



TEMPLARS Succeeds at the Court of Appeal Affirming the Jurisdiction of the Tax Appeal Tribunal

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On Wednesday, 13 April 2022, the Court of Appeal (the “CA”) sitting in Lagos upheld the jurisdiction of the Tax Appeal Tribunal (the “TAT”) to hear and determine tax appeals in an appeal filed by the Nigerian National Petroleum Corporation (“NNPC”) against the decision of the Federal High Court.

BACKGROUND

The NNPC (as concessionaire) together with two International Oil Corporations (**IOCs**), as contractor parties, are parties to the Production Sharing Contract (“PSC”) which governs the petroleum operations in a concession/contract area. On 28 February 2013, the IOCs appealed against the 2009 and 2010 Education Tax and Petroleum Profits Tax assessments issued by the Federal Inland Revenue Service (FIRS) on the contract area at the Tax Appeal Tribunal (TAT).

At the TAT, FIRS applied to join the NNPC to the tax appeals on the grounds that the NNPC was a desirable and necessary party to the tax appeals. On being joined, the NNPC applied to (i) strike out the appeals in their entirety on the ground that the TAT lacks subject matter jurisdiction to hear the appeal or (ii) strike out its name from the tax appeals on the grounds that the TAT had no personal jurisdiction and that the tax appeals disclosed no cause of action (and no relief was sought) against it. In a ruling delivered on 8 February 2013, the TAT dismissed the NNPC’s jurisdictional objection to the subject matter of the appeal but granted its alternative request to be struck out as a party to the tax appeals.

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Aggrieved by the decision of the TAT, the NNPC applied to the Federal High Court (the “FHC”) to issue prerogative writs of *certiorari* and *prohibition* against the ruling of, and continuing of proceedings at, the TAT respectively.¹ The NNPC argued that the TAT’s jurisdiction conflicts with that of the FHC. It further argued that it is a necessary party to the tax appeals and its absence from the proceedings before the TAT strips the TAT of the jurisdiction to hear and determine the tax appeals. The FHC dismissed the NNPC’s application for judicial review for being misconceived and for want of legal standing to challenge the ruling of, and proceedings at, the TAT. The NNPC appealed to the CA to seek a reversal of the decision of the FHC.

A key issue which the CA was called upon to determine was whether the FHC was wrong in its decision that the TAT had the jurisdiction to adjudicate on the tax appeals. In opposition to the arguments of the NNPC, the respondent parties (i.e., the IOCs) argued, among other things, that the: (i) “exclusive jurisdiction” conferred on the FHC by Section 251 (1) of the Constitution is in relation to other courts in Nigeria and not as between the FHC and an administrative Tribunal such as the TAT; (2) TAT is an administrative tribunal and not a court, even though it performs adjudicatory functions over tax disputes; and (3) jurisdiction of the TAT does not derogate from the jurisdiction of the FHC because the TAT only provides an administrative forum for resolving tax disputes before proceeding to the FHC.

The CA agreed with the submissions of the IOCs and resolved the issue of the jurisdiction of the TAT against the NNPC. The decision is significant because the jurisdiction of the TAT had been a subject of conflicting decisions at the FHC. Thus, whilst one cannot exclude the possibility of a further appeal by the NNPC to the Supreme Court, it is notable that the respondents’ submissions on the jurisdiction of the TAT to determine tax appeals were upheld by both the FHC and the CA.

TEMPLARS represented the IOCs at the FHC as well as the CA. The TEMPLARS team was led by Disputes Partner and Practice Head, **Adewale Atake, SAN** and Disputes and Tax Litigation partner, **Igonikon Adekunle**. They were supported by Senior Associates, **Chidi Ejiolor, Sesan Sulaiman** and Associate, **Olusola Odunsi**.

¹ The effect of the requests in the NNPC’s application, had they been granted by the FHC or the CA, would have been to set aside the ruling delivered by the TAT on 8 February 2013 and nullify any further proceedings in the tax appeal before the TAT.