

Nigeria's Court of Appeal orders re-trial of case regarding applicability of certain taxes and levies on Nigerian Liquefied Natural Gas

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Executive summary

Nigeria's Court of Appeal (COA) ordered, on 29 March 2019, that the judgment delivered by the Federal High Court (FHC) be set aside, in the case of *Nigerian Maritime Administration and Safety Agency (NIMASA) vs. Nigerian Liquefied Natural Gas Limited (NLNG)*. The FHC had held that NLNG was not liable to pay certain taxes, levies and surcharges (the levies) to NIMASA based on the provisions contained in the *NLNG Act*, wherein NLNG is exempt from such levies.

In its judgment, the COA ruled that NIMASA was not given a fair hearing by the FHC and as such, ordered that the case be remanded to the FHC for valid proceedings to be conducted.

Detailed discussion

NLNG, the defendant in the COA case, is a joint venture gas production company owned by the Nigerian National Petroleum Corporation and a few International Oil Companies (IOCs). Its operations are governed under the *NLNG (Fiscal Incentives, Guarantees and Assurances) Act*, which provides certain incentives, guarantees and assurances by the Federal Government of Nigeria to NLNG. The *NLNG Act* (the Act) also provides NLNG with the exemption from certain taxes and levies.

The appellant in the case, NIMASA, is an agency of the Government responsible for regulations related to Nigerian shipping, maritime labor and coastal waters. NIMASA's functions are governed by the *NIMASA Act*, which empowers NIMASA to regulate and impose levies and charges on operations in the maritime sector.

In 2013, NLNG brought an action at the FHC, to seek the FHC's judgment against NIMASA's imposition of gross freight charges, sea protection levy and cabotage surcharge on NLNG. The FHC ruled in favor of NLNG, and held that NLNG was not liable to pay the stipulated levies to NIMASA based on the provisions of the Act, which exempts NLNG from payment of such levies.

Following the FHC's judgment above, NIMASA instituted an appeal case to the COA on the grounds that it was not granted fair hearing at the FHC, among other grounds.

Judgment of the COA

In delivering its judgment, the COA held that the failure of the FHC to consider NIMASA's counter affidavit, additional counter affidavit and written address amounted to a clear denial and breach of NIMASA's right to a fair hearing. It was

also held that under the law, for being in breach of the right to a fair hearing, the entire proceedings conducted by the FHC were considered null, void and of no legal consequence.

Therefore, the COA ruled that in the absence of valid proceedings and judgment by the FHC, there were no valid issues remaining in the appeal for which the COA could competently consider on merit. Accordingly, the appeal was allowed and the COA ordered that the judgment of the FHC be set aside, and that the case be sent back to the FHC for a re-trial.

Implications

Based on the COA's ruling, the FHC's judgment which exempted NLNG from payment of the stipulated levies is no longer valid. Furthermore, the FHC now has to begin new proceedings to re-try the case.

Until a new ruling is issued by the FHC on the matter, the applicability of the levies to NLNG remain an area of uncertainty and as such, concerned parties should seek professional counsel in conducting their affairs.

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