

New Civil Rules to Dispute Resolution

Reactions to Last Newsletter

I received the largest number of responses to my last Newsletter, which was on Personal Income Tax. A sampling of these responses include:

- On mortgages, a tax colleague with BAT responded that he was of the view that only interest on funds, in an owner-developed house, was exempted from tax and not on all types of mortgages.
- Another colleague responded by saying that the Joint Tax Board was considering increasing the amounts on the allowable expenses under the PAYE system.
- A very senior Practitioner and Mentor responded that, "The information in the Newsletter was factual and everyone should know it?. Issues of the attitude of employers and employees to tax compliance and remittance, government use of the taxes collected, tax administration, etc were not addressed.

My first response is that my Newsletters are for general information and call to action by the recipients. Recipients are advised to seek professional advice to specific situations as my Newsletter(s) are meant to assist them in appreciating the professional advice sought and obtained. Secondly, it is acknowledged globally that issues on taxation are often very complex and controversial. It is therefore essential to consult a legal tax expert when in doubt.

What is New?

On political, social and economic issues, the month of July 2004 was an exciting month. Apart from it being the end of the legal year (for Legal Practitioners) and the beginning of the summer season, the Central Bank of Nigeria increased the capital base of Banks from N 2Billion to N 25Billion, effective end of December 2005. This has caused a lot of concern and debate. There may be a lot of opportunity in this new government direction.

Also, in the month of July 2004, the United States government extended to the end of year 2015, the tenure of the United States ?African Growth & Opportunities Act? (AGOA). This legislation allows for the export to the United State , duty free, some selected African products manufactured in Africa . To qualify, the African country must meet some criteria amongst which is having a democratically elected government. This legislation, from reports, have increased trade between

the selected African countries and the United States . Nigeria was recently admitted as one of the African benefiting countries.

In Lagos State , the New High Court of Lagos State (Civil Procedure) Rules , 2004 (?New Rules?) came into effect. These new Rules govern and direct the procedure of civil cases in contrast to criminal cases in our Courts of Law.

The excitement with the above-mentioned New Rules of Court is that it contains a lot of innovations for civil cases management in Nigeria as it is expected that with the co-operation of all stakeholders, it will assist in the quick dispensation of cases. Some of the innovations in these new Rules include: -

- All civil litigations commenced by a writ of summons must be accompanied by: -
 - A statement of claim stating the facts of the case and the relief(s) that the litigant seeks from the Court;
 - A list of the witnesses that the litigant intends to call at the trial;
 - Written statements on oath (depositions) of the witnesses;
 - Copies of every document that the litigant intends to rely upon at the trial of the case;
 - In a majority of the cases, written briefs of arguments in support of the claim filed.
- Pre-trial conferencing with the trial Judge so that the issues in the case are identified before full-scale litigation and if possible, a settlement is reached early instead of further time and expense in a protracted litigation.
- The appointment of Special Marshals (e.g. Law Chambers, Courier companies, etc), in addition to the existing Sheriffs and Bailiffs, as Process Servers, to assist in the delivery of Court papers.
- Pre-trial conferences and scheduling which enables the trial Judge to (a) dispose of all preliminary matters; (b) give directions on the future conduct of the case and importantly, (c) promote amicable settlement of the case or recommend an alternative dispute resolution mechanism. Pre-trial and scheduling conferences must be completed within three months of its commencement.

A failure to comply with any of the above requirements means that a prospective litigant's court papers will not be accepted for filing at the Lagos High Court Registry. In the event that it is accepted in error, the Court will declare them a nullity until the new requirements, stated above,

are complied with.

Conclusion

Commentators have referred to the above innovations in the new Rules as the 'front loading' of litigation. This means that the era of commencing frivolous litigations should be coming to an end as all the parties must, at an early stage, place all their 'cards' and armoury on the table as it were, and the ones with bad cards will either not commence or continue the litigation, or reach out for an amicable out-of-court settlement.

I therefore recommend that you be prepared with all the materials of your case before you brief a Solicitor/Barrister to commence any litigation or seek legal counsel.

Enjoy the summer holiday!

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