

**IN THE TAX APPEAL TRIBUNAL
SOUTH-EAST ZONE
HOLDEN AT ENUGU.**

APPEAL NO. TAT/SEZ/005/2016

BETWEEN:

MTN NIGERIA COMMUNICATIONS LTD APPELLANT/RESPONDENT

AND

**ANAMBRA STATE BOARD OF INTERNAL
REVENUE RESPONDENT/APPLICANT**

**REPLY ON LAW ON THE NOTICE OF PRELIMINARY OBJECTION
DATED AND FILED ON 11/11/21**

Respondent/Applicant filed notice of preliminary objection dated and filed on 11/11/2021 attacking the jurisdiction of this tribunal to hear and entertain Appellant/Respondent appeal before the tribunal.

In her argument, Applicant argued as follows as contained in paragraph ix of her notice of preliminary objection;

"That the dispute between the Respondent/Applicant and Appellant/Respondent arises from the outstanding pay-as-you earn/withholding tax/development levies on the Appellant/Respondent's lease/rental of its over 700 mast/BTS sites within the territory of Anambra State for the periods 2001 – 2014 due to the State Government and not that due to the Federal Government of Nigeria or its agencies. It is only disputes arising from taxes and levies that are due to the Federal Government of Nigeria that this Tax Appeal Tribunal or the Federal High Court should have exclusive jurisdiction to entertain".

Counsel for the Respondent/Applicant in urging the tribunal to decline jurisdiction cited and relied on the case of *Skye Bank Plc v. Kwara State Internal Revenue Service (2021) NWLR (Pt. 1789) 31*.

Respondent/Applicant Counsel also cited Sections 59, Federal Inland Revenue Service (Establishment) Act, 2007 and Section 60 Personal Income (Amendment) Act, 2011 in urging the tribunal to decline jurisdiction in the Appellant/Respondent's suit in this suit.

It is our humble submission and we respectfully urge the tribunal to hold that argument of Counsel to the Respondent/Applicant regarding jurisdiction of this tribunal is misconceived.

Tax Appeal Tribunal is an administrative tribunal established under Section 59(l) of Federal Inland Revenue Service (Establishment) Act 2007. In *FIRS v. TSKJ (2017) LPELR-42868*, Court of Appeal held;

“It is obvious that Tax Appeal Tribunal is an administrative tribunal as prescribed by the enabling statute and serves as a condition precedent to instituting an action before the Federal High Court. The Tax Appeal Tribunal is a condition precedent to the jurisdiction of the Federal High Court to entertain the subject matter of this Appeal”.

Your Honours, Appeal pending before this tribunal borders on dispute between the parties on withholding tax due from the Appellant/Respondent to Anambra State Government. That being the case, it is our submission that this tribunal has jurisdiction to entertain this matter.

The reverse would have been the case if parties are not disputing amount due from the Appellant to Anambra State Government. Subject matter of this appeal can be distinguished from the case of *Skye Bank Plc v. Kwara State Internal Revenue Service (Supra)* relied upon by the Respondent/Applicant. There was no dispute as to the tax payable and due to Kwara State Internal Revenue Service. The case before Kwara State High Court in *Skye Bank* matter was simply for recovery of outstanding debts arising from under deduction and/or unremitted taxes/levies due to Kwara State Government which outstanding was not disputed or objected to.

It is our humble submission and we urge your Honours to hold that facts of this matter before the tribunal is different from facts which gave rise to decision of Court of Appeal in *Skye Bank* case and this tribunal is not bound by the decision of Court of Appeal in *Skye Bank v. Kwara State Internal Revenue Service (Supra)*.

It is also our humble submission that this tribunal is excluded from the hierarchical structure of court that would apply the doctrine of *stare decisis stricto sensu*. Tax Appeal Tribunal is not listed in Section 6(5) of the constitution of the Federal Republic of Nigeria as a court recognized by law and that would be bound by the principle of precedent.

We urge your Honours to dismiss the preliminary objection filed on 11/11/2021 and continue with the hearing of this appeal.

May it please the tribunal.

DATED this 4th day of February, 2022.



Amaechi Onyekwuluje

✓ **Onyinye Medline Mbanefo**

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