

Case Brief: Export Finance Company Ltd v. Ghana Revenue Authority & Attorney-General

Citation: Writ No. J1/07/2021

Court: Supreme Court of Ghana

Date: 30th November 2022

Coram: Dotse JSC (Presiding), Amegatcher JSC (Lead), Owusu (Ms.) JSC, Lovelace-Johnson (Ms.) JSC, Honyenuga JSC, Prof. Mensa-Bonsu (Mrs.) JSC, Kulendi JSC

Flynote

Constitutional Law – Tax Law – Access to Justice – "Pay Now, Argue Later" Principle – *Constitutionality of mandatory tax prepayment – Whether requiring 30% payment of disputed tax (or 100% for import duties) as a condition for objection violates the right to a fair hearing and access to the courts – Articles 2(1), 17, 19(13), and 140 of the 1992 Constitution – Interplay between parent Acts and subsidiary legislation (C.I. 47).*

Facts

The Plaintiff, Export Finance Company Ltd, challenged the constitutionality of certain provisions in the **Revenue Administration Act, 2016 (Act 915)** and the **High Court (Civil Procedure) Rules, 2004 (C.I. 47)**.

Specifically, the Plaintiff argued that **Section 42(5)** of Act 915 acted as a "clog" or "fetter" on the constitutional right to access the courts and the presumption of innocence. That provision requires a taxpayer to pay 100% of disputed import duties or 30% of other disputed taxes before an objection is even considered. The Plaintiff further challenged **Order 54 Rule 4** of C.I. 47, which requires a 25% payment of the quarterly tax before an appeal can be entertained by the High Court, arguing these cumulative requirements were unconstitutionally burdensome.

Issues

1. Whether **Section 42(5)(a) & (b)** of Act 915 is unconstitutional by making tax prepayment a prerequisite for administrative and judicial redress.
 2. Whether the discretion granted to the Commissioner-General under **Section 42(6)** to waive or vary these payments is arbitrary or discriminatory.
 3. Whether **Order 54 Rule 4** of C.I. 47 violates the right to a fair hearing.
 4. How the court should resolve the apparent "double payment" requirement between Act 915 and C.I. 47.
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Held (Judgment)

The Supreme Court **dismissed the writ in its entirety**, affirming the constitutionality of the challenged provisions.

- **"Pay Now, Argue Later":** The Court held that this principle is a recognised global standard in tax jurisprudence. It is not an absolute bar to justice but a **proportionate limitation** intended to balance individual rights against the state's urgent need for revenue to function.
- **Presumption of Innocence:** The Court clarified that tax disputes are civil and administrative in nature, not criminal. Therefore, the Article 19(2)(c) presumption of innocence does not apply to the assessment of tax liabilities.
- **Public Policy Rationale:** Without such requirements, recalcitrant taxpayers could file frivolous objections simply to delay payment, effectively "starving" the state of necessary funds during years of litigation.
- **Hierarchy of Laws:** The Court ruled that **Order 54 Rule 4 (C.I. 47)** is subsidiary legislation and must yield to the parent Act (**Act 915**). To avoid an "absurd" double payment, the Court held that a taxpayer who has already complied with the prepayment requirements of Act 915 **does not** need to pay the additional 25% under C.I. 47 to access the High Court.

Relevant Legal Provisions Considered

Statutory Provisions:

- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 42(5):** Mandatory prepayment of 100% (import duties) or 30% (other taxes) for objections.
 - **Section 42(6):** Discretionary power of the Commissioner-General to waive or vary the prepayment.
- **High Court (Civil Procedure) Rules, 2004 (C.I. 47):**
 - **Order 54 Rule 4:** Requirement to pay 25% of the tax for the first quarter before an appeal is heard.

Constitutional Provisions:

- **Article 17:** Equality before the law and freedom from discrimination.
- **Article 19(13):** Right to a fair hearing in the determination of civil rights and obligations.
- **Article 23:** Right to administrative justice (fair and reasonable acts by administrative bodies).
- **Article 140:** The High Court's jurisdiction in civil and criminal matters.

Significance

This decision is the definitive authority in Ghana for the **"Pay Now, Argue Later"** rule. It protects the state's revenue mobilization efforts from being paralysed by litigation while providing a "safety valve" through the Commissioner-General's discretion to waive payments in cases of genuine hardship. It also successfully harmonised the conflict between the Revenue Administration Act and the High Court Rules regarding the percentage of tax to be paid before an appeal.