IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA. A. D. 2026

CORAM:

BAFFOUR JA. (PRESIDING)
BARIMA OPPONG J.A
ADANU (MRS) J.A

SUIT NO H1/21/2024
29TH JANUARY 2026

THE REPUBLIC

VERSUS

THE COMMISIONER-GENERAL OF THE GHANA REVENUE AUTHORITY (GRA) **RESPONDENT/RESPONDENT**

EX PARTE AGILITY DISTRIBUTION PARKS GH. LTD **APPLICANT/APPELLANT**

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COURT OF APPEAL, ACCRA

JUDGMENT

Baffour J.A:

INTRODUCTION

1. This appeal elicits an exciting excursion as to the applicability of the relevant provisions of two tax enactments to the issue at stake and whether it is the *generalia specialibus non derogant*

rule of hermeneutical interpretation that ought to be applicable or the *leges posteriores priores contrarias abrogant* rule. The appeal is against the ruling of the court below in its refusal to grant a prayer for an order of mandamus to compel the Respondent/Respondent to make refund of cumulative amount of Ghc12,398,000.06 that the Applicant/Appellant adjudged to be excess tax paid by him to the Respondent between 2015 to 2019, together with interest. Our task is to examine whether the trial court correctly applied the relevant tax provisions to the resolution of the suit when it hinged its decision on section 50(1)(a) of the Value Added Tax (VAT) Act, 2013, Act 870. The parties would bear the designations that they carried at the court below as Applicant and Respondent.

APPLICANT'S CLAIM

2. By the invocation of the supervisory jurisdiction of the High Court under article 141 of the Constitution, the Applicant prayed, by its originating application, an order for mandamus. In an affidavit that accompanied the application deposed to by one Eric Bandomah, the Managing Accountant of the applicant company, he swore that the Applicant made excess tax payment for which it deserves a refund of the excess tax paid within a period of 90 days upon request made.

3. Based on the determination of its Accountants, Ernst & Young Ltd., after an audit that the Applicant had overpaid the Respondent in terms of its tax obligations for the years 2016-2019, to the tune of VAT & NHIL in amount of Ghc12,335,784.17, Ernst & Young applied to Respondent on behalf of the Applicant for tax refund. The application was anchored on sections 67 and 68 of the Revenue Administration Act (RAA), Act 915. The Respondent through a letter objected to the demand for a tax refund. Respondent conceded that the Applicant had a credit balance of Ghc200,112 as tax due it and a VAT amount of Ghc12,197,887.6 which to Respondent had been credited to Applicant in accordance with section 50(1)(a) of the VAT Tax, 2013, Act 870.

4. In Applicant's view it had overpaid its tax obligations to the tune of Ghc12,398.000.06, which was due it but the Respondent had refused to perform its public duty imposed by statute to refund the excess taxes paid. To Applicant it was contrary to statute for the Respondent to opt to credit the excess taxes to Applicant's tax account. That the statute demands that the Respondent make a refund of the excess taxes paid rather than the decision to credit its tax account.

5. Applicant further averred that in 2020, it received a tax audit report from Respondent covering its tax affairs between 2015-

2018, which indicated that there was a total liability of Ghc2,112,291.82 made up of PAYE of Ghc174,892.14 and a withholding tax and interest of Ghc1,937,399.68. Applicant rather argues that its corporate income tax is one of a credit of Ghc475,872.57 and a VAT/NHIL credit of Ghc10,835,017.52. To Applicant instead of offsetting the Applicant's assessed tax liability in the sum of Ghc2,112,291.82 against its tax credit in the sum of Ghc11,210,890.09 to arrive at a net amount of Ghc9,198,598.27 as the excess tax paid by the Applicant for the period under review in its tax decision, the Respondent requested Applicant to pay a sum of Ghc2,112,291.82 to it within a period of thirty days. In the view of Applicant, the Respondent having concluded in its tax decision that the Applicant had accrued tax credit in the net sum of Ghc9,198,598.27, Respondent was required to refund the sum to it within a period of ninety (90) days.

6. That being aggrieved by the decision of the Respondent and to ensure entertainment of its objection to the tax decision of the Respondent, Applicant had to pay a further amount of Ghc633,687.55 being 30% of the tax in dispute to the Respondent. And having come to the conclusion that the Applicant had overpaid its tax obligation to the tune of Ghc12,398,000.06 by February, 2021, the rightful course was for a refund to have been made by the Respondent. And with such a

failure to perform its public duty, even after demand had been made, it was appropriate that it supplicated for mandamus from the High Court to compel the Respondent to perform its public duty.

RESPONDENT'S AFFIDAVIT IN OPPOSITION

7. In a strongly worded affidavit in opposition to the demand for mandamus filed by the Applicant, one Mohammed Ibrahim, a Legal Officer of the Respondent institution, averred that the Applicant was not entitled to any tax refund in respect of VAT credit under the Value Added Tax Act, Act 870. That under Act 870, it was only persons who engage in exports and whose exports exceed twenty-five percent (25%) of their total supplies and for which the total export proceeds have been repatriated and satisfy other conditions prescribed under section 50(1)(b) and those specified under section 50(3) and 51 of Act 870, who qualified for refund of excess tax credit.

8. That under section 50(1)(a) of Act 870, any taxable person other than those engaged in export of goods, who have excess tax credit within a tax period was required to carry forward the excess to offset any future output tax due and not entitled to a refund of the excess credit. In the view of the Respondent, section 68 of the Revenue Administration Act, Act 915, that Applicant sought to rely on was applicable to taxes other than the Value Added Tax

Act, Act 870. And even if the Act 915 was applicable to the Applicant, the said Act 915 being a provision of general one, it could not override the section 50 of Act 870, which was a specific provision relating to treatment of VAT excess tax paid. And Act 870 being a specific tax law dealing with VAT, any excess VAT tax paid must be treated specifically in accordance with the Act 870.

9. In Respondent's assessment therefore, the section 68 of the Act 915 was inapplicable. As the general law could not be interpreted to take precedence over the tax law that specifically addresses VAT excess tax payment. Respondent accordingly urged the court below to dismiss the application for mandamus as the preconditions for the grant of such an order had not been met by the Applicant.

10. Taking account of the respective statements of case of the parties, the trial court gave its ruling on the 25th of June, 2021, wherein it ruled that the Respondent did not err when it relied on section 50(1)(a) of the Act 870 and chose to credit the amount of Ghc12,197,889.60 to the Applicant rather than making a refund of the sums to the Applicant. The trial court further held that Act 915 was an enactment of general application to tax obligations whiles Act 870 was specific to VAT and therefore, on the basis of the *generalia specialibus non derogant* rule, the Respondent correctly applied the relevant legislation to the issue.

11. Piqued by the determination of the High Court the Applicant has appealed for a second look to be taken by your Lordships as to the correctness or otherwise of the ruling of the court below. Five main grounds were canvassed as contained in the Notice of Appeal. They are as follows:

(i) The learned Judge misdirected herself on the law applicable to the refund to a tax payer of excess corporate income tax when she erroneously applied section 50 of the Value Added Tax Act, 2013 (Act 870) relating to Value Added Tax (VAT) in determining the Appellant's entitlement to a refund of Ghc200,112.00 excess corporate income tax paid by the Appellant.

(ii) The learned Judge erred in failing to apply section 68 of the Revenue Administration Act, 2016 (Act 915) relating to the payment of tax refunds in determining the Appellant's entitlement to a refund of the Ghc12,197,887.61 excess VAT paid by it.

(iii) The learned Judge erred in holding that section 50(1)(a) of Act 870 which permits taxpayers to carry forward any excess input taxes paid by them to the next tax period pending a refund claim is the legal provision applicable to VAT refund claims.

(iv) The learned Judge erred in holding that Act 915, the

general legislation regulating tax administration is applicable to taxes other than VAT and that the said Act does not take precedence over Act 870, the specific law relating to VAT refund.

(v) Having held Act 870 as being the applicable law to VAT refund claims, the learned Judge erred when she failed to apply section 50(3) to 50(9) to Act 870 to the Appellant's application for an order to compel the Respondent to make a refund of the Ghc12,197,887.61 excess VAT tax paid by it.

(vi) The Judge erred when she held contrary to section 50(5) of Act 870 that the Respondent had performed the duty placed on him under Act 870 by crediting the Appellant for the excess taxes paid by it as book balance when he had not complied with the said provision.

RESOLUTION OF THE GROUNDS OF APPEAL

12. In dealing with the grounds of appeal that demand resolution, I adopt as a matter of style, a combination of grounds (i) to (iv) by resolving them together. The first ground of appeal is to the effect that the court below wrongly applied section 50 of Act 870 to VAT to the Applicant's entitlement to an amount of Ghc 200,112.00 of excess corporate income tax. The second ground is to the effect that the trial court erred in its failure to apply section 68 of Act 915 to the issue of refund of Ghc12,197.887.61

excess VAT paid by the Applicant. The third ground rather indicts the finding of the court below of the applicability of section 50(1)(a) of Act 870 to the excess tax paid by the Applicant and the ground (iv) complains about the finding that Act 915 was a tax of general application and was inapplicable to VAT refund.

13. There are two main figures in contention and this must be made clear. The first is in respect of over payment of Value Added tax to the tune of Ghc12,197.887.61. There is also a second amount in the sum of Ghc200,112.00. It is these two figures that gives a cumulative figure of Ghc12,398,000.06. This is clearly seen in Exh "EB1" where the amount in respect of VAT overpayment is stated by Respondent to be Ghc12,197,887.61. And in the same vein the Respondent acknowledged as at June, 2020, an amount of Ghc633,687.55 which an amount of Ghc433,575.10 was applied to the liability of Applicant leaving a balance of Ghc200,112.45 as tax due the Applicant. This did not fall under VAT but rather corporate income tax.

14. Before dealing with the application and treatment of the trial Judge with each of these separate amounts under consideration, I think it appropriate to determine the applicability or otherwise of the two tax laws to the two figures under consideration and if one of the statutes overrides the other. For the court below made the two different figures subject to the treatment of section

50(1)(a) of Act 870 on the basis of the *generalia specialibus non derogant*, when in fact and clearly, even if the principle was correctly applied, the corporate income tax was not a Value Added Tax, for it to have received any form of treatment under Act 870.

15. The VAT Act, Act 870 deals with taxes relating to VAT and how matters relating to VAT taxes be treatment. It is only taxes dealing with and relating to VAT that are covered under Act 870. Any other taxes such as Pay as you Earn (PAYE), Gift Tax, Company Income Tax (CIT), Rent Tax, Vehicle Income Tax, Capital Gains Tax etc do not fall under Act 870. Taxes other than VAT, therefore, cannot under any circumstances receive treatment or application of a tax that has been imposed for VAT for goods and services.

16. On the other hand, it could be gleaned from the long title of the Revenue Administration Act, Act 915, that it is a law for administration and collection of revenue by the Respondent. The long title appearing at the beginning of the Act states the general purpose of the law. The long title does not operate to affect the provisions or the effect of the provisions of the law, except in instances of doubt and ambiguity, where the long title may be resorted to as an aid to interpretation. Though historically, a non-operative part of an enactment, however, under purposive approach to interpretation, all parts of a statute are deemed

relevant. The weight placed on a long title of an Act is whittled down only when it conflicts with an operative provision of an enactment under consideration.

17. Chief Justice Marshall, writing the opinion of the Federal Supreme Court Of the United States in the case of **United States v. Fisher, 6 U.S. (2 Cranch) 358, 386 (1805)** stated the role of long title of an Act and its overall purpose as that it "*can aid in resolving an ambiguity in the legislation's text where the mind labours to discover the design of the legislature, it seizes everything from which aid can be derived.*" In the Ghanaian case of **De Simone Limited v. Olam Ghana Limited [2017-2018] 1 SCLRG 286;** Benin JSC writing for the court relied on long title of the Alternative Dispute Resolution, Act, Act 798 as follows:

> *"It is a cardinal principle in the construction of statute that the provisions of a statute are to be construed as a whole, in order that particular provisions fit into the purpose and object of the statute. It is also permissible to construe the provisions of a statute by reference to other existing statutes so that the legislative intent can be unearthed.* ***As the title of the Alternative Dispute Resolution Act, 2010, (Act 798) clearly suggests, the purpose of the Act is to allow parties to choose an alternative forum other than the regular courts for the resolution of their disputes. It is***

therefore important that the construction of the provisions of the Act should reflect the general purpose of the Act."

18. It is my view in answering and resolving the first ground of appeal, that the trial Judge egregiously erred when she treatment the corporate income tax excess payment under section 50(1)(a) of the VAT Act, Act 870. Clearly, there is no provision under VAT Act, Act 870, for treatment of corporate income tax. I agree with the Applicant on its first ground of appeal that the amount of excess corporate income tax to the tune of Ghc Ghc200,112.45 ought not to have been treated as an excess VAT overpayment.

19. Perhaps, the trial Judge felled into that error because she lumped two separate figures emanating out of two different taxes as one in the cumulative sum of Ghc Ghc12,398,000.06. If the court below had been mindful of the clarification that was provided by the counsel for Applicant found at page 94 of the record of appeal, that there were two claims of refund, that error would have been avoided. First being income tax overpayment of Ghc200,112.45 and two VAT payment of Ghc12,197.887.61 The two provides a cumulative figure of Ghc12,398.000.06. The treatment of income tax overpayment by Respondent under a law relating to VAT was not only inappropriate but an error of law. I reverse the trial Judge on that.

20. What about the trial court's treatment of the Respondent's overpayment of VAT to the Ghc12,197.887.61 under section 50(1)(a) of Act 870 instead of section 68 of Act 915, or under section 50(3)-(9) as it is the contention of the Applicant? The Act 915, makes it clear that the Respondent through the Commissioner-General, was responsible for administering and giving effect to all tax laws in Ghana. The section 68 that Applicant has strenuously agued as being the applicable provision for the recovery of the separate sums of excess payment in respect of PAYE and VAT, its section 68 states as follows:

Payment of tax refund

68. (1) Where the Commissioner-General is satisfied that a person has paid excess tax, either on application for a refund by that person or by reason of an order of a court or tribunal, the Commissioner-General shall (a) apply the excess in reduction of any outstanding tax liability of the person; and (b) refund the remainder to the person within ninety days of making the decision.

(2) Where the Commissioner-General accepts to refund part of the excess tax

applied for by a person, the Commissioner-General shall refund the amount accepted, irrespective of whether the person files an objection against the decision of the

Commissioner-General.

(3) Where, the Commissioner-General fails to refund the excess tax to the person within ninety days as specified in subsection (1)(b), the Commissioner-General is liable to pay interest on the amount. The interest is calculated as fifty per cent of the statutory rate (4) and is for the period (a) commencing on the earlier of the Commissioner-General makes a refund (i) the date decision under section 67; and (ii) the day the person files an objection against the tax decision that gave rise to repayment of the excess tax and (c) ending on the day the refund is made."

20. The above provision under section 68 of Act 915 must be contrasted with section 50 of Act 870. The said provision is to the effect as follows:

Refund or Credit for Excess tax Payment

*"**50.** (1) Where the amount of input tax which is deductible exceeds the amount of output tax due in respect of the tax period,*

(a) the excess amount shall be credited by the Commissioner-General to the taxable person, and

(b) in the case of the portion of the excess attributable to exports, the Commissioner-General may refund the excess

credit to the taxable person where that person's exports exceed twenty-five per cent of the total supplies within the tax period and the total export proceeds have been repatriated by the importers' banks to the taxable person's authorized dealer banks in the country.

(2) A taxable person may apply for a refund under subsection (1)(b) where the credit for the excess amount remains outstanding for a continuous period of three months or more, except that where the Commissioner-General orders an audit of the claim for refund, for purposes of ***section 51****, the application shall be treated as received on the date that the audit is concluded.*

(3) Subject to ***section 45****, where the amount of tax paid by a person, other than in the circumstances specified in subsections (1) and (2), was in excess of the amount properly subject to tax under this Act, the amount of the excess shall be treated in the manner provided for under subsection (5) to (9).*

(4) Where a person has overpaid tax in the circumstances specified under subsection (3), the person may apply in writing to the Commissioner-General for a refund of the excess amount of tax, accompanied by documentary proof of payment of the excess amounts.

(5) Subject to this section, where the Commissioner-General is satisfied that a person who has made an application under subsection (4) has overpaid tax, the Commissioner- General shall

(a) first apply the amount of the excess against the liability of that person for any tax, levy, interest or penalty administered by the Commissioner-General, and

(b) repay any amount remaining to the person within thirty days of being satisfied that the person has overpaid tax.

(6) Subject to subsection (8), a claim for a refund under subsection (4) shall be made within six months after the date on which the excess arose.

(7) The Commissioner-General shall serve on a person claiming a refund, a notice in writing of the decision in respect of the claim.

21. The question for our determination is whether it is the section 68 under the Act 915 or section 50 of VAT Act, Act 870 that is applicable or that both are even applicable? And if that question is settled in favour of even Act 870, there is a corollary question as to whether or not the application of section 50(1)(a) by the Respondent to the VAT tax over payment was correct instead of section 50(3) to 50(9). But first which of the two laws must be made applicable. I have already ruled that in respect of the excess payment of corporate income tax of Ghc200,112.00, the correct tax law that

ought to have been applied cannot be the VAT law as that law deals specifically with VAT. The Respondent ought to have refunded the Ghc200,112.00 under section 68 of Act 915. This is because any claim other than VAT may stand to be determined under Act 915, unless there are some other reasons under law not to apply Act 915.

22. Applicant in its written submission has argued that there are two separate laws that deal with excess tax refund. That Act 915 being the tax law which is latter in time and has copious provisions regarding the treatment of excess tax payment, the trial Judge ought to have had regard to the principle of implied repeal and should have applied the latter in time rule to prevail over the earlier legislation. The Respondent on the other hand has argued the opposite. Respondent contends that the court ought to endorse the choice of the trial High Court to rely on the *generalia specialibus non derogant* rule, instead of the latter in time rule. Its reason is that the refund for which the Applicant seeks are VAT overpayments. And there being specific provisions as to how the Respondent should treat VAT over payment, it need not look elsewhere than the provision spelt out under the Act 870.

23. There are two forms of repeal of an enactment. They are the express and implied repeals. Express repeal is provided for under section 32 of the Interpretation Act, 2009, Act 792. That is when a new enactment expressly states that a previously existing law has

been repealed, that previous law ceases to have effect. The law when expressly repealed is deemed not to be part of the *corpus juris* of the nation. The implied repeal is when there are two laws validly existing but a provision or two of the two enactments are patently inconsistent with each other. In such a situation, the courts attempt a resolution of the problem by first applying the principle of harmonious interpretation. That is an attempt to give effect to the provisions of the two enactments so as to avoid the inconsistency. See the case of **Independent Broadcasters Association v Attorney-General J1/4/2016 dated 30th November, 2016.**

24. Where the principle of harmonious interpretation is unable to resolve the conflict between the two existing laws, then the court invokes one of two principles, being *generalia specialibus non derogant* or the *leges posteriores priores contrarias abrogant.* The *generalia specialibus non derogant* rule is to the effect that where there are two existing legislations on a matter that are in conflict with each other, the court should have regard to the specific legislation on the matter as opposed to the general law. In other words, general provisions or laws cannot be interpreted to override specific ones.

25. The Supreme Court had occasion to apply the principle of *generalia specialibus non derogant* in the case of **In Re Parliamentary Election for Wulensi Constituency, Zakaria v**

Nyamakan [2003-2004] SCGLR 1. What was at stake was the provisions of articles 131(1)(a) and article 99(2) of the Constitution, 1992 regarding the court with the final appellate jurisdiction in the determination of an election petition of a person elected as a member of Parliamentary. Whiles article 131(1)(a) of the Constitution states that a right of appeal from the determination of the Court of Appeal to the Supreme Court in all criminal and civil matters as of right, when the cause or matter originally emanated from the High Court or a Regional Tribunal. Article 99(2) of the Constitution only states that a person aggrieved by the determination of the High Court in respect of parliamentary election petition may appeal to the Court of Appeal. By a majority decision, the apex court was of the view that article 99 dealt specifically with causes or matters relating to parliamentary elections whiles article 131 of the Constitution dealt broadly and generally with general matters of appeal.

26. This rule of *generalia specialibus non derogant* was again applied in the case of **Bonney v Ghana Ports and Harbours Authority [2013-2014] 1 SCGLR 436.** What was in issue in that suit was whether or not it was the application of the Limitations Act, 1972, NRCD 54 or the Ports and Harbours Authority Act, 1986, PNDCL 160 to the time period for an action to be commenced against Ghana Ports and Harbours Authority (GPHA). The Supreme Court ruled that section 92(1) of PNDCL 160 that provided time limitation of twelve

months was the applicable one as that was the specific law made to regulate GPHA whiles NRCD 54 was the general law. And on application of the *generalia speciliabus* rule, the specific matters of GPHA must be governed by the law that was specifically made for GPHA. See also **Republic v High Court (Fast Track Division), Accra; Ex Parte PPE Ltd & Paul Juric (Unique Trust Financial Services Ltd Int Parties), [2007-2008] SCGLR 188.**

27. On the other hand, *leges posteriones priores contrarias abrogant* is what is referred to as the latter in time enactment inferentially repealing a former enactment. This is when there are two irreconcilable enactment, then the latter in time that is presumed to speak the latest mind of Parliament would be deemed to have repealed the former enactment. This principle was applied in the case of **Kowus Motors v Check Point Ghana Ltd [2009] SCGLR 230.** In that case there was a conflict between AFRCD 60 and the Company's Act, Act 179 and the question had to do with which of the two existing enactments ought to prevail. The answer was provided by the Supreme Court through the pen of Auguba JSC as follows that:

> *"We do not understand how AFRCD 60 can be nullified by reason of any perceived or actual collision with Act 179. Apart from the opening words "Notwithstanding anything to the contrary..." in section 4 of AFRCD 60, the trite known rule of*

construction of statutes is that where two Acts conflict irreconcilably the latter one is deemed to have repealed or amended the earlier one".

See also a decision of this court authored by my good self in the case of **Oyoko Contractors Ltd v Starcom Broadcasting Ghana Ltd & Anor Suit No: H1/15/2019** delivered on the 15th of October, 2021.

28. Examining the rival claims before this court, the question worth asking is whether there is truly a conflict between the two enactments at all to require a choice to be made between Act 870 and that of Act 915? When the application for VAT refund is made, I think it is anchored on section 50 of Act 870, as that is the specific law that deals with VAT. Due to the principle of harmonious interpretation, a conclusion that two valid laws are in conflict and one should prevail over the other is a decision of last resort. The provisions of section 68 of Act 915, I submit, can be interpreted as not in conflict with the import of section 50 of Act 870. I set out to demonstrate *infra.*

29. The provisions of VAT Act, specifically section 50, as well as the provisions of Act 915, specifically section 68 may be applicable, but I think in the face of specific law that deals and focus on VAT matters, unless there is manifest conflict, the starting point is to have

recourse to the specific law that deals with the matter, in this instance the VAT Act and supplement same with the general law, being the Revenue Administration Act, Act 915.

30. Agreeing with the trial court that the relevant law applicable is the VAT Act, Act 870, in dealing with the payment of the excess VAT tax that the Respondent clearly admits have been paid in respect of VAT in the sum of Ghc12,197,887.61. The question flowing from that finding and worth dealing with is whether it was right for the Respondent to have treated the VAT excess tax payment in the sum of Ghc12,197.887.61 credited to Appellant in accordance with section 50(1) of Act 870, instead of the application of subsection 50(3) to (7) of the VAT Act?

31. Respondent argues that under the VAT Act, Act 870, it was only persons who engage in exports and whose exports exceeds twenty-five percent of their total supplies and the total export proceeds have been repatriated and further satisfy the conditions prescribed under section 50(1)(b) that qualifies for tax refund. That under section 50(1)(a) of Act 870, any taxable person, other than those engaged in export of goods who have excess tax credit within a tax period is required to carry forward the excess to offset any future output tax due.

32. What Respondent failed or ignored was to inform the court below whether section 50(3) of Act 870, was inapplicable to the case of the Appellant. For under section 50(3)-(7), one need not be a person engaged in export and whose export must exceed twenty-five percent of his total supplies and the total export proceeds have been repatriated.

33. Section 50(3)-(9) stands on its own which provides a different incident for tax refund other than subsections (1) and (2), which the Respondent gleefully sought umbrage. For the section 50(3) notes that subject to **section 45**, where the amount of tax paid by a person, other than in the circumstances specified in subsections (1) and (2), was in excess of the amount properly subject to tax under this Act, the amount of the excess shall be treated in the manner provided for under subsection (5) to (9).

34. As the phrase "*subject to section 45*" has been used, its import was explained in the case of **Ebel Edusei v Attorney-General [1997-1998] 2 GLR 1**. Article 33 of the Constitution has granted jurisdiction to the High Court to enforce fundamental human rights whiles article 130(1) of the Constitution also grants jurisdiction to the Supreme Court to enforce and interpret the Constitution, subject to the jurisdiction of the High Court under article 33 of the Constitution in the enforcement of fundamental human rights.

35. Explaining the import of the phrase "*subject to*", the Supreme Court, per Acquah JSC, (as he then was), was of the view that:

> *"to remove this conflict between the exclusiveness of the Supreme Court's original jurisdiction and the High Court's original jurisdiction in articles 33(1) and 140(2) of the Constitution, 1992, the* ***"subject to"*** *part of article 130(1) of the Constitution, 1992 precludes the Supreme Court from exercising original jurisdiction in the enforcement of human rights abuses, so as to preserve the exclusiveness of the Supreme Court's original jurisdiction in the enforcement of all the other provisions of the Constitution, 1992."*

36. What section 50(3) of Act 870, implies is that for section 50(3)-(9) to be applicable it should not be one that falls under subsections (1) and (2) and it must also not be one that comes within section 45 of Act 870. As the claim by Appellant was not one attributable to exports, it does not fall under sub section (1) and (2). Section 45, on the other hand deals with taxable supply which has been cancelled or varied or there is alteration by agreement with the recipient of the supply or the goods or services or part thereof had been returned to the supplier. This in addition, the law under section 45 requires that the taxable person has given an invoice in relation to the supply and the amount shown on the invoice as tax charged in relation to the supply was incorrect.

37. The sub section (3) of section 45 deals with situations where the VAT a registered entity pays to the Respondent on goods and services, being the output tax, exceeding the input tax actually accounted for by the taxable entity, the excess is deemed to be a tax charged by the entity in relation to taxable supply and linked to the occurrence of the event in subsection (1). It has been established *supra* that the claim of the Appellant is not one for which it is engaged in export which has been cancelled or varied or any kind of alteration with the recipient of the supply. This is even made clearer by an examination of the Fourth Schedule regarding the particulars of such claim. The Fourth Schedule has been incorporated by reference under sub section (4) of section 45 and is as much part of the Act 870 as much as the section 45 itself. See **IRC v Gittus [1932] 1 KB 563 @ 575**. The Schedule being the tax credit and debit note with the particulars that must be contained in the note is one of value of the supply shown on the applicable tax invoice, the adjusted value of the supply, or the correct amount of the value of the supply, the difference between the two amounts as well as the tax charged that relates to the difference.

38. The case of the Appellant does not fall under section 45 with its subsections for it to be excluded from the remit of the application of section 50(3)-(9). Indeed, none of the overriding matters for which section 50(3) is subject to under section 45 of Act 870, exist in the case of the Appellant and reading carefully the subsection (4) of section 50 of Act 870, upon an application made for the tax refund,

the Respondent should have proceeded to determine the entitlements under section 50(5) which for purposes of emphasis states as follows:

> *"(5) Subject to this section, where the Commissioner-General is satisfied that a person who has made an application under subsection (4) has overpaid tax, the Commissioner- General shall*
>
> *(a) first apply the amount of the excess against the liability of that person for any tax, levy, interest or penalty administered by the Commissioner-General, and*
>
> *(b) repay any amount remaining to the person within thirty days of being satisfied that the person has overpaid tax."*

39. As to how the Respondent completely ignored this provision also under section 50 of Act 870 beggar's belief. In our view this provision is apt to be applied to the case of the Appellant for a VAT refund of Ghc12, 197.887.61. There appears to be no compelling reasons for the Respondent to have ignored the application of section 50(3)–(9) of the VAT Act, Act 870.

40. If the trial court had applied its mind to the relevant provisions under the section 50 of the VAT Act, rather than the truncated and limited scope of only section 50(1)(a)and (b), it would have appeared to the court below, that granted that the chunk of the taxes sought to be refunded being VAT overpayment, there were

provisions in Act 870 itself that dealt with the application for tax refund.

41. It is a trite rule of statutory interpretation that a court ought not to come to a conclusion that two existing enactments are in conflict unless that is the only inevitable results from a comparison of the two enactments. This is derived from the principle or presumption of harmonious interpretation. Examining section 68 of the Revenue Administration Act, Act 915, we find it to be in tandem, as far as application for excess VAT overpayments were concerned, to supplement section 50(3) – (9), as there is no conflict between the two at all. For section 68 of Act 915, for the avoidance of doubt states that:

"68. (1) Where the Commissioner-General is satisfied that a person has paid excess tax, either on application for a refund by that person or by reason of an order of a court or tribunal, the Commissioner-General shall (a) apply the excess in reduction of any outstanding tax liability of the person; and (b) refund the remainder to the person within ninety days of making the decision.

(2) Where the Commissioner-General accepts to refund part of the excess tax

applied for by a person, the Commissioner-General shall refund the amount accepted, irrespective of whether the person files an

objection against the decision of the Commissioner-General.

(3) Where, the Commissioner-General fails to refund the excess tax to the person within ninety days as specified in subsection (1)(b), the Commissioner-General is liable to pay interest on the amount. The interest is calculated as fifty per cent of the statutory rate (4) and is for the period (a) commencing on the earlier of the Commissioner-General makes a refund (i) the date decision under section 67; and (ii) the day the person files an objection against the tax decision that gave rise to repayment of the excess tax and (c) ending on the day the refund is made."

42. In my opinion I fail to see the conflict between section 50(3)-(9) of Act 870 and section 68 of Act 915. There is no justiciable reason for Respondent and the court below in failing to hinge the demand of the Appellant on section 50(3) and rather sought to anchor the demand of the Appellant on section 50(1).

43. Appellant assailed the High Court by way of an invocation of the supervisory jurisdiction of the High Court under Article 141 of the Constitution and section 16 of the Courts Act, 1993, Act 459 for an order of mandamus to compel the Respondent to refund excess taxes paid. This came on the heels of specific demands made by letters to Respondent. The criteria for grant of mandamus had long been set down by Annan J (as he then was) in the case of **Republic**

v Chieftaincy Secretariat & Anor; Ex Parte Adansi Traditional Council [1968] GLR 736. He stated in characteristic terms that:

> *"[G]enerally, an order of mandamus did not lie against the State or servants of the State acting as such to carry out duties laid on the State. Where, however, a person, whether holding office as a State servant or not, had a statutory duty of a public nature towards another person, an order of mandamus would lie to compel performance of the duty at the instance of a person aggrieved by the refusal to perform that duty unless another remedy was indicated by the statute. But before a court would make such an order of mandamus the applicant must satisfy four main conditions, namely: (a) that there was a duty imposed by the statute upon which he relied, (b) that the duty was of a public nature, (c) that there was a right in the applicant to enforce the performance of the duty and (d) that there had been a demand and a refusal to perform that public duty enjoined by statute."*

44. One may also see cases such as **Republic v Central Regional Minister & Anor; Ex Parte Action Congress Party [1981] GLR 527; Republic v Chief Accountant, District Treasury, Kumasi, Ex Pare Badu [1971] GLR 2 285; Larbie Mensah IV alias Aryee Addoquaye v National House of Chiefs [2011] SCGLR 883; Republic v High Court, Accra; Ex Parte Eastwood Ltd & Others [1995-96] 1 GLR 689.** Applicant satisfied all the

preconditions for the trial court to have favourably considered the exercise of her discretion towards the grant of the application.

CONCLUSION

44. Appellant succeeds in this appeal. The learned trial Judge is reversed in her application and hermeneutical appreciation of the relevant law laws. We proceed to make the following orders:

a. An order directed at the Commissioner-General of the Respondent institution to pay to the Appellant the sum of Ghc200,112.45 as excess corporate income tax under section 68 of the Revenue Administration Act, 2016, Act 915.
b. The interest exigible *ex vigori legis* and specifically under section 68(3) shall be applied as the said sum was not paid within the ninety-day period stated by the law.
c. We further order the Commissioner-General to pay the sum of Ghc12, 197.887.61 being excess payment of VAT, to be refunded to the Appellant under section 50(3)-(9) of Act 870.
d. No order as to cost.

SGD.
Eric K. Baffour, Esq.
(Justice of Appeal)

CERTIFIED TRUE COPY
13-02-26
.....REGISTRAR
COURT OF APPEAL, ACCRA

I agree

SGD.
Franklina G. Adanu (Mrs)
(Justice of Appeal)

CONCURRING

Barima Oppong, JA

INTRODUCTION

My, I have read with profound awe the erudite judgment of my able and respected Brother Baffour JA and I am in full agreement with the reasoning and orders made therein. I have however decided to add to same my thoughts on some key matters that have a rounded my interest. Tried as I did, I could not avoid the temptation of this concurring opinion becoming longer than the lead judgment, thus reflecting the aphorism in Catholicism pontificating on "the benediction being longer than the mass".

[1] I am inspired to commence this concurring opinion with the enduring romanticised words of Edmund Burke, a renowned English Jurist who, as part of his "*Speech on American Taxation*," delivered in the British House of Commons on April 19, 1774, stated what appears to be axiomatic, that:

> "***To tax and to please, no more than to love and to be wise, is not given to men.***"

[2] The above aphorism reflects the general attitude of persons subject to tax who, unless compelled with the prospects of severe sanctions, would not willingly hand over their hard-earned income to the State in the form of taxes. This disposition is further captured by Lord

Greene M R in *Lord Howard de Walden* v *Inland Revenue Commissioners* [1942] I KB 389 at 397 as follows:

> *"There are few greater stimuli to human ingenuity than the prospect of avoiding fiscal liability. Experience shows that under this stimulus, human ingenuity outreaches Parliamentary prescience." As a result, "For years a battle of manoeuvre has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. In that battle, the legislature has often been worsted by the skill, determination and resourcefulness of its opponents, of whom the present appellant has not been the least successful... It [therefore] scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers."*

See also *Commissioner of Customs and Excise* v *Top Ten Promotions Ltd* [1969] 3 All ER 39 at 69, per Diplock LJ.

[3] It is on the basis of this act of resistance to tax that led the drafters of the Constitution, 1992, to admonish a person subject to tax: *"to declare his income honestly to the appropriate and lawful agencies and to satisfy all tax obligations"*, as contained in article 41(j) of the Constitution 1992.

[4] Thus, where a person has honestly and conscientiously discharged his tax obligations to the State, he needs to be commended.

More so, where the person has overpaid his taxes to the state, not only does he deserve commendation of a sort, but also a expeditious refund of any such excess payment, unless he opts to have the same retained by the tax authorities as credit for the discharge of his future tax obligations or an enactment expressly provides otherwise in clear and unambiguous language.

[5] The importance of an excess tax refund cannot be overstated. It is *communis opinio* among tax experts that a well-functioning VAT refund mechanism has profound positive implications for overall competitiveness, productivity, and capital formation. On the other hand, a poorly functioning VAT refund mechanism adversely affects the umbilical cord of the VAT mechanism and further undermines the essential qualities of VAT, being efficiency and neutrality. It also undermines voluntary tax compliance.

[6] It is globally agreed that failure to refund excess tax credits turns the VAT into a tax on production. This practice obviously distorts and discourages investment and production. It has been established that failure to refund excess VAT payment generally cascades along the production-distribution chain and either inflates consumer prices or reduces business profits. Indeed, experts in tax administration concur that where excess VAT credits are not refunded timeously, the delay usually leads to a straining of business cash-flow with possible debilitating consequences, including the collapse of businesses, an increase in production costs, and lower investment returns.

[7] In short, refunding excess VAT is essential to an effective administration of VAT systems, enhances the strength of the taxpayer's business, eases the burden on consumers who would have borne the brunt of any adverse consequences that the business will suffer as a result of failure on the part of the tax administration to refund excess tax or do so within a reasonable time, and improves voluntary tax compliance. Above all, the economy will be the ultimate beneficiary of a well-managed tax system.

See the IMF-sponsored concept paper on *"HOW TO MANAGE VALUE-ADDED TAX REFUNDS"* published by the IMF on 10th May 2021; (Issue 2021; Volume 004.)

BRIEF FACTS

[8] The appellant is a private limited liability company and a registered taxpayer in Ghana. The Respondent is a public office holder responsible for the day-to-day administration of the affairs of the Ghana Revenue Authority (GRA). The appellant engages in the construction of commercial warehouses, which it rents to tenants.

[9] On 1st March, 2021 the appellant filed an application for judicial review at the Registry of the court below against the respondent herein seeking inter alia an order of mandamus directed at the Respondent to compel him to refund to it, the appellant, a total amount of

GHC12,398,000.06 determined by the Respondent to be excess tax paid by the Applicant between the years 2015 and 2019 in addition to interest at the applicable rate. A breakdown of the tax, which the respondent determined that appellant had overpaid, is as follows:

Excess Value Added Tax (VAT).	=	**GHc12,197,887.61**
Excess Corporate Income Tax (CIT).	=	**GHc200,112.45**
Total	=	**GHc 12,398,000.06**

SUBMISSION OF APPELLANT AT THE COURT BELOW

[10] The fundamental legal basis of the appellant for an order of Mandamus for refund is planked on Sections 66, 67 and 68 of the Revenue Administration Act, 2016 (Act 915), which Act, it submits, is the general law governing revenue administration in the country. The Applicant as a taxpayer has a right under section 66 of Act 915 to apply to the Respondent for a refund of tax paid by it in excess of its tax liability within three years of the relevant date.

[11] As the public officer responsible for administering and giving effect to the tax laws of Ghana, the Respondent is mandated by the Revenue Administration Act, 2016 (Act 915) to, upon an application made by a taxpayer under section 66 of Act 915, and being satisfied that the taxpayer has paid excess tax, apply the excess in reduction of any outstanding tax liability of the taxpayer and make a refund of the remainder to the taxpayer within ninety days of making the decision.

[12] Again, the appellant submitted that as held in **Republic (No.2) *vrs.* National House Of Chiefs, Exparte Akrofakrukoko II (Enimil VI Interested Party) [2010] SCLR 134 @ 165**, the precondition to the grant of mandamus is that there must be a demand and a refusal. Thus, a demand was made on the Respondent to refund the excess tax paid by the Applicant by a letter dated December, 2020, as shown in Exhibit "EB2". That no response to the demand had, as at the time of filing the application, been received from the Respondent.

[13] Appellant contends further that no reason has been proffered by the Respondent for his refusal to discharge his statutory duty to refund to the Appellant the sum the Respondent had determined to be excess tax paid by it. Respondent has also refused to respond to a notice of reminder sent to the respondent. That the respondent will not perform the said duty unless compelled by the court below by an order in the nature of Mandamus.

[14] Thirdly, it was argued by the appellant that the mandatory provisions of Act 915 on the refund of excess tax paid by a taxpayer take precedence over section 50(1)(a) of the Value Added Tax Act, 2013 (Act 870), relied on by the Respondent in crediting the excess tax paid by the Applicant to it. The Applicant submitted that the Respondent erred when he relied on section 50(1)(a) in crediting the said sum to the Appellant instead of refunding same. This is because section 50 of the VAT Act, being an earlier enactment on administrative matters relating to VAT,

would be considered repealed by the provisions of the later Revenue Administration Act, which deals specifically with the administration of tax laws in Ghana.

[15] The appellant emphasised that the express language used in section 68 of Act 915, which addresses the particular point of excess tax refunds, has revoked or abrogated any provision in a prior law on granting tax credits instead of refunds. The Applicant supported its argument with the long titles of both legislation and submitted that, being part of the Act per section 13 of the Interpretation Act, 2009 (Act 792), the VAT Act was intended to:

> *"revise and consolidate the law in relation to the imposition of the value added tax and to provide for related matters". The long title of the Revenue Administration Act, was promulgated subsequent to the VAT Act and intended to "provide for the administration and collection of revenue by the Ghana Revenue Authority and for related matters."*

RESPONDENT'S RESPONSE AT THE COURT BELOW

[16] In resisting the application, the Respondent submitted that the Applicant was not entitled to any refund of the excess tax paid by the Appellant. They founded this claim on relevant provisions of the Value Added Tax Act, 2013 (Act 870), as amended. They argued that Act 870 has clearly stipulated persons engaged in a particular trade or business who are entitled to a refund of excess tax paid by them. They buttressed

the point by indicating that it is only persons who engage in exports and whose exports exceed 25% of their total supplies, and the total export proceeds have been repatriated, and who satisfy other conditions prescribed under section 50(1)(b) and those specified under section 50(3) and 51 qualify for a refund of excess tax credit.

[17] In their view, Act 870 does not recognise the appellant's line of business as being eligible for a refund of any excess tax paid by them pursuant to Act 870. They, however, explained that under section 50(1)(a) of Act 870, any taxable person, such as the appellant herein, who engages in export of goods as articulated above, who has an excess tax credit within a tax period, is required to carry forward the excess to offset any future output tax due. Such a person is not entitled to a refund of the excess of any tax paid.

[18] In addition, Act 870 has set conditions and those who qualify for a refund of VAT in case of excess tax credit, such that where there is conflict between a specific law and a general law, as is in this case, the specific law takes precedence over the general law. Specifically, section 68 of the Revenue Administration Act, 2016 (Act 915), relied on by the Applicant, is applicable to taxes other than the Value Added Tax, Act 870. Thus, Act 915 is a general provision which does not override the specific provision of Act 870, the Value Added Act, 2013. Respondent referred to the decision in ***In Re Parliamentary Election For Wulensi Constituency; Zakaria vrs. Nyimakan*** [2003-2004] 1 SCGLR 1.

THE DECISION OF THE COURT BELOW

[19] The court below dismissed the application. In doing so, the court held, inter alia that since the respondent had, as at the time applicant filed the application "*performed the duty placed on him by crediting the excess tax to the applicant as a book balance this being the remedy provided by law in the Value Added Tax Act,*" mandamus would therefore not lie against a public office holder who has performed the duty in respect of which the application for mandamus was being sought to compel him to perform that very duty.

[20] The court below set down the following as the fundamental issues for determination: *(a) whether the Respondent erred when he relied on section 50(1)(a) of the law and credited a VAT amount of GHC12,197,887.60 to the Applicant rather than a refund for which an order of mandamus should lie (b) whether section 50 of the VAT Act being an earlier enactment on administrative matters relating to VAT would be considered repealed by the provision of the later Revenue Administration Act, 2016 (Act 915) which deals specifically with the administration of tax laws in Ghana and therefore takes precedence over the VAT Act.*

[21] Procedurally, the court held that mandamus would not lie as the respondent had already performed the duty imposed on him, in the sense that the respondent had credited appellant against future liabilities in the nature of taxes exigible with the excess tax paid by the appellant.

[22] On the substance, the court agreed with the respondent that since Act 915 is a general law on the administration of taxes, it cannot override relevant provisions of Act 870, which is a specific law which concerns revenues derived from value addition. The court concluded that since the tax, the subject matter of the dispute was paid pursuant to a specific law, i.e. VALUE ADDED TAX ACT, 2013, (Act 870), specifically Section 50(1)(a) thereof, *ipso facto*, Act 915, which is a general law, cannot prevail over the former.

[23] Indeed, the court was led by the parties through their respective counsel into expending substantial energy on principles of interpretation that the court thought were dispositive of the fundamental issue raised on the face of the proceeding. To this we shall return in our consideration of the issues raised in this appeal.

THE APPEAL

[24] Dissatisfied with the decision of the court below, the appellant filed an amended notice of appeal on 10th July 2023. In it, the appellant has set down no less than nine (9) grounds of appeal. We shall comment on these grounds of appeal in no time. They are:

(i) The ruling is against the weight of the evidence.

(ii) The learned judge misdirected herself on the law applicable to the refund to a taxpayer of excess corporate income tax when she erroneously applied section 50 of the Value Added

Tax Act, 2013 (Act 870) relating to Value Added Tax ("VAT") in determining the Appellant's entitlement to a refund of GH¢200,112.00 excess corporate income tax paid by the Appellant

(iii) The learned judge erred by failing to apply section 68 of the Revenue Administration Act, 2016 (Act 915) relating to the payment of tax refunds in determining the Appellant's entitlement to a refund of the GH¢12, 197,887.61 excess VAT paid by it.

(iv) The learned judge erred in holding that section 50(1)(a) of Act 870 which permits taxpayers to carry-forward any excess input taxes paid by them to the next tax period pending a refund claim is the legal provision applicable to VAT refund claims.

(v) The learned judge erred in holding that Act 915, the general legislation regulating tax administration is applicable to taxes other than VAT and that the said Act does not take precedence over Act 870, the specific law relating to VAT refunds.

(vi) Having held Act 870 as being the law applicable to VAT refund claims, the learned judge erred when she failed to apply section 50(3) to 50(9) of Act 870 to the Appellant's application for an order to compel the Respondent to make a refund of the GH¢12,197,887.61 excess VAT tax paid by it.

(vii) The judge erred when she held contrary to section 50(5) of Act 870 that the Respondent had performed the duty placed on him under Act 870 by crediting the Appellant for the excess taxes paid by it as a book balance when he had not complied with the said provision.

(viii) The learned judge misdirected herself on the law applicable to the refund to a taxpayer of excess Pay As You Earn and withholding tax when she erroneously applied section 50 of the Value Added Tax Act, 2013 (Act 870) relating to Value Added Tax ("VAT") in determining the Appellant's entitlement to a refund of GH¢200,112.00 excess Pay As You Earn and withholding tax paid by the Appellant; and

(ix) The learned judge erred by failing to apply section 68 of the Revenue Administration Act 2016 (Act 915) relating to the payment of tax refunds in determining the Appellant's entitlement to a refund of the taxes which are not VAT paid by the Appellant in excess of its tax liability including: (a) the GH¢475,872.57 determined by the Respondent to be excess corporate income tax paid by the Appellant; and (b) the GH¢200,112.00 determined by the Respondent to be excess Pay As You Earn and withholding tax paid by the Appellant.

PRELIMINARY OBSERVATIONS

[25] It is rudimentary legal knowledge that an appeal is a creature of statute. Therefore, an appellant supplicating before this court must abide by the statutory procedures regulating the invocation of our appellate jurisdiction. This is governed by the Court of Appeal Rules, 1997 (C.I. 19).

[26] The Rules prescribe the mode and manner in which appeals to this court are to be fashioned. Of particular essence to the instant appeal is Rule 8. It proclaims, amongst others, that the grounds of appeal detailed in the notice of appeal must not be argumentative, and/or narrative. Further, where an appellant alleges a misdirection or an error of law, the particulars of the said error are to be given.

[27] The relevant portions of the rules are enacted as follows:

Rule 8(4):

> ***"Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated."***

Rule 8(5):

> ***"The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively."***

[28] The Apex court, and indeed this court, have had the occasion to deprecate grounds of appeal which are not compliant with the rules of Court. Where there is failure to abide by the statutory formula in pleading the grounds, the court is empowered to strike out the same as provided for under Rule 8(6) of C.I. 19.

[29] Quite clearly, the purpose of the grounds of appeal is to identify errors for correction, not to serve as submissions or replicate the story of the case. See: **Nasib Dahabieh V. S. A. Tarqui & Brothers** [2001-2002] SCGLR 498; **Multigroup Consultants Ltd and Kwabena Boadi-Aboagye v. Elizabeth Dufour Poku And Michael Dufour Poku** Civil Appeal N0: H1/114/2015 (April 21st 2016).

[30] Measured against this standard, several of the drafted grounds (aside the omnibus ground) contain embedded conclusions, characterisations and legal debate that properly belong in the written submissions (statements of case), not in the notice of appeal. The recurring "when she erroneously applied..." format, repeated across multiple taxes and amounts, also risks violating the rule against prolixity and duplication. In addition, the grounds as drafted exhibit internal inconsistency in the stated figures for "excess corporate income tax" (appearing as GH¢200,112.00 in one place and GH¢475,872.57 in another), which may complicate the "distinct heads" requirement and weaken precision.

[31] My Lords, the omnibus grounds itself risks being declared a nullity as it is also infelicitously drafted. We are, however, permitted in the circumstances of this case to consider the appeal on its merits to do so on the basis that the appeal raises some central questions of law and facts worthy of resolution by the court.

[32] That the rest of the grounds of appeal are argumentative, narrative and where errors are alleged, the particulars of same are not provided.

[33] However, the important procedural point is: what follows from non-compliance? Rule 8 does not in the strictest sense impose a single mandatory consequence but the court may strike out the offending grounds (or offending parts), grant leave to amend, and, critically, is not in every situation confined to the grounds as framed, provided the respondent has had sufficient opportunity to contest any additional basis upon which the court proposes to rest its decision.

[34] The courts have demonstrated two impulses – the strict and pragmatic approach - as demonstrated in **International Rom Limited vs Vodafone Ghana Limited; Suit NO. J4/2/2016 (6th June 2016).** In this case, the Supreme Court held as narrative the "so called grounds" as non-compliant and struck them out. However, in the same decision, the court, "in order not to yield overly to legal technicalities to defeat the cries of an otherwise sincere litigant," substituted the defective grounds with

what it considered the real gravamen. The court speaking through Akamba JSC remarked;

> *"Thus the 1st defendant's so called grounds of appeal when juxtaposed with the above requirement reveals an obvious non-compliance with the rules of court. Undoubtedly it is only in an atmosphere of compliance with procedural rules of court would there be certainty and integrity in litigation. All the so called grounds filed by the appellant (above) are general, argumentative and narrative and to that extent non-compliant with Rule 6 sub-rules 4 and 5 of CI 16. They are struck out. In order not to yield overly to legal technicalities to defeat the cries of an otherwise sincere litigant we would and hereby substitute them with what actually emerges as the core complaint and general ground which is that 'the judgment is against the weight of evidence'. It does appear that the magnanimity exhibited by this court over these obvious lapses and disrespect for the rules of engagement is being taken as a sign either of condoning or weakness hence the persistence of the impunity. It is time to apply the rules strictly."*

[35] The present appeal, therefore, sits squarely within that jurisprudential tension. The draft grounds (other than the omnibus) are vulnerable to procedural attack under Rule 8. Yet the court retains tools to prevent form from extinguishing substance, particularly where the

dispute turns on statutory duties to refund and the legal basis for retaining public monies.

[36] Therefore, a suggestive approach would be for the appellate court to strike out argumentative and narrative portions while preserving any discernible "distinct head" of complaint or direct amendment into properly framed grounds, rather than treating the notice of appeal as a written submission, as adopted in the **International Rom case.**

[37] In the round, we hold the view that, having regard to the pertinent issues provoked in the instant appeal, the court will focus on their essence, to ensure that justice is served.

ARGUMENTS OF THE PARTIES

[38] My Lords, both parties virtually rehashed their respective arguments canvassed at the court below and summarised above.

THE APPEAL BEFORE US.

[39] My Lords, we cannot proceed beyond this point until we have exhaustively dealt with a crucial issue raised on the face of the application, which is: ***whether or not the jurisdiction of the court below was properly invoked by the applicant.*** There is no gainsaying that the High Court before whom the application was placed has jurisdiction to entertain an application in the nature of judicial review. Such an application, if successful, can result in the issuance of various orders in the nature of remedies, including mandamus. Order 55 of the High Court

Civil Procedure Rules (CI 47) empowers the High Court to entertain such applications.

[40] The remedy of mandamus has been the subject of a sea of famous authorities. We, however, wish to provide a handful to illustrate our understanding of the law in this respect. The law on the requirements for the grant of the prerogative remedy of mandamus has evolved since the classic pronouncement of Annan J (as he then was) in *The Republic v Chieftaincy Secretariat Ex Parte Adansi Traditional Council*, [1968] GLR 736, wherein he eminently proclaimed thus:

> "...*But before a court would make such an order of mandamus the applicant must satisfy four main conditions, namely:(a) that there was a duty imposed by the statute upon which he relied, (b) that the duty was of a public nature,*
> *(c)that there was a right in the applicant to enforce the performance of the duty and (d) that there had been a demand and a refusal to perform that public duty enjoined by statute.*"

[41] The recent case of **Republic v National House of Chiefs; Ex parte Akrofa Krukoko II [2010] SCGLR 134** followed, with the Supreme Court emphasising that in all cases, demand for performance must always precede the application for mandamus. In so holding, the Supreme Court added the formulation of the "*ordinary*" rule and the *built-in* qualifications to clarify the requirement of time within which an

application for mandamus may be brought, vis-a-vis the requirement of demand and refusal, as captured in Holding 4, thus:

> "(4) ... *Ordinarily, time within which to apply for mandamus should begin to run only after a demand to perform duty had been met with refusal. Where the demand made for the performance of the duty had been found to be premature, mandamus would not lie. And the mere fact of non-compliance with a duty would be sufficient ground for the award of mandamus, where the applicant had been substantially prejudiced by the respondent's procrastination. On the facts of the instant case, the appellant had more than satisfied the demand and refusal criteria to maintain the application for mandamus.* ***Indeed, the conduct of the respondent in delaying to comply with the demand of the appellant and failing to give a direct answer on the demand, was tantamount to a refusal.*** ..."

[42] My Lords, over time, the courts had unquestionably applied the rule that demand and subsequent refusal are preconditions for the entertainment of an application for mandamus, until in the year 2011, when the Supreme Court, speaking through the venerable Atuguba JSC in **Republic *vrs.* National House Of Chiefs, Kumasi; Ex Parte Nii Larbie Mensah IV [2011] 2 SCGLR 883,** @ 890-891raised a doubt as to whether in the face of relevant "intervening constitutional provisions" an applicant for mandamus "***would still be bound by the common law***

precondition of making a prior demand before applying for mandamus."

[43] My Lords, the dusty wind of doubt that covered the principle of demand as *sine qua non* for the application of mandamus was finally dispersed by the Supreme Court in the year 2018 when their Lordships restated with clarity and finality in ***The Republic v High Court, General Jurisdiction '5', Accra; Ex Parte: The Minister for the Interior & The Comptroller-General of Immigration Service; Ashok Kumar Sivaram (Interested Party)*** **[2017–2018] 2 SCGLR 846)** that as a general rule the conjoin requirement of prior demand and refusal continue to be a condition precedent for the grant of mandamus, and therefore cannot be overlooked subject to recognised exceptions. Their lordships stated crisply thus:

> *"It is convenient to commence this discussion on the requirement of prior demand before commencing proceedings for mandamus. It was a point raised by counsel for the applicants, relying on the authority of Republic v. National House of Chiefs; ex parte Akrofa Krukoko, supra. The court held that as a general rule the order of mandamus would not be granted unless the party complained of had known what it was he was required to do, so that he had the means of considering whether or not he should comply...The requirement however, that before the court would issue a mandamus there must be a demand to perform the act sought*

*to be enforced and a refusal to perform it could not be applicable in all cases, and would not apply where a person had by inadvertence omitted to do some act he was under a duty to do, and where the time within which he could do it has passed....**And the mere fact of non-compliance with a duty would be sufficient ground for the award of mandamus, where the applicant has been substantially prejudiced by the respondent's procrastination.**"*

[44] The Supreme Court then concluded in clear terms, thus:

"We therefore state with emphasis that the law remains the same as stated in **Republic v. National House of Chiefs; ex parte Akrofa Kukroko,** supra."

[45] Thus, My Lords, the import of the decision is twofold. First, the demand/refusal doctrine remains the ordinary framework for mandamus. Second, the Court itself recognised that the demand/refusal requirement "could not be applicable in all cases", identifying, among others, inadvertent omission where time has passed, and situations where the applicant has been substantially prejudiced by procrastination. As clarified by the Supreme Court in the **Ashok Kumar Sivaram** case, the law still remains as stated in **Ex parte Akrofa Krukoko II,** and that any earlier "*doubt*" expressed in *Larbie Mensah IV* case did not amount to a doctrinal departure.

[46] The practical consequence is that, unless the case fits within a recognised qualification, an applicant's affidavit should ordinarily exhibit evidence of a distinct demand to perform the duty and evidence of refusal, whether express or constructive (that is, refusal inferred from conduct). Two practical propositions are usually drawn from the above. First, demand and refusal remain the general rule and should ordinarily be proved by evidence. Second, the rule is not universal: where there is substantial prejudice caused by procrastination, "mere non-compliance" may suffice; and delay or failure to give a direct answer may amount to refusal.

[47] The operative position of the law, therefore, is that any uncertainty that may be argued on the basis of the ***Larbie Mensah IV*** ratio is overtaken by the explicit ratio in ***Ashok Kumar Sivaram***, thus: "*We therefore state with emphasis that the law remains the same as stated in Republic v. National House of Chiefs; ex parte Akrofa Kukroko, supra.*"

[48] My Lords, another question that is inherent in the instant proceeding and which needs to be addressed is whether or not refusal ought to be express in all circumstances. The general principle of the law, as I understand it, is that refusal as a condition precedent for mandamus has to be express. This position of the law is not without an exception, which is to the effect that refusal may be constructive depending on the circumstances of the case. In other words, the refusal may be inferred

from conduct. The principle is illustrated by **Ghana Railway Administration v Ansah** (1974) 1 GLR 47, where Edusei J stated:

> *"... the fiat might be refused either expressly or by implication. Express refusal was where the Attorney-General wrote to the applicant indicating that he had refused to issue the fiat, but where one month had passed and the Attorney-General had not issued the fiat or written to refuse it, as in the instant case, then it was presumed that he had impliedly refused it. ..."*

[49] Instructively, unreasonable delay has been treated as a basis for compulsion. Thus, in ***Republic v Lands Commission; Ex parte Vanderpuye Orgle Estates Ltd*** **(1998–99) SCGLR 677** at **727**, Acquah JSC (as he then was) held:

> *"Indeed, the unreasonable delay by the Lands Commission in the way they dealt with the problem created by themselves makes it imperative to take legal action to compel them to sit up to their public duty. For a statutory duty must be performed without unreasonable delay, and if any such delay occurs, mandamus may be employed to enforce the performance of such duty. ..."*

[50] We must state with emphasis that within the demand/refusal framework, the requirement of express refusal is thus not applicable in all cases as highlighted in *Ashok Kumar Sivaram and Krukoko II*) wherein the

Supreme Court maintained that mandamus may still lie ***where the applicant has been substantially prejudiced by the respondent's procrastination, such that "mere non-compliance" may suffice.***

[51] Consequently, as a matter of affidavit evidence, where an applicant proceeds on the general rule, it is prudent to exhibit proof of the distinct demand and the refusal (or conduct amounting to refusal). Where the applicant relies on a qualification, it is prudent to plead the facts bringing the matter within that qualification: the nature of the duty, when it fell due, the prejudice occasioned by delay, and the conduct relied upon as constructive refusal.

[52] Another related matter that comes up for our consideration is a situation where, in the face of a clear statutory or other legally binding duty imposed on a public officer to perform, he nonetheless decides to perform a different duty. In my view, in a situation where it can be fairly inferred from the conduct of a public officer that he deliberately avoided performance of a public duty by performing a different duty, which a genuinely-minded person cannot be expected to perform unless he intends to overreach relevant provisions of law.

[53] In that case, sitting as a judge, I would be right to conclude that, in the circumstances, the performance of the other duty, instead of that which rather obviously applies, amounts to refusal to perform. In that case, the court will be right in holding that the public officer has failed to

perform the duty upon demand. It appears to us that this scenario is a reflection of the situation with which we are confronted in the instant appeal, as shall be unfolded in the course of the ensuing analysis.

[54] From the foregoing, I hold that the appellant herein properly invoked the jurisdiction of the court below by successfully meeting the requirements for the invocation of the jurisdiction of the lower court to entertain the application for the remedy of mandamus.

THE SUBSTANCE OF THE CASE

Analysis of the applicable legal framework.

[55] It is interesting to note that, inasmuch as the Value Added Tax Act, 2013 (Act 870), in section 50 provides for "Refund or credit for excess tax", the provisions in section 50(5) are the same as found in section 68(1) of the Revenue Administration Act, 2016 (Act 915). It is thus not the case that there is a conflict between the two provisions – they are indeed the same, and that is the reason why there was no need for a repeal of the provisions in the Value Added Tax Act when the Revenue Administration Act was passed.

[56] For purposes of clarity, the two provisions are restated below:

Section 50(5) of the Value Added Tax Act, 2013 (Act 870) provides that, Subject to this section, where the Commissioner-General is satisfied that a person who has made an application under subsection (4) has overpaid tax,

the Commissioner-General shall

(a)first apply the amount of the excess against the liability of that person for any tax, levy, interest or penalty administered by the Commissioner-General, and

(b)repay any amount remaining to the person within thirty days of being satisfied that the person has overpaid tax.

Section 68(1) of the Revenue Administration Act, 2016 (Act 915) provides that, Where the Commissioner-General is satisfied that a person has paid excess tax, either on application for a refund by that person, or by reason of an order of a court or tribunal, the Commissioner-General shall

(a) apply the excess in reduction of any outstanding tax liability of the person; and

(b) refund the remainder to the person within ninety days of making the decision.

[57] It is evident from the above that the two provisions in the two Acts above are *in pari materia,* as they both deal with the same matter of tax refund and should be interpreted together as one statute, helping to clarify ambiguities and ensure consistent meaning across these two related legislations, the Value Added Tax Act, and the Revenue Administration Act. This will help harmonise the two provisions in the two

different Acts with similar goals of refund of taxes overpaid, to create a cohesive body of law.

[58] Indeed, the above is what will sit with the provision in section 97(1) of Act 915 quoted by the court below on page 9 of the judgment as follows: "Section 97(1) of Act 915 is headed "Relationship between tax laws," and provides that: **This Act shall be read as one with each of the other tax laws.**" Section 68(1) of Act 915 should thus be read together with section 50(5), and there will be clarity, as there was no repeal, express or implied, but rather an affirmation of an already existing provision which has been allowed to continue to co-exist.

[59] Consequently, the holding on page 11 of the judgment, in the second paragraph, that "*the legal principle that specific laws override the general provisions will therefore apply in this instance*" cannot stand since there is no ambiguity or conflict for the specific law to override the general law. The preceding paragraph thus demonstrates why the Latin maxim "*Generalia specialibus non derogant*" is inapplicable here.

[60] It is not in dispute that an overpayment in tax usually creates at least three competing rights. Two are vested in the taxpayer, and the remaining one is vested in the tax authority. They are:

(a) ***the right to a refund of excess tax vested in the taxpayer***

(b) the right vested in the taxpayer to opt for his excess tax to be treated as a credit, *and*

(c) the right vested in the tax authority by operation

of law to treat overpaid tax as a credit for future tax liability.

[61] For the avoidance of doubt, where the overpayment is treated as a credit either under category (b) or (c), the overpayment is set off against any future tax liability. In the alternative, the taxpayer is entitled to a refund of the overpayment under category (a).

[62] It is pedestrian knowledge that in accounting for VAT, section 48 of Act 870 allows a taxable person to offset or deduct the VAT incurred by the taxable person (input VAT) against or from the VAT charged (output VAT) by the taxable person. The taxable person thereafter remits the outstanding amount, if any, to the Commissioner-General.

[63] My Lords, the accounting method described above mimics the approach adopted by the International Monetary Fund (IMF) as contained in its April 2021 publication titled "***How to manage Valued-Added Tax Refunds***". They posit that VAT is not expected to be a cost to the taxable person but to the final consumer. Consequently, where a taxable person incurs more input VAT than it charged and remits the excess input VAT to the Commissioner-General, the excess input VAT constitutes an overpayment of tax and creates a right in the taxable person. According to the IMF, situations that place taxpayers in excess VAT credit positions include situations where output VAT is less than input VAT and, in such situations, the IMF maintains that excess VAT credits should be refunded promptly to avoid turning VAT into a tax on production instead of a value addition.

[64] My Lords, a careful reading of section 50(3) of Act 870 suggests that overpayments of VAT may arise in two main ways. They are:

i. Circumstances specified in subsections (1) and (2)

ii. Circumstances other than specified in subsections (1) and (2)

I. Circumstances specified in subsections (1) and (2)

[65] The combined effect of section 50(1) and (2) is that if an overpayment of tax is arising from excess input VAT, that excess input VAT is credited to the taxable person **and** the taxable person can only claim a refund upon application within a minimum of three months if the excess is attributable to exports and the taxable person exports at least 25% of its total supplies with the total export proceeds having been repatriated to Ghana.

[66] Importantly, reading section 50(1) as a whole, in a conjunctive and not a disjunctive manner, the following must be present:

- *There must be more input tax than output tax to have a credit*
- *The excess must be attributable to exports*
- *The exports must represent about 25% of the proceeds of the taxable person*
- *The proceeds should have been repatriated to Ghana.*

[67] The above analysis creates a perfect picture of the essence of section 50(2) of Act 870. It shows clearly that where a taxable person overpays VAT under the above circumstances, it has an option under section 50(2) to apply for a refund where the excess amount remains outstanding for a minimum of three months. It goes without saying that a credit arising from the circumstances in section 50(1) enumerated above, for which a refund has not been requested, shall be carried forward to the next tax period under section 50(13).

[68] The foregoing emboldens me to hold that Section 50(1), (2), and (13) are specific or special laws for overpayments arising from excess input in the case of persons whose exports are at least 25% of their proceeds. Any other situation would therefore be governed by the general provision in Act 870 on refunds and credits. These other situations are referred to under the Act as *circumstances other than specified in subsections (1) and (2).*

II. Circumstances other than specified in subsections (1) and (2)

[69] On the other hand, a situation where the overpayment is not arising from excess input or from excess input but the excess is not attributable to exports or to 25% of export of the total supplies, it would be considered as overpayments arising from ***circumstances other than in subsections 1 and 2***. Accordingly, pursuant to sub-section 3, the taxable person shall be treated in accordance with sections 50(5) to 50(9)

of Act 870, which creates a right of refund in the taxpayer, which right must be exercised within six months after the date on which the excess payment arose.

[70] Furthermore, it is trite that unless a law expressly curtails or takes away a right, including the right to a refund in this instance, to refuse a refund to persons who overpay VAT by virtue of excess input only on the grounds that they are not exporters or do not meet the threshold for exporters, is to hold that the excess payments were taxes properly due the State under law, instead of an overpayment which belongs to the taxpayer until the taxpayer elects to give the same to the State.

[71] Such an interpretation, which effectively converts an overpayment into a tax where there are no clear and express words to that effect, would be inconsistent with the tenets of interpreting tax statutes, as a tax cannot be imposed without clear and express words for that purpose.

[72] Hence, an interpretation to the effect that a taxpayer cannot claim a refund of monies paid in excess to the tax authorities when the said excess payment does not constitute the tax properly imposed by or due the State and when no express provisions of the tax law deny the taxpayer a refund would lead to an absurdity.

[73] We are aided by a cardinal principle for the interpretation of all laws, which is to the effect that where the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense

and not to give a meaning which would cause violence to the provisions of the statute.

[74] My able brother, Baffour JA has done justice to the applicable interpretative principles and approaches in the lead judgment, and therefore I do not intend to expend my energy in espousing them here. Suffice it to state that I think I may be permitted to remind the reader that critical matters concerning rules of interpretation of tax statutes have been extensively discussed under chapter 5 of the book entitled *"CONTEMPORARY TRENDS IN THE LAW OF IMMOVABLE PROPERTY IN GHANA"* authored by Yaw D. Oppong. (2ed. 2021)

[75] My Lords, I am constrained to deprecate the conduct of the respondent and with all due defence their legal advisors and tax experts employed by the State to serve the citizen's interest not to use the powers vested in them by the same citizens as a sword or a tool to subjugate them in the manner the respondent and their expert advisors have subjected the appellant to.

[76] The obvious injustice they have caused appellant for more than five years when its only 'crime' is to over-pay its tax liabilities in excess of gargantuan amount of twelve million Ghana Cedis (GHc 12,000,000.00) cannot be countenanced by anyone, the court not excepted. By their conduct, they sought to pull appellant into the tax net without any legally founded justification. On this, the enduring words of wisdom declared more than one hundred and sixty years ago in *Partington v Attorney-General* [1869] LR 4 HL 100 at 122, which ought to be well-

known to even a neophyte in the practice of taxation, reverberate in perpetuity thus:

> *"... if the Crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject must be free however apparently within the spirit of the law the case might otherwise appear to be."*[1]

[77] The respondent has invited us to agree with him on the retention of appellant's money, which the respondent admits is an overpaid VAT amount. Accession to this apparent invidious invitation will no doubt lead us into the temptation of stretching the law to meet hard cases, which does not merely amount to making a bad law, but, as Lord Simon of Glaisdale puts it in *Ransom* v *Higgs* [1974] 3 ALL ER 949, *"run(s) the risk of subverting the rule of law itself."*

I am thus unable to drink with the respondents from their "poisoned chalice."

CONCLUSION

[78] The foregoing analyses have emboldened me to hold that the respondent's failure to grant the appellants' request or demand for the refund of the excess VAT paid was arbitrary, illegal and unconscionable, and that one need not be a sage to ascertain that same has manifestly caused the appellant substantial miscarriage of justice for the past five years.

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1 [1869] LR 4 HL 100 at 122.

[79] On the whole, the application for an order of mandamus succeeds on the basis of the arguments articulated in the foregoing and summarized below as follows:

(a) that there was a duty imposed by the statute upon which the respondent, relied, that is, section 68(1) imposed a duty on the Commissioner-General (Respondent) to refund any excess taxes paid;

(b) that the duty was of a public nature, which it is, since the Commissioner-General is a public officer and his duties of tax administration are of a public nature;

(c) that there was a right in the applicant to enforce the performance of the duty – this is clear in the statute in section 68(1)(b), providing the refund to be made within ninety days, giving rise to the Applicant to seek to enforce the refund;

(d) and that there had been a demand and a refusal to perform that public duty enjoined by the statute notwithstanding his purported compliance by avoiding the clear duty imposed on him which we have found to be a deliberate act to overreach the law. This is the essence of the Applicant's suit, as demands on the Commissioner-General for the refund have gone unheeded since 9th December, 2020, as shown in Exhibit 'EB2'.

[80] I have already agreed to the orders stipulated in the lead judgment and therefore I have nothing more useful to add.

The appeal succeeds in its entirety.

EPILOGUE

[82] I deem it imperative to close the curtain with the abiding words of admonition of William Shakespeare (who needs no accolades here) in his seminal play entitled ***Macbeth*** **(Act 1, Scene 7)**, where Macbeth, the protagonist, describes the murder of King Duncan as a "poisoned chalice" that will return to plague the inventor. I wish to render the same as follows:

> *"We dare not do a wrong for fear of being wrong ourselves; this even-handed justice Commends ingredients of our poisoned chalice To our own lips.*

SGD.
Barima Yaw Kodie Oppong
(Justice of Appeal)

CERTIFIED TRUE COPY
13-12-24
REGISTRAR
COURT OF APPEAL, ACCRA

Representations:

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