



TAX ADJUDICATIVE MECHANISM; A CRITIC OF THE INTERVENTION OF TAX APPEAL TRIBUNAL *

Abstract

Tax Appeal Tribunal (TAT) is a child of circumstance birthed at the time tax litigation was a clog on the wheel of tax administration. Reforms were carried out to reposition the tax sector for quick and efficient resolution of tax disputes. One of the numerous reforms was the establishment of TAT to herald the quick resolution of tax disputes as against the usual delay associated with litigation at the conventional court. It is also intended to reduce cost of tax administration. The establishment of TAT saw the annulment of all other tax resolution bodies, like the defunct Body of Appeal Commissioners; and the harmonisation of tax adjudication process. The Body, however, has been laced with many controversies. The most prevailing is the jurisdiction of the TAT *vis a viz* the jurisdiction of Federal High Court. Lots have been said about the composition of TAT as whether it is a court or an administrative tribunal. Little or no attention has been paid to the appellate nature of the Tribunal and the efficacy of the Practice and Procedure Rules. This paper reviewed the practice and procedure of TAT with a view to ascertaining whether the Tribunal has lived to the exigency of its establishment in terms of speedy resolution of tax disputes and cost reduction. The nature of an appellate jurisdiction is analysed so as to ascertain whether TAT qualifies as an appellate adjudicative body or a body of first instance. This paper adopts doctrinal methodology. Recourse was made to the study of textbooks, journals, and statutes for an established legal theory and principles that will form the basis of the argument. It is found that TAT is crucial to tax dispute resolution, consequently, the paper canvassed for a review of the Practice and Procedure Rules for efficient and optimal performance. The practice and procedure of the rule should portray the body as an appellate body and not a trial body. Such will unburden the Tribunal to ensuring speedy resolution of disputes before it. It will also reduce the cost of tax litigation, both for the taxpayer and tax authority.

Key words: Tribunal, Tax, Litigation, Disputes, Jurisdiction, Commissioners

1. Introduction

Establishment of tax tribunal in Nigeria was rooted in the colonial era though not as it is today in nomenclature, jurisdiction and power. In the colonial period, tax tribunal was christened as Board of Commissioners established pursuant to section 60(1) of the Income Tax Ordinance 1948¹. Under the law, the Governor-General was empowered to appoint a three member Board of Commissioners to determine appeals filed by aggrieved taxpayers on assessment raised on them². To ensure the Board was impartial, the Ordinance provided that none of its members should be a public officer.³ The Board was in existence in that form till 1961 when Income Tax Management Act (ITMA)⁴ and Companies Income Tax Act (CITA)⁵ respectively were enacted.

*MN Umenweke, FICMC, ACTI, Professor and former Dean, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Email: mn.umenweke@unizik.edu.ng and

NB Amadi, LL. B, LL.M, BL, AICMC, ACTI, Lecturer, Faculty of Law, Godfrey Okoye University, Thinker's Corner, Enugu, Email: namadi@gouni.edu.ng. Tel. No. 08032666969 This paper was formally published as a Monograph in February, 2021.

¹ The ordinance consolidated and amended Income Tax Ordinance of 1943.

² See also section 61(1) Income Tax Ordinance CAP 85 LFN 1958.

³Section 62(2), *Ibid*.

⁴ No. 21 of 1961. It came into effect on 1st April, 1961.

⁵ No 22 of 1961.



There was no provision of ITMA establishing Appeal Commissioners; but section 18 thereof provided for any appeal with respect to assessment of income arising from any decision or direction of the Joint Tax Board (JTB) to lie only to the High Court at the instance of the person in whose hands that income is assessed to tax. The *Companies Income Tax Act* 1961 provided for establishment and constitution of the Body of Appeal Commissioners⁶. The Act (*CITA*) afforded any company aggrieved by an assessment the right of appeal against such assessment to the Body of Appeal Commissioners⁷ which may affirm or reverse the assessment.⁸ Its membership initially consisted of not more than six persons but was later increased to eight persons pursuant to section 1, *Companies Income Tax (Appeal Commissioners) Act, 1962*.⁹ In 1973, Federal Revenue Court was created pursuant to Decree 13 of that year but it was not until the promulgation of the 1979 Constitution that its nomenclature changed to Federal High Court.¹⁰

It is noteworthy that also in 1993; Value Added Tax Decree was promulgated¹¹ and Value Added Tax Tribunal¹² was established shortly thereafter to entertain appeals from any person who is aggrieved by an assessment made on him by Federal Inland Revenue Service. In contrast, the VAT Tribunal was imbued with jurisdiction to recover any tax, penalty or interest which remains unpaid after the period of assessment;¹³ and appeal from the Value Added Tax Tribunal lied to Court of Appeal.¹⁴ For these two reasons, VAT Tribunal had the reminiscence of a High court both in power and jurisdiction. That triggered off a challenge of the constitutionality of the provisions of section 20 Value Added Tax Act and the entire jurisdiction of VAT Tribunal in a court of law. As a matter of fact, the constitutionality or otherwise of Section 20 VAT Act was the crux of the appeal in *Stabillini Visinoni Ltd v FBIR*¹⁵ where the Court of Appeal was invited to determine whether the Value Added Tax Tribunal was right to have assumed jurisdiction to hear and determine recovery of Value Added Tax in the circumstance it did, in view of the provision of section 251(1) of the 1999 Constitution.¹⁶ The court held that section 20 of the VAT Act is inconsistent with the constitution and hence cannot stand.¹⁷ Never the less, before the *Stabillini Vissioni's* case could be decided in the year 2009, the Federal Inland Revenue Service (Establishment) Act 2007 was enacted. The Act did not only merge but radically changed the name, nature and jurisdiction of the Body of Appeal Commissioners and VAT Tribunal and renamed them as Tax Appeal Tribunal (TAT).¹⁸ The TAT is empowered to settle any disputes arising from the operations of all income tax Acts,¹⁹ Since the establishment of TAT, there has been a lot of controversies as to the jurisdiction and composition especially with regards to 251 of the Constitution; and the power of the tribunal to try state's tax

⁶ Section 53(1), *Companies Income Tax Act* CAP 60 LFN 1990.

⁷ Section 54(1) *CITA*, 1990.

⁸ Section 54(5) *CITA*, 1990.

⁹ Is worthy of mention that in 1961 when *ITMA* was promulgated, Federal High Court was not in existence. and that necessitated the making of appeal from Joint Tax Board to lie to State High Courts even on Federal taxes. As then the State High Courts had unlimited Jurisdiction to try matters. See *Bronik Motors V Wema Bank (1985)*. 35 *NCLR* 296.

¹⁰ See section 228 of the 1979 Constitution of Federal Republic of Nigeria.

¹¹ No 103 1993 now Value Added Tax Act, CAP v1 LFN, 2004.

¹² Decree No 32, 1996 – see Section 20(1)(2) and 3 *Value Added Tax Act*, CAP VI, LFN, 2004.

¹³ Section 20(1) VAT Act 2004. See also MT Abdulrazaq – *Introduction to VAT in Nigeria* [Ibadan: Ababa Press. Ltd] 2011 Pp 115 – 127.

¹⁴ *Ibid*, section 20(3).

¹⁵ (2009)13NWLR (Pt 1157) 200.

¹⁶ See also *Cadbury Nig. Plc v. FBIR* (2010) 2 NWLR (Pt 1179) 561.

¹⁷ It was consequently declared null and void. That the said section 20 did not restrict the jurisdiction of VAT Tribunal to issue of assessment only but clothed it with absolute and sweeping jurisdiction to recover any tax inclusive of the ones on which the Federal High Court is imbued with jurisdiction by virtue of section 251(1) (a & b) of the 1999 Constitution.

¹⁸ Section 59, *FIRS Act 2007* and Fifth Schedule thereto.

¹⁹ *Personal Income Tax Act, Companies Income Tax Act, Tax and Levies (Approved List for Collection) Act*.



matters. The Act also provides that the tribunal shall be deemed to be a court which raises the issues as to whether the Tribunal is an administrative body or a quasi-court. This paper, however, is more concerned with the reason behind the establishment of the Tribunal and its procedural efficiency. The historical antecedent shows that the Tax Authority has been in consistent search for a mechanism of resolving disputes arising from tax matters. That is the lyric in the establishment of Board of Commissioners and the Body of Appeal Commissioners, VAT Tribunal and then the Tax Appeal Tribunal. The trend has shown that reliance on the traditional court system does not provide the needed process for speedy resolution of Tax Dispute for efficient tax dispute resolution system. With the establishment of TAT, one is expected to see the desired change in tax dispute resolution process. TAT, though a fantastic approach to tax dispute resolution, is yet to achieve the desired goal. This paper, therefore, seeks to evaluate the establishment and composition of TAT. It further reviews the practice and procedure of the Tribunal. The nature of appellate jurisdiction is examined in order to ascertain whether the Tribunal qualifies as an appellate body. The provision of the rules of the tribunal as it relates to delay in tax dispute resolution and the attendant huge cost of administration is examined. The paper agrees that TAT is a veritable platform to the adjudicative process of tax dispute and suggests the better way to reposition the Tribunal so that it can achieve its intended goals and objectives.

2. Tax Appeal Tribunal (TAT)

2.1. Establishment of Tax Appeal Tribunal

The Tax Appeal Tribunal is a child of necessity born out of the desire to fill up the gaps opened by the nullification of the defunct VAT Tribunal via judicial declaration, as well as to provide an umbrella body to take care of all tax related disputes. The Tribunal was established by section 59 of the Federal Inland Revenue Service (FIRS) Act, 2007 which provides that Tax Appeal Tribunal shall have power to settle disputes arising from the operation of this Act and as other enactments stated in the First Schedule to the Act. The Tax Appeal Tribunal therefore has jurisdiction over disputes arising from the Companies Income Tax, Petroleum Profit Taxes, Personal Income Tax, Capital Gains Tax, Value Added Tax, Stamp Duties, Taxes and Levies.²⁰

It was established in 2010 in eight different locations namely Bauchi, Kaduna, Jos, Ibadan, Enugu, Benin, Lagos and Abuja,²¹ and vested with powers to settle disputes arising from the operations of the FIRS Act and other tax laws as spelt out in the First schedule to the Act. The scope also covers any other law for the assessment, collection and enforcement of revenue accruable to the Government of the Federation as made by the National assembly from time to time or regulations incidental to those laws, conferring any power, duty and obligation on the Service. Other laws include laws imposing taxes and levies within the Federal Capital Territory; laws imposing collection of taxes, fees and levies collected by government agencies and companies, including signature bonuses, pipeline fees, penalty for gas flared, depot levies and licence fees for Oil Exploration Licence (OEL), Oil Mining Lease (OML), Production licence, royalties, rents (productive and non-productive), fees for licence to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all other fees prevalent in the oil and gas industry. While inaugurating the Tribunal, the former Minister of Finance, Mansur Muhtar said that the Federal Government's commitment to making the country a haven for investors informed the setting up of the Tax Tribunal. According to him:

²⁰ See First Schedule to the FIRS Act 2007.

²¹ Tax Appeal Tribunal Establishment Order 2009.



This government is committed to making Nigeria a preferred destination for both local and foreign investors by making the economy more investment friendly. You will agree with me that this is a step in the right direction towards the attainment of that objective. The responsibility being entrusted to you is indeed enormous, but I have no doubt in my mind that given your qualifications and experiences in both the public and private sectors of the economy you will discharge this responsibility creditably.²²

It is intended that TAT would help to engender public confidence in the tax system. A person aggrieved by an assessment of the Service or one aggrieved by the non-compliance with tax laws can appeal to the Tribunal by virtue of Paragraph 14 of the 5th Schedule to the FIRS Act.

2.2. Powers of the Tribunal

The tribunal shall have powers to:²³

- i. Summon and enforce the attendance of the person and examine him on oath
- ii. Require the discovery and production of documents.
- iii. Receive evidence on affidavits
- iv. Call for the examination of witnesses or documents.
- v. Review its decisions
- vi. Dismiss an application for default or deciding matters *ex parte*;
- vii. Set aside any order or dismissal of any application for default or any order passed by it *ex parte*
- viii. Do anything which in the opinion of the Tribunal is incidental or ancillary to its functions.

2.3. Jurisdiction of the Tax Appeal Tribunal

The Tribunal shall have power to adjudicate on disputes, and controversies arising from the following tax laws:²⁴

- i. Companies Income Tax Act, Cap. 21, LFN, 2004.
- ii. Personal Income Tax Act Cap P8, LFN, 2004.
- iii. Petroleum Profit Tax Act Cap. P13, LFN, 2004
- iv. Value Added Tax Act, Cap V1, LFN, 2004.
- v. Capital Gains Tax Act Cap. C1, LFN, 2004
- vi. Any other law contained in or specified in the first schedule to this Act or other laws made or to be made from time to time by the National Assembly.

The Tribunal shall apply such provisions of the tax laws referred to in subparagraph (1) of this paragraph as may be applicable in the determination or resolution of any dispute or controversy before it.²⁵

Paragraph 11(1) (vi) extends the jurisdiction of the Tax Appeal Tribunal to cover any other law

²²TAT, available at <http://tat.gov.ng/content/tax-appeal-tribunal-move-engender-confidence-nigeria>, (accessed on 23th March 2020).

²³ See paragraph 20 (2) of Fifth Schedule to the Federal Inland Revenue Service (Establishment)Act, 2007.

²⁴ See paragraph 11 of Fifth Schedule to the Federal Inland Revenue Service (Establishment)Act, 2007.

²⁵ Para 11(1), 5th Schedule, Ibid.



contained or specified in the First Schedule to the Act. In other words, the Tribunal has additional jurisdiction over the items listed in Paragraphs 6 to 11 of the First Schedule to the FIRS Act and these include:

- (a) Stamp Duty Act Cap S8, LFN, 2004.
- (b) Taxes and Levies (Approved List for Collection) Act, Cap T2, LFN, 2004.
- (c) All regulations, proclamations, government notices or rules issued in terms of these legislations;
- (d) Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to these laws, conferring any power, duty and obligation on the service;
- (e) Enactment or laws imposing Taxes and Levies within the Federal Capital Territory; and
- (f) Enactment of Laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licenses, fees for oil Exploration Licence (OEL), Oil Mining Licence (OML), Oil Production Licence (OPL), royalties, rents (productive and non-productive), fees for licences to operate drilling rigs, fees for oil pipeline licences, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

2.4. The Composition of the Tax Appeal Tribunal

Each TAT division is composed of five Tax Appeal Commissioners headed by a chairman who must be a lawyer with not less than fifteen years cognate experience in tax matters while the other commissioners must be knowledgeable about tax laws, regulations, norms, practices and operations of taxation in Nigeria.²⁶ The Chairman is to preside over the sittings of the tribunal, though in his absence another commissioner may be nominated to preside. The quorum of the tribunal is three. The zoning of the Tax Appeal Tribunal is a welcome development since it has made it easily accessible to would be disputants. The emphasis on the qualification of the commissioners is also commendable as this would guarantee that highly experienced professionals capable of delivering quality and well considered verdicts are appointed as commissioners.

3. Commencement of Appeals

Any person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws administered by the Service may appeal against such action, decision, assessment or demand notice within the period stipulated hereunder.²⁷ An appeal under these Rules shall be filed within a period of 30 days from the date on which the action, decision, assessment or demand notice which is being appealed against, was made by the Service. The Tribunal may entertain an appeal after the expiration of the said period of 30 days if it is satisfied that there was sufficient cause for the delay.²⁸

Apart from aggrieved persons, the Service may also file appeal before the Tribunal. The Rules provides that the Service, if aggrieved in relation to any person in respect of any provisions of the tax laws may file an appeal at the appropriate zone of the Tribunal.²⁹

²⁶ See paragraph 2 and 3 of the 5th Schedule to FIRS (Establishment) Act, 2009.

²⁷ Order III, Rule 1 of t Tax Appeal Tribunal (Procedure) Rules, 2010.

²⁸ Order III, Rule 2 of the Rules.

²⁹ Order III, Rule 3 of the Rules. The Notice of Appeal that initiates appeal before the Tribunal is similar to pleadings (writ of summons and statement of claim) as we have it in civil litigations in the regular courts. This rule, therefore, introduces the concept of front-loading system which forbids springing up of surprises in the determination of tax



3.1. Form of Commencement of Appeals

An Appeal before the Tribunal is commenced by way of Notice of Appeal as in Form TAT 1 contained in the First Schedule to the Rules and accompanied by such fees as may be prescribed in the Second Schedule to the Rules.³⁰ Where an appellant desires to rely on evidence of witnesses at the hearing of an appeal, such appellant shall file the following documents along with the notice of appeal-

- (a) list of witnesses to be called at the hearing of an appeal;
- (b) written statements on oath of the witnesses; and
- (c) Copies of every document to be relied on at the trial.³¹

3.2. Hearing of Appeal

The Tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensure speedy dispensation of justice. The hearing of an appeal shall be commenced by the appellant presenting documents and statements which he intends to rely upon as well as any witnesses he desires to call. The respondent or his representative may in like manner present any document or statement he intends to rely upon as well as any witnesses he desires to call. At the hearing of an appeal, the Tribunal shall admit all relevant evidence, oral or documentary, adduced by the appellant or the respondent or any person appearing on their behalf.

The oral examination of a witness during his evidence in chief shall be limited to confirming his written deposition and tendering in evidence all documents or other exhibits referred to in his deposition.³² Thereafter the other party may cross-examine the witness who may then be re-examined.³³ Where the Tribunal deems it necessary, it may call upon or, as the case may be, permit any party to produce any additional document or call additional witnesses or file any affidavit to enable it to issue proper directions or orders.³⁴ Where the Tribunal, on application of any party, directs that any person shall be summoned to give evidence, or tender any document, the Tribunal may order the deposit of such amount of money before the issue of a summons, as in Form TAT 6 in the First Schedule to these Rules, as will cover the expenses of such person in so attending. Where a witness does not appear to a summons, the Tribunal upon proof of service of the summons, a note of which shall be made on the record book, may issue a warrant as in Form TAT 7 in the First Schedule to these Rules to bring such witness before the Tribunal at such time as may be convenient.

4. Practice and Procedure of Tax Appeal Tribunal

Tax Appeal Tribunal Rule may be cited as the Tax Appeal Tribunal (Procedure) Rules 2010.³⁵ The rules shall apply in all proceedings of the Tribunal.³⁶ The rule provides for the form of commencement of action before the tribunal. A person or body corporate aggrieved by an assessment

disputes. See Gospel Rawlings Adams: An Evaluation of the Rules of Practice and Procedure of Tax Appeal Tribunal in Nigeria, being a thesis submitted to the School of Postgraduate Studies, Ahmadu Bello University, Zaria, in partial fulfilment of the requirements for the award of Master of Laws Degree-LL.M.

³⁰ Order III, Rule 4 of the Rules.

³¹ Order III, Rule 5 of the Rules.

³² Order XV R(1) of the Rules.

³³ Order XV R(2) of the Rules.

³⁴ *Ibid.*

³⁵ Order 1 (1) of the Rules.

³⁶ Order 2(2) of the Rules.



or demand notice made upon him/her by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws administered by the Service may appeal against such action, decision, assessment or demand notice within a period of 30 days from the date on which the action, decision, assessment or demand notice which is being appealed against, was made by the Service.³⁷ The form and practice of the rule provides for evaluation of evidence. An Appellant who desires to rely on evidence of witnesses at the hearing of an appeal shall file along with the notice of appeal— list of witnesses to be called at the hearing of an appeal; written statements on oath of the witnesses; and copies of every document to be relied on at the trial.³⁸ The place of instituting appeal shall be in the zone from which it emanates. An appeal commenced in a wrong zone shall not be heard but be transferred upon the direction of the Chairman of the zone where it is commenced to the appropriate zone.³⁹

A notice or process shall be deemed to have been properly served if delivered personally to the appellant or his representative.⁴⁰ Where personal service on a party cannot be effected, the Tribunal may on the application of any of the parties order substituted service to be effected by advertisement in a newspaper circulating within the jurisdiction of the Tribunal; delivery of the process to an adult person at the usual or last known place of residence or business of the party; or delivery of the process to a person who is an agent of the party; or pasting the process at a conspicuous part of the last known place of residence or business of the party; or registered post or courier service.⁴¹ Service of notices and processes shall be effected between the hours of six o' clock in the morning and six o' clock in the evening. Save in exceptional circumstances and as may be ordered by the Tribunal, service shall not be effected on a Saturday, Sunday or a public holiday.⁴²

According to Order 8, a respondent shall within 30 days after the service of a notice of appeal on him enter appearance by delivering to the Secretary a respondent's acknowledgment of receipt of the Notice of Appeal and stating therein whether he contests the appeal.⁴³ A respondent who desires to rely on evidence at the hearing of the appeal shall file along with the respondent's reply — list of witnesses to be called at the hearing of the appeal; written statements on oath of the witnesses; and copies of every document to be relied on at the hearing.⁴⁴ Where an appeal has been heard in default of the appearance of the respondent and any decision has been given, the Tribunal may entertain an application from the respondent to set aside such decision and to re-hear the appeal.⁴⁵

An appeal may be discontinued at any time before the hearing of the appeal, at the hearing of the appeal.⁴⁶ One of the main reasons of establishing the tribunal is to ensure speedy dispensation of justice. Accordingly, the rule however provides that the Tribunal shall have the power to conduct its

³⁷ Order 3(1)(2) of the Rules.

³⁸ Order 3(5), of the Rules.

³⁹ Order 4, of the Rules.

⁴⁰ Order 7(2) of the Rules.

⁴¹ Order 7(3) of the Rules.

⁴² Order 7 (4)(5) of the Rules.

⁴³ Rule 1 of the Rules.

⁴⁴ Order 8 (3) of the Rules.

⁴⁵ Oder 8(4) of the Rules.

⁴⁶ Order 14(1 & 2) of TAT Rules. The rules did not state ground for the withdrawal of an appeal before it. It may not, however, be out of the conventional practice of withdrawing matter once parties have settled. This may suggest that the rule, impliedly, recognises alternative method of resolving dispute other than litigation. It would as well be better if the rules make provision for a defined mechanism of resolving dispute before hearing at the Tribunal. For more on the potentials of ADR in resolving tax dispute, see MN Umenweke and NB Amadi on "Exploring the Potentials of ADR in Resolving Tax Dispute" being a paper presented at the 3rd International Tax Conference of Chartered Institute of Taxation held at Igbinedion University, Okada.



proceedings in a manner it deems fit to ensure speedy dispensation of justice.⁴⁷ The rule, however, provides that at the hearing of an appeal, the Tribunal shall admit all relevant evidence, oral or documentary, adduced by the appellant or the respondent or any person appearing on their behalf.⁴⁸ Any party dissatisfied with a decision of the Tribunal may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the Secretary within 30 days from the date on which such decision was given.⁴⁹

5. The Nature of an Appellate of Court

The Appellate Court has jurisdiction to hear and determine appeals from the lower courts. The court has powers to exercise appellate jurisdiction in civil matters for the purpose of re-hearing the case in whole or in part or may remit the case to the court below for such re-hearing, and may give such other directions as to the manner in which the court below shall deal with the case in accordance with the power of the court.

An appellate court hearing an appeal in civil matter may reverse, vary or confirm the decision of the court below. Similarly, in the exercise of its appellate jurisdiction, the appellate court has the discretion to re-hear the whole case or not and it has power to make any order which the trial court might have made as well as the power to substitute any order which it considers appropriate as the justice of the case demands. Furthermore, the appellate court may quash the proceedings of the court below and order a fresh hearing before the trial court or before any other court of competent jurisdiction.⁵⁰

Appeal court is not a trial court. It is not the business of the appellate court to reopen disputes- calling of witnesses and taking evidence. The duty of the court is to see whether the court below have used correct procedures with a view to arriving at the right decision.

In the case of *Victor Woluchem & Ors v Chief Gudi Ors*⁵¹, Nnamani JSC, succinctly explained how an appeal court would interfere with the findings of the court below. In the word of the learned justice:

It is now settled law that if there has been a proper appraisal of evidence by a trial court, a court of appeal out not embark on as fresh appraisal of the same evidence in order merely to arrive at a different conclusion from that reached by the trial court. Furthermore, if a court of trial unquestionably evaluates the evidence, then it is not the business of a Court of Appeal to substitute its own views for the views of the trial court.

From the foregoing, it is very clear that once a trial court considers the totality of the evidence adduced by the parties and decides the case upon the preponderance of credible evidence, then an appeal court will not interfere with finding of the lower court. An appellate court has no business to appraise the evidence adduced or to distort the findings of the fact of the lower court or to substitute

⁴⁷ Order 15, TAT Rules.

⁴⁸ *Ibid*, the provision for evaluation of evidence, calling of witness with the consequence of examination in-chief and cross examination is usually associated with delay during trial. It's possible this can be done before trial for speedy and efficient resolution of disputes.

⁴⁹ Order 24, TAT Rules.

⁵⁰ See order 4 (4) of Court of Appeal Rules, 2006.

⁵¹ (1981) LCN/2126(SC)



its own views for that of the trial court.⁵² An Appellate Court can appraise the evidence where the Lower Court has failed to do so.

Appeals in civil matters deal with the proceedings in which no one is accused of any offence. Thus, any party who is not satisfied with the decision of the court below in civil proceeding may lodge a complaint at an appeal court and the prospective appellant must come within the provisions of the statute creating the appeal otherwise the appeal will not be entertained. It is, therefore, the duty of the appellant to comply with the conditions for the exercise of the right of appeal and also the burden is on him to show that decision of the lower court is wrong.⁵³

An Appellate court hearing an appeal in civil matters may reverse, vary or confirm the decision of the court below. Similarly, in the exercise of its appellate jurisdiction, the Appellate court has the discretion to re-hear the whole case or not and it has power to make any order which the trial court might have made as well the power to substitute any order which it considers as the justice of the case demands. Further, the appellate court may quash the proceedings of the court below and order a fresh hearing before the trial court or before any other court of component jurisdiction. The court shall have power to receive further evidence or questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner as the court may direct but in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence other than evidence as to matters which have occurred after the date of trial or hearing shall be admitted except on special grounds.⁵⁴

It must be emphasised that an Appeal Court is not a trial court and, therefore, it is not the business of the appellate court to reopen disputes. Thus, the duty of the court is to see whether the court below had adopted the correct procedure with a view to arriving at the right decision. In the case of *Victor Woluchem & Ors v Chief Gudi & Ors*,⁵⁵ where Nnamani, JSC succinctly explained how an appeal court would interfere with the findings of the court below and said:

It is now settled law that if there has been a proper appraisal of evidence by trial court, a Court of Appeal ought not embark on a fresh appraisal of the same evidence in order merely to arrive at a different conclusion from that reached by the trial court. Furthermore, if a court of trial unquestionably evaluates the evidence, then it is not the business of a Court of Appeal to substitute its own views for the views of the trial court.

A trial court has the opportunity to assess witnesses, form impression about them and evaluate their evidence in the light of the impression which the courts forms of them. The appeal court, therefore, examines the grounds that led to the conclusion reached by and the inference that have been drawn from such conclusions of the trial court and then decide whether or not the judgment appealed against is against the weight of evidence. Where a point of consideration borders on the credibility or reliability of witnesses, the proper course to be taken by an appeal court is to make an order for a retrial.⁵⁶ An appellate court, therefore, should not disturb or interfere with the finding of the trial court where it is satisfied, on the evidence before it, that the findings are wrong, and could not ordinarily have been based on the evidence which would lead to miscarriage of justice.

⁵²See *Victor Woluchem & Ors v Chief Gudi*, *supra*.

⁵³ See order 4(1) of Court of Appeal Rules, 2016.

⁵⁴ See Order 4(2) of Court of Appeal Rules, 2016.

⁵⁵ (1981) LCN/2126(SC).

⁵⁶ *Ibid*



5.1. Grounds for Further Evidence

The Appeal Court shall have power to receive further evidence on questions of fact, either by oral examination in Court, by affidavit, or by deposition taken before an Examiner or Commissioner as the Court may direct, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.⁵⁷

Order 1 rule 20(3) of the Court of Appeal Rules provides the conditions under which further evidence may be received and admitted on an appeal against the decision of a lower court. The rule requires the appellate court to grant leave to a party to adduce further evidence in respect of matters which have occurred after the date of the trial or hearing on special grounds. In *Odiase v Omele*⁵⁸ further evidence is defined as that evidence which is complimentary to evidence already adduced at the trial and which may be taken together with it to prove or defeat a claim. The court further held that a piece of evidence which contradicts the evidence at the court below cannot be said to be further evidence but really additional evidence.

Special ground has been held to include grounds for furtherance of justice and not to rectify the mistakes or negligence of counsel to appellant in the court below. This means that in special circumstances and in the interest of justice, further evidence which was available at the time of the trial or hearing but not adduced at the trial court may be received in the Court of Appeal as the evidence could not have been obtained with reasonable diligence for use at the trial. It is, therefore, the practice of the court to refuse an application to adduce further evidence which the applicant could have adduced at the trial. This is in view of the fact that a party should not be allowed to give additional evidence in the Appeal Court in order to improve on his case which he should have adduced at the trial court

5.2. Tax Appeal Tribunal, an Appellate or Trial Body?

Tax Appeal Tribunal by its nomenclature is established to be an appellate body; however, the practice and procedure shows that it's more of a body with original jurisdiction than appellate jurisdiction. Order III Rule 4 provides that Notice of Appeal shall be accompanied with list of witness to be called at the hearing of an appeal; written statement on oath of the witness; and copies of every documents to be relied on at the trial. After the hearing of the appeal, the tribunal shall admit all relevant evidence, oral or documentary, adduced by the appellant or the respondent or any person appearing on their behalf.⁵⁹ The tribunal has power to summon any person to give evidence; and where a witness does not appear to a summon, the tribunal may issue a warrant to bring such witness before the tribunal.

However, the duty of an appellate body is to see whether the court below have adopted the proper procedures in arriving at the decision. An appellate is not a trial court and therefore, it is not the business of the appellate court to reopen disputes. Thus, the duty of the court is to see whether the court below had adopted correct procedure with a view to arriving at the right decision. It is now settled law that if there has been a proper appraisal of evidence by a trial court, a Court of Appeal ought not embark on a fresh appraisal of the same evidence in order merely to arrive at a different

⁵⁷ Order 4(2), *ibid*.

⁵⁸ (1985) 3 NWLR (Part 11) 82.

⁵⁹ See Oder 15 of the TAT Rules



conclusion from that reached by the trial court. Where TAT, pursuant to Order III Rule 4 engages in trial, evaluation of evidence and calling of witness, it has assumed a trial nature and not an appellate nature.

Experience from other foreign jurisdictions shows that before an appeal is filed to tax tribunal, such matter is tried and evaluated before a fact-finding administrative body. It is where the parties are dissatisfied with the outcome of the findings that an appeal is made to the tribunal which assumes appellate jurisdiction on the decision of the fact-finding administrative body.⁶⁰ Nigerian tax dispute resolution mechanism does not have such fact-finding administrative body where trial is conducted and evidence evaluated before appeal is made to the tribunal. That is why the tribunal assumes the job of a trial body which hampers its efficiency and speedy resolution of dispute.

Some jurisdictions have appeal office or Case Management Conferences. The office is separate and independent office in charge of appeal conference between aggrieved tax payer and tax authority where non contentious issues, frivolities are settled before a matter proceed to trial in court.⁶¹ The appeal office mission is to resolve tax controversies without litigation on basis that is fair and impartial to both the government and the taxpayer in a manner that will enhance voluntary compliance and public confidence. The basis for appeal office is to help facilitate case resolution by narrowing factual and legal differences. Generally, TAT supposed to sit on appeal on the decision of tax authority with regards to Notice of Refusal to Amend (NORA); but in Practice, TAT conduct fresh trial on appeal arising from NORA while it has been established that an appellate court is not a trial court.

The issue has affected the jurisprudence of the tribunal as to whether it is a court of first instance or an appellate court. There is need to delineate a clear demarcation of the nature of the tribunal for more efficient and productive performance. The combination of both functions have hindered the smooth and speedy operation of the tribunal. The tribunal spends so much time conducting trial in what is supposed to be an appeal on the decision of (NORA) If the tribunal sits on appeal from NORA, there would be no need for calling of witness and evaluation of evidence. The duty of the tribunal will be to review the decision of the tax authority as to whether the authority below has applied the correct principle and procedure in arriving at a decision. The tribunal will concern itself with the correctness or otherwise of the decision and not to conduct fresh trial.

This position however may be impracticable because of the nature of NORA. The NORA decision is usually not taken in line with the rule of evidence. There is no evaluation of evidence and calling of witness before NORA is issued.⁶² This may be the reason TAT may have to conduct trial rather than appeal. The practice and procedure of NORA in Nigeria is that where a taxpayer (individual or corporate) is aggrieved by the assessment by a RTA,⁶³ the taxpayer may file an objection to the assessment issued by the RTA. The RTA will then amend or refuse to amend the assessment. Where

⁶⁰ See Judith Lohman "Tax Appeal Process in Connecticut and other States — Updated" available at <https://www.cga.ct.gov/2008/rpt/2008-r-0352.htm>, accessed on 13th September, 20201.

⁶¹ *Ibid*

⁶² Though documents submitted during objection could be reviewed; but it does not affect the position of TAT. And the issue of waiting for Nora has been dispersed with. In other words, a taxpayer does not require NORA to be issued from the tax authority before the taxpayer can approach the tribunal for redress. See *Oando Supply & Trading Limited v Federal Inland Revenue Service*, (2001) 4 TLRN, 113. This has worsened the opportunity of the tax authority to review its stance before a taxpayer can approach TAT for redress.

⁶³ Relevant Tax Authority



the RTA refuses to amend the assessment, the RTA will then issue a Notice or Refusal to Amend (NORA).

Upon receiving the NORA, and within 30 days, the taxpayer may file an appeal with the Nigerian Tax Appeal Tribunal (TAT) under Section 59 the Nigerian Federal Inland Revenue Establishment Act (FIRSEA) Act⁶⁴, Section 11 of the Fifth Schedule to the FIRSEA and Paragraph 5 of the Tax Appeal Tribunals (Establishment) Order.⁶⁵ If the administrative process of taking NORA is made with the evaluation of evidence and calling of witnesses, appeal to TAT will just be appeal on point of law. TAT will truly assume an appellate nature and not a trial body. What is therefore required is to empower tax authority to improve on its administrative process of issuing NORA to accommodate rule of evidence. The tax authority would need to set up an appeal office that will be saddled with the responsibility.

6. Tax Appeal Tribunal and the Challenge of Time and Cost of Litigation

The Tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensuring speedy dispensation of justice. The TAT is established to serve as a specialised tribunal with the jurisdiction to settle tax disputes. Being a specialised tribunal, it is assumed that tax disputes will be settled with dexterity and speed. However, the tribunal as a quasi-court, with the calling of witnesses, has assumed the same characteristic that defaced conventional court in terms of delay in dispute resolution process.

Litigation is extremely time consuming. It has become a culture that cases must last several years in the courts before they are determined. Even when a case has lasted up to ten years in the court and the judge handling the matter is retired, the case has to start *de novo* before another Judge. Ogunbe⁶⁶ rightly noted that some cases have been pending in our courts for more than ten years as a result of certain constraints like retirement or transfer of judges handling the cases which have been opened and evidence had been taken. Such cases have to start *de novo*. The devastation, frustration, and economic stress which litigants undergo are better imagined than experienced.⁶⁷ The celebrated case of *Ariori and others v. Elemo and others*,⁶⁸ for instance, was first instituted in the Court in the month of October, 1960 thereby coinciding with the month and year Nigeria got its independence and took 23 years to reach the Supreme Court which remitted it back to the trial court. *Atanda v. Ajani*⁶⁹ also took 10 years to reach the Apex, Oyesola and Kola noted that parties are discouraged from litigation due to unnecessary delays and the consequent overstay of their cases in the courts.⁷⁰ They opined that sometimes, for undisclosed reasons, case files are alleged lost, while transfer of officers handling certain cases may result in the cases being neglected.⁷¹

⁶⁴ 2007.

⁶⁵ 2009.

⁶⁶ MO Ogunbe (2003). Arbitration & Mediation: when is either best suited for dispute resolution? Nigerian Law: Contemporary Issues, Essays in honour of Sir. G. O. Igbinedion, P 319.

⁶⁷ AT Tropill (1991). Alternative dispute resolution in a contemporary South African context, cited in Joseph Nwazi, (2017) Assessing the Efficacy of Alternative Dispute Resolution (ADR) in the Settlement of Environmental Disputes in the Niger Delta Region of Nigeria, Vol. 9(3), pp. 26-41, available at <http://www.academicjournals.org/JLCR>.

⁶⁸ (1983)1 SC NLR 1.

⁶⁹ (1989) 3 NWLR pt. 511 at 103

⁷⁰ A Oyesola, OO Kola (2014), 'Industrial conflict resolution using court connected alternative dispute resolution,' *Mediterranean Journal of Social Science*, available at <https://www.mcser.org/journal/index.php/mjss/article/view/3620>, (accessed on 24th June, 2020).

⁷¹ *Ibid*.



Most tax cases are also caught in the net of delayed litigation. In the case of *Joseph Rezcallah & Sons Ltd v FBIR*,⁷² the validity of Best of judgment (BOJ) where a taxpayer has not delivered a return was contested up to the Supreme Court within 15 years. In *FBIR v Blue Pelican Casino Co. Ltd*,⁷³ the Supreme Court, within 8 years, held that an assessment which has not been objected to within the time prescribed by law shall be deemed final and conclusive. Such delay in tax adjudication is antithetical to the efficiency of tax administration. TAT is established to speed the process of tax dispute resolution; however, it has been occupied with functions of a trial body that consumes its time.

The cost of running TAT is huge. The costs of paying the tax Appeal Commissioners and the administrative cost is counterproductive since the tribunal has not guaranteed the purpose of speedy dispensation of justice. Tax administration would be efficient where administrative cost is low.⁷⁴ Administrative costs clearly include the costs of running and maintaining revenue agencies, including salaries of staff, pensions relating to those staff, together with accommodation and office expenses for revenue department staff. Where cost expanded in TAT administration is juxtaposed with the TAT's speed of resolving dispute, it would be revealed that TAT has not realised its goal of a speedy tax dispute resolution mechanism.

7. Appeal Office/Case Management Conference

There is need for a legal framework that will establish a fact-finding independent administrative body that will be charged with responsibility of evaluating every tax dispute in line with the rules of evidence before appeal is made to tribunal. Appeal to the tribunal will be appeal on the findings of the administrative body. The appeal body would be a neutral and independent body between the taxpayer and tax authority which shall have power to resolve tax disputes amongst parties. The body will constitute of experts that are experienced in tax issues. Appeal to TAT will then be appeal only on issues of law. That will lessen the burden of TAT and save its time. The body may be an appeal office or case management conference. It will be separate and independent of the Tax Authority which shall be the only level where appeal conferences are generally held in an informal manner by correspondence of tax parties. In such a situation, a taxpayer must first exhaust this administrative remedy before petitioning the Court or tribunal for a declaratory judgment.

This trend exists in other jurisdictions. Ethiopian Tax Appeal Commission Rules and Procedures⁷⁵ have elaborated provisions on case management conference.⁷⁶ Where such a conference is arranged, the Commissioner will normally fix a date and time for an initial case management conference following the receipt of the Statement of the case, and this will be notified to the parties not less than 14 days prior to the time and date of the conference.⁷⁷

The Commissioners may hold such further case management conferences as appear to them necessary or desirable with the aim of securing the completion of the proceedings in a fair and

⁷² (1962)1 ANLR1.

⁷³ 2 FRCR (1976)10.

⁷⁴ See Adams Smith Canon of taxation available at https://library.croneri.co.uk/cch_uk/btr/101-200 (accessed on 13th September, 2021).

⁷⁵ Ethiopian Tax Appeal Commission Rules available at < https://www.taxappeals.ie/_fileup/Rules...

⁷⁶ Section 3 of the Rules provides that the Act includes a number of provisions aimed at assisting the expeditious and fair completion of proceedings, including the right for the Commissioners to direct that a meeting, known as a case management conference, be held to help progress a case.

⁷⁷ Subsection 22, *Ibid*.



expeditious manner.⁷⁸ The Commissioners will request the parties to the appeal to notify them in writing not later than 7 days before the date fixed for a conference of any application for directions that the party intends to make, including a brief statement of the grounds on which the party will argue that such directions are necessary and appropriate for the fair and efficient disposal of the appeal.⁷⁹ In Connecticut's tax appeal process, appeal usually starts after a Department of Revenue Service (DRS) audit determines a taxpayer owes taxes.⁸⁰ If DRS proposes changes in the amount of taxes owed as a result of an audit, it must explain the reasons in writing and provide the taxpayer with copies of audit work papers and with a Tax Determination Report that summarizes all adjustments made on the work papers. The report must also show the proposed amount of tax with any interest and penalties due. If a taxpayer disagrees with the audit results, he may ask for an informal conference with the manager or supervisor of the office that conducted the audit to discuss any disputed issues. After the conference, DRS issue a notice of assessment, which incorporates any adjustments resulting from the conference.

A taxpayer who disagrees with a notice of assessment or may file a protest with DRS's Appellate Division.⁸¹ Protests are assigned to an appellate officer or specialist in the Appellate Division, who gathers and considers relevant information, including information the taxpayer provides. At the end of the process, the division issues a final determination letter. An aggrieved taxpayer has one month from the date of this letter to file an appeal against the decision of Appellate with the Superior Court in the New Britain Judicial District.

The State of Massachusetts has independent tax appeal processes that could serve as models for Nigerian system. If the Massachusetts Department of Revenue (DOR) determines that a taxpayer owes additional taxes, either as a result of an audit or the department's routine verification of taxpayer records, it sends the taxpayer a written notice of intent to assess (NIA). If the taxpayer disagrees with an NIA, he can ask the DOR's Office of Appeals for a conference or settlement consideration. The Office of Appeals is a separate unit within DOR that operates under the DOR commissioner's control. After the conference, the taxpayer can appeal to the Appellate Tax Board.⁸²

The mechanism canvassed above would require legislative framework to see the light of the day. This may not come soon because of the cumbersomeness of legislative process in Nigeria. But that would not remain caged. TAT needs to be unbundled for it to achieve its efficiency. What would be a remedy is the amendment of TAT rules to accommodate case management conference before appealed is fine. The will help TAT pending when laws would be amended to institutionalise a fact-finding administrative method to tax dispute resolution.

8. Conclusion and Recommendations

Tax Appeal Tribunal (TAT) came at a time Nigerian tax system was desirous of an improved administration mechanism that would guaranty efficient resolution of tax disputes. The coming into effect of TAT, in all intent and purpose, was meant to rescue tax disputes resolution system from the shackle of litigation. Unfortunately, the tribunal became characterised by the complexity of the court system which the tribunal is established to remedy. The rules of the tribunal are as formal as the rules

⁷⁸ Subsection 23, *Ibid*.

⁷⁹ Subsection 24, *Ibid*.

⁸⁰ Judith Lohman Tax Appeal Process in Connecticut and other States — Upda00ted, available at <https://www.cga.ct.gov/2008/rpt/2008-r-0352.htm> (accessed on 13th September, 2021)

⁸¹ *Ibid*

⁸² Department of Revenue's (DOR) Office of Appeals available at <https://www.mass.gov/dor-tax-appeals>, (accessed on 13th September, 2021)



of court; and the technicality associated with the rules of evidence has adorned the tribunal. The tribunal rather than an appellate body has become a court of first instance. These formalities have clogged the efficiency of the tribunal and muffled the speed of tax dispute resolution. It is therefore recommended that:

- 1) There is need to unbundle the tribunal for optimal performance. The Tax Appeal Tribunal Rules need to be reviewed in order to accommodate case management conference before appeal is made to the tribunal. It will also save the time of the tribunal in dealing with the frivolities.
- 2) There is need for a legal framework that will establish a fact-finding administrative body that will be charged with the responsibility of evaluating every tax dispute in line with the rules of evidence before appeal is made to tribunal. Appeal to the tribunal should be appeal on the findings of the administrative body. This would make the tribunal an appellate body and not a trial body.