

Case Brief: Bishop Daniel Obinim v. Ghana Revenue Authority & Fidelity Bank Ltd.

Court: High Court (Commercial Division), Accra

Judge: Akua Sarpomaa Amoah (Mrs.), J.

Date: 30 October 2020

Suit No.: CM/OCC/1033/2019

Parties: Plaintiff – Bishop Daniel Obinim; 1st Defendant – Ghana Revenue Authority; 2nd Defendant – Fidelity Bank Ltd.

Flynote

Tax law – Dispute resolution – Exhaustion of statutory remedies – Tax decision and objection procedure – Jurisdiction – Improper commencement by writ where Act 915 prescribes objection and appeal – Garnishment – Service of third-party notice prior to service on taxpayer permissible.

The High Court dismissed a suit challenging GRA tax assessments and a garnishment notice on grounds that the plaintiff failed to exhaust the mandatory dispute resolution mechanisms under the Revenue Administration Act, 2016 (Act 915), ss 41–44, before invoking the court’s jurisdiction. A demand letter constituted a “tax decision,” triggering the statutory objection process. Challenges to such decisions must first be lodged with the Commissioner-General and thereafter appealed under Order 54 if necessary. Garnishment under s 60 may be served on a third-party debtor before serving the taxpayer. Application to set aside writ granted; suit dismissed.

Facts

The GRA served the plaintiff with a letter dated 18 December 2018 demanding GH¢719,890 as taxes allegedly due for 2014–2018, including rent tax relating to twenty-one shops at Tema and VAT said to be due from Abroso Guest House Ltd. The plaintiff asserted that an earlier joint GRA/EOCO audit had assessed only rent tax of GH¢39,555 on the shops, excluded Abroso Guest House as a separate entity outside his control, and that he had fully paid the assessed sum with receipts issued. In June 2019 the plaintiff’s bank (Fidelity Bank) informed him that GRA had served a garnishment notice under the Commissioner-General’s hand directing the bank to withhold GH¢769,095.87. The plaintiff commenced an action by writ seeking declarations that all taxes due had been paid, that he was not liable for Abroso’s VAT, orders to set aside the garnishment, injunctive relief against GRA and the bank, damages, and costs.

The GRA applied to set aside the writ and dismiss the suit for want of jurisdiction, contending that the plaintiff had not complied with the mandatory dispute resolution sequence under Act 915 and Order 54 of CI 47.

Procedural Posture

Application by the 1st defendant to set aside the writ and dismiss the suit for failure to exhaust statutory remedies and improper invocation of the High Court’s jurisdiction. The court determined the application on the merits.

Issues

1. Whether the plaintiff's suit concerned a "tax decision" within the meaning of Act 915, thereby triggering the mandatory objection and appeal process under ss 41–44.
2. Whether the plaintiff properly invoked the High Court's jurisdiction by writ without first lodging an objection with the Commissioner-General and, if necessary, proceeding by the statutory appeal mechanism.
3. Whether the garnishment notice was unlawful for want of prior or contemporaneous service on the taxpayer.
4. If framed as supervisory relief, whether the action was properly commenced by writ rather than by judicial review under Order 55.

Holding

1. The 18 December 2018 demand letter constituted a "tax decision" and, as such, the matter was a tax dispute subject to the objection procedure under Act 915.
2. The plaintiff failed to exhaust mandatory domestic remedies; accordingly, the court's jurisdiction was not properly invoked and the suit was incompetent.
3. Under s 60 of Act 915, the Commissioner-General may serve a third-party debtor with a garnishment notice and serve the taxpayer "as soon as practicable" thereafter; prior service on the taxpayer is not a prerequisite.
4. Even if the plaintiff intended to invoke the court's supervisory jurisdiction, the proper mode was judicial review under Order 55, not by writ of summons.

Application granted; writ set aside; suit dismissed. Reliefs against the 2nd defendant fell away.

Reasoning

The court construed ss 41–44 of Act 915 and held that a tax dispute arises when a taxpayer is notified of a tax decision, including an assessment or other decision of the Commissioner-General. The plaintiff's own pleadings acknowledged receipt of the 18 December 2018 letter demanding payment within 30 days, which met the statutory criteria for a tax decision. The plaintiff's disagreement with that demand, and his request for declarations negating the assessment and garnishment, placed the action squarely within the statutory dispute resolution framework. Following the principle that where legislation prescribes a special procedure it must be strictly followed, the plaintiff had to first lodge an objection with the Commissioner-General within the stipulated period and pursue an appeal under s 44 and Order 54 if dissatisfied. The court emphasized that the Act does not oust jurisdiction but makes the statutory pathway mandatory save for substantial reasons, which were not demonstrated.

On garnishment, the court read s 60 as authorizing service on the third-party debtor without prior service on the taxpayer, with the latter to be served as soon as practicable afterward. The plaintiff's complaint of lack of notice therefore did not render the garnishment per se unlawful.

Finally, to the extent the pleadings could be viewed as an invocation of supervisory powers, the action should have been commenced by an application for judicial review

under Order 55. Commencement by writ was procedurally improper.

Disposition

- 1st defendant's application to set aside the writ and dismiss the suit granted.
- Plaintiff's writ set aside; suit dismissed.
- Reliefs sought against the 2nd defendant consequently dismissed.

Ratio Decidendi

Where Act 915 prescribes an objection and appeal process for "tax decisions," a taxpayer must exhaust that process prior to seeking relief in court. A demand notice of assessment constitutes a tax decision, and failure to follow the objection route renders a court action premature and incompetent. Garnishment under s 60 may validly proceed by serving a third-party debtor before the taxpayer is served.

Obiter

The court noted procedural defects in the plaintiff's affidavits concerning the marking and certification of exhibits under Order 10, but treated any objections as waived and proceeded on the merits.

Legal Provisions Considered

- Revenue Administration Act, 2016 (Act 915):
 - Section 41 (definition and timing of "tax decision" and notice of assessment).
 - Section 42 (objection to tax decision within 30 days).
 - Section 44 (appeals to the High Court from the Commissioner-General's decision).
 - Section 60 (garnishment/third-party debt notice; sequence of service).
- High Court (Civil Procedure) Rules, 2004 (CI 47):
 - Order 54 (procedure for tax appeals).
 - Order 55 (judicial review procedure).
 - Order 10 r 14(1) and r 1(1) (requirements for exhibiting and certifying documents to affidavits).
 - Order 81 r 2(a) (waiver/setting aside for non-compliance).
- Authority cited: *Boyefio v. NTHC Properties* [1996–97] SCGLR 531 (special statutory procedures must be followed).

Significance

The decision reinforces the primacy of Act 915's statutory dispute resolution mechanism in tax matters and clarifies that a demand notice is a tax decision triggering the objection timeline. It also affirms the procedural pathway for contesting tax decisions—objection to the Commissioner-General, then appeal under Order 54—and the proper use of judicial review procedures where supervisory relief is sought. On enforcement, it confirms that garnishment notices may be served on third-party debtors prior to taxpayer service without invalidating the process.