



HALLMARK OF JUSTICE

COMMENTARIES ON SELECTED JUDGEMENTS OF HON. JUSTICE M. M. A. AKANBI



Edited by: I. A. Yusuf
M. M. Akanbi
A. T. Shehu

CHAPTER 2

Suit No: FRC/PH/2/76

Between:

FEDERAL BOARD OF INLAND REVENUE PLAINTIFF

And

BLUE PELICAN CASINO COMPANY LIMITED DEFENDANT

JUDGMENT DELIVERED BY M.M.A AKANBI J.

Comment by Mrs. F.F. Abdulrazaq*

INTRODUCTION

The defendants were directed to lodge their income Tax Return Form with Federal Board of Inland Revenue and the Defendants acknowledged the receipt of the said letter through their Accountants.

PRINCIPLE OF LAW ENUNCIATED IN THE JUDGMENT

INCOME TAX

Without prejudice to any other power conferred on the plaintiff i.e. the enforcement of payment of tax due from taxable companies, where an assessment had been duly carried out; or the judgment of its account through income tax form to the plaintiff, this power was never challenged by the defendants, thus, it was incontrovertible. However, the defendants failed to produce its audited account to the plaintiff.

The defendant lodged a formal objection and gave reasons for doing so. However, based on the present case, it appears, as rightly pointed out by MUHAMMED MUSTAPHA AKANBI JCA (retired) that the Defendant did not pay the sum and has not submitted any statement of account.

* LLB (Maiduguri), BL (Lagos) LL.M (Ifé) Ph.D. Candidate (Uni-Ilorin), Lecturer, Department of Private and Property Law, Faculty of Law, University of Ilorin

RELEVANCE OF THE JUDGMENT TO CURRENT POSITION OF THE LAW

Based on the fact of the present case, the issue raised were neither waiver nor estoppels, thus, the statement of defence did not contain such. Therefore, it is unnecessary to go into reason advanced by plaintiff's counsel on that.

The judgment had strengthened the power of the tax collector to sue for recovery of income tax in a court of competent jurisdiction. Section 66 of the Company Income Tax allows the Board to make an independent assessment of the company, if the company fails to submit its account, within the year of assessment or within six years after the expiration thereof. The defendants are to complete and return to the Federal Board of Inland Revenue their accounts under the Companies Income Tax Act (CITA) 1961. The amount of tax determined by the body of Appeal commission was to be notified to the tax payer and it is payable within one month from the date of such notification. When it is not paid, legal proceedings may be taken for its recovery. The method is still in existence till date in our tax statute. This empowers the relevant tax collector to enforce its procedure, for effective compliance by the company. This position was basically the outcome and final determination of the matter.

CONCLUSION

The objection raised by the Defendant in my view is a ploy to rob the Plaintiff from accessing them. Undoubtedly this could not sustain them.

It is pertinent to note that the Federal Revenue Court had metamorphosed into the Federal High Court under Degree 13 of 1973.

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JUDGEMENT DELIVERED BY M.M.A AKANBI J.

In April 1974, the Defendants were duly asked to complete and return to the Federal Board of Inland Revenue, Port-Harcourt, Form 1 R 3 otherwise known as Income Tax Return Form. By a letter dated 7th May, 1974, the Defendants acknowledged through their Accountant, receipt of the said forms and further stated as follows:

"We would advice that the company's first account will be made up to 31st July, 1974. When the accounts become available they will be submitted to you together with Form 1 R 3 in the normal manner."

It is common ground that up to the close of pleadings and the completion of the evidence of both parties, 10th August, 1976, no accounts have been submitted by the Defendants and the relevant forms have not been completed. Be that as it may, the Plaintiff on 25th September 1974, proceeded to assess the Defendants to tax for the sum of N4,000:00 plus a penalty of N4,000:00. The copy of the assessment note which was received in evidence as Exhibit 'B' is dated 20th September, 1974. Mr. Asuk Learned Counsel for the Defendants at first objected to the admission of the dispatch book indicating that Exhibit 'B' was registered at the P. & T on 23rd September, 1974 but later withdrew his objection. The dispatch book was consequently received in evidence and marked Exhibit 'C'. By another letter dated 29th November, 1974, the Defendants' Accountants Messrs. Nsobiari George, Konu & Co. (Chartered Accountants) wrote from their Lagos office informing the Plaintiff that the Exhibit 'B' & 'C' was according to their client received on 20th November, 1974. The said letter which was admitted as Exhibit 'D' went on to state as follows:

"The Company's first year of trading ended on 31st July, 1974, and we recently started to prepare the accounts for that year. It will take us some time to produce draft accounts since we are still writing up the books. The figures available now indicate that the company will not make any profit in the first year, and for that reason we regret that we cannot advise them to pay any deposit toward their tax liability for 1974/75 which on the present facts at their disposal is going to be nil."

In the circumstances, we make formal objection to the assessment on the ground that:

- (i) You have over-estimated the profit for the year which we consider will be nil;
- (ii) You have granted capital allowance in the wrong amount. May we suggest with respect that you set aside the present assessment and register nil assessment pending the time when we are in a position to file proper audited accounts and income tax computations with you?"

In further support of the contents of this letter, one Mr. Octavius Nsobiari George of the said accounting firm of Nsobiari George, Konu & Company gave evidence for the defendants. He tendered Exhibit 'H' a letter dated 22nd November, 1974 and signed by one Mr. R.N. Tekenah, communicating inter alia the date when Exhibit 'B' was said to have been received by the Defendants. The defendants' evidence is to the effect that Mr. Tekenah is dead – at least so says Mr. Saunders Udoffia, the first witness of the Defendants. DWI said that Mr. Tekenah died in November, 1975. It is pertinent to observe that Exhibit 'H' was not copied to the plaintiff. PW1 said that he had no recollection that Mr. Tekenah came to see him. He however stated that after the case had been filed in court, some members of the defendants company offered to pay part of the tax on deposit, until a final settlement was reached.

In spite of Exhibit 'D', the Defendants have not found it convenient to produce an audited, or any, account at all. Their auditors say that this has been due to the defendants' failure to answer queries sent to them. One is therefore left to speculate on the catalogue of losses allegedly sustained by the defendants. Exhibit 'D' did not set out the extent of the loss. It is unfortunate that the accountants/auditors of the defendants themselves, conjectured these losses and sought to 'hoodwink' the Federal Board of Inland Revenue by advising them to register a 'nil assessment' when by all practical manifestations there was no acceptable basis for such wild suggestion. Mr. Nsobiari George, himself in reply to a question by the court regarding this 'advice' openly admitted that he did not know the law relating to income tax. This is an incredible admission by an accountant.

The Defendants however said that they lodged a 'formal' objection and gave reasons for doing so in the letter of 20th November, 1974 written by their accountants to the Plaintiff. The letter is Exhibit 'D'. By Exhibit 'E', a letter dated 27th January, 1975, the Plaintiff informed the accountants to the Defendants that their objection was not valid and asked the Defendants to pay on account 50% of the tax due pending the submission of their accounts. The defendants did not pay this sum and have not submitted any statement of account. The defendants as I had observed earlier said that they received Exhibit 'B' on 20th November. I regret to say I am unable to believe them. I accept Mr. Ariemuduigbo's evidence that the Defendants did not complain

about the late receipt of Exhibit 'B' before Exhibit 'D' was not received. I have no doubt that if Exhibit 'B' did not actually get to the defendants in time, they could have written at once to the Plaintiff's office in Port-Harcourt. I am therefore satisfied that all the relevant notices were duly served on the Defendants

Learned counsel to the Defendants, Mr. Asuk however argued that the Plaintiff have by their conduct waived their rights to assess the defendants to tax. I do not think it necessary to go into the reasons advanced by the Learned Counsel on this point. Suffice it to say that I see nothing in the conduct of the Plaintiffs as would constitute a waiver or justify a plea of estoppel. Besides, the Defendants have not pleaded waiver or estoppel in their statement of defence. In paragraph 6 of their Amended Statement of Defence, they stated inter-alia as follows:-

"The auditors draft report will be founded upon at the trial."

No report was produced at the trial and it is evident that none has been prepared. It seems to me therefore that the Defendants are engaged in a game of hide and seek and have no solid defence to this action. Their Counsel Mr. Asuk must have realized this, when in final stages of his submission, he requested that I should either dismiss the claim or advise the parties to settle out of Court. I have to decide on the evidence. I am satisfied that the Plaintiffs have established their case.

Accordingly, I enter judgement in their favour for the sum of N4, 400.00 inclusive of the penalty Judgment for Plaintiffs.

Parties Present:

Mr. Ayo Osolanke for the Plaintiffs

Mr. S.E Asuk for the Defendants