



FEDERAL HIGH COURT RULES ON THE POWERS OF THE REVENUE MOBILIZATION ALLOCATION AND FISCAL COMMISSION TO ASSESS, DEMAND AND COLLECT TAX FROM CORPORATE ENTITIES

In recent times, corporate entities operating in various sectors of the Nigerian economy have been inundated with tax assessments from the Revenue Mobilization Allocation and Fiscal Commission (“**RMAFC**”), demanding payment and remittance of taxes allegedly due and payable to the Federal Government of Nigeria. In most cases, the RMAFC enlists the enforcement assistance of the Economic and Financial Crimes Commission (“**EFCC**”) in its tax collection drive.



On February 23, 2022, the Federal High Court (“**FHC**”) (*coram*: A. L. Allagoa, J), handed down its judgment in a contentious suit which challenged the propriety and extent of powers of the RMAFC to assess, demand, and collect tax from corporate entities: **Suit No. FHC/L/CS/330/2021- Heritage Energy Operational Services Limited (“HEOSL”) v. RMAFC & EFCC.**

The decision re-affirms a fundamental principle of Nigerian law that Nigerian courts will not hesitate to appropriately intervene, where administrative and/or law enforcement agencies exceed their statutory powers. Legal and financial advisers who routinely advise on tax and fiscal matters in Nigeria will find the decision useful.

Background

In February 2021, RMAFC issued a demand notice to HEOSL for payment of certain sums arising from HEOSL’s alleged under-remittance of Value Added Tax (“**VAT**”) and Withholding Tax (“**WHT**”), respectively between 2017 to 2020. RMAFC demanded that payment of the alleged sums be made within seven days of receipt of the demand notice. Following RMAFC’s issuance of the demand notice, the EFCC issued a follow-on letter to HEOSL,

requesting HEOSL’s officials to attend its offices in relation to RMAFC’s allegation of under-remittance of VAT and WHT against HEOSL.

HEOSL filed an action at the FHC seeking declaratory and injunctive reliefs challenging the powers of the RMAFC to assess, demand and collect the taxes, on the basis that paragraph 32 (a-e) of Part 1 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the “**Constitution**”) and section 6 of the RMAFC Act, limits RMAFC’s powers to monitoring and collation of revenue from government agencies. HEOSL further contended that RMAFC’s powers do not include and extend to private individuals, non-governmental agencies and entities, such as HEOSL. HEOSL also questioned the propriety or otherwise of the exercise of investigative powers by the EFCC on complaints received from RMAFC with respect to the alleged under-remittance of VAT and WHT.

Decision

In a well-considered and landmark judgment, the FHC upheld HEOSL’s arguments and held that on a proper construction of the relevant provisions of the Constitution and RMAFC Act, RMAFC lacks the powers to assess, demand, and collect revenue

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(including WHT and VAT) from private individuals and corporate entities. The FHC's reasoning is consistent with the application of established principles of statutory interpretation, where plain and unambiguous provisions of statutes are given their ordinary meaning.

The FHC went further to make the following key findings:

1. RMAFC's actions (in assessing and attempting to collect VAT and WHT from HEOSL) was a "naked usurpation" of powers statutorily conferred on the Federal Inland Revenue Service.
2. The EFCC's powers, like the police powers, are not exercisable "at large". Such powers must be exercised upon "reasonable suspicion" of the commission of a crime.
3. Law enforcement agencies, such as the EFCC, cannot act "capriciously and ultra vires" their enabling statutes.
4. To the extent that the EFCC acted at the behest of RMAFC, in relation to matters that are outside RMAFC's statutory remit, the actions of the EFCC are *ultra vires*.

Premised on the foregoing findings, the FHC granted all the reliefs sought by HEOSL in the originating summons, including orders of perpetual injunctions restraining RMAFC and EFCC from taking any further or other steps in relation to the demand notice; and inviting, arresting, detaining and/or harassing HEOSL's principal officers based on the complaint received from RMAFC in respect of the alleged under-remittance of VAT and WHT.

This decision is a welcome development, as it reflects the legislative intent underpinning the creation of the RMAFC. The decision is also consistent with recent decisions of the appellate courts to the effect that the investigating powers of the EFCC are not at large.

This newsletter is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. We are available to provide specialist legal advice on the readers' specific circumstances when they arise.

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