

Case Brief: Perseus Mining Ghana Limited v. Commissioner-General (GRA)

Citation: Civil Motions J8/34/2024 & J8/112/2024

Date: 11 March 2025

Court: Supreme Court of Ghana

Coram: Sackey Torkornoo (Mrs.) CJ (Presiding), Baffoe-Bonnie JSC, Prof. Mensa-Bonsu (Mrs.) JSC, Asiedu JSC (Lead), Adjei-Frimpong JSC.

Flynote

Constitutional Law — Supreme Court — Appellate Jurisdiction — Special Leave to Appeal — Whether an appeal from a Court of Appeal judgment originating from a tax assessment can be filed as of right — Article 131 of the 1992 Constitution — Section 4 of the Courts Act, 1993 (Act 459) — Nullity of appeals filed without required leave.

Facts

The Commissioner-General of the Ghana Revenue Authority (GRA) assessed the tax liability of Perseus Mining Ghana Limited in 2020 at approximately \$8.7 million. Following an objection, the GRA revised the liability to \$7.5 million. Perseus Mining appealed to the High Court, which dismissed the appeal and ruled in favor of the GRA. Perseus then appealed to the Court of Appeal, which overturned the High Court's decision and granted the reliefs sought by the company.

Dissatisfied, the GRA filed a Notice of Appeal directly to the Supreme Court on August 29, 2023. The GRA also filed motions to rectify the record of appeal. Perseus Mining objected, arguing that the GRA did not have an automatic right to appeal and had failed to obtain the mandatory "special leave" required by the Constitution for matters originating from administrative actions.

Issues

1. Whether the High Court exercised its original or appellate jurisdiction in the underlying tax dispute.
2. Whether an appeal lies as of right to the Supreme Court from a Court of Appeal judgment where the case commenced as an administrative tax assessment.
3. What is the legal effect of a Notice of Appeal filed without the required special leave.

Held (Judgment)

The Supreme Court **dismissed the appeal in limine** (at the threshold) and dismissed all associated motions.

- **No Right of Appeal:** The Court held that an appeal to the Supreme Court is only "as of right" if the High Court exercised its original jurisdiction. In this case, the High Court exercised its appellate jurisdiction over an administrative decision by the GRA.
 - **Special Leave Mandatory:** Because the case did not start in a "court" (lower than the High Court) but began with an administrative tax assessment, the provisions for appealing "with leave" of the Court of Appeal did not apply. Consequently, the only legal avenue was to apply for special leave from the Supreme Court under Article 131(2).
 - **Nullity:** Since the GRA failed to obtain special leave before filing its Notice of Appeal, the filing was in breach of the Constitution and the Courts Act, making it a nullity.
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Relevant Legal Provisions Considered

1992 Constitution of Ghana:

- **Article 131(1):** Outlines circumstances where appeals lie as of right from the Court of Appeal to the Supreme Court.
- **Article 131(2):** Provides that the Supreme Court may grant "special leave to appeal" in cases where an appeal does not lie as of right.

Statutory Provisions:

- **Courts Act, 1993 (Act 459), Section 4(2):** Mirrors the constitutional requirement for special leave in specific appellate paths.
- **Revenue Administration Act, 2016 (Act 915):** Relied upon for the initial tax assessment and objection procedures.

Case Law Referenced:

- **Coker v. NDK Financial Services Ltd:** Establishing that an appeal filed without required leave is a nullity and cannot be corrected retrospectively.