IN THE TAX APPEAL TRIBUNAL
IN THE LAGOS ZONE
HOLDEN AT IKEJA

Appeal No: TAT/LZ/CIT/063/14

Between

1. **FMC Technologies AG**
2. **FMC Technologies AG Puerto Rico Branch** Appellants

And

Federal Inland Revenue Service Respondent

Ruling

Issue for Determination

During the hearing of this appeal, the Respondent tendered a photocopy of an email from Chevron. The Appellants objected to its admission for violating statutory evidentiary restrictions on computer-generated documents. Do those standards apply to preclude the admission of this document?

The Appellants say yes, the Respondent no.

The Appellants cited section 84(1) of the Evidence Act, *Mobil v FIRS*,[1] *Kubor v Dickson*,[2] and *Obih v Mbakwe*.[3] We found *Obih's case* unhelpful.

Section 84(1) of the Evidence Act makes computer-generated documents admissible when the conditions prescribed in section 84(2) are fulfilled. In tendering the email copy, the Respondent did not even advert its mind to, let alone meet these provisions.

Our decision in *Mobil* cannot govern the Appellants' objection here. The evidentiary issue in that case was hearsay. Here, it is the admissibility of computer-generated evidence. On the other hand, the Respondent's submission that admissibility should be based on relevance *simpliciter* ignores much of our jurisprudence.

The Appellants conclude their submissions by urging the tribunal to reject the document and mark it REJECTED.

---

[1] [2015] 17 TLRN 73.
[2] (2012) 10-11 S.C 1, 58-61.
[3] (1984) 1 SC 246.

Kubor v Dickson,[4] relied on by the Appellants, threw guiding light on the appreciation of section 84(1) of the Evidence Act. The Appellants' understanding of this and other provisions of the Evidence Act is an excellent guide to how that Act governs *court* proceedings. Regarding *tribunal* proceedings, the Evidence Act is an extremely helpful guide. The Act provides an excellent template for the conduct of trials before this and similar tribunals. But the provisions of the Evidence Act do not control our proceedings as they do those of courts.

This tribunal is an administrative tribunal, not a court.

Section 36(1) of the Constitution imposes the duty of fair hearing on "a court or other tribunal." In *Jibrin v NEPA*,[5] the Court of Appeal recognized that the contemplation of those constitutional words was to extend the requirement of fair hearing to tribunals other than courts. This is an acknowledgment that not all tribunals are courts. Administrative tribunals are not courts. This tribunal is an administrative tribunal.

Black's Law Dictionary 10th edition defines an administrative tribunal as a "court-like decision-making authority that resolves disputes, esp[ecially] those in which one disputant is a government agency or department."[6] Administrative tribunals emerged in the 20th century to enable governments pursue social objectives like taxation without stultification from the courts, with their strict procedures and evidential dogma. Since disputes would inevitably arise from the government's pursuit of its policies through administrative agencies like the Respondent, "it was felt [that] specialized administrative bodies such as tribunals needed to be created to resolve such disputes fairly and effectively."[7] In Nigeria, this led to the establishment of this tribunal.

Administrative tribunals are neither courts nor executive bodies. "Rather they are a mixture of both. They are judicial in the sense that the tribunals have to decide facts and apply them impartially, without considering executive policy. They are administrative because the reasons for preferring them to the ordinary courts of the land are administrative reasons."[8] Administrative tribunals are hybrid adjudicating authorities which straddle the line between government and the courts. They are not necessarily

---

[4] (2012) 10-11 S.C 1, 58-61.
[5] [2004] 2 NWLR (Part 856) 210, 229B (Bulkachuwa JCA).
[6] *Black's Law Dictionary*, 10th ed., 1737-1738.
[7] Abhishek Kumar Jha, 'Administrative Tribunals of India- A Study in the Light of Decided Cases', http://ssrn.com/abstract=1989780, 1.
[8] Abhishek Kumar Jha, 'Administrative Tribunals of India- A Study in the Light of Decided Cases', http://ssrn.com/abstract=1989780, 2.

presided by judges. They may have adjudicating authority, which is "quasi-judicial" because it directly affects the legal rights of persons.

Professor Iluyomade and Hon. Justice Dr Eka deem as inevitable "the rise of administrative adjudication", which the learned administrative-law experts recognize as a salutary dilution of the separation-of-powers dogma.[9] Iluyomade and Eka acknowledge that administrative tribunals "exercise judicial, quasi-judicial or adjudicatory functions" while forming no part of the judicature.[10] These two frontline and long-time authorities on Nigerian administrative law state that an administrative tribunal is "not bound by the strict rules of evidence."[11]
Administrative tribunals do not have inherent powers as courts do. They only have the powers conferred on them by constitutive or enabling statutes. Administrative tribunals do not follow strict procedural codes and are not restricted by the strict statutory rules of evidence. They may, in the words of the Nigerian Constitution, "determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person."[12]

The features of an administrative tribunal include the following:[13]

1. Their adjudicatory power must be statutorily derived.
2. They possess the trappings of courts.
3. They can summon witnesses, administer oaths, and compel production of evidence.
4. They are not bound by strict rules of evidence.
5. They must exercise their powers judicially and objectively.
6. They must apply the law and resolve disputes independently of executive agenda.

The following features do not constitute or convert an administrative tribunal into a court: [14]

- Giving a final decision

---

[9] B. O. Iluyomade & B. U. Eka, *Cases and Materials on Administrative Law in Nigeria*, 2nd ed., Ile-Ife, OAU Press, 1992, 188.
[10] B. O. Iluyomade & B. U. Eka, *Cases and Materials on Administrative Law in Nigeria*, 2nd ed., Ile-Ife, OAU Press, 1992, 188.
[11] B. O. Iluyomade & B. U. Eka, *Cases and Materials on Administrative Law in Nigeria*, 2nd ed., Ile-Ife, OAU Press, 1992, 189.
[12] Section 36(2), 1999 Constitution of the Federal Republic of Nigeria (as amended).
[13] *Jaswant Sugar Mills v Lakshmi Chand* AIR 1963 SC 677, 687.
[14] *Jaswant Sugar Mills v Lakshmi Chand* AIR 1963 SC 677, 688, http://indiankanoon.org/doc/387276/

- Hearing witnesses on oath
- Proceeding in an adversarial fashion
- Giving decisions affecting citizens' rights
- Availability of appeal to court, or
- Welcoming complaints or references from another body.

In jurisprudential terms, this Tribunal is properly characterized as an administrative tribunal. This is what it is. It is preferable to stick to this term. It has a clear meaning in law. In *Nigerian National Petroleum Corporation v Tax Appeal Tribunal & Ors*,[15] the Federal High Court held that the Tax Appeal Tribunal is not a court.

The Appellants submitted that the Act applies to this tribunal because (a) section 256(1) of the Evidence Act lists bodies excused from the Act's operation, and (b) that list does not include this tribunal. The Appellants invoked the maxim *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another).

The Appellants also pointed to the definition of "court" under section 258(1) of the Evidence Act to include "all judges and magistrates and, except arbitrators, all persons legally authorized to take evidence." This broad definition may appear to include this tribunal since it is "legally authorized to take evidence." But a community reading of this provision with section 256(1) instructs us to restrict the Act to judicial proceedings *stricto sensu*, and not extend its application to administrative proceedings. And if the Evidence Act does not control this tribunal's proceedings, none of its provisions, including definition clauses, apply. The Evidence Act defines "court" for the purposes of the Evidence Act.

In any case, the constitutional use of the term "court" is superior to any statutory definition of that term. The Tax Appeal Tribunal is not named in section 6(5)(a) to (i) of the Constitution, a comprehensive listing of this nation's superior courts of record. Section 6(3) provides: "The courts to which this section relates established by this Constitution for the Federation and for the States, specified in subsection (5)(a)-(i) of this section shall be the only superior courts of record in Nigeria." By virtue of this provision, the categories of superior courts of record in Nigeria are closed.

Section 36 of the Constitution dealing with fair hearing is another example where "tribunal" does not necessarily mean judicial tribunal alone. If "tribunal" in that clause were restricted to judicial tribunals, it would mean that administrative and other tribunals would be excused from the duty of fair hearing. We know this is not so. In

[15] 9 All NTC 119, 173.

Tamti v Nigeria Customs Service Board,[16] the Court of Appeal held, "An administrative tribunal ... is bound to observe the principles of *audi alteram partem* and *nemo judex in causa sua* enshrined in the rules of natural justice."

Policy reasons dictate relaxation of evidence-law tenets in administrative hearings.

Administrative tribunals arise as follows. First, a jurisdiction enacts a statute to deal with a field of public law. Second, the state sets up an agency to administer that law. Third, the state sets up a court-like apparatus to quickly and efficiently resolve disputes arising from the law's administration and enforcement. Because the state is eager to proceed with speed and efficiency in attaining the law's objectives, it wishes to minimize delay in dispute resolution. It wishes to avoid the courts. So it sets up administrative tribunals. All these attributes are present in the establishment of the Tax Appeal Tribunal. Nigeria passed an act or a series of acts on taxation, then set up an agency, the Respondent, to administer those laws; and set up the Tax Appeal Tribunal to resolve disputes arising from the administration of those laws.

In setting up the tribunal, both the executive and the legislature were mindful of the potential protraction of disputes if submitted to the overworked judiciary for resolution. That would defeat the tax-collection agenda. A key attribute of the court system that would cause the feared protraction is the strict adherence to evidence rules drawn from the English common law and installed in our Evidence Act.

Administrative-tribunal proceedings are very similar, but not identical, to court proceedings. Administrative tribunals "do not use formal rules of evidence or permit comprehensive discovery under [civil-procedural codes]."[17] Insistence on the niceties of evidence is apt to derail administrative proceedings. Such insistence would defeat the policy reason for the tribunal's establishment. Indeed, if the tribunal were to function precisely like a court and follow evidentiary dogma religiously, it would lose any *raison d'être*.

How tribunals should receive evidence.

The Court of Appeal in *WAEC v Mbamalu*[18] cited with approval *ex parte Moore*:[19] "The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than [that] it must be based upon material which tends

[16] [2009] 7 NWLR (Part 1141) 631, 651H-652A (Abba Aji JCA).
[17] William F. Fox Jr, *Understanding Administrative Law*, 4th ed., LexisNexis, 2000., 19.
[18] [1992] 3 NWLR (Part 230) 481, 494B-E (Uwaifo JCA).
[19] [1965] 1 QB 456, 488 (Diplock LJ).

logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would become relevant. It means that he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue."

In *T. A. Miller Ltd v Minister of Housing and Local Government,*[20] Lord Denning MR, also approving *ex parte Moore,* held that "Tribunals are entitled to act on any material which is logically probative, even though it is not evidence in a court of law."

We overrule the objection and admit the document as Exhibit [ ].

Legal Representation:
Layi Babatunde, SAN with Prof Taofeeq Abdulrazaq, L.A. Opanoye Esq. and M. Udoh Esq for the Appellant/Respondent.

Mrs. A.A. Iriogbe for the Respondent/Applicant.

Dated at Ikeja Lagos this 22nd day of January 2016

s

KAYODE SOFOLA, SAN (Chairman)

CATHERINE A. AJAYI (MRS)
Commissioner

D. HABILA GAPSISO
Commissioner

MUSTAFA BULU IBRAHIM
Commissioner

CHINUA ASUZU
Commissioner

[20] [1969] RPC 91, 93.