



No more ₦50 stamp duty on bank deposits: Federal High Court

“The FHC held that the provisions of the CBN circular are inconsistent with the provisions of the Stamp Duties Act and as such are null and void.”

A Federal High Court (FHC) on 13 March 2017, delivered a judgment on the validity of the circular issued by Central Bank of Nigeria (CBN) referenced CBN/GEN/DMB/02/006, in the case between Retail Supermarkets Nigeria Limited (AKA Shoprite) and the defendants Citibank Nigeria Limited (Citibank) and Central Bank of Nigeria (CBN). The issue considered in the case is determining if the CBN circular aligns with the provisions of the Stamp Duties Act (SDA).

In delivering its judgment, the FHC held that the provisions of the CBN circular are inconsistent with the provisions of the SDA and as such are null and void.

Background of the case

CBN issued a circular on 15 January 2016, mandating all banks and other financial institutions to enforce collection of ₦50 stamp duty on all electronic transfers and teller deposits from ₦1,000 and above.

Shoprite, incorporated under the laws of Nigeria, operates a retail business and runs a chain of supermarkets across Nigeria. Further, to the release of the circular, Citibank intimated its customers that it will begin to implement CBN’s directives and subsequently began deducting stamp duties from Shoprite’s account, in line with the CBN circular.

Dissatisfied, Shoprite initiated a law suit at the FHC, citing huge cost implications due to implementation of the circular, and therefore sought clarification from the court on:

- Whether Citibank could implement the provisions of the CBN circular in respect of deposits into the bank account of Shoprite
- Whether the stamp duty of ₦50 was consistent with the provisions of the SDA

Judicial precedence

In delivering its judgment, the FHC insisted that it was bound by the decision of a higher court, in this case the Court of Appeal (CoA), in a case between Standard Chartered Bank Nigeria Limited and Kasmal International Services Limited & Ors (SCB V KASMAL).

The ruling of the CoA was quite fundamental and instructive. The key highlights of the judgment include:

- a) The CoA noted that it could only enforce and apply provisions of

the law which are in existence and in force in Nigeria.

- b) Section 89 of the SDA provides the applicable duty to be charged on receipts. Receipts include any note, memorandum, or writing, bill of exchange or promissory note for monies amounting to N4 and above, is acknowledged or expressed to have been received or deposited or paid. The applicable stamp duty rate is 2 kobo.

However, the Schedule to the SDA specifically exempts receipts given for money deposited in any bank from stamp duties

- c) In this regard, the CoA held that there was no provision or amendment in the SDA conferring powers upon the banks and other financial institution to deduct and collect stamp duty on deposits or transfers

Highlights of the FHC ruling

In view of the issues submitted for evaluation, the FHC ruled as follows:

- The provisions of the CBN circular are invalid, null and void and have been set aside by order
- Perpetual injunction order restraining Citibank and its agents from implementing the provisions of the CBN circular.

Conclusion

The FHC judgment is a welcome development, as it provides further clarity on the subject. Taxpayers are admonished to seek clarification from the courts where new regulations issued are considered to contradict existing laws.

The above notwithstanding, inspite of the earlier judgment by the CoA, most banks are yet to discard the provisions of the CBN circular. It will therefore be interesting to see the response from stakeholders going forward.

Further, bank customers are likely going to seek court injunctions on refund of stamp duties already deducted.

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