

FHC upholds the illegality of stamp duty deductions prior to amendment of the SDA

KPMG in Nigeria

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The Federal High Court (FHC or “the Court”) Asaba Division, on Wednesday 9 December 2020 held in the case between Mr. Rupert Irikefe (trading as Abimbola Energy Ventures (the Plaintiff) and Central Bank of Nigeria (CBN), Zenith Bank Plc (“the Bank”) & Attorney General of the Federation (AGF), collectively referred to as (“the Defendants”) that collection of stamp duties on teller deposits or electronic transfers of monies prior to the amendment of the Stamp Duty Act, Cap. S8, Laws of the Federation of Nigeria (LFN), 2004 (as amended) (SDA) was arbitrary, unlawful and illegal and contemptuous of the lawful orders of superior courts of competent jurisdictions.

Further, the FHC awarded exemplary damages against the CBN and Bank to set an example to tax and regulatory authorities that wilfully flout decisions of the courts of law.

Facts of the case

The Plaintiff operates a current account with the Bank and observed several deductions of ₦50 and ₦100 from his current account between 2016 to 2018. In 2018, the Plaintiff approached the Bank’s offices in Asaba and Warri to inquire the basis of the stamp duties charged on his current account. The Bank referred him to the FHC’s decision the case between *Kasmal International Service Limited (KISL) vs. Standard Chartered Bank Nig. Ltd & 22 Ors (SCB & Ors) (Suit No.: FHC/L/CS/1462/2013)*, which the Bank claimed supported the deduction of the said amounts.

The Plaintiff informed the Bank of the subsisting decisions of the Court of Appeal (COA) in the same case between *KISL vs SCB & Ors (Suit No : CA/L/437A/2014)* and the FHC’s decision in the case between *Retail Supermarkets Nigeria Limited vs Citibank Nigeria Limited and the CBN (Suit No: FHC/L/CS/126/2016)*, wherein the courts held that there was no express provision in the SDA or any other law imposing any obligation on the Bank to collect and remit ₦50 as stamp duties on teller deposits or electronic transfers from ₦1,000 upward. Consequently, the Plaintiff requested the Bank to refrain from deducting stamp duties from his account and to refund the amounts deducted thus far. However, the Bank refused to refund the deducted amounts and continued to charge stamp duties on the Plaintiff’s account.

The Plaintiff dissatisfied with the treatment of the Bank, filed an appeal at the FHC, seeking the following reliefs:

1. a declaration that the conduct of the CBN imposing or directing the imposition, deduction or remittance of ₦50 as stamp duty on electronic transactions or transfer of monies from ₦1,000 upwards from the Plaintiff’s current account to it by the Bank, despite the subsistence and its awareness of the COA and FHC judgements, is arbitrary, unlawful, illegal, dismissive and contemptuous of the lawful orders of superior courts of competent jurisdiction, condemnable, null and void and of no effect.
2. a declaration that the conduct of the Bank in charging, deducting and remitting to the CBN the sum of ₦50 as stamp duty on electronic transactions or transfer of monies from ₦1,000 upwards from the Plaintiff’s current account, despite the subsistence and/or its awareness of the judgements of the COA and FHC, is arbitrary, unlawful, illegal, dismissive and contemptuous of the lawful orders of superior courts of competent jurisdiction, condemnable, null and void and of no effect.
3. a declaration that there being no provision in the SDA or any law imposing any obligation to deduct and remit the sum of ₦50 as stamp duty on teller deposits or electronic transfers of monies from ₦1,000 upwards, the CBN and the Bank, particularly the Bank, are bound or under duty to refund to the Plaintiff’s account the cumulative sum illegally, unlawfully and wrongfully deducted from the Plaintiff’s account domiciled with Bank, from the commencement of the deductions to the date the suit was filed.
4. an order setting aside the imposition, deductions, receipts and/ or remittances of stamp duty charges on teller deposits or electronic transfers of monies from ₦1,000 upwards on Plaintiff’s current account by the CBN and/or the Bank from the commencement of the deductions on 31 January 2016 to the date the suit was filed.
5. an order directing or mandating the CBN and the Bank to refund the Plaintiff the total sum illegally, unlawfully and wrongfully deducted as stamp duty from the Plaintiff’s current account domiciled with the Bank from the commencement of the deductions on 31 January 2016 to the date the suit was filed.
6. the sum of ₦50 million being general damages against the CBN and the Bank jointly and severally for grievous mental and psychological agony, unnecessary costs, inconveniences and pains caused by the unlawful, illegal and arbitrary imposition and deductions of a non-existent charge of ₦50 as stamp duty on the Plaintiff’s current account.

7. the sum of ₦50 million being exemplary damages against the CBN and the Bank jointly and severally for the wilful, flagrant, arbitrary and contemptuous disregard of the law and or jungle actions and conduct of the CBN and the Bank in the continued deduction of ₦50 as stamp duty from the Plaintiff's current account despite subsisting court judgements nullifying and restraining same.
8. an order of injunction restraining the defendants, their servants, officers, privies or whomever from further deducting the sum of ₦50 as stamp duty on teller deposits or electronic transfers on the money transaction from ₦1,000 upwards from the Plaintiff's current account domiciled with the Bank unless authorized by law

In response to the above grounds of appeal, the CBN argued that there was no contractual relationship between itself and the Plaintiff, and that Sections 52 (1) of the CBN Act and 53 (1) of the Banks and other Financial Institutions Act (BOFIA) protects the CBN from any liability for actions carried out in good faith including that against the Plaintiff.

Similarly, the Bank argued that it acted as an agent with the express authorization of its principal (CBN). Consequently, the Bank implored the Court to exempt it from any liability based on the general rule of liability in agency; that whatever is done by an agent on the authorization of the principal is deemed to have been done by the principal.

The AGF posited that the Plaintiff's suit does not disclose a cause of action against him and therefore he is not a proper or necessary party to the suit. Further, the AGF argued that certain paragraphs of the Plaintiff's supporting affidavit were not statement of facts and circumstances and contradicts the provisions of Section 115 of the Evidence Act, Cap. E14, LFN 2011 ("the Evidence Act"). Therefore, the Plaintiff failed to provide sufficient evidence to merit the reliefs sought in its appeal.

Issues for determination

Based on the arguments of the parties, the FHC formulated one key issue for determination, which was, *"whether from the totality of the materials presented before the Court, the Plaintiff is entitled to any or all of the reliefs sought?"*

FHC's decision

After considering the arguments of both parties, the FHC held that:

- i. By disobeying the subsisting decisions of the COA and FHC regarding the charge of stamp duties, the CBN acted in bad faith by its action and, therefore, cannot be shielded by Sections 52 (1) of the CBN Act and 53 (1) of the BOFIA, respectively.
- ii. Despite the existence of an agency relationship between the CBN and the Bank, there is an exception to general rule of liability in agency. Where an agent is a wrongdoer, he cannot enjoy any protection from liability simply by pleading that he is the agent of a disclosed principal. Therefore, there is no agency in the case of a wrongdoing. Consequently, the Bank acted recklessly and at its own

peril when it wilfully disobeyed the subsisting judgments of the COA and FHC, where it was a party to the appeal, and continued to deduct stamp duties from the Plaintiff's current account.

- iii. The Plaintiff's affidavit does not contravene the provisions of the Evidence Act. Further, the AGF having alleged that paragraphs 5 to 10 of the Plaintiff's affidavit contradict the provisions of Sections 115 (1) and (2) of the Evidence Act, failed to provide evidence to support the claim. Based on the affidavit submitted, the Plaintiff has provided the Court with sufficient evidence to be entitled to the reliefs sought in the appeal.
- iv. A judgement that has not been appealed against or set aside by a higher court is valid, subsisting and binding on all parties, agents and privies. Section 287 of the Constitution of the Federal Republic of Nigeria, 1999, provides that the decisions of the courts are binding and shall be enforced in any part of the Federation by all *"authorities and persons,"* which include the Defendants, and by courts with subordinate jurisdiction. The Defendants did not present any judgement of a higher court or amendment to the SDA enabling it to continue deducting the stamp duty charges and are therefore bound by the subsisting courts judgments on the issue.

The FHC, therefore, granted reliefs 1, 2, 3, 4, 5 and 8 sought by the Plaintiff. The exemplary damages sought in relief 7 was also granted but limited to ₦2 million, to set an example that it is a reprehensible conduct to wilfully disobey decisions of competent courts of law. Relief 6 was denied.

Commentaries

The FHC's decision reaffirms its earlier decision and that of COA on the illegality of stamp duties deduction on teller deposits or electronic transfers of monies by banks prior to the amendment of the SDA by the Finance Act, 2019. It is important to state that the FHC's decision will only apply to periods before the amendments in the Finance Act, 2019 became effective. Therefore, from 13 January 2020 to the date of commencement of Finance Act, 2020, all electronic receipts/ transfers from ₦10,000 for all types of accounts in Nigeria were liable to stamp duty of ₦50, in line with the new Section 89(3) of the SDA introduced by the Finance Act 2019.

Further, the judgment reiterates several court decisions that circulars or guidelines issued by regulators and agencies of government do not constitute a delegated or subsidiary legislation and have no enforceable legal basis. Although regulators and government agencies may issue guidelines and circulars, such administrative documents cannot be used as instruments to amend or substitute the provisions of extant laws.

Conclusion

The grant of exemplary damages by the FHC against the CBN and Bank is cautionary for tax authorities and regulators that wilfully disobey existing decisions of courts of law and will motivate them to comply with court decisions. At the same time, it provides aggrieved taxpayers a legal basis for seeking reliefs against extra-legal practices of government agencies.

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