

Case Brief: Kwasi Nyantakyi Owiredu v. Commissioner-General, Ghana Revenue Authority

Citation: Suit No: CM/TAX/0142/2019

Court: High Court (Commercial Division), Accra

Date of Judgment: 20th December, 2019

Judge: His Lordship Samuel K. A. Asiedu, J.A. (Sitting as an additional High Court Judge)

Flynote

Tax Law – Income Tax – Mortgage Interest Deduction – Upfront vs. Year-end Deduction – Employment Income – Whether an employee is entitled to upfront monthly deduction of mortgage interest from chargeable income or must wait until the filing of annual tax returns – **Interpretation of Section 8 of Act 896 and Paragraph 4(3) of the Sixth Schedule –** Mandatory nature of employer tax estimates under **L.I. 2244.**

Facts

The Appellant, an employee with a mortgage from Ghana Home Loans Limited, paid monthly interest on his residential property. He sought to have his employer deduct this interest upfront on a monthly basis to determine his monthly chargeable income. The Commissioner-General of the Ghana Revenue Authority (GRA) refused the request, stating that the law only permits such deductions after the individual has filed annual tax returns at the end of the year. The Appellant appealed this decision under Section 44 of the Revenue Administration Act, 2016 (Act 915).

Issue for Determination

Whether it is permissible under Ghanaian tax law for an employee paying monthly mortgage interest on their only residential premises to claim or deduct that interest when determining their monthly chargeable income, rather than waiting until the end of the year.

Held (Judgment)

The High Court **allowed the appeal** and set aside the Commissioner-General's decision.

- **Upfront Entitlement:** The Court declared that the Appellant is entitled under the law to have an upfront deduction of mortgage interest at any time the employer makes a "qualifying cash payment" (be it weekly, monthly, or yearly).

- **No Requirement to Wait:** Taxpayers do not necessarily have to wait until the end of the year or the filing of tax returns to benefit from this deduction.
- **Employer's Obligation:** Since employers are already legally mandated to make monthly estimates of an employee's tax liability, they are equally enjoined to factor in proven mortgage interest payments during those periodic assessments.

Relevant Legal Provisions Considered

- **Income Tax Act, 2015 (Act 896):**

- **Section 8:** Established that deductions for employment income are generally not allowed unless specifically permitted under the Sixth Schedule.
- **Section 19(2):** Provides that individuals shall account for employment or investment income on a **cash basis** (meaning an expense is incurred when it is paid).
- **Paragraph 4(3) of the Sixth Schedule:** Explicitly states that, notwithstanding Sections 8 and 9, mortgage interest incurred during the year shall be deducted when calculating an individual's income.

- **Income Tax Regulations, 2016 (L.I. 2244):**

- **Regulation 4(2), (3), and (4):** Enjoins employers to make reasonable monthly estimates of an employee's tax liability and qualifying cash payments yet to be made.

- **1992 Constitution of Ghana:**

- **Article 296:** Regarding the fair and non-arbitrary exercise of discretionary power by administrative bodies.

Significance

This ruling clarifies that the mortgage interest deduction is a **tax concession** intended to support homeownership. It establishes that because employees are paid periodically to meet their human needs, tax reliefs and deductions should be applied at the time of payment rather than being deferred to the end of a calendar year.