

Case Brief: ACS Africa Coastal Services (GH) Ltd v Ghana Revenue Authority

Court: High Court of Justice, Tema

Date: 30 October 2018

Judge: Emmanuel Ankamah J.

Suit No.: E12/66/2018

Parties: ACS Africa Coastal Services (GH) Ltd (Plaintiff) v Ghana Revenue Authority (Defendant)

Counsel: Yvette Ofosu Asante for the Plaintiff; Doris Agbetise for the Defendant

Flynote

Tax law — Jurisdiction and procedure — Mode of challenging tax assessments — High Court's jurisdiction not properly invoked — Where statute prescribes a specific appellate route for challenging a Commissioner-General's tax decision, a plaintiff cannot proceed by writ seeking declaratory relief — Appeal procedure under Revenue Administration Act, 2016 (Act 915), s. 44 is the proper mode — Action commenced by Writ of Summons declared incompetent and dismissed with costs.

Procedural Posture

The plaintiff commenced an action by Writ of Summons seeking declaratory and injunctive reliefs against the imposition of the National Fiscal Stabilisation Levy (NFSL) under the National Fiscal Stabilisation Levy Act, 2013 (Act 862). At the application for directions stage, the parties agreed two issues for determination: whether the High Court had jurisdiction to hear the case; and whether, on a proper interpretation of Act 862 (as amended), the plaintiff was subject to the NFSL. The defendant pleaded that the action was incompetent because the plaintiff sought to challenge a tax liability by writ rather than by the statutory tax appeal mechanism.

Facts

The Commissioner-General of the Ghana Revenue Authority determined that the plaintiff was liable to the NFSL in the sum of GHS 661,611.07 under Act 862. The plaintiff disputed liability and issued a Writ of Summons seeking: a declaration that its operations fell outside the scope of the NFSL; a declaration that the levy imposed was unlawful, irregular, and arbitrary; and an injunction restraining the defendant from imposing sanctions, together with further relief.

The defendant contended that the plaintiff's challenge to the levy should have been brought by way of appeal under the applicable tax procedure statute rather than by writ.

Issues

1. Whether the High Court had jurisdiction to hear the case in the procedural posture adopted.
2. Whether, on a proper interpretation of Act 862 (as amended), the plaintiff is subject to the NFSL.

Holding

The Court held that although the High Court has jurisdiction over tax matters, the plaintiff failed to properly invoke that jurisdiction because the challenge to the Commissioner-General's determination had to be brought by way of an appeal under section 44 of the Revenue Administration Act, 2016 (Act 915), rather than by Writ of Summons. Having so found, the Court declined to address the substantive NFSL liability issue.

Reasoning

The Court reiterated the principle that where an enactment prescribes a specific mode for seeking redress, that procedure must be followed, and failure to do so disables the Court from entertaining the matter. Order 2 rule 2 of C.I. 47 provides that civil proceedings are commenced by writ "subject to any existing enactment to the contrary." Section 44 of Act 915 provides the statutory avenue to challenge decisions of the Commissioner-General by appeal to the High Court. The plaintiff's pleadings acknowledged a determination by the Commissioner-General under Act 862 with which it was dissatisfied. Consequently, the proper mode was the statutory appeal, not a writ seeking declaratory and injunctive reliefs. Because the statutory mode was not followed, the Court's jurisdiction was not properly invoked, rendering the action incompetent. In those circumstances, it was unnecessary and inappropriate to reach the second issue concerning the merits of NFSL liability.

Disposition

Action dismissed as incompetent. Costs of GHS 10,000 awarded to the defendant.

Key Statutes and Procedural Rules

- Revenue Administration Act, 2016 (Act 915), section 44 (appeals against decisions of the Commissioner-General).
- National Fiscal Stabilisation Levy Act, 2013 (Act 862) (substantive levy framework).
- High Court (Civil Procedure) Rules, 2004 (C.I. 47), Order 2 rule 2 (commencement of proceedings subject to contrary enactment).

Significance

This decision underscores the primacy of the statutory appellate scheme in tax disputes. Declaratory and injunctive relief by writ is not an available substitute where Act 915 prescribes an appeal against a Commissioner-General's tax determination. Practitioners must route challenges to tax assessments through the appeal mechanism under Act 915 to properly invoke the High Court's jurisdiction. The Court will not entertain the merits of liability under substantive tax legislation, such as the NFSL, where the procedural gateway has not been respected.