

IN THE SUPREME COURT OF NIGERIA

Suit No: SC286/2001

Petitioner: Unipetrol Nigeria Plc

And

Respondent: Unipetrol Nigeria Plc

Date Delivered: 2006-04-06

Judge(s): Idris Legbo Kutigi , Aloysius Iyorgyer Katsina-Alu , Ignatius Chukwudi Pats Acholonu , George Adesola Oguntade ,

Judgment Delivered

In the Mobile Revenue Court of Edo State sitting at Benin City, the following charge was framed against the appellant:

'Count 1:

That Unipetrol Plc, Benin City, between January, 1993 to December 1995 at Benin City within the jurisdiction of the Edo State Mobile Revenue Court, without lawful justification or excuse, failed to pay the sum of one million, Two hundred and sixty two thousand, five hundred and seven Naira (N1, 262, 507.00) being outstanding PAYE Tax liabilities for the said period and thereby committed an offence contrary to Section 51 (2) (b) of the Income Tax Law, Cap. 71, Vol.III, Laws of Bendel State now applicable to Edo State.

Count II:

That Unipetrol Plc, Benin City, between January, 1993 to December 1995 at Benin City within the jurisdiction of the Edo State Mobile Revenue Court, without lawful justification or excuse, failed to pay the sum of Two hundred and forty-four thousand, one hundred and thirty-one Naira (N244, 131.00) being outstanding with holding tax liabilities for the said period and thereby committed an offence contrary to Section 51 (2) (b) of the Income Tax Law, Cap. 71, Vol. III, Laws of Bendel State of Nigeria, 1976, now applicable to Edo State.'

A notice of preliminary objection was filed by learned counsel for the defendant, and the ground of the notice reads: -

'That the pending charge against the defendant is incurably defective, incompetent unconstitutional, null and void and of no effect whatsoever'.

In ruling on the preliminary objection the learned trial judge dismissed it as follows: -

'The objection of the Respondent's counsel is incompetent and it is founded on inefficient research into the law and hastily brought. This should be discouraged. I am of the fair view that if counsel had been aware of Edict No. 1 of 1996 he would not have raised the preliminary objection. It has needlessly delayed the hearing. The preliminary objection is hereby dismissed.'

Dissatisfied with the dismissal the respondent appealed to the Court of Appeal initially on a single ground of appeal, which reads thus:

'The learned trial judge erred in law in holding that the complainant could institute the pending criminal charge against the respondent in its name without the existence and/or authority of the Attorney-General of Edo State.

Particulars of Error

- (i) Edo State (sic) of Internal Revenue has power to sue and be sued only,
- (ii) Edo State had no Attorney General at the time of the institution of the pending charge,
- (iii) Pending charge is in the name of the complainant simpliciter."

An additional ground of appeal was filed with leave of that court. The appeal to the Court of Appeal failed and the respondent again appealed to this court on a ground of appeal which reads as follows: -

"The Court of Appeal erred in law when it held that the respondent could initiate criminal proceedings against the respondent in its corporate name.

Particulars

- (a) The law establishing the respondent gave it power to sue and be sued only.
- (b) The law does not give it power to prosecute criminal matters in its own name.
- (c) The word sue connotes civil responsibilities.
- (d) Section (191) (1) of the 1979 Constitution vests the power to institute and undertake criminal proceedings on the Attorney-General of Edo State.
- (e) There is a difference between a state counsel prosecuting in the name of the Attorney-General and prosecuting in the name of the respondent".

Learned counsel exchanged briefs of argument, and learned counsel for the appellant who was in court on the day of hearing adopted the appellant's brief of argument. The respondent was not represented; but he had filed a respondent's brief of argument. A sole issue for determination was raised in the appellant's brief of argument. The issue is, whether the respondent could validly undertake the pending criminal charge against the appellant in its corporate name. This issue was adopted in the respondent's brief of argument.

It is not in dispute that the respondent is a creation of statute, that is to say that it was established by the Income Tax Law Cap. 71 laws of Bendel State, 1976, applicable to Edo State. Section 4 (1) of the said Income Tax Law makes the following provision: -

"There shall be established for the state in accordance with the provisions of this law a Board to be known as the Tax Board."

Then it goes on to provide under subsection (2) of the said Section 4 that: -

"The Board shall have power to sue and be sued in its official name and to acquire, hold and dispose of movable and immovable property for the purposes of its functions under this law."

Learned counsel for the appellant has submitted that the language used above is quite clear and unambiguous, and urged the court to adopt the ordinary meaning of the words used in interpreting the provision, and not be let into construing the said provisions that are very clear by any reference to extraneous matters or inference or supposed tendencies. He placed reliance on the cases of *Ogbuniviva and Ors v. Okudo Ors* 1979 6-9 S.C. 32. and *Ogunmade v. Fadaviro* 1972 8 - 9 S.C. 1. Learned counsel for the respondent has in his brief of argument conceded the cardinal principle of interpretation that where a statute in its ordinary meaning is clear and unambiguous, effect should be given to it without resorting to external aid, and he cited the case of *Odua Investment Limited v. Talabi* 1997 10 NWLR part 523 page 1 in support.

I am in full agreement with learned counsel that the words used in a statute are to be given their ordinary meaning when interpreting a provision. The cardinal principle of law of interpretation is that a court when interpreting a provision of a statute must give the words and the language used their simple and ordinary meaning, and not to venture outside it by introducing extraneous matters that may lead to circumventing or giving the provision an entirely different interpretation to what the law maker intended it to be. See *Lawal v. G.B. Olivant* 1972 3 S.C. 124, *Toriola v. Williams* 1982 7 S.C. 27, and *Abioye v. Yakubu* 1991 5 NWLR part 190 page 130. In the case of *Adisa v. Oyinwola* 2000 10 NWLR part 674 page 116 Ayoola JSC explained this cardinal principles of interpretation thus: -

"In this regard, the point must be stressed that it is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. As this was expressed by Lord Mersey in the decision of Her Majesty's Privy Council in *Thompson v. Gold and Co.* (1910) A.C. 409 at 42: -"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity, it is a wrong thing to do. Here, I see no necessity at all for introducing the words."

The provisions are clear and unambiguous and should be given life. Learned counsel for the appellant has further submitted that the word sue and be sued as used in Section 4 (2) supra connotes civil responsibilities only; and gave examples of the provisions of the companies and Allied matters Decree of No. 1 of 1990, and the University of Benin Law, Cap. 452 Laws of the Federation of Nigeria 1990 which provides the same 'words as 'to sue' and 'be sued', as in the said Section 4 (2) supra, contending that if the interpretation of the court below is allowed undisturbed, then all corporate entities would be able to prosecute criminal matters in their names. Reference was made to the provision of Section 64 (2) of the Tax Law in respect of the purport of the word 'sue', on whether it connotes civil responsibility. I will reproduce the provision hereunder. It reads: -

"The Chief Justice may from time to time appoint any judge or Chief Magistrate to deal with such cases, and a judge or Chief Magistrate sitting in a special court shall have, in addition to the jurisdiction conferred by this law, all the powers, immunities and privileges which he would have if he were adjudicating in civil proceedings in the High Court or Magistrate's court, as the case may be."

Learned counsel for the respondent has argued that it has long been recognized that a company is an artificial legal entity which is separate and distinct from members of the company i.e. a company is a juristic person, which can sue and be sued in its corporate name. He placed reliance on the cases of *Co-operative Bank Ltd v. Samuel Okekhare and 2 ors* 1996 8 NWLR part 468 page 581 and, *Yesuf v. Adewusi Brothers and Co.* 1991 7 NWLR part 201 page 4.

Learned counsel for the respondent also made reference to the above provision, and argued that the respondent derived its existence from Section 4 (1) of the Income Tax law supra. A thorough understanding of these provisions confirms that the respondent could take any action, be it civil or criminal. In this respect, I cannot fault the following finding of the lower court, which reads thus: -

"I do not think I can agree with the construction or meaning placed on the word 'sue' in Section 4 (2) of the Income Tax law by learned counsel for the appellant. Even going by Blacks law Dictionary definition of the word, as indicated by learned counsel, both 'sue' and prosecute" cover an action. It is a common denominator in both words. An action should be civil or criminal, it cannot be only civil."

It is instructive to note that section 51 of the said Income Tax Law, throws more light on the provision of Section 4 of the same Law, and it is definitely of assistance in this discussion. Section 51 provides as follows: -

"51(1) Any person guilty of an offence against this law, or any person who contravenes or fails to comply with any of the provisions of this law or of any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of four hundred Naira, and where such offence is the failure arising from the provisions of part 4 to furnish a return, statement or information or to keep records required, a further sum of ten Naira for each and every day during which such failure continues, and in default of payment to imprisonment for six months"

[Underlining is mine]

The above provision reinforces the fact that actions that may be initiated are not confined to civil ones per se. As a matter of fact a careful perusal of the provision, with the use of the words 'guilty', 'conviction' and 'imprisonment' etc, should satisfy any one that actions predicated on criminality are involved. It is instructive to note that the charge framed against the appellant which I have already reproduced above, was brought pursuant to the said Section 51 (2) (b) of the Income Tax Law.

On whether the respondent can sue the appellant in their corporate name, I subscribe to the argument of learned counsel for the respondent, that it can do so, and the said Income Tax Law is very clear on this.

Another argument proffered by learned counsel for the appellant is that a state counsel in the Ministry of Justice has no power to prosecute charges in the names of incompetent persons. Reference was made to the case of Engineering Enterprise of Niger Contractors Company of Nigeria V. A. G. Kaduna State 1987 5 S.C. at page 37. It is learned counsel's submission that the constitution of the Federal Republic of Nigeria 1979, empowered only the Attorney-General of Edo State to initiate, institute and undertake criminal proceedings against any person before any court of law in Nigeria, and that it is quite clear that our courts have always acknowledged the supremacy of the constitution, and that the powers of the Attorney-General cannot be usurped by the respondent. Reliance was placed on the cases of A. G. Bendel State v. A. G. Federal Republic of Nigeria and ors 1981 10 S.C. 1. and The State v. Ilori and ors 1983 2 S.C. 155.

In reply, learned counsel for the respondent conceded the argument of the appellant, on the powers of the Attorney-General to sue and be sued, but added that he can exercise the power either directly or through officers of his Ministry and referred to the case of M.U.D. Ezomo v. A.G. of Bendel State 1986 4 NWLR part 36 page 448. He submitted that the charge as filed by a state counsel on behalf of the respondent is a competent and valid charge, and in compliance with the provisions of the Edo State Mobile Revenue Courts Edict No. 1 of 1995. He placed reliance on the cases of The State v. Ilori 1983 1 S.C.N.L.R. 14, and Ibrahim and Anor v. The State 1986 1 N.W.L.R. part 18 page 650.

I subscribe to this latter argument, for the Attorney General of a state has the power to delegate his powers to officers of his ministry (Ministry of Justice) to prosecute, and defend matters in court on his behalf, be it criminal or civil. In the circumstances, I hold that the action in the present case is competent, and so is the charge framed.

The competence of the respondent to initiate the case is clearly established by the Income Tax law of Bendel State supra, and I have already found so. In this light, the answer to the sole issue is in the affirmative; and the sole ground of appeal to which it is married fails, and it is dismissed.

The end result is that the appeal fails in its entirety and it is hereby dismissed. The judgment of the lower court is affirmed. It is hereby ordered that the case be heard by the Mobile Revenue Court, Benin City, Edo State.

Judgement delivered by
Idris Legbo Kutigi. J.S.C.

I read in advance the judgment just delivered by my learned brother Mukhtar JSC. I agree with his reasoning and conclusions. The authority or person engaged hi the prosecution herein is clearly authorised by law to undertake the prosecution and therefore covered by Section 191(l)(b.)&(c.) of the 1979 Constitution, now Section 174(l)(b.)&(c.) of the 1999 Constitution. The power to prosecute is thus not limited to the Attorney General alone (see the unreported case No. SC.23/2004: Federal Republic Of Nigeria V. George Osahon & 7 Ors. Decided on 17th February 2006). The appeal is therefore dismissed. The trial of the Appellant herein should be speeded up forthwith.

Judgement delivered by
Aloysius Iyorgyer Katsina-Alu, J.S.C.

I have had the advantage of reading in draft the judgment delivered by my learned brother Mukhtar JSC. I agree with it. I would also dismiss the appeal with costs as assessed.

Judgement delivered by
Ignatius Chukwudi Pats-Acholonu. J.S.C.

I have read the judgment in draft of my noble and learned Lord Mukhtar, JSC and I agree with her. I have nothing more to add.

Judgement delivered by
George Adesola Oguntade. J.S.C.

The respondent had at the Mobile Revenue Court, Edo State, sitting at Benin framed a two-count charge against the appellant. The offences were laid against the appellant pursuant to section 51(2)(b) of the Income Tax Law, Cap. 71 Vol. III, Laws of Bendel State applicable in Edo State.

The appellant's counsel filed a notice of preliminary objection the substance of which was that the respondent had not the capacity to initiate proceedings of a criminal nature against persons. It was further contended that it was only the Attorney-General of Edo State who could in any case bring such proceedings. The trial judge, Oimage J. (as he then was) on 9-2-98 dismissed the preliminary objection. In an appeal to the Court of Appeal, Benin Division (i.e. the court below), the appellant fared no better than it did before the trial court. It has brought a final appeal before this court.

In the appellant's brief filed before this Court, the solitary issue identified for determination reads:

"Whether the Respondent could validly undertake the pending criminal charge against the appellant in its corporate name".

My learned brother Mukhtar JSC has in her lead judgment shown why this appeal must fail. I entirely agree with her. I only wish to emphasise an aspect of the matter concerning the interpretational approach of this Court.

Now, section 4(1) and (2) of the Income Tax Law, Cap. 71, Laws of Edo State 1976 provides:

"(1) There shall be established for the State in accordance with the provisions of this Law a board to be known as the State Tax board.

(2) The Board shall have power to sue and be sued in its official name and to acquire, hold, and dispose of movable and immovable property for the purposes of its functions under this Law."

There is no doubt that one gets the impression on a first look at section 4(2) above that the power to sue conferred therein raises the connotation of civil suit. I concede this much to the appellant that if all there is in Cap.71, Laws of Edo State 1976 as to the power of the respondent is section 4(2) above, I may be then swayed into accepting that the power conferred on the respondent is limited to the initiation of civil suits.

It seems to me however, that a perusal of section 51(1) of the same law removes any doubt as to the ambit of the power conferred under section 4(2). Section 51(1) gives an extended meaning to the word 'sue' used in section 4(2). Section

51(1) provides:

"51 (1) Any one guilty of an offence against this law or any person who contravenes or fails to comply with any of the provisions of this law or of any rule made there under for which no other penalty is specifically provided shall be liable on conviction to a fine of four hundred Naira, and where such offence is the failure arising from the provisions of part 4 to furnish a return, statement or information or to keep records required, a further sum often Naira for each and every day during which such failure continues and in default of payment to imprisonment for six months."

There was no suggestion that Cap. 71 created any other statutory body other than the respondent to ensure the enforcement of the provisions of the Law. That being the position, it is unarguable that the respondent could not bring proceedings of a criminal nature under Cap. 71. Appellant's counsel in my view fell into the error of construing section 4(2) of Cap. 71 in isolation from the other provisions in the Law.

I am in agreement with appellant's counsel that in the interpretation of a statute, the words used must be given their ordinary and plain meaning. See *Ifezue v. Mbadugha* [1984] 1 S.C.N.L.R. 427 and *Ogbunyiya v. Okudo* [1979] 6-9 SC.32. It is equally important however that a statute should always be looked at as a whole. See *Awolowo v. Shagari* [1979] 6-9 SC. 51 and *Broniks Motors v. Wema Bank* [1983] 1 S.C.N.L.R. 296.

It is apparent, that, when section 4(2) is read along with section 51(1) of Cap. 71, the argument of appellant's counsel falls flat and becomes unsustainable.

I would also dismiss this appeal as in the lead judgment of my learned brother Mukhtar J.S.C.