

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

Civil Procedure — Appeals — Special Leave to Appeal — Constitutional requirements for appeals from the High Court to the Supreme Court — Article 131(2) — Section 4(2) of the Courts Act, 1993 (Act 459) — Effect of failing to obtain leave for a second tier of appeal — Jurisdictional Competence.

Facts

The Commissioner-General of the Ghana Revenue Authority (GRA) assessed the tax liability of Perseus Mining Ghana Limited at approximately \$8.7 million. Following an objection and a subsequent appeal to the High Court (sitting in its appellate capacity over tax decisions), the High Court ruled on the matter.

Dissatisfied, Perseus appealed to the Court of Appeal, which delivered a judgment on June 1, 2023. The GRA sought to challenge this decision and filed a Notice of Appeal directly to the Supreme Court on August 29, 2023. Additionally, the GRA filed motions for the rectification of the record of appeal.

Issues

1. Whether the GRA (Appellant/Applicant) was required to obtain special leave from the Supreme Court before filing its appeal.
2. Whether a Notice of Appeal filed without the requisite statutory or constitutional leave is valid.
3. Whether the Supreme Court can entertain motions (such as rectification of records) based on a void Notice of Appeal.

Held (Judgment)

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

- **Requirement for Special Leave:** The Court clarified that under **Article 131(2)** of the Constitution and **Section 4(2)** of the Courts Act, where a case starts in a tribunal or a body other than the High Court, or where it reaches the Supreme Court as a second-tier appeal (High

Court → Court of Appeal → Supreme Court), an appeal to the Supreme Court is not "as of right." It requires the **Special Leave** of the Supreme Court.

- **Nullity of the Appeal:** Because the GRA filed its Notice of Appeal without first applying for and obtaining special leave, the filing was in breach of constitutional and statutory mandates. The Court held that the Notice of Appeal was a **nullity**.
- **Ancillary Motions:** Since the underlying Notice of Appeal was void, the Court ruled it had no jurisdiction to hear the motion for the rectification of the record. You cannot put "something on nothing and expect it to stay there" (citing *MacFoy v. United Africa Co. Ltd*).

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.