

LIMITATIONS TO TRADE UNIONS' USE OF REPRESENTATIVE ACTION TO INTERVENE IN TAX LITIGATION FOR TAX LIABILITIES OF ITS MEMBERS: A LEGAL APPRAISAL*

Abstract

An action based on tax assessment under Pay-As -You -Earn (PAYE) Scheme cannot be maintained in a representative capacity. This is the reason for the resistance to every move as a group to challenge a tax assessment by the relevant tax authority. Trade Unions have always relied on the omnibus consent and authority of members implied in their membership, to represent them in tax matters. They have always shown in its insistence that PAYE tax matters are matters relating to and connected to the welfare of workers who are members. They allege that it is part of the mandate of a trade union to stand in on behalf of persons so affected who are members, whether it is procedurally permitted or not. PAYE scheme is a tax scheme through which employees are assessed, re-assessed and demand notice sent to them and where the employers fail to remit their tax indebtedness litigation to recover same by the tax authority will be the next option. Doctrinal method of data collection was adopted using analytical approach to review the various tax statutes, decisions of courts, opinion of experts and journal and internet materials on the subject matter. The work revealed that liability to tax arises only upon an earned income of an individual tax payer. An assessment or re-assessment of tax liability for all employees could not be made in a common exercise by the tax authority. The salaries of workers are not from a common fund liable to income tax en bloc. It is recommended that each and every employee has a separate and distinct cause of action which could not be combined in one cause. The cause of action in tax matters or against an assessment accrues only when the individual person, employer or tax payer was assessed.

Keywords: Tax, Trade Union, Action, Assessment, PAYE, Representative.

1. Introduction

The crux of this paper is whether a group of workers not sufficiently ascertained can maintain and sustain an action in a representative capacity on matters relating to and connected with an individual assessment of personal income tax. Trade unions make effort to champion the better welfare of its members, protecting the reliability of its trade, achieving higher wages by securing economic benefits for their members. This trade union possesses legal capacity under the labour law to do this but it would be acting *ultra vires* for unions to maintain an action on behalf of its members on matters relating to the workers personal income tax concerns which is regulated by statute through a third party, the tax authority which is neither an employee nor an employer. The relevant tax authority is mandated by law,¹ to proceed to assess every taxable person chargeable with income tax as soon as may be after the time allowed to the person for the delivery of the return or where it appears to the relevant tax authority practicable to do so. It is the law² that for each year of assessment, a taxable person shall, without notice or demand thereof file a return of income in the prescribed form and containing the prescribed information with the tax authority of the state in which the taxable person is deemed to be a resident together with a true and correct statement in writing. The statement³ should contain the amount of income from every source for the year preceding the year of assessment and such particulars as by the return may be required for the purpose of the Act. It will also contain rules or regulations made there under with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose. This is done within 90 days from the commencement of every year of assessment;⁴ but the tax authority has the latitude to assess before the expiration.⁵ The relevant tax authority, when the return is filed may accept same and make an assessment accordingly or refuse to accept the return and to the best of its judgment, determine the amount of the assessable, total or chargeable income of that person and make an assessment accordingly. Importantly, the relevant tax authority may within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess the taxable person at such amount or additional amount as ought to have been charged.⁶

Under, the Pay-As-You-Earn (PAYE) Scheme,⁷ the employers of labour are expected to use the PAYE guidelines as the standard for making deduction and the tax payments to the tax offices in respect of their employees on a monthly basis. Under the scheme income tax is paid by a person who is engaged by another under a contract of

* **By Kachidobelu John BIELU, BL, LLM, PhD**, Lecturer, Faculty of Law, Nnamdi Azikiwe University Awka, Anambra State, Nigeria. Tel: +2348037443753, E-mail: kachbielu@gmail.com; kj.bielu@uizik.edu.ng

¹ Personal Income Tax Act (PITA) 2011, s.54(1)

² PITA, 2011, s.41(1)

³ *Ibid*, s.41 (1) (a) & (b)

⁴ *Ibid* s.41(3)

⁵ *Ibid*, s.54(4)

⁶ *Ibid*, s.55(1)

⁷ *Ibid*, s.81(1)

employment. It is the responsibility of every employer to deduct income tax from the pay or salary of the employee for onwards remittance to the relevant tax authority. Following this process of sending a demand notice by the relevant tax authority is litigation or enforcement or recovery of tax due but unpaid. At this juncture, it will be pertinent to decide whether a trade union or an individual worker who belongs to the trade union can maintain or defend an action with respect to the subject matter.

2. Tax

Taxation spans over a wide gamut of human activity and is essentially aimed at providing the requisite revenue for the socio-economic development of a nation. Tax is a pecuniary burden laid upon individuals or persons or property to support the government which is exacted by legislative authority.⁸ In *Matthews v Chicory Marketing Board*,⁹ a tax is compulsory exaction of money by public authority for public purposes. Tax is therefore seen as a pecuniary burden laid upon individuals or property to support government, a payment exacted by legislative authority or a compulsory contribution to the support of government levied on persons, property, income, commodities, transactions and others.¹⁰

3. Taxable Person under PITA

Under the Personal Income Tax Act,¹¹ tax is imposed on the income of individuals, commodities and families and others arising or due to a trustee or estate. It is imposed on any individual (including a family, any corporation sole, trustee or executor) having any income which is chargeable with the tax under the provisions of the said Act.¹² The total amount determined in accordance with the table in the sixth schedule of the Personal Income Tax Act shall be payable for each year of assessment on two categories of person,¹³ viz, every individual other than persons covered under paragraph (b) of the subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant state.¹⁴ The following other persons,¹⁵ persons employed in the Nigeria Army, the Nigerian Navy, the Nigerian Airforce, the Nigerian Police force, other than in a civilian capacity,¹⁶ Officers of the Nigerian Foreign Service¹⁷ and every resident of the Federal Capital Territory, Abuja.¹⁸ A person resident outside Nigeria, who derives income or profit from Nigeria,¹⁹ will also be taxed. The relevant tax authority in the state shall though have powers to collect tax under this Act from itinerant workers.²⁰ For an individual, other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of the section, tax for any year of assessment may be collected only by the state in which the individual is deemed to be resident for that year under the provisions of the First Schedule of this Act and in case of persons referred to in subsection (1) (b) of this section, tax shall be collected by the Federal Inland Revenue Service.²¹ In the case of itinerant worker, a tax may be collected for any year by any state in which the itinerant worker is found during the year.²² In the case of a village or other indigenous communities, tax may be collected for the year only by the law of the territory in which that community is found and the tax may be charged on;

- a. The esteemed total income of all its members,
- b. The estimated total income of those of its members whose income is impracticable in the opinion of the relevant tax authority to assesses individually; or
- c. The amount of any communal income which in the opinion of the relevant tax authority in relations to such community, it is impracticable to apportion with certainty between its members.²³

⁸ I A Ayua, *Nigerian Tax Law* (Ibadan: Spectrum's Law Publishing, (1996) 9

⁹ (1938) 60 CLR 263 at 276

¹⁰ AB. Ahmed, Residence and payment Establishment issues in Nigeria taxation in *AETA Tax journal of Nigeria*, 2012, Vol.1 at 97

¹¹ PITA, 2011, s.2

¹² *Ibid*, s.108

¹³ *Ibid*, s.2 (1)

¹⁴ *Ibid*, s.(1) (a)

¹⁵ *Ibid*, s.2 (b)

¹⁶ *Ibid*, s.2 (b) (i)

¹⁷ *Ibid*, s.2 (1) (b) (ii)

¹⁸ *Ibid*, s.2 (1) (b) (iii)

¹⁹ *Ibid*, s.2 (1) (b) (iv)

²⁰ *Ibid*, s.1 (A)

²¹ *Ibid*, s.2(2)

²² *Ibid*, s.2(3). But the proviso is that for an itinerant worker credit shall be given against tax payable but not exceeding the amount thereof, for any income tax already paid by him to any other authority.

²³ *Ibid*, s.2(4) (a) (b) and (c)

For the income of a family recognized under any law or custom in Nigeria such as family income, in which the several interests of individual members of the family are indeterminate or uncertain, tax may be collected only by the territory in which the member of that family who customarily receives that income in the first instance in Nigeria usually resides.²⁴ For an income accruing to a trustee or any executor of any estate of a deceased person, tax may only be collected by the territory of which the tax authority is the relevant tax authority in relation to such settlement, trust or estate and to the extent provided in the second schedule to the Act.²⁵ But the law²⁶ also provides that nothing in the section shall be construed as imposing liability to tax on the personal emoluments of any person serving as other rank and accordingly any other enactment or law imposing tax on the income of individual shall not apply. By the letters of the law, the taxable person under PAYE Scheme is the employee, the person earning the income, where he is employed by an organization subject to PAYE, the chargeable person is the employer.

4. Pay-As-You-Earn (PAYE) Scheme

Pay as You Earn (PAYE) Scheme is a collection system for the recovery of tax payable on personal emoluments or salaries and wages.²⁷ It is taxed on an income earned by a person who is employed by another person in a contract of employment. The tax is provided under the Personal Income Tax Act.²⁸ Under PAYE regulations, it is the Board that determines the assessment before issuing a special tax deduction card to the employers. Under the scheme, tax is deducted at source by authorized employers. In *LSBIR v JENKINS*,²⁹ the term PAYE is used to describe the system whereby the employee pays tax on whatever income he earned from his employment in any particular employment at the end of the month. The employer deducts the tax from the employee's earnings. The total amount deducted by the employer from the employee's earnings at the end of every month is then remitted to the relevant tax authority. It is to be noted that the relevant tax authority is empowered by the Act,³⁰ to collect PAYE of employee resident in the state except those who are exempt.³¹ In *7Up Bottling Company Plc v LSIRB*,³² it was held that the employer is a collecting agent on behalf of the tax authority. Employers are expected to use the PAYE guidelines as the standards for making tax deductions and tax payments to the tax offices in respect of their employees on a monthly basis.³³ The guidelines apply to all incomes (that is emoluments which includes salary and allowances) of an employee derived or deemed to be derived from Nigeria, whether or not such income is received in Nigeria. All Employers of labour, agents and consultants are to ensure that all employees make full disclosure of all their incomes at the beginning of the year (whether or not such income is received in Nigeria). Such disclosure should encompass as required by law of all incomes earned, accruable, derived or accumulated in Nigeria. This includes disclosure of income paid both in Nigeria and outside, as well as all salaries and allowances paid either in cash or kind. The authorized employer who so deducts the PAYE tax is expected to make regular returns to the relevant tax authorities in such a manner as the relevant Tax Authority directs.³⁴ The employer is required to deduct an appropriate amount from the weekly or monthly wages/salary of the employee as tax liability for the whole year. The returns of income and claims for allowances and reliefs are filed at the commencement of the tax year by each employee with the relevant tax authority. The tax office shall calculate the allowances due to the employee based on the returns and enter these on the tax deduction card. The card together with the notice of total free pay allowance will be sent to be deducted from the employee's emoluments at the end of each month. In arriving at the tax to be deducted monthly, the cumulative is usually considered. The aggregate of the basic salary, gross earnings, overtime, bonuses, commission, housing allowances and transportation are some of the earnings considered. The total allowances from tax free pay up to the month under consideration is deducted to arrive to the amount on which tax is payable. Any tax deducted from employee's salary must be remitted to the relevant tax authority within ten (10) days after the end of the month under consideration. In the event of failure by the employer to make deductions or properly account thereof, the amount together with a penalty of ten percent per annum of the amount plus interests at the prevailing commercial rate shall be recoverable

²⁴ Ibid, s.2(5)

²⁵ Ibid, s.2(6)

²⁶ Ibid, s.2(7). It provides that where any other income accrues to a person serving as other rank (not being income by way of personal emolument) that income shall be liable to tax under the Act or under any relevant enactment or law).

²⁷ *ID Sam Nig Ltd v LSIRS* (2011) 5 TLRN 41 at 50

²⁸ PITA, 2011, s. 81 and 82

²⁹ (2013) 10 TLRN 148

³⁰ PITA, 2011, s.2

³¹ Note that the relevant tax authority in the state are not permitted under the law to collect taxes of members of the Armed Forces of the Federation, Members of the Nigeria Police Force, Staff of the Ministry of Foreign Affairs and none resident individuals.

³² (2000) 3 NWLR (pt 650) 505.

³³ MT Abulrazag, *Revenue law and practice in Nigeria* (Lagos: Malthouse Press Ltd: 2015) 71

³⁴ PITA, 2011, s.81 (1) (2)s

as a debt by the relevant tax authority from the employer.³⁵ Where the employee leaves an organization, such an employee must collect a duplicate copy of Form 'E' and the original copy will be sent to the relevant tax office. The tax deduction card will then be marked off with a word indicating that he had left and the date clearly indicated.

5. Trade Union

A Union is an organization formed to negotiate with employers, on behalf of workers collectively about job-related issues such as salary; benefits, hours and working conditions.³⁶ Trade Union therefore is any combination of workers or employers whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers.³⁷ It is an association of persons, workers or employers who have come together on a temporary or permanent basis to pursue like other associations, a common purpose, here, it is the purpose of regulating the terms and conditions of workers employment. This is the principal purpose of a trade union. By the provisions of the Trade Unions Act,³⁸ it makes a distinction between trade unions and other associations of persons on the status of Trade Unions Act. Trade Unions without registration will be unlawfully pursuing its objects. It is the registration that makes an association a trade union and confers on it a special status, which attracts consequential rights and privileges. A registered trade union will be clothed with a sufficient legal status to sue or be sued *eo nomine*.³⁹ The typical activities of trade union include providing assistance and services to their members, collectively bargaining for better pay and conditions for all workers, working to improve the quality of public service, political campaigning and industrial action. It is also very significant that trade unionism has brought changes in the society which includes a national minimum wage; the abolition of child labour; improved workers safety; improving living standard by reducing the number of hours in the working week and encouraging a healthy work/life balance; improved parental leave; and equality legislation and others.

Moreover, while there are decisions that trade unions can represent members in issues pertaining to trade dispute as in *Multiquip (Pty) Ltd & Anor. v National Union of Metalworkers of South Africa*.⁴⁰ The decision was to the effect that it is the rights of employees to be represented by trade unions in dismissal hearings in court and commissions. It also emphasized the fact that trade union can exercise its entitlement in terms of the provisions of the Act,⁴¹ to be a party to the proceedings by virtue of the fact that one or more of its members are parties to the proceedings. But the question now is whether a trade union can maintain an action in a representative capacity on behalf of members in tax matters or litigation.

6. Representative Action

The rule as to representative action is said to have been derived a long time ago from the court of chancery, which required the presence of all parties to an action, so as to put an end to the matters in controversy. In *Commissioner of sewers of the city of London v Gellantly*,⁴² it was held thus; Where one multitude of persons were interested in a right and another group of persons interest in contesting that right and that right was a general right and it was utterly impossible to try the question of the existence of the right between that two multitudes on account of their number, some individuals out of the one multitude might be selected to represent one set of claimants and another set of persons to represent the parties resisting the claim and the right might be finally decided as between all parties in a suit so constituted. This rule being only for convenience and for the sake of convenience has since been relaxed.⁴³ Today, in *Ejiofor Apeh & ors v PDP or ors*,⁴⁴ the court held: 'As with all rules, which eventuated from equity's attenuation of the rigidity of the common law, the species of actions known as representative suits were evolved for the relaxation for the complete joinder rule under the common law'. What crystallizes from the earlier exposition is that the jurisprudential postulate underlying suits in representative capacity is that the person

³⁵ Ibid, s 82. Note that this could be in addition to the provisions under section 81(3) which provides that any employer who contravenes the provisions of the section shall be liable on conviction to a penalty of N500, 000 in case of body corporate and N50, 000 in the case of an individual.

³⁶ B A Garner, *Black's Law Dictionary*, 7th edition (USA, West Group, 1999) 1532. Re Union of Ifelodun Timber Dealers and Allied Workmen (1964)2 All NLR 63.

³⁷ Trade Union Act, Cap T2 Laws of the Federation of Nigeria, 2004, 1.1(1)

³⁸ Trade Union Act Capt. T14 laws of the Federation 2004, s.(1)

³⁹ *Abia State University v Anyaibe* (1996) 3 NWLR (ppt. 439) 646, *Fawehinmi Amalgamated Society of the Railway servants* A.C. 426

⁴⁰ D477-20 (17 August 2021)

⁴¹ Labour Relations Act, 6 of 1995 (South Africa) s.200, see also *NUMSA v Lufil Packaging* (2020) BLLR 645 CC;

⁴² (1876) 3 Ch. D 610 at 615. But the rule in the case has been described as a rule of convenience only in *Harison v Abergavenny (Marquis of)* (1887) 3 TLR 324 at 325.

⁴³ *Bed for (Duke of) v Ellis* (1901) AC 1 at 8, *Ighedo v PHCN PLC* (2018) 9 NWLR (pt. 1623) 51 at 66

⁴⁴ (2016) LPELR-40726 (SC), see also F Nwadialo, *Civil Procedure in Nigeria* (2nd edition) Lagos: University of Lagos Press, 2000) 10.

or persons suing or defending in a representative capacity must have the same interest in the proceedings.⁴⁵ It means the parties must have common interest. Put differently, the subject matter must evince a common interest as opposed to diverse interests. It means common grievance and the reliefs sought must, in their nature be beneficial to all the representatives and those represented.⁴⁶ From the above, it is obvious that similarity of interests would not suffice in the absence of a commonality of interest.⁴⁷ It is for the plaintiff to establish a commonality of interest which must be evidenced in a twin prerequisite of common grievance and a relief or reliefs beneficial to all of them. Clearly, where the plaintiff or defendants in a matter and others on whose behalf they claimed in representative capacity had varied and diverse interest, the claim will fail.

7. Action Based on Pay As You Earn (PAYE) Tax Assessment in a Representative Capacity

The quest by trade unions or other associations to take certain actions on behalf of membership of the association in pursuance of their grievances against acts of a relevant tax authority in relation to a matter of PAYE tax assessed or deducted under the Personal Income Tax has generated serious issues in the recent past. The trade unions have always based their intervention on the sweeping authority and mandate of all the members or staff that belonged to the union. Whether the body or association will show sufficient interest and *locus standi* to maintain such action had been the question. In *Adefulu v Oyesile*,⁴⁸ it was held that for there to be an action in a representative capacity, there is need for the disclosure of the interest they have in common. In *Jijani v Akinwumi*,⁴⁹ the court held that it is essential that in a representative action, they must have the same interest as the persons that they claim to represent not mere, similar interest in the suit. Trade unions have always moved on an illusion that assessment of tax under PAYE for all the employees was done in one exercise. Again, trade unions insist that none of the persons being represented pay their taxes directly to the taxing authority. Their taxes are deducted at source from their income by their common employer and paid over to the taxing authority. It is the trade unions insistence that a single order from court would therefore be made for the benefit of all persons involved. This position of the trade unions is not a true reflection of the law as even if the assessments were done in one exercise, it will not be a determining factor as to the community of their interest in the suit. Their salaries do not come from a common fund which is liable to income tax en bloc. Each tax payer has his income which is liable to tax. Liability to tax arises only upon earned income of an individual tax payer.⁵⁰ When issues come up requiring a determination of whether a person either natural or artificial is liable to pay tax, the court is duty bound to explore the relevant tax laws and apply them accordingly.⁵¹ By PAYE system, the taxes of workers individually are deducted at source from their salaries or emoluments. At the end of every year, a receipt is issued to each employee indicating his gross emoluments for the year, his total free pay allowance, his net taxable income and the tax paid by him for the year. Each year too, a tax clearance certificate is issued to each employee certifying that such employee had paid his assessed tax for the past three years.

The competence of a representative action against a demand notice issued by a Commissioner for finance and the applicability of additional assessment to PAYE scheme was the central issue in *Hon. Commissioner for Finance and Economic Development v Ukpong & Anor*.⁵² The respondents as the representatives of the employees of an oil company had challenged an additional personal income tax assessment raised against the employees by the Appellant. This was as a result of the demand notice containing their individual liability for outstanding PAYE taxes served individually on the Respondents. The High Court decided in favour of the Respondents upon which the Appellant appealed to the Court of Appeal. Some of the issues raised by the Appellant on the appeal were that the Respondents did not have the legal capacity to represent the employees in the matter and that the Respondents did not fulfill the condition precedent of submitting a written objection to the Appellant within 30 days from the receipt of the Appellant's demand notice before instituting the matter as provided under the Personal Income Tax Decrees. It was contended that the Respondents on record lacked the *locus standi* to prosecute the appeal in that their names and the names of the authors of Exhibit 'H', that is, the authorization are not reflected in Exhibit J as being among the employees affected by the additional tax assessment. Again, the affidavit did not disclose the interest which the Respondents on record have in common with the 292 employees they purported to represent. Further, it was contended that it would acting *ultra vires* for a union to maintain an action on behalf of its members on matters relating to the workers personal income tax which is regulated by statute. On behalf of the Respondents,

⁴⁵ *Ogamioba & ors v Chief Ogene & ors* (1961) All NLR 59 at 62

⁴⁶ *Market and Co Ltd v Knight steamship Co Ltd* (1910) 2 KB 1021 *Smith & ors v Cardiff Corporation* (1954) 1 DB 210, *Ayinde & Ors v Akanji & ors* (1988) 1 NWLR (pt 68) 70

⁴⁷ *Afolabi v Adekunle* (1983) 2 SCNLR 141, *Atane v Amu* (1974) 10 SC 237

⁴⁸ (1988) 12 SCNJ 44 at 54

⁴⁹ (1990) 1 NWLR (pt 125) 237, *RTLSTDA v AG* (1990) 3 NWLR

⁵⁰ *CIR v Dela Goa Bay Cigarette C Ltd* (1988) TPD 391, *TSKYII & 2 ors v FIRS* (2012) 7 TLRN 48 at 59

⁵¹ *Best Children Int'l Sch v FIRS* (2019) 40 TLRN 33

⁵² 4 All NTC 363

it was submitted that the complaint was the imposition of additional tax on all the mobile employees based at Qua Iboe terminal Eket. They further submitted that the complaint was common to all the employees; hence, it was of common interest and of common benefit to all the employees.

From the facts of the case, what was seriously disputed was whether the interest of each respondent on record is the same or common to the interest of those they represent. The lower trial court was, however, swayed by this argument and the court reasoned thus:

The re-assessment of taxes for all the employees was done in one exercise. None of the appellants (Respondents) pay their taxes directly to the taxing authority; their taxes are deducted at source from their income by their common employer and paid over to the taxing authority. In the present case, it is not necessary to consider the individual taxed and if the appeal succeeds the entire exercise would be set aside to the benefit to all the appellants.

On appeal, the action by the respondents was declared incompetent. The reasoning of the court was that there is no evidence that the re-assessment of the taxes from all the employees were made in one exercise even though the demand notices served on the 292 employees of Mobil bear the same date. But even if the re-assessment was done in one exercise, it is not necessarily the determining factor as to the community of their interest in the suit. It is not the case of the respondents that they all have as their salaries from a common fund which is liable to income tax en bloc.

From the evidence, it shows that each tax payer had his income which is liable to tax.

The law is sacrosanct that the liability to tax arises only upon earned income of individual tax payer. His cause of action against assessment accrues only when as an individual he is assessed. The court rightly followed the statutory stipulations and thus held;

I am of the view that the 292 employees of Mobil have 292 separate and distinct causes of actions which cannot be combined in one cause of action. In the case of *Amachree & ors v Newington, District Officer Degella* (9152) 14 WACA 95, the nine appellants who were all detained at the same time and in the same place sued the respondent claiming a single amount for damages for assault and false imprisonment. It was held that the rules permit for joinder of plaintiffs but not joinder of causes of action. The damages caused to each plaintiff could only be personal to each of them and therefore the suit was not properly constituted.

It does appear that the claim of the right to the reliefs sought for themselves and in a representative capacity and the group or class of persons they sought to represent must be easily identifiable and have common interest and purpose they could sue in that capacity must be ascertainable. It is a trite law that when a group of class of persons sought to be represented in a suit are easily identifiable and have common purpose, they can institute a suit in a representative capacity to seek remedy in a court of law.⁵³ In *S. Oragbaide v SJM Onitiju*,⁵⁴ the plaintiff had a farm of his own in one area of land while other persons each had their own separate farm in adjacent areas of the area. The plaintiff then brought an action for himself and on behalf of other farm owners of the area against the defendant for a declaration of title to the whole area in which all the farms were situate. It was held by the Supreme Court that there was no common interest between the plaintiff and the other people and that he could not sue on their behalf.

From the above, the powers that inhere on the named plaintiff in a proceeding in tax matters are hedged around with limitations. For instance, he can only represent those who have given him authority to do so and in respect of a claim in which his interest in the subject matter is common with that of those he represents. He cannot without authority and order of court authorizing him to do so, defend the suit.⁵⁵ It all means that after judgment he cannot deprive other persons of the same class of the benefits of the judgment.⁵⁶ In tax matters however, it is obvious that the court has insisted similarity of interest would not suffice in the absence of a commonality of interest. In a situation where individual tax payers were assessed and demand notices show different and diverse liabilities, it will not be a proper step to institute a representative action as the group will have different but similar causes of action. For instance, Mr. A's tax liability will not be the same with that of 'B' in the breakdown of their taxable income, thus⁵⁷

1. GL 1/1

⁵³ *ELF Pet (Nig) Ltd v Umah* (2018) 10 NWLR (pt 1628) 428 at 453

⁵⁴ (1962) 1 All NLR 32

⁵⁵ *Smith & Ors v Cardiff Corporation* (1953) 2 All ER 1373

⁵⁶ *Watson v Cave* (No 1) 17 CH D 19

⁵⁷ A JM Agbonika & JAA Agbonika, understanding the ABC of Taxation: the Nigeria perspective in JAM Agbonika et al, (ed) *Topical issues on Nigeria Tax Laws and Related Areas*, volume 2, (Ibadan, Ababa press Ltd: 2018) 1-92

Consolidated Salaries----	-----	-----	-----	226, 800.00
Less Consolidated Relief; (#200,000 +20% x 226,800)45, 360---				245,360.00
Pension (7.5% x 226,800)	-----	-----	-----	17, 010.00
NHF (2.5% x 226,800)	-----	-----	-----	5,670.00
Total Relief 245,360 + 17,010	-----	-----	-----	268,04.00
Chargeable Income 245,360 + 17,010+5670-226,800	-----			41,240.00
Minimum Tax (Annual) -----1% of 226,800.00	-----			2,268.00
Monthly Tax 2268/12	-----	-----	-----	189.00

Upon the above, the tax payer will be assessed to tax at the Minimum Tax Rate of 1% of consolidated/ Gross Income since the chargeable income is lesser.

2. GL 16/3

Consolidated Salary -----	-----	-----	-----	2,373,301.00
Less; Consolidated Relief (#200,000 + 20% x 2373,301)---				674,660.20
Pension (7.5% x 226,800)	-----	-----	-----	17, 010.00
NHF (2.5% x 2, 373,301)	-----	-----	-----	59,3326.53
Chargeable Income 1373301.00-911990	-----			1, 461, 310.70
1 st 300,000.00@7%-	-----	-----	-----	21,000.00
Next 300,000.00@11	-----	-----	-----	33, 000.00
Next 500,000.00@15%	-----	-----	-----	75,000.00
Balance of 361,310.70@19%	-----	-----	-----	68,649.03
Total Tax payable	-----	-----	-----	197, 649.03
Minimum Tax (1% x 2,373,301.00	-----	-----	-----	23, 733.00
Tax payable (Higher of Tax payable and Minimum Tax)	-----			197,649.03
Tax payable Monthly = 197, 649/12	-----	-----	-----	16,470.75

Following up, the consolidated relief of N200,000 plus 20% of earned Income and also deduct exemptions such as National Housing Fund Contribution (NHF) which is 2.5% of your basic salary and pension which 7.5% of your basic +Housing to arrive at your taxable income. But a tax payer can reduce his taxable income by increasing the pension contributions; increase one other premium. Automatically, the tax per month will drop. From the above, no two employees will be liable to pay the same amount as tax. It is therefore, *ultra vires* for a trade union to seek to institute an action on behalf of its members on matters relating to the workers personal income tax, which is regulated by a statute through a third party, the tax authority which is neither an employee nor an employer. Any matter pertaining to PAYE tax deduction or Personal Income Tax is purely a personal affair or matter which affects only the individual tax payer but not an association, club or groups matter to which the tax payer is a member.

8. Conclusion and Recommendations

In other to maintain a representative action, the subject matter must evince a common grievance and the reliefs sought must, in their nature, be beneficial to all the representatives and those represented generally. A trade union that had the above may maintain an action on behalf of the members where it is possible to show that they had a representative capacity and must have the same interest in the proceedings. In tax matters, it is obvious that similarity of interests would not suffice in the absence of a commonality of interests. The assessments and re-assessment of taxes for all the employees who are members of a trade union was not made in one exercise and their salaries were not from a common fund liable to income tax en bloc. The liability to tax is only on income of individual taxpayer and the cause of action against the assessment accrues only when the individual was assessed. It is important to note that each of the employees had separate and distinct causes of actions which could not be combined in one separate action. The reason is that it is a statutory provision and the demand notices were served individually on the employees not a trade union. A reduction in the level of ambiguity in understanding and interpretation of the provisions of tax statute is imperative. There should be sensitization and awareness creation among trade unions on the limits of participation and protection of their members in tax related matters. When there is this orientation and awareness the trade unions will understand that everything about assessment weather direct or indirect or even PAYE assessments is an individual thing. By the awareness, trade union should always engage the stakeholders in tax matters in some kind of negotiation to protect members from imposition of excessive and multiple taxations on their membership. The impositions of excessive taxes carry incidences of unbearable hardships among members of a trade union as a result of inadequate incomes, high prices, homelessness, poverty and loss of purchasing power. This should be timeously before demand notice for the recovery of tax is issued. Each employee and a member of a trade union should as a matter of course always settled his tax indebtedness promptly to avoid this quagmire. But where there is demand notice for assessment or further assessment, the tax paper should individually negotiate with the relevant tax authority or proceeds to court to challenge the assessment or further assessment.