

Case Brief: Republic v. Ghana Revenue Authority, Ex parte Export Finance Company Ltd

Citation: Suit No. CM/MISC/1186/2019

Date: 8th July 2020

Court: High Court of Justice (Commercial Division), Accra

Judge: George K. Koomson J.

Flynote

Administrative Law – **Judicial Review** – **Supervisory Jurisdiction of High Court** – **Tax Administration** – **Objection to Tax Decision** – **Condition Precedent** (30% Payment) – **Time Limits** – *Effect of Commissioner-General's failure to decide objection within statutory 60 days* – **Garnishment** – *Whether delay invalidates subsequent tax decision* – **Revenue Administration Act, 2016 (Act 915)**.

Facts

The Applicant, Export Finance Company Ltd, sought an order of *certiorari* to quash a tax decision by the Ghana Revenue Authority (GRA/Respondent) dated 26th February 2019 and a subsequent garnishment notice served on its bankers, Universal Merchant Bank (Interested Party).

- **Assessment:** On 10th December 2018, the GRA assessed the Applicant's tax liability for 2013 and 2018 at approximately GH¢2.5 million.
- **Objection:** The Applicant objected to this assessment via a letter dated 17th December 2018. The GRA acknowledged receipt on 21st December 2018.
- **The Dispute:** Under Section 42(2) of the Revenue Administration Act (Act 915), the GRA is required to make a decision on an objection within 60 days. The GRA did not issue a decision until 26th February 2019 (outside the 60-day window), disallowing the objection.
- **Garnishment:** The GRA subsequently garnished the Applicant's accounts on 26th July 2019.
- **Applicant's Argument:** The Applicant argued that the GRA's failure to respond within 60 days rendered any subsequent decision void, and the delay should be interpreted as the objection being "allowed". This was a misprint in the earlier version of the law. This error was subsequently corrected.
- **Respondent's Argument:** The GRA argued the Applicant failed to pay the mandatory 30% of the disputed tax required to entertain an objection. Further, the law states that silence after 60 days implies the objection is *disallowed*, not allowed.

Issues

1. **Jurisdiction:** Whether the High Court has the supervisory jurisdiction to entertain the application.
2. **Condition Precedent:** Whether the Applicant satisfied the statutory requirement of paying 30% of the disputed tax to validate their objection.

3. **Effect of Delay:** Whether the Commissioner-General's failure to make a decision within the statutory 60-day period renders a subsequent decision void or implies acceptance of the objection.
4. **Remedy:** Whether the appropriate remedy was judicial review or a tax appeal.

Held (Judgment)

The High Court **dismissed the application**, finding no error of law on the face of the record.

- **Supervisory Jurisdiction:** The Court confirmed it has jurisdiction under **Article 141** of the Constitution and **Section 16** of the Courts Act, 1993 (Act 459) to supervise lower adjudicating authorities.
- **30% Payment Rule:** The Court found the Applicant failed to pay the 30% of the disputed tax required by **Section 42(5)(b)** of Act 915. While this normally invalidates an objection, the Court held that the GRA waived this requirement by proceeding to make a decision on the merit of the objection, as permitted by **Section 42(6)**.
- **Interpretation of 60-Day Rule:** The Court rejected the Applicant's argument that failure to decide within 60 days means the objection is "allowed."
 - **Section 43(3)** explicitly states that if the Commissioner-General fails to decide within 60 days, the taxpayer may elect to treat the objection as **disallowed**.
 - The provision is designed to allow taxpayers to proceed to appeal, not to prevent the GRA from making a late decision.
 - The Court likened this to a judge delivering a judgment after the statutory deadline; it does not invalidate the judgment.
- **Proper Remedy:** Since the GRA's decision was not void, the Applicant's proper recourse was to file a tax appeal under **Section 44** of Act 915, not an application for judicial review.

Relevant Legal Provisions Considered

- **1992 Constitution, Article 141:** Grants the High Court supervisory jurisdiction over lower adjudicating authorities.
- **Revenue Administration Act, 2016 (Act 915):**
 - **Section 42(2):** Commissioner-General must decide on objections within 60 days.
 - **Section 42(5)(b):** Requires payment of all outstanding taxes and 30% of the disputed tax before an objection is entertained.
 - **Section 42(6):** Allows the Commissioner-General to waive or vary the 30% payment requirement.
 - **Section 43(3):** If no decision is made in 60 days, the objector may treat the objection as disallowed.
 - **Section 44:** Provides for appeals to the Court within 30 days of a tax decision.
 - **Sections 60 & 61:** Provisions regarding Garnishment (though Applicant failed to demonstrate breach of these).