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IS A CITN LICENSE REQUIRED TO FILE TAX RETURNS? A REVIEW OF THE ICAN v. FIRS & CITN CASE[1]

Background

Dating as far back as 2003, the Institute of Chartered Accountants of Nigeria (ICAN) and the Chartered Institute of Taxation of Nigeria (CITN) have been at loggerheads over the appropriate body to regulate the professional practice of taxation in Nigeria. This resulted in the CITN filing a suit at the Lagos State High Court in 2005 seeking a declaration that only the CITN is statutorily empowered to regulate the tax profession in Nigeria by virtue of the CITN Act.[2] ICAN contended that by the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA),[3] chartered accountants are recognised as professional tax consultants that may act on behalf of a person known to law in respect of tax matters.

In 2007, the Lagos State High Court, per Lateefat Okunnu J., held that taxation is a profession separate from the accounting profession and as such, the regulation of which is vested exclusively in CITN. The High Court also held that it is illegal for any member of ICAN, who is not also a member of CITN, to practice taxation in return for a fee in Nigeria.[4] Aggrieved, ICAN filed an appeal before the Court of Appeal in 2013. The Court of Appeal had ruled that the CITN is vested with statutory power to regulate and control the practice of taxation in all its ramifications to the exclusion of ICAN or any other professional body or institution. Further aggrieved, ICAN filed an appeal before the Supreme Court, immediately after which Terms of Settlement were reached between ICAN and CITN, culminating in the withdrawal of the Supreme Court Appeal.

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2 Cap. C10, LFN 2004.
3 A163, No. 13, 2007.
4 (unreported), Suit No. M/476/2005: Chartered Institute of Taxation of Nigeria (CITN) v. Institute of Chartered Accountants of Nigeria (ICAN).

However, neither the Court of Appeal decision nor the Terms of Settlement appeared to extinguish the rift between both professional bodies. Things finally came to a head in 2018 when the Federal Inland Revenue Service (FIRS) declared that only returns submitted by members of CITN will be accepted for filing at the FIRS office, leading to ICAN v. FIRS & CITN, the case under review.[5]

Facts of the Case

By a Notice dated 23rd April 2018, FIRS posited that a member of the Plaintiff (ICAN) can neither practice as a professional in Taxation in Nigeria nor file tax returns, unless they obtain the stamp and seal of CITN. Aggrieved by this move by the FIRS, ICAN took out an Originating Summons against the FIRS and CITN and sought the determination of *inter alia*, the following questions:

1. Whether the FIRS can exclude non-members of CITN from filing tax returns?
2. Whether by extant and relevant tax enactments, a chartered accountant cannot practice, administer, hold himself out, be consulted and file tax returns as an accountant cum tax agent/practitioner without being a member of the CITN?
3. Whether membership of the CITN is a condition-precedent to practicing as tax agents/practitioners?
4. Whether the Court of Appeal decision in CA/L/673/2007 - ICAN v. CITN – is not binding on FIRS and CITN as to restrain them from excluding members of ICAN from tax practice?

ICAN was of the position that there has been a decided case between it and CITN before the High Court of Lagos State wherein five (5) reliefs were sought by CITN against ICAN, reliefs which did not include affixing the stamps and seals of CITN before tax returns can be validly filed at the FIRS. ICAN argued that the High Court had granted the said five (5) reliefs, but that on appeal, the Court of Appeal had set aside two (2) reliefs which sought to compel ICAN from practicing taxation in Nigeria only through the control of CITN. ICAN therefore submitted that the requirement of affixing CITN stamps and seals on tax returns is an entirely new argument which seeks to rewrite the aforesaid judgment of the Court of Appeal.

ICAN also contended that based on section 5 of the Federal Inland Revenue Service (Establishment) Act 2007 Tax Administration (Self-Assessment) Regulation 2011, a person certified by ICAN can validly file tax returns at the FIRS. The said Regulation provides thus:

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[5] (Unreported) Suit No. FHC/L/CS/125/2019: Institute of Chartered Accountants of Nigeria (ICAN) v. Federal Inland Revenue Service (FIRS) and Chartered Institute of Taxation of Nigeria (CITN), delivered on 21st November 2019, available here: <https://www.proshareng.com/report/Economic%20&%20Financial%20Reviews/Federal-High-Court-Judgment-in-the-Case-of-ICAN-v.-FIRS-and-CITN/13152> accessed on 4th December 2020.

"5 (1) A taxpayer must file returns under self-assessment in person or engage the services of accredited agents to file returns on his behalf.

(2) For an agent to carry out the services required under this regulation, the agent must be truly certified by anyone of the underlisted bodies…

(a) The Association of National Accountants of Nigeria;

The Chartered Institute of Taxation of Nigeria; and

(c) The Institute of Chartered Accountants of Nigeria."

In response, FIRS argued that its public notice was in conformity with the judgment of the High Court which was upheld by the Court of Appeal to the effect that the claimant is vested with the power to regulate and control the practice of taxation in all its ramifications to the exclusion of any other professional body, in good faith to prevent quackery in tax administration.

On its part, CITN maintained that it has a statutory duty to regulate both its members and the profession of taxation in Nigeria. Further, CITN argued that there was no extant law containing a list of agents qualified to file tax returns in Nigeria.

Relevant Legislations

1. Chartered Institute of Taxation of Nigeria Act (supra).
2. Institute of Chartered Accountants of Nigeria Act.
3. Companies Income Tax Act.[6]
4. Federal Inland Revenue Service (Establishment) Act 2007.
5. 1999 Constitution of the Federal Republic of Nigeria (supra).
6. Federal Inland Revenue Service (Establishment) Act 2007 Tax Administration (Self-Assessment) Regulation 2011.[7]

Decision

In determining the questions raised in this suit, the Court adopted the questions for determination formulated by the Plaintiff (ICAN). The five (5) issues for determination are distilled below:

1. Whether the letter dated 23rd day of April 2018 written by the office of the executive chairman of the FIRS with Reference No. FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with the Court of Appeal Judgment dated 15th

[6] Cap. C21, LFN 2004.
[7] See relevant provisions of each legislation at the Appendix segment of this article.

February 2013 in Suit No CA/L/673/07: Institute of Chartered Accountants of Nigeria and *(sic)* Chartered Institute of Taxation of Nigeria.

2. Whether the letter dated 23rd day of April 2018 written by the office of the executive chairman of the FIRS with Reference No. FIRS/EC/MISC/5435/18/57 and signed by Mr. Tunde Fowler is not inconsistent with section 5(1) & (2) and other salient provisions of the FIRS (Establishment) Act 2007 Tax Administration (Self-Assessment) Regulations 2011 (sections 5(2) and 10 (a & b) thereof), Companies Income Tax Act Cap. C21 LFN 2004, as amended by the Companies Income Tax (Amendment) Act 2007 (sections 55(6)(a) & (b) thereof) and Institute of Chartered Accountants of Nigeria Act No. 15 of 1965 (Sections 1, 14(1)(b), 7(c) and 20(3) thereof).

3. Having regard to the relevant provisions of Companies Income Tax Act 2007, Institute of Chartered Accountants of Nigeria Act and the Constitution of the Federal Republic of Nigeria 1999 (as amended), whether a Chartered Accountant cannot practice, administer, hold himself out, be consulted and file tax returns as an Accountant cum tax agents/practitioners in Nigeria without necessarily being a member of the Chartered Institute of Taxation of Nigeria.

4. Having regard to the relevant provisions of section 287 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), whether the decision of the Court of Appeal delivered on 15th day of February 2013 is not valid, subsisting, extant and binding on all authorities and persons including but not limited to the FIRS and CITN.

5. Having regard to the relevant Constitutional provisions particularly section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), whether a party/person may be compelled to join an Association.

The Court reproduced verbatim, all salient provisions of the relevant legislations highlighted above and moved straight to an analysis of the decisions of the Lagos State High Court and the upholding of same by the Court of Appeal and their effects on the respective statutory powers and rights of the parties.

<u>Lagos State High Court Decision - Suit No. M/476/2005</u>

CITN filed a suit and claimed a declaration that:

1. Taxation is legally recognised in Nigeria as a profession separate and distinct from accountancy profession.

2. The Claimant (CITN) is vested with the 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.

3. It is illegal for any member of the Defendant (ICAN) who is not a member of the Claimant (CITN) to practice or hold himself out as practicing tax administrator or tax practitioner for, on in expectation of a reward in Nigeria.

4. It is unlawful for the Defendant to forestall or impede the Claimant's effort to regulate tax practice.

5. For 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 CITN Act.

ICAN in response, filed a statement of defence/counterclaim which was wholly dismissed. In granting CITN's claim and entirely dismissing ICAN's counterclaims, the court stated as follows:

> *"I again do not agree with defence counsel that because the Defendant has adequate means of ensuring that its own rules regulates and disciplinary procedures will apply to any of its members that chooses to engage in tax practice, therefore, there is no need for those members to be made to join the Claimant. In the first place, the CITN Act has created a clear distinction between the accountancy profession and the Taxation profession. If the Council of the Institute of Taxation is to have overall superintendence of and proper control over all those who practice this newly created profession, as is the intendment of the Act, then it would, au(sic) contraire, lead to an absurdity, and to confusion. To have other bodies enforcing their own different rules and regulations and disciplinary procedures, over them. The intended control that the Clamant has been given by law will be of no real use and effect, as its authority would be weak, and in its place will arise a Tower of Babel, with different governing councils speaking different tongues on the same profession. That I dare say, would not be in Tandem with the intention of the law makers as distilled from the clear, simple words of the CITN Act by which they (the Law Makers) gave the Clamant the sole authority to regulate and control. Tax practice*

in all ramifications and here I use the word "Ramification" adversary and to enforce discipline against administrators and practitioners."[8]

Court of Appeal Decision – Appeal No. CA/L/673/2007

ICAN appealed seeking for the upturning of the trial court's decision by setting aside all reliefs granted to CITN and granting its counterclaims. Eventually, the appeal partially succeeded with the Court of Appeal granting reliefs 1, 2 and 4, while setting aside reliefs 3 and 5. For clarity, the five (5) reliefs are chronologically itemized above.[9]

This Court noted that the first five reliefs claimed in this case under review are essentially the same as the reliefs 1, 2 and 4 which were granted by the trial court and affirmed by the Court of Appeal in the earlier cases. According to the court, the setting aside of reliefs 3 and 5 by the Court of Appeal did not, either expressly or indirectly, affect the resolution of all the questions for determination in favour of the Claimant, as the rationale of the Court of Appeal in setting aside the reliefs was not based on any error in the trial court decision but on the failure or non-joinder of all persons who were likely to be affected by the potential criminalization of their conduct without being afforded the constitutionally guaranteed right to fair hearing.

Thus, the Court was bemused on the rationale behind the filing of this suit, having failed both at the trial court and substantially at the Court of Appeal on the same questions, merely couched in what it termed "more florid and flowery language".

Further, the Court *suo motu* raised the issue of *estoppel per rem judicatam* and used the opportunity to expound on the purport of the earlier judgment of the Court of Appeal:

"I must with due respect to the Learned Counsel for the Plaintiff state that the interpretation of the Judgment is grossly faulty, a misled conception which strictured the broad effect of the entire Judgment of the Court. Reading the Reliefs iii and v in isolation from the other three Reliefs will fail to capture the broad essence of the entire suit which was to determine the respective specific statutory functions of each of the institutions. That is whether both share common professional calling or are both are (sic) mutually distinguished with the others in terms of the statutory and professional callings. The Judgment of the trial Judge which the Court of Appeal affirmed in part wholly resolved and affirmed the mutual distinctiveness of each of the two parties. In other words, in terms of practice of taxation and accountancy, ICAN and CITN are mutually

8 Page 17 of the judgment.
9 *Supra,* p. 4.

exclusive. This means, neither can venture into the statutory and professional domain of the other. Okuno J (sic) in her Judgment very eloquently laid down in very lucid and beautifully expressive language. This Judgment leaves no one in doubt at (sic) as to the status of the parties in relation to Accountancy and Taxation profession."

The court therefore refused reliefs 1 - 4 of the Claimant's Originating Summons, a decision which ultimately deprived the suit of any reasonable or subsisting cause of action, causing the court to dismiss the entire suit.

Commentary

It is respectfully submitted that the law was properly applied by the court in arriving at the decision under review. The CITN Act clearly brings taxation under the professional regulation of CITN and distinct from the accountancy profession regulated by ICAN. As a specific legislation, that is, one which specifically governs the profession and practice of taxation, it overrides any express or implied provision of any other statute affecting the administration of specific taxes in Nigeria.[10]

This further lays to rest, any controversy on the appropriate body to make rules and regulation(s) and confer licenses with respect to the taxation profession.

Conclusion

It is admitted that the tax and accountancy professions are very much intertwined. In the process of acquiring a bachelor's degree in Accounting and qualifying as a professional accountant, a student is required to take taxation courses. Therefore, a professional accountant has all it takes to practice the profession of taxation and as such, should be recognised for all intents and purposes as a tax professional.

However, such argument comes crashing to the earth when the legal profession or the nursing profession, for instance, is considered. The fact that a person diligently acquires substantial knowledge of the law or of the field of nursing would certainly not guarantee such person a license to practice law or nursing, let alone, bypass the relevant professional bodies that regulate both fields. Clearly then, a CITN license is *sine qua non* to not only filing tax returns but to practice tax as a profession in Nigeria. Perhaps, in recognition of the tax knowledge that chartered accountants possess, CITN certification and practice licensing requirement could include certain course exemptions for chartered accountants.

[10] Kaduna State v. Kagoma (1982) 6 SC 87 at 107-108; Osadebey v. A. G. Bendel State (1991) SCNJ 102 at 218.

The decision of the Federal High Court in the case under review could not have been assimilated into the Nigerian tax jurisprudence more timeously. It is important professional services to be anchored on a reputation of high ethical standards. These standards are ideally and usually set, not just by the professionals themselves but by corporate personalities recognised by law and comprising such professionals. It is a welcome development and with tax beginning to gain traction as a subject of national significance, CITN can only get better in ensuring international best practices in the profession now clearly under its oversight.

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