

Case Brief: DM Kojo Trading Ent Ltd v. The Commissioner-General (GRA)

Citation: Suit No. CM/MISC/0945/2019

Court: High Court of Justice (Commercial Division), Accra

Date: 7th November 2019

Judge: Her Ladyship Justice Akua Sarpomaa Amoah (Mrs.)

Flynote

Tax Law – Revenue Administration – Garnishment – Validity of Garnishment Notice – Service of Documents – Mandatory nature of statutory service procedures – Section 25 and 40 of Act 915 – Natural Justice – Audi Alteram Partem – Whether a Garnishment Notice can be issued without prior service of a Tax Assessment and Demand Notice – Effect of using non-prescribed modes of service (text messages/phone calls).

Facts

The Applicant, DM Kojo Trading Ent Ltd, discovered on 7th June 2019 that its bankers (Agricultural Development Bank) had been served with a Garnishment Notice by the GRA to pay **GHS 515,493.84** from the Applicant's account. The GRA alleged that it had previously served the Applicant with a tax assessment and a demand for payment, which the Applicant supposedly ignored.

The GRA contended it sent the assessment via ordinary mail on 16th May 2019 and attempted to contact the Applicant through telephone calls and text messages. The Applicant maintained it was never served with any notice of assessment or demand to pay before the garnishment occurred and argued that the GRA breached the rules of natural justice.

Issues

1. Whether the Respondent (GRA) complied with the mandatory statutory procedures for the service of a Notice of Assessment under **Act 915**.
2. Whether a Garnishment Notice issued without lawful service of a prior assessment is valid.
3. Whether non-statutory modes of communication (text messages and phone calls) constitute valid service under the tax laws.

Held (Judgment)

The High Court **granted the application** and ruled in favour of DM Kojo Trading Ent Ltd.

- **Nullity of Garnishment:** The Court declared the Garnishment Notice a **nullity** because the GRA failed to comply with the mandatory procedures outlined in **Sections 25 and 40 of Act 915**.
- **Procedural Impropriety:** The Court held that a taxpayer must be duly served with an assessment and afforded a fair opportunity to respond or object before garnishment can be triggered. Serving a Garnishment Notice on a bank simultaneously with (or before) serving the taxpayer with the assessment is a violation of the *audi alteram partem* rule (the right to be heard).
- **Evidence of Service:** Following the principle in *Andani v. Abdulai*, the Court held that the burden of proving service lies strictly on the party alleging it. The GRA failed to provide proof of service by ordinary or registered mail that met the statutory timelines.
- **Invalidity of Text/Phone Alerts:** Text messages and phone calls are **not** prescribed modes of service under Act 915 and cannot be used to waive or substitute statutory requirements.

Relevant Legal Provisions Considered

- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 25:** Prescribes the specific modes for the service of paper documents (e.g., delivery in person, ordinary post, or registered post) and defines when service is deemed to have occurred.
 - **Section 40:** Mandates that the Commissioner-General **shall** serve a Notice of Assessment on the taxpayer whenever an assessment is made.
 - **Section 60:** Governs the power to garnish funds from third parties, which is contingent upon the taxpayer's failure to pay an assessed tax by the due date.
- **1992 Constitution of Ghana:**
 - **Article 23:** Requires administrative bodies to act fairly, reasonably, and comply with the requirements imposed by law.
- **High Court Civil Procedure Rules, 2004 (C.I. 47):**
 - **Order 55:** Invoked for the Court's review jurisdiction regarding administrative acts.