

Case Brief: Afrifa v Ghana Revenue Authority & Attorney-General (SC writ)

Court: Supreme Court of Ghana

Date: 30th November 2022

Case No: Writ No. J1/23/2021

Coram: Dotse (Presiding), Pwamang, Kotey, Lovelace-Johnson, Torkornoo, Mensa-Bonsu, Kulendi JJSC.

Flynote

Constitutional Law – Supreme Court – Original Jurisdiction – Enforcement and Interpretation – Tax Administration – Revenue Administration Act, 2016 (Act 915) – Challenge to constitutionality of various sections of Act 915 – Requirement to identify specific constitutional provisions alleged to be violated – Whether general allegations of "unconstitutionality" without specific nexus to constitutional provisions invoke the Court's jurisdiction – Presumption of Validity of Statutes – Burden of Proof in Tax Appeals – Restraint of Person (Travel Ban) – Joint Liability and Third Party Debtors.

Facts

The Plaintiff, Kwasi Afrifa, brought an action invoking the original jurisdiction of the Supreme Court under Articles 2(1) and 130(1) of the 1992 Constitution. He sought to challenge what he described as "awesome and far-reaching powers" granted to the Ghana Revenue Authority (1st Defendant) under the Revenue Administration Act, 2016 (Act 915).

The Plaintiff identified thirty-nine sections of Act 915 (including sections 31, 41-45, 51-57, 70-96) which he alleged were inconsistent with the "letter and spirit" of the Constitution, specifically the Preamble, Articles 1, 2, and 125, as well as Chapters 5 and 6. He argued that these provisions gave the GRA powers that usurped the judicial power of the courts and violated fundamental human rights. The Defendants argued that the Plaintiff failed to properly invoke the Court's jurisdiction because he did not demonstrate with sufficient particularity how the impugned sections violated specific constitutional provisions.

Issues

1. Whether the Plaintiff properly invoked the original jurisdiction of the Supreme Court under Articles 2(1) and 130(1)(a) of the 1992 Constitution.
2. Whether specific sections of the Revenue Administration Act, 2016 (Act 915) (including s. 42, 52-54, 56-67, 72-93) are inconsistent with the 1992 Constitution and therefore void.

Holding

The Supreme Court dismissed the Plaintiff's action in its entirety. The Court held that, with the exception of one relief (Relief d) which was considered on its merits and dismissed, the Plaintiff failed to properly invoke the Court's jurisdiction by failing to link the impugned statutory provisions to specific constitutional breaches.

Reasoning (Ratio Decidendi)

- **Requirements for Invoking Jurisdiction (The "Two Pillars"):** The Court reiterated that to invoke its enforcement jurisdiction under Article 2(1), a plaintiff must identify two pillars: (1) the specific enactment or act alleged to be offensive, and (2) the specific constitutional provisions sought to be preserved. General references to the "letter and spirit" or entire Chapters of the Constitution without specific legal submissions are insufficient.
- **Presumption of Constitutionality:** Statutes are presumed valid. A plaintiff bears the burden of clearly demonstrating their unconstitutionality. The Court will not "find evidence for the parties" or speculate on intended constitutional arguments where none are clearly presented.
- **Restraint of Person (Section 56):** The Court rejected the claim that Section 56 of Act 915 empowers the GRA to restrain persons without court recourse. The section only allows the Commissioner-General to *request* the Comptroller-General of Immigration to prevent a debtor from travelling, and such restraint is limited to seven days unless extended by the High Court. This procedure aligns with Article 14(1)(g) of the Constitution regarding lawful deprivation of liberty upon suspicion of a criminal offence.
- **Burden of Proof (Section 92):** The Court distinguished between civil tax disputes and penal proceedings. Section 92(1) places the burden of proof on the taxpayer in assessment disputes, which accords with the Evidence Act (NRCD 323) principle that "he who asserts must prove". Conversely, Section 92(2) places the burden on the Commissioner-General for penalties, aligning with the presumption of innocence in Article 19(2)(c).
- **Private Rights vs. Constitutional Issues:** Several reliefs (regarding charges on assets, joint liability, and third-party debtors) were dismissed because they concerned private rights (contract, company law) or administrative law, rather than constitutional interpretation.

Relevant Legal Provisions Considered

- **1992 Constitution of Ghana:**
 - **Article 2(1):** Enforcement of the Constitution.
 - **Article 14(1)(g):** Protection of personal liberty and exceptions.
 - **Article 19(2)(c):** Presumption of innocence.
 - **Article 23:** Administrative justice.
 - **Article 125:** Judicial power vested in the Judiciary.
 - **Article 130(1):** Exclusive original jurisdiction of the Supreme Court.

- **Article 141:** Supervisory jurisdiction of the High Court.
- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 52:** Creation of charge over assets.
 - **Section 56:** Restraint of person (travel ban).
 - **Section 58:** Liability of managers of corporate entities.
 - **Sections 60-61:** Third-party debtors.
 - **Section 92:** Burden of proof.
 - **Section 93:** Tax decisions not automatically stayed by proceedings.
- **Evidence Act, 1975 (NRCD 323):**
 - **Section 14:** Allocation of burden of persuasion.