

FEDERAL HIGH COURT OF NIGERIA
ENUGU DIVISIONAL DIVISION
HOLDEN IN ENUGU

CROSS-APPEAL NO: _____

BETWEEN

CELEBRITIES RESTAURANT LIMITED ... CROSS-APPELLANT

AND

FEDERAL INLAND REVENUE SERVICE ... CROSS-RESPONDENT

NOTICE OF CROSS-APPEAL

1. TAKE NOTICE that the Cross-Appellant being dissatisfied with part of the judgment (the “decision”) of the Tax Appeal Tribunal, South-East Zone holden in Enugu (the “Tribunal”) presided over by Hon. Chukwuemeka Eze, Hon. Ide John C. Udeagbala, Hon. Anne C. Akwivu, and Hon. Prof. J. O. Anyaduba in *Celebrities Restaurant Limited v. Federal Inland Revenue Service* (Appeal No. TAT/SEZ/004/2020) delivered on Thursday, 14th April, 2022 doth hereby cross-appeal to the Federal High Court upon the grounds set out in paragraph 3 and will at the hearing of the Cross-appeal seek the reliefs set out in paragraph 4 hereof.

AND the Cross-Appellant further states that the names and addresses of the persons directly affected by the appeal are those set out in paragraph 5 hereof.

2. **Part of the decision complained of**

Parts of the decision that –

- (a) the Cross-Appellant should pay to the Cross-Respondent the sum of ₦5,239,123.58 (Five Million, Two Hundred and Thirty-Nine Thousand, One Hundred and Twenty-Three Naira, Fifty-Eight Kobo) only, despite the Tribunal’s decision setting aside the additional assessments and demand notices issued by the Cross-Respondent to the Cross-Appellant **in all the circumstances of the appeal**; and

- (b) the Cross-Respondent can validly assess the Appellant to value added tax (“VAT”) and that the Cross-Appellant is bound by law to remit its VAT returns to the Cross-Respondent.

3. **Grounds of Appeal**

Ground 1

The Tribunal erred in law when it held that the Cross-Appellant should pay to the Cross-Respondent the sum of ₦5,239,123.58 (Five Million, Two Hundred and Thirty-Nine Thousand, One Hundred and Twenty-Three Naira, Fifty-Eight Kobo) only, despite having setting aside the Cross-Respondent’s additional assessments and demand notices in all the circumstances of the appeal as being null and void.

Particulars of Error

- (a) The Tribunal held that the Cross-Respondent’s additional assessments and demand notices issued against the Cross-Appellant were not in compliance with the law and therefore set aside the additional assessments and demand notices **in all the circumstances of the appeal** as being null and void.
- (b) Having set aside the Cross-Respondent’s additional assessments and demand notices issued against the Cross-Appellant **in all the circumstances of the appeal** on the basis that they were not in accordance with the law, the Tribunal lacks the powers to turn around and order the Cross-Appellant to pay to the Cross-Respondent the sum of ₦5,239,123.58 (Five Million, Two Hundred and Thirty-Nine Thousand, One Hundred and Twenty-Three Naira, Fifty-Eight Kobo) only based on a purported undertaking arising from the invalid additional assessments and demand notices.
- (c) The order of the Tribunal that the Cross-Appellant should pay to the Cross-Respondent the sum of ₦5,239,123.58 (Five Million, Two Hundred and Thirty-Nine Thousand, One Hundred and Twenty-Three Naira, Fifty-Eight Kobo) only is inconsistent with the decision of the Tribunal setting aside the Cross-Respondent’s additional assessments and demand notices issued against the Cross-Appellant **in all the circumstances of the appeal** and therefore null and void.

Ground 2

The Tribunal erred in law when it held Cross-Respondent can validly assess the Appellant to value added tax (“VAT”) and that the Cross-Appellant is bound by law to remit its VAT returns to the Cross-Respondent.

Particulars of error

- (a) Taxation is a matter of legislation as tax can only be imposed and/or collected based on a valid law.
- (b) The Constitution of the Federal Republic of Nigeria 1999 (As Amended) shared the legislative powers in Nigeria including taxing powers amongst the federal government and the federating units (i.e. the States of the Federation).
- (c) Power to impose and/or collect value added tax (VAT) is neither in the Exclusive List nor in the Concurrent List of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).
- (d) Not being in either the Exclusive List nor in the Concurrent List of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), the power to impose and/or collect VAT is a Residual matter under the legislative scheme of the Constitution which is within the exclusive legislative competence of States and not the Federal Government.
- (e) The Value Added Tax Act, Cap. V11, LFN 2004 (VAT Act) being a federal legislation is invalid for purporting to empower the federal government to impose VAT and to collect same through the Cross-Appellant.
- (f) The current position of the law in Nigeria in line with the Constitution is that the Federal Government of Nigeria (whose agent the Cross-Respondent is) lacks the power to impose and/or collect VAT relating to supply of goods or services within a state in Nigeria. See *Attorney General of Ogun State v Aberuagba* (1985) 1 NWLR (Pt. 3) 395, 405, *E. C. Ukala SAN v. Federal Inland Revenue Service & Anor* (2021) 56 TLRN 1, *Uyo Local Government Council v. Akwa Ibom State Government & Anor* (2020) LPELR-49691 (CA), and *Attorney*

General of Rivers State v. Federal Inland Revenue Service & Anor
(2021) 61 TLRN 1.

- (g) The Cross-Appellant carries on its restaurant business with Enugu State only and therefore the Cross-Respondent cannot validly assess the Cross-Appellant to VAT nor the Cross-Appellant liable to remit VAT to the Cross-Respondent.

4. Reliefs sought from the Court

- (a) An order of this Honourable Court setting aside the decision of the Tribunal that the Cross-Appellant should pay to the Cross-Respondent the sum of ₦5,239,123.58 (Five Million, Two Hundred and Thirty-Nine Thousand, One Hundred and Twenty-Three Naira, Fifty-Eight Kobo) only on the basis of the Cross-Respondent's additional assessments and demand notices which had been found to be null and void and set aside in all the circumstances by the Tribunal;
- (b) An order of this Honourable Court setting aside the decision of the Tribunal that the Cross-Respondent can validly assess the Cross-Appellant to VAT and that the Cross-Appellant is bound in law to remit VAT to the Cross-Respondent.

5. Persons directly affected by the appeal

Cross-Appellant

Celebrities Restaurant Limited
No. 1 Hospital Road
GRA, Enugu

Cross-Respondent

Federal Inland Revenue Service
No. 4 John Nwodo Street
GRA, Enugu

Dated this 15th day of July, 2022



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