact that the acts complained about are prohibited by penal sanctions or the rights invoked are also public rights are not a bar to such an action. In support, reference was made to **Dyson v. Attorney General (1911) 1 KB 410**. The case of **Shofolahan v. Fowler (2002) 14 NWLR (Pt.788) 664** was submitted to be inapplicable to the instant case. The Respondent posited that injunctions have been granted to restrain acts that would otherwise be an offence under relevant statutes where private rights of the Plaintiff are involved. Reference was made to Copyright Act and Trademark Act as examples and in support, reference was made to **Beecham Group v. Essdee Food (1985) 2 NWLR (Pt.10) 112**. In concluding, the court was urged to hold that the Respondent has the *locus* to seek for the interpretation of its enabling statute and the fact that the statute contains penal provisions should not be a bar to the action.

The issues herein seem to be anchored or having a bearing to Section 19 of the CITN Act. The aforementioned section of the CITN Act defined offences against the Act and prescribed appropriate penalties for

any transgressor. The contention of the Appellant is that the action instituted by the Respondent was aimed at enforcing the provisions of Section 19 of the CITN Act, which criminalises certain actions and the power to enforce criminal laws is that of the Attorney General, hence the Respondent lacks the *locus standi* to have instituted the action ab initio. The Respondent is a body created by the CITN Act. The action instituted by the Respondent was by way of an originating summons posing some questions for determination and praying for some reliefs. The action was therefore purely civil in nature, asking for the interpretation of relevant provisions of the CITN Act. There was nobody being prosecuted or on trial and no penal sanctions imposed on anyone. The fact that the statute sought to be interpreted contain provisions which criminalised certain actions does not ipso facto make the action instituted a criminal action. The action instituted by the Respondent was purely civil in nature, seeking for the interpretation of CITN Act and the Respondent has the necessary *locus standi* to institute same. The issues herein also fail and are resolved in favour of the Respondent.

Issues 6 & 7: NON-JOINDER OF NECESSARY PARTIES

It was contended that the Appellant was the only Defendant in the suit, though the Respondent claimed declarative and injunctive reliefs against the Appellant and its members who are not members of the Respondent. Specific reference was made to reliefs 4 and 5 to the effect that they were claimed against members of the Appellant who are not members of the Respondent. The Appellant stated that the said members of the Appellant who are not members of the Respondent were not parties

to the action, hence reliefs 4 and 5 were claimed against persons who are not parties to the proceedings before the court. It was argued that without a class or representative action, the declaration and injunction obtained against Appellant's members who are not members of the Respondent are incompetent, null and void on grounds of non-joinder of necessary parties and a violation of the requirement of fair hearing. In support, reference was made to the case of **Attorney General of Lagos State v. Attorney General of the Federation & Ors (2003) 12 NWLR (Pt.833) 140.**

It was also argued that by Section 1 (1) (2) and (3) of the ICAN Act, the Appellant is a juristic body with perpetual succession, separate and distinct from its members. In support, reference was made to the following cases: **Solomon v. Solomon (1897) AC 22**, **Lee v. Lee Air Farming Ltd. (1961) AC 12**, **Macaure v. Northern Assurance Co. Ltd. (1925) AC 619**, **Govt. of Mid-Western State v. Mid Motors Nig. Co. Ltd (1977) 10 SC 43.** It was also contended that the issue of representative or class action was also not raised by the court, as parties were not invited to address the court to that effect. In support, reference was made to **Kaigama v. Att. Gen. Borno State (2001) 6 NWLR (Pt. 738) 94 at 106-107**, **Abimbola v. Abatan (2001) 9 NWLR (Pt. 717) 66 at 77.** It was submitted that the failure to join Appellant's members as parties to the suit, has made the Respondent's action improperly constituted and incompetent. In support, reference was made to **Att. Gen. Lagos State v. Att. Gen of the Fed. & Ors** (supra), **Best Vision Centre Ltd & Ors v. UACN PDC Plc (2003) 13 NWLR (Pt.836) 606**, **Awoniyi v. Reg. Trustees of Rosicrucian Order, Amorc (Nig) (2000)**

10 NWLR (Pt.676) 533. The Appellant argued that the lower court was wrong in not following the decisions of Superior Court cited to it. In support, reference was made **Concorde Press (Nig) Ltd v. Olutola (1999) 9 NWLR (Pt.620) 578 at 599, Controller of Nigeria Prisons v. Adekanye (1999) 10 NWLR (Pt.623) 400 at 419.** In concluding, the Appellant urged the Court to hold that the non-joinder of proper parties was fatal to the Respondent's suit in the court below, hence the issue under consideration be resolved in favour of the Appellant.

In response it was stated that by Section 1(4) of the ICAN Act, members admitted to the Institute shall be enrolled as Chartered Accountants in the category of fellows or associates and be registered as accountants and have the status of the institute. It was contended that it was not necessary to individually join each and every member of the Appellant when orders made against the Appellant are binding and enforceable against the Appellant as an incorporated body. It was submitted that once the limitation of the ICAN Act are established by a Court of Law, it is Appellant's institute that will restrain its members, in its capacity as the institute under whose licence the members practice.

The Respondent stated that the action was commenced by originating summons seeking the interpretation of relevant statutes, and the reliefs granted four were declaratory and only one was injunctive. It was argued that the declarations made were concerning statutes only i.e. declarations of law not of fact, hence they cannot be enforced against an individual as such. On the nature and scope of enforceability of declaratory judgments, reference was made to the following cases:

Mathew Okechukwu Enekwe v. International Merchant Bank of Nigeria Ltd & 2 Ors. (2006) 19 NWLR (Pt.1013) 146, Oguntade v. Adeleye (1992) 8 NWLR (Pt.260) 409, Okulate v. Awosanya (1992) 4 NWLR (Pt.235) 278. On the declaration made relating to any member of the Appellant, the Respondent argued that "any member" is not determinable before the commission of the illegality in question and it cannot be stated that all members of the Appellant have to be joined as a party. It was further submitted that the only identifiable link is the Appellant itself as the body statutorily enjoined to regulate accountancy as a profession and it is the Appellant that is encouraging a wrong interpretation of the Law.

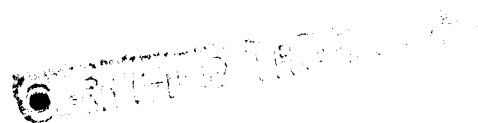
The grouse of the Appellant in the issues herein is basically to the effect that the action instituted by the Respondent was not properly constituted because members of the Appellant who were affected by Orders 4 and 5 were not joined as parties. The Appellant therefore contended that the non-joinder of the members of the Appellant was fatal to the action. It is a fundamental principle of law that parties who will be affected one way or the other in litigation be made parties to afford them an opportunity of being heard before judgment is given against them. The main objective of joinder is to put an end to litigation and to make the person so joined to be bound by the result of the litigation. See **Obananjo Ewetuga (1993) 4 NWLR (Pt.288) 445**, In Re: **Mogaji (1986) 1 NWLR (Pt.19) 759**. Parties to an action in court are broadly speaking classified into 3, namely Proper parties, Desirable parties and Necessary parties. Proper parties are those though not interested in the

plaintiff's claims are made parties for good reasons. Desirable parties are those who may have an interest or who may be affected by the result. While Necessary parties are those who are not only interested in the subject matter of the proceedings but also who in their absence the proceedings could not be fairly dealt with see **Green v. Green (1987) 3 NWLR (Pt.61) 480.**

The contention of the Appellant is that the non-joinder of the Appellant members renders the action of the Respondent improperly constituted and thus fatal. On the effect of the non-joinder of the appellant members to the action, the Apex Court in **Oyorinde v. Oni (2000) FWLR (Pt.3) 445 at 464** per **Karibi – Whyte JSC** stated thus:

“It is a correct proposition of the law that where an action is properly constituted, with a plaintiff with legal capacity to bring the action, a defendant with capacity to defend the action, and a claim with cause of action against the defendants, and the action has satisfied all pre-conditions for instituting the action, the fact that a necessary party has not been joined is not fatal to the action and will not render the action a nullity.”

Based on the foregoing, the non-joinder of the Appellants members to the action in the lower court is not fatal to the Respondent's suit. The action in the lower court was therefore properly constituted. At best the failure to join the Appellant's members will only affect the orders if any made against them, as not being parties they are not bound and the order(s) were given in breach of their right to fair hearing. See **Onyekwulunne v. Ndulue (1997) 7 NWLR (Pt.512) 277, Okpata v. Obo (1960) SCNLR 103 at**



110. Orders (iii) and (v) are accordingly set aside. The issues herein therefore partially succeed.

Issue 8: WAIVER & EQUITABLE PRINCIPLES OF LACHES

The Appellant stated that Declarations and injunctions are equitable reliefs, hence all equitable principles and defences are applicable to them. It was submitted that Section 2 of the Limitation Law of Lagos State preserved the equitable jurisdiction of the High Court of Lagos State to refuse a relief on grounds of delay in asking for same. It was posited that for more than 12 years after the enactment of CITN Act in 1992, the Appellant members continued to practice as tax administrators and Respondent failed to enforce the provisions of CITN Act. Based on the foregoing, it was argued that it had slept over its right to institute an action against the Appellant and its members in 2005. In support reference was made to the following cases: **Leedo Presidential Hotel Ltd v. B.O.N. (Nig) Ltd. (1993) 1 NWLR (Pt.269) 334 at 350, Lendsday Petroleum v. Hurd (1874) LR 5 PC 221 at 239, Hogg v. Scott (1947) KB 759 at 767, Oil Services Ltd. v. Johnson (1987) 2 NWLR (Pt.58) 2 NWLR (Pt.58) 652.** The Appellant urged the court to hold that the lower court was wrong in holding that the principles of laches and waiver are not applicable.

In response, it was contended that all the facts and evidence before the court, are to the effect that Appellants members in tax practice had been duly registered with the Respondent. It was also argued that in the absence of any dispute from the time CITN Act was enacted, it would be an academic exercise for the parties to seek judicial interpretation of the

statute. It was contended that there had been mutual understanding between the two professional bodies up to 2004, when misunderstandings started/erupted. Learned Counsel for the Respondent contended that the action was filed timeously.

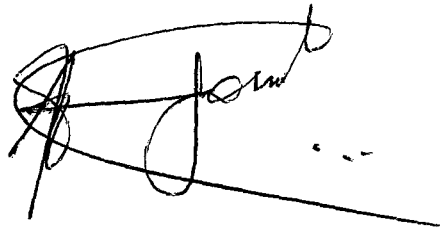
From the background facts and evidence in this case, the establishment of the Respondent as a professional body was championed by members of the Appellant. As rightly submitted by the Respondent, there was a mutual understanding between the two professional bodies up to the year 2004, when Appellant and Respondent started having misunderstandings as to tax practice. The principles of laches and waiver are not applicable in the instant case as there was no need for the institution of the action, prior to the time it was commenced. It would indeed have been academic. This issue is also resolved against the Appellant.

Issues 9 & 10: CITN ACT & FREEDOM OF ASSOCIATION

The contention of the Appellant under these issues is to the effect that compelling its members to be members of the Respondent infringes on their members right to freedom of association. The Appellant appears to be blowing hot and cold at the same time. In one breath, it contended that its members have not been joined to the action and now under this issue the Appellant is contending that the right of its members to freedom of association is being violated. A determination of this issue is really academic, as members of the Appellant are not parties to the action. It is trite law that courts do not engage in academic, speculative or hypothetical issues. See **Olori Motors Co. Ltd. v. UBN Plc. (2008) 10 NWLR**

(Pt.986) 586, Agbareh v. Mimra (2008) 2 NWLR (Pt.1071) 378, Unity Bank Plc. v. Bouari (2008) 7 NWLR (Pt.1086) 372, Amanchukwu v. F.R.N. (2009) 8 NWLR (Pt.1144) 475, Abdullahi v. Mil. Adm. Kaduna State (2009) 15 NWLR (Pt.1165) 417. The issue herein is accordingly discountenanced.

Consequent upon the foregoing, the appeal partially succeeds on the grounds of non-joinder of the Appellants members resulting in the setting aside of Orders (iii) and (v). All other orders of the lower court, other than Orders (iii) and (v) contained in the judgment delivered on 12th March, 2007 in Suit No. M/476/05 are hereby affirmed. There will be no order as to costs.

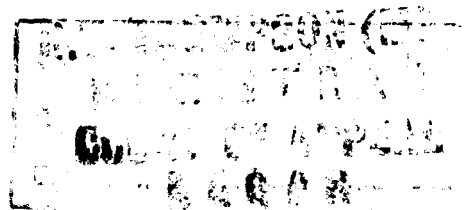


**ADAMU JAURO,
JUSTICE, COURT OF APPEAL.**

APPEARANCES:

Prof. Taiwo Osipitan SAN with Mrs. Olayemi Badewole and Ayodeji Awobiye Esq., for the Appellant.

Dr. Abiola Sanni with Kunle Akinpelu Esq., for the Respondent.



APPEAL NO CA/L/673/2007

BETWEEN:

**INSTITUTE OF CHARTERED
ACCOUNTANTS OF NIGERIA**

--- --- **APPELLANT**

AND

**CHARTERED INSTITUTE OF
TAXATION OF NIGERIA**

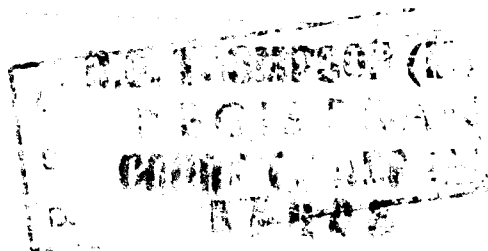
--- --- **RESPONDENT**

RITA NOSAKHARE PEMU, JCA

I have read before now, the Judgment just delivered by my brother **ADAMU JAURO J.C.A.** and I agree and fully adopt his reasoning and conclusions.

I abide by the consequential order made in the lead Judgment inclusive of the order as to costs.


**RITA NOSAKHARE PEMU
JUSTICE, COURT OF APPEAL**



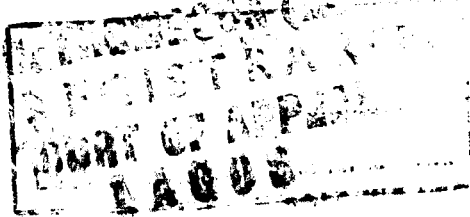
CA/L/673/2007

FATIMA OMORO AKINBAMI, JCA

I have had a preview of the Judgment just delivered by my learned brother JAURO, JCA and I agree with the reasoning and conclusions and adopt them as mine.

I abide by the orders on costs as made by my learned brother.

Fatima Omoro Akinbami
**FATIMA OMORO AKINBAMI
JUSTICE, COURT OF APPEAL**



*C. T. C. of Judge - Above - as per
CRW 9215693 of 26/2/13*

