

## Case Title, Court and Citation

African Mining Services (Ghana) Pty Ltd v Commissioner-General, Ghana Revenue Authority.

High Court of Justice, Commercial Division, Accra.

Suit No. CM/MISC/0245/2021.

Ruling delivered 14 October 2021, Minta J.

## Flynote

*Tax – Judicial review – Discretion – Commissioner-General’s discretion to waive, vary, or suspend the 30% down-payment requirement pending determination of a tax objection under section 42(6) of the Revenue Administration Act, 2016 (Act 915) – Whether Act 915 distinguishes between “computational error” and “interpretive error” for purposes of the 30% down-payment under section 42(5)(b) – No such dichotomy in the statute – Applicant’s request for a waiver premised on a self-created categorisation not known to the Act – Wednesbury unreasonableness – Strict construction of tax statutes – High Court declines reliefs and dismisses application.*

## Procedural Posture

Application for judicial review under Order 55 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47), seeking an order of certiorari to quash the Commissioner-General’s refusal to waive the statutory 30% down-payment prerequisite to lodging a tax objection, together with related injunctive and mandatory reliefs. The Ghana Revenue Authority opposed the application and contended that the applicant’s request was inconsistent with Act 915 and that the application was premature and without merit.

## Facts

Following a GRA audit of the applicant’s tax affairs for 2014–2018, a final tax assessment issued. The applicant notified its intention to object to the entire assessment and requested, by letter, a waiver of the 30% down-payment requirement under section 42(5)(b) of Act 915 as a condition to lodging its objection. In making the request, the applicant unilaterally segregated the total disputed liability into two categories: (i) a larger portion said to be attributable to “computational error” (or “patent error”) and (ii) a smaller portion said to turn on “interpretive” issues. It proposed to pay 30% only of the latter “interpretive” portion while seeking a complete waiver of the 30% down-payment for the “computational” portion.

The Commissioner-General refused the waiver request, set out the options available under Act 915 (accept and pay, object and pay 30%, or object to the full assessment and pay 30% of the full amount), and did not accede to the applicant’s asserted dichotomy. The applicant commenced judicial review, alleging illegality, Wednesbury unreasonableness, breach of administrative justice, and denial of access to justice. It relied inter alia on Articles 296 and 23 of the 1992 Constitution.

## Issues

1. The scope of the Commissioner-General’s discretion under section 42(6) of Act 915 concerning waiver, variation, or suspension of the 30% down-payment requirement in section 42(5).

2. Whether Act 915 recognises a distinction between “computational” and “interpretive” objections for purposes of the 30% down-payment requirement in section 42(5)(b).
3. Whether the Commissioner-General’s refusal was tainted by illegality or Wednesbury unreasonableness.
4. Whether the applicant was entitled to the reliefs sought, including certiorari, declaratory, mandatory, and injunctive orders.

### **Held**

Application dismissed. All reliefs declined.

- Section 42(6) confers a broad but structured discretion on the Commissioner-General to waive, vary, or suspend the down-payment requirement or to take other appropriate action (including security). However, the exercise of discretion must be anchored to the statutory framework in section 42.
- Act 915 does not distinguish between “computational” and “interpretive” tax disputes for the purposes of the 30% down-payment required by section 42(5)(b). The applicant’s self-created dichotomy is unknown to the Act and cannot be used to condition or circumvent the pre-payment requirement.
- The Commissioner-General’s response, which directed the applicant to the options contemplated by the statute, was lawful and reasonable. Any illegality lay in the applicant’s request, which attempted to recast a single tax decision into categories not provided for by law. On the facts, Wednesbury unreasonableness was not established.
- Given the statutory scheme and the applicant’s approach, the discretionary remedies of certiorari, declaration, and injunction were not warranted.

### **Reasoning**

On Issue 1, the Court emphasised that section 42(6) affords the Commissioner-General latitude to waive, vary, or suspend the section 42(5) pre-condition or take other appropriate measures, including security. That latitude is “very broad but not limited to waiver”. It is, however, to be exercised with regard to section 42(7), which requires consideration of the integrity of the dispute resolution process and protection of revenue and the tax system.

On Issue 2, section 42(5) bifurcates only between “import duties and taxes” and “other taxes”, requiring payment of all outstanding taxes and, in the case of “other taxes”, 30% of the tax in dispute. There is no further subdivision in the statute based on the nature of alleged errors. The applicant’s attempt to segment the tax decision into “computational” and “interpretive” components, and to peg payment to that segmentation, was not supported by Act 915.

On Issue 3, applying the Wednesbury standard, the Court held that the Commissioner-General’s response was an appropriate and reasonable application of the statute to the applicant’s novel request. The correct procedural path, if the applicant intended to pay a partial amount while disputing the remainder, would have been to seek a variation or suspension under section 42(6) grounded in the statutory criteria, not to invent a dichotomy to exclude a large tranche of the disputed assessment from the pre-payment regime.

On Issue 4, the Court reiterated that judicial review is concerned with the legality of decision-making, not the merits of the tax assessment. Certiorari is discretionary and is granted for jurisdictional error or breach of natural justice; neither was shown. The declaratory and injunctive

reliefs were also declined, particularly in light of the strict construction applicable to fiscal statutes and the applicant's unreasonable approach, which undermined its claim to discretionary relief.

## Disposition

Application for judicial review dismissed. Reliefs A through E declined.

## Authorities and Materials Cited

- Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 (as reported)
- Francis Owusu-Mensah & Anor v National Board for Professional & Technical Exams & Ors (Supreme Court, unreported, Civil Appeal No. J4/57/2019, 9 May 2018)
- Republic v High Court, Commercial Division, Accra; Ex parte Electoral Commission (Papa Kwesi Nduom, Interested Party) (2016)
- Ghana Telecommunications Co. Ltd & Anor v Atta VI [2017–2020] 1 SCGLR 1090
- Republic v High Court, Sekondi; Ex parte Ampong aka Akrufa Krukoko I (Kyerefo III & Ors, Interested Parties) [2011] 2 SCGLR 716
- Republic v High Court, Accra; Ex parte Attorney-General (Delta Foods Case) [1996–98] SCGLR 595
- Multichoice Ghana Ltd v Internal Revenue Service [2011] 2 SCGLR 783
- Boateng v Dwinfuor [1979] GLR 360
- Republic v High Court, Accra; Ex parte Osafo [2011] 2 SCGLR 966

## Legal Provisions Considered

- 1992 Constitution of Ghana:
  - Article 23 (administrative justice: fairness and reasonableness, right to seek redress)
  - Article 296 (exercise of discretionary power: fairness; prohibition of arbitrariness; due process)
  - Article 141 (supervisory jurisdiction of the High Court)
  - Article 129(4) (referred to for context on Supreme Court's powers)
- Revenue Administration Act, 2016 (Act 915):
  - Section 42(1)–(9): Objections to tax decisions; 30% down-payment requirement for “other taxes” under section 42(5)(b); Commissioner-General’s discretion to waive, vary, suspend, or take other appropriate action under section 42(6); considerations under section 42(7)
- High Court (Civil Procedure) Rules, 2004 (C.I. 47):
  - Order 55 (Judicial review)
  - Order 67 (Fundamental Human Rights) referenced but not invoked

## Key Takeaways for Practitioners

A taxpayer objecting to an assessment under Act 915 must either comply with section 42(5) or situate any request squarely within section 42(6), addressing the statutory considerations in section 42(7). Act 915 does not recognise taxpayer-invented subdivisions of a single “tax decision” into categories that alter the 30% pre-payment requirement. In judicial review, the Court will not revisit the merits of an assessment and will apply the strict construction of fiscal statutes when assessing the legality of administrative action.