

# CASE BRIEF

## CENTER FOR JUVENILE DELINQUENCY v. GHANA REVENUE AUTHORITY & ATTORNEY GENERAL

Supreme Court of Ghana

Writ No. J1/61/2018

Date: 30th July, 2019

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### FLYNOTE

*Constitutional Law – Access to Justice – Right to Court Access – Taxpayer Identification Number (TIN) – Whether requirement to quote TIN before filing court cases constitutes unconstitutional fetter on access to courts – Whether provisions are overbroad affecting vulnerable groups including juveniles – Proportionality test – Articles 2(1), 33(1), 130(1), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of 1992 Constitution – Revenue Administration Act, 2016 (Act 915), First Schedule, paragraphs 1(9), 2(8) and 2(9)*

*Held (Unanimously): Requirement that person shall not be permitted to file case in court without quoting TIN constitutes unjustified interference with constitutional right of access to justice. Provision fails proportionality test as harm to freedom of access plainly outweighs intended benefit of tax compliance. Unhampered access to courts is fundamental prerequisite to full enjoyment of human rights. Paragraphs 1(9) and 2(8) of First Schedule of Act 915 struck down as unconstitutional. Paragraph 2(9) relating to other official business with listed institutions severed and left intact.*

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### PARTIES

**Plaintiff/Applicant:** Center for Juvenile Delinquency (Ghanaian NGO)

**1st Defendant:** Ghana Revenue Authority (GRA)

**2nd Defendant:** Attorney General

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### FACTS

1. Parliament passed Revenue Administration Act, 2016 (Act 915) which came into force 10th August 2016
2. Section 11 of Act 915 required persons to quote TIN in documents used for tax law purposes

3. First Schedule, paragraph 1(9) listed "the Courts" among institutions to which TIN system applies
  4. First Schedule, paragraph 2(8) provided: "A person shall not be permitted to file a case with the Courts" unless person quotes TIN
  5. First Schedule, paragraph 2(9) prohibited conducting official business with listed institutions without TIN
  6. Plaintiff brought action under Articles 2(1) and 130 of Constitution challenging provisions as unconstitutional fetters on right to access courts
  7. Plaintiff argued provisions particularly affected vulnerable groups: aged, incapacitated, juveniles, accused persons in custody
  8. Both Defendants contended requirement merely regulatory, obtaining TIN free and without delay, similar to filing fees or lawyer's license endorsement
  9. AG raised preliminary objection that Plaintiff failed to properly invoke Supreme Court's original jurisdiction
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## ISSUES FOR DETERMINATION

1. Whether Plaintiff properly invoked original jurisdiction of Supreme Court under Articles 2(1) and 130 of 1992 Constitution
  2. Whether paragraphs 1(9), 2(8) and 2(9) of First Schedule of Act 915 contravene Articles 2(1), 33(1), 48(2), 130(1), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of Constitution and right of access to court and justice
  3. Whether said provisions violate rights of juveniles to access court and justice in criminal proceedings
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## ARGUMENTS

### Plaintiff's Case

1. **Constitutional Violation:** Provisions breach Articles 2(1), 33(1), 130(1), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 which guarantee unimpeded right of access to courts
2. **Vulnerable Groups Affected:** Requirement particularly impacts aged, incapacitated, juveniles, accused persons in custody who may not readily obtain TIN
3. **Discriminatory:** Provisions discriminatory against vulnerable groups
4. **Spirit of Constitution:** Requirement affront to spirit of Constitution as described in *Tuffuor v Attorney-General*
5. **Overbroad Application:** Especially affects juveniles who access courts through guardians ad litem

## 1st Defendant's Case (GRA)

1. **Merely Regulatory:** Requirement merely regulatory, akin to other constitutional and statutory requirements in Courts Act
2. **No Cost or Delay:** Obtaining TIN comes with no cost and delay, therefore not a fetter on access to courts
3. **Similar to Filing Fees:** Comparable to requirement for payment of filing fees or lawyer's license endorsement
4. **Tax Compliance Measure:** Measure put in place by Parliament to ensure tax compliance under Article 41(j) of Constitution
5. **Juveniles Not Liable:** Juvenile not liable to pay tax, therefore not obliged to obtain TIN - argument not legally tenable
6. **Election Not Fetter:** Person who chooses not to obtain TIN electing not to access courts, not that fetter being placed

## 2nd Defendant's Case (Attorney General)

1. **Jurisdictional Objection:** Plaintiff failed to properly invoke original jurisdiction - merely asserted constitutional violations without proof
2. **Reference to *Daasebre Asare Baah III*:** Claim unfounded, unsubstantiated and not justiciable
3. **Juveniles Not Affected:** Juvenile has no capacity to institute action except through guardian ad litem who requires TIN
4. **Limited Application:** Law does not apply to criminal proceedings or original jurisdiction of Supreme Court under Articles 2(1) and 130

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## HOLDING & JUDGMENT

**Per Adinyira JSC** (Dotse JSC, Yeboah JSC, Baffoe-Bonnie JSC, Benin JSC, Pwamang JSC, Amegatcher JSC all concurring):

### ALLOWED THE ACTION

#### Issue 1: Jurisdiction

**HELD:** Plaintiff properly invoked jurisdiction under Articles 2(1) and 130(b) of Constitution.

#### Reasoning:

1. **Sufficient Particularity:** Contrary to AG's assertion, Plaintiff demonstrated how each constitutional provision gave automatic right of access to courts

2. **Effect on Justice Administration:** Plaintiff discussed effect on jurisdiction, human rights enforcement, criminal justice, civil cases, and vulnerable groups
3. **No Magical Formula:** Per *Ghana Independent Broadcasters Association v AG*, no magical formula for setting out constitutional case - important that reliefs and affidavit raise case recognizable under Constitution
4. **Constitutional Development:** Since *In re Akoto*, Ghana's democracy evolved with entrenchment of fundamental rights requiring enforcement mechanism
5. **Article 33(1):** Entrenched for protection and enforcement whenever rights contravened
6. **Combined Effect of Provisions:** Articles 2(1), 48(2), 130(1), 135, 137(1), 140, 273(5) and 280 by combined effect give free and unimpeded right of access to courts
7. **Courts as Institution:** Use of "the Courts" in First Schedule intended to apply to courts as institution, not limited to High Court
8. **Cogent Issues Raised:** Plaintiff raised cogent constitutional issues concerning Judiciary's function as watchdog of Constitution

**Preliminary objection dismissed.**

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## **Issues 2 & 3: Constitutionality of TIN Requirement**

**HELD:** Paragraphs 1(9) and 2(8) of First Schedule unconstitutional. Paragraph 2(9) severed and left intact.

### **A. ACCESS TO JUSTICE**

#### **Cardinal Principles:**

1. **Rule of Law:** Article 17(1) guarantees equality before law including equal access to courts
2. **Two Aspects:**
  - Freedom to walk into court and initiate cause of action
  - Ability to meaningfully and effectively participate in proceedings (fair trial)
3. **No Prior Statutory Restraint:** No prior statutory restraint for form of identity before accessing courts except capacity, jurisdiction and nature of claim
4. **Article 12(1):** All 3 arms of government must respect fundamental rights

### **B. PROPORTIONALITY TEST**

**Applied from *Civil and Local Government Staff Association (CLOSAG) v Attorney-General*:**

Questions to determine validity of limitation on constitutional right:

1. **Is limitation necessary?** Is it necessary for enhancement of democracy and freedoms, for public good?
2. **Is limitation proportional?** Is it overbroad such as to effectively nullify constitutional right?

### Court's Analysis:

1. **Importance of Court Access:** Enables every person to enjoy all other fundamental human rights
2. **Vulnerable Groups:** Enables socio-economically vulnerable, discriminated and abused to access and enforce rights
3. **Majority Face Obstacles:** Due to lack of legal aid - additional impediment unacceptable
4. **Per *Labone Weavers v Bank of Ghana*:** Every person has unimpeded access to law courts - only taken away by express provision provided Act doesn't run counter to Constitution
5. **Per *NPP v Inspector General of Police*:** Any law abridging freedoms and rights must be struck down as unconstitutional

## C. INTERPRETATIVE APPROACH

### Statutory Construction:

1. **Plain Meaning:** Words simple, clear, unambiguous - given normal and ordinary meaning
2. **Use of "SHALL":** Per Section 42 Interpretation Act - "shall" is imperative and mandatory
3. **Clear Prohibition:** "Person shall not be permitted...to file case" clearly intended to impose statutory prohibition
4. **No TIN, No Access:** Requirement bluntly put is: no TIN no access to court
5. **Transaction Defined:** Per Black's Law Dictionary - "act of conducting business or other dealings"

## D. FILING CASE NOT A BUSINESS TRANSACTION

### Critical Distinction:

1. **Other Transactions:** All other paragraph 2 transactions (clearing goods, registering land/company, receiving state payments) ultimately require person to pay or be taxed
2. **Courts Different:** Filing case clearly does not fit description of business transactions
3. **Official Business of Courts:** To administer justice for people and on behalf of people per Article 125(1)
4. **Judicial Service vs Courts:** Business transactions role played by Judicial Service, not courts/Judiciary
5. **Proper TIN Use:** Application of section 11(2) by other listed institutions to request TIN for business specified in paragraph 2 is legal, necessary and reasonable for tax compliance

## E. DEFENDANTS' COMPARISONS REJECTED

### Filing Fees:

1. **Defeats Purpose:** Filing fee is form of tax per section 9(1) - refusing person from filing for lack of TIN defeats purpose of widening tax net for revenue
2. **Begs the Question:** Comparison diminishes issue - "comparing apples with oranges"

### Lawyer's License:

1. **Different Purpose:** Endorsement provides proof lawyer licensed to practice that legal year
2. **TIN Proves Nothing:** Person quoting TIN doesn't necessarily mean tax obligation fulfilled - mere inconvenience
3. **Better Alternatives:** Where administrative body has alternatives to achieve outcome, option creating greater inconvenience and impeding justice not preferable

## F. PRACTICAL BARRIERS

### Widespread Impact:

1. **Geographic Barriers:** Bulk of populace in rural areas, informal sector - GRA offices only in urban areas
2. **Illiteracy:** Per *Attisogbe v CFC Construction*, illiteracy widespread phenomenon of which judicial notice taken
3. **Remote Areas:** Not practical for people in remote areas to access tax office for TIN
4. **GRA Promise Insufficient:** Promise to provide facilities at court premises outside court's control - only taxpayers to obtain TIN, filing clerk cannot determine who exempted
5. **Multiple Challenges:** Geographic, illiteracy, financial and gender-specific challenges

## G. HARM OUTWEIGHS BENEFIT

### Balancing Exercise:

1. **Underlying Policy:** Purpose of TIN to identify taxpayers, widen tax net, facilitate collection, ensure compliance with Article 41(j) duty
2. **Disproportionate Harm:** Harm to freedom of access plainly outweighs benefit of tax compliance
3. **Strike Balance Needed:** Between need for citizens to pay tax and need to encourage free access to courts
4. **Constitutional Democracy:** Free court access basic characteristic where rule of law prevalent, serves as barometer for good governance and accountability
5. **Judicial Review:** Strong bulwark against illegality and impunity, insulates citizens against human rights violations

## I. JUVENILES

### Overbroad Application:

1. **Indirect Impact:** Juvenile accesses courts through next friend (adult)
2. **Adult Requirement:** Next friend may require TIN before filing on juvenile's behalf
3. **Both Proceedings:** Affects juvenile rights in criminal and civil cases
4. **Provisions Overbroad:** Therefore overbroad as affects juvenile access to justice

## J. CONCLUSION ON CONSTITUTIONALITY

### Provisions offend letter and spirit of Constitution:

1. Violate right of access to law courts by persons in Ghana including juveniles
2. Contravene Articles 2(1), 33(1), 130(1), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280
3. Unconstitutional, void and of no effect
4. Fails proportionality test
5. Unjustified interference with individual right to access court for justice
6. Unreasonable restriction and limitation

## K. SEVERABILITY

### Application of Severability Test:

**Power of Court:** Per Articles 2(1) and 130(1), Court can sever and strike down offending part, leaving other parts intact

### Paragraph 2(9) Severed:

1. **Use of "Or":** Word "or" after comma at end of paragraph 2(8) shows it's disjunctive from 2(9)
2. **Different Scope:** Paragraph 2(9) applies to other official business not listed in preceding paragraphs
3. **Concluding Portion Intact:** Last part of paragraph 2 "unless person quotes TIN" not limited to courts but applies to other institutions listed in paragraph 1
4. **Activities in Paragraph 2:** Applies to other activities mentioned therefore not affected by declaration of 1(9) and 2(8) as void
5. **Can Be Severed:** By applying severability test, can be severed from offending subparagraphs

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## ORDERS

1. **Issue 1 (Jurisdiction):** Resolved in favor of Plaintiff
2. **Issue 2:** Resolved in part in favor of Plaintiff
3. **Issue 3 (Juveniles):** Resolved in favor of Plaintiff

4. **Relief (a) Granted:** Declaration that paragraphs 1(9), 2(8) and 2(9) inconsistent with Constitution
5. **Relief (b) Granted:** Declaration that requirement overbroad as applies to juveniles
6. **Relief (c) Granted in Part:** Order striking down paragraphs 1(9) and 2(8) only

#### **FINAL ORDER:**

**Paragraphs 1(9) and 2(8) of First Schedule of Revenue Administration Act, 2016 (Act 915) hereby STRUCK DOWN as unconstitutional and in contravention of letter and spirit of Articles 2(1), 33(1), 48(2), 130(1), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of 1992 Constitution.**

**Paragraph 2(9) severed and left intact.**

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## **RATIO DECIDENDI**

1. A statutory provision that prohibits a person from filing a case in court unless that person quotes a Taxpayer Identification Number constitutes an unjustified and disproportionate interference with the constitutional right of unimpeded access to justice.
  2. Where the harm a provision does to freedom of access to courts plainly outweighs whatever benefit it aims to achieve, it fails the proportionality test and must be struck down as unconstitutional.
  3. Unhampered access to courts is a fundamental prerequisite to the full enjoyment of fundamental human rights and an essential element of the rule of law, which cannot be fettered by administrative or revenue collection measures however well-intentioned.
  4. Filing a case in court is not a "business transaction" comparable to commercial dealings that legitimately require tax identification for revenue purposes - it is the exercise of a fundamental constitutional right to seek justice.
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