

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE COMMERCIAL
DIVISION OF THE HIGH COURT, HELD IN ACCRA ON THE 13TH DAY
OF MAY, 2020, BEFORE HER LADYSHIP JUSTICE DOREEN G.
BOAKYE-AGYEI (MRS)**

IN THE MATTER OF APPLICATION FOR INVOKING JUDICIAL REVIEW
JURISDICTION OF THE HIGH COURT

BETWEEN

BISHOP DANIEL OBINIM
International Godsway Church
Tema

..... APPLICANT

AND

1. **THE COMMISSIONER GENERAL**
GHANA REVENUE AUTHORITY
Ministries, Accra

..... 1ST RESPONDENT

2. **ECOBANK GHANA LIMITED**
Accra

..... 2ND RESPONDENT

PARTIES : APPLICANT REPRESENTED BY REV. KWADWO ADU-
BOAHENE.
RESPONDENTS ABSENT.

COUNSEL : MR. RALPH POKU ADUSEI FOR APPLICANT PRESENT.
MR ABDULLAI IDDRISU WITH MR. EUGENE DANSO
COBBOLD FOR 1ST RESPONDENT PRESENT HOLDING
BRIEF FOR MR. FREEMAN SARBAH.

RULING

A.N./

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REGISTRAR
HIGH COURT
ACCRA

The present application is founded on Order 55 of C.I. 47 and the Order gives the Court the powers to make orders ranging from Prohibition, Mandamus, Certiorari, Injunction and even declaratory reliefs.

By Order 55 Rule 1 of C.I 47, an application for:

- (a) An order in the name of Mandamus, Prohibition, Certiorari or Quo Warranto; or
- (b) An injunction restraining a person from acting in any public office in which the person is not entitled to act; or
- (c) Any other injunction shall be made by way of an application for judicial review to the High Court.

The following cases of **REPUBLIC V. MINISTER OF INTERIOR; EX-PARTE BOMBELLI (1984-86) GLR 205, REPUBLIC V. HIGH COURT ACCRA; EX-PARTE SALLOUM & OTHERS (SENYO COKER, INTERESTED PARTY) 2011 1 SCGLR 574 and TEMA DEVELOPMENT CORPORATION & MUSA V. ATTA BAFFOUR (2005-2006) SCGLR 121** are applicable on Judicial Review.

Being an application for judicial review, the mode of application is as provided by the Rules of Procedure, that is the *High Court Civil Procedure Rules, 2004 (C.I. 47) by Order 55 Rule 4. It provides as follows:*

- (1) An application for judicial review shall be made to the High Court by motion.
- (2) The motion shall be supported by an affidavit by or on behalf of the applicant which shall contain the following particulars
 - (a) The full name, description and address for service of the applicant
 - (b) The facts upon which the applicant relies;
 - (c) The relief or remedy sought by the applicant and the grounds on which he seeks the relief or remedy; and
 - (d) The full name, description and address for service of the person directly affected by the application.

As was held by the Supreme Court through Hayfron Benjamin JSC in **REPUBLIC V KORLE GONNO DISTRICT MAGISTRATE GRADE 1; EX-PARTE AMPOMAH (1993-94) 2 GLR @ 270**, the Attorney General has come in to defend the application because both Respondents are public officers, but it is not a suit against the Attorney General. Further, in my view the Applicant has complied with the rules because it is trite that where a procedure is prescribed by statute, it is that procedure that ought to be complied with. See **BOYEFIO V. NTHC PROPERTIES (1997-98) 1 GLR 768 SC** and **PEOPLE'S POPULAR PARTY V ATTORNEY GENERAL (1971) 1 GLR 138-152**. The current position of the law on procedural defects is as was stated in the Supreme Court case of **RUPUBLIC V HIGH COURT, ACCRA EX-PARTE ALLGATE CO. LTD (2007-2008) SCGLR 1041**. It was held in that case that unless the procedural defect offends the Constitution, Statutes other than the provisions of the High Court (Civil Procedure) Rules, 2004, C.I 47, the principles of natural justice or goes to jurisdiction, the Court ought to regard the procedural defect as curable irregularity. This authority recalls the seminal decision in **WILSON V. SMITH (1981) GLR 152 CA** where the Court explained that unless the complaining party was prejudiced by the procedural defect and could not be reasonably compensated by way of cost, the defect in procedure ought to be treated as merely irregular and curable.

In other words, for a defect in procedure to be declared null and void, such a defect must go to jurisdiction in the sense that it must offend the Constitution, Natural Justice or any statute other than the rules of Court. All other defects that fall outside this parameter constitute irregularities that are curable at the discretion of the Court.

The Applicant filed an application for Judicial Review against the Respondents for the following reliefs:

- I. A Declaration that the issuance and service of the 3rd Party debtor notice served on the 19th February 2020 on the 2nd Respondent was unlawful, null and void.
- II. An Order setting aside the 3rd Party Debtor notice dated 19th of February 2020 issued and served on the 2nd Respondent herein.
- III. An Order directed at the 1st Respondent to respond and or make a determination in respect of the Applicant's notice of objection dated the 29th of July 2019.
- IV. An Order directed at the 1st Respondent to serve its decision in respect of the notice of objection on the Applicant **personally**.

V. Any further Order that is Honourable Court may deem fit.

BACKGROUND

The 1st Respondent herein on or around the 15th of November 2018 served the Applicant with a Notice of Tax Due requiring him to settle a tax liability of GH¢1,591,797.50. The 1st Respondent on the 17th of June 2019, served the Applicant with a final demand notice requiring him to settle his tax liability of GH¢1,591,797.50 by the 28th of June 2019.

The Applicant was dissatisfied with the decision of the GRA and completely denied any tax liability by virtue of the fact that he has fully paid all his tax liabilities. In view of Section 42 of the Revenue Administration Act, 2016, Act 915 the Applicant filed a Notice of Tax Objection which was served on the 1st Respondent on the 30th of July 2019. The Applicant's reasons for his objections are inter alia, that he is the Head Pastor of the International Godsway Church, the church fully takes care of his expenses and he does not receive any remuneration from the church. His only source of income is from his shops which he has paid all tax liabilities for.

To date the Applicant deposes that has not heard anything from the 1st Respondent and the issue of his tax liability remains undetermined under the law. The Commissioner General is enjoined by law to make a decision on any objection raised and also; must serve the decision **personally** on the affected Tax Payer. That till date no decision has been taken or served on the Applicant.

On the 13th February 2020 the 1st Respondent proceeded to issue and serve on the 2nd Respondent herein a 3rd Party Debtor Notice demanding from the 2nd Respondent herein to pay the sum of GH¢1,591,797.50 deemed to be the Applicant's tax liability according to the 1st Respondent. Applicant submits that until and unless a decision is made and served on him personally, the 1st Respondent is estopped under the law to proceed to enforcement as far as the recoveries of the purported sum is concerned.

Thus the 1st Respondent's decision to issue a 3rd Party Debtor Notice against the Applicant is arbitrary, capricious and lawless and that; justice will be best served if the Applicant is given a fair hearing as far as the Notice of Objection dated the 29th of July 2019 is concerned.

It is required of the Respondent to serve notice of its tax liability and afford the Applicant the opportunity to be heard, on the contrary, the normal procedure was not adhered to, yet the Respondent has taken steps to retrieve the money.

The 1st Respondent submits that they followed the laid down procedure in their dealings with Applicant leading to the issuance of the 3rd Party notice on 2nd Respondent to make good the amount deemed owed.

ISSUES:

- I. Whether or not the Respondent has breached the rules of natural justice by refusing to make a determination on the Applicant's Tax Objection.
- II. Whether or not this is an appropriate case for the Court to exercise its powers of Judicial Review.

The Law applicable to this matter can be found in Sections 37, 39, 40, 42 and 43 of the Revenue Administration Act, 2016, Act 915. The relevant sections are reproduced as follows:

Section 37 (1) –

Assessment of tax is made by way of

- a. Self-assessment, where a person is obliged to file a tax return and
- b. The Commissioner-General making an assessment in other cases including where a self-assessment is adjusted.

Section 39 (1) – the Commissioner-General may adjust an assessment in a manner that ensures that the tax payer is liable for the correct amount of tax in the circumstances to which the assessment relates.

Section 40 (1) provides as follows:

“Where the Commissioner General makes an assessment under tax law, the Commissioner General shall serve a written notice of the assessment on the taxpayer”. The contents of such Notice of Assessment are provided for in section 40 (2) of Act 915.

Section 42 (1)

Subject to a tax law to the contrary, a person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the Commissioner-General within 30 days of being notified of the tax decision.

Section 43(1) After consideration the Commissioner-General may vary the tax decision in whole or in part or disallow the objection.

(2) The Commissioner-General shall within sixty days of receipt of an objection serve the objector with a notice of the decision including reasons for the decision.

Counsel for Applicant cites the case of **ACCRA HEARTS OF OAK SPORTING CLUB V. GHANA FOOTBALL ASSOCIATION (1982-83) GLR 111-120** where it was held that any body of persons having legal authority to determine questions affecting the rights of citizens, and having the duty to act judicially should give adequate notice to persons likely to be affected by their proceedings or decisions, so that they might be in a position to prepare their case, appear at the inquiry and make representations on their own behalf or through a representative. An act or decision consequential upon a contravention of the audi alteram partem rule might be restrained by prohibition or an injunction or set aside by certiorari.

The case of **BOYEFIO V NTHC PROPERTIES (1996-97)SCGLR 533** held that the law is clear that where an enactment has prescribed a special procedure by which something was to be done it was that procedure alone that was to be followed. That principle was also applied in the case of **THE REPUBLIC VRS HIGH COURT GENERAL JURISDICTION 5, ACCRA EX-PARTE THE MINISTER FOR INTERIOR AND THE COMPROLLER-GENERAL OF IMMIGRATION SERVICE., ASHOK KUMAR SIVRAM (INTERESTED PARTY)**

Applicant Counsel submits that a reading of sections 37, 39, 40, 42 and 43 of the Revenue Administration Act 2016, Act 915 together shows that once an assessment is done and notice of it is served on the Taxpayer, the taxpayer has the right to object to the assessment and the GRA must either vary the tax decision or give reasons for disallowing the objection. That the 1st Respondent never made a final determination on the Tax Liability of the Applicant thus the Applicant is of the view that deliberations on his tax liability have not been concluded and he has not been afforded the opportunity to be heard. Thus the GRA cannot therefore go ahead and attempt to take steps to retrieve the money when his actual indebtedness has not fully been determined. That the failure of the GRA to grant the Applicant a hearing is in

direct contravention of the audi alteram partem rule and must be set aside by certiorari. Further that the failure of the 1st Respondent to offer the Applicant a hearing and then proceeding to serve a third party debtor notice on the Applicant's bank, 2nd Respondent is unlawful and in breach of the rules of natural justice.

In the view of Applicant and his Counsel, from the facts of the present case, he has established that the Respondent has clearly acted not only in breach of the rules of natural justice but also gone beyond his authority as an Officer of the GRA. That the judicial pronouncements within our jurisdiction will warrant the exercise of the powers of this Court under Order 55 of CI 47. That therefore, the actions of the 1st Respondent in this case are amenable to the exercise of the judicial review by this Honourable Court. Applicant prays that the Court ought to exercise its discretion in his favour and grant the reliefs endorsed on the face of the motion paper.

In response, 1st Respondent's Counsel on issue 1 submits that the relevant provisions of the law that deal with tax assessment and objections can be found in the Revenue Administration Act, 2016 (Act 915). That in line with Section 40(1) of Act 915 and per the Applicant's own showing in paragraph 2 of his affidavit in support he was duly notified of his tax liability.

The Court notes that Applicant deposed on oath as follows:

“The 1st Respondent herein on or about the 15th of November, 2018 served me with a Notice of Tax due requiring me to settle a tax liability of GHC 1,591,797.50. Attached and marked as Exhibit A is a copy of the notice”.

The admission of the Applicant is buttressed by 1st Respondent's Exhibit C-G '2' annexed to the supplementary affidavit in opposition which shows that the Applicant was duly served with the notice by courier service on the 15th November, 2018. Per Exhibit C-G '1' annexed to the supplementary affidavit in support, prior to the service of the Notice of Tax due, Applicant was served with a Notice of the Income Tax Assessment also by courier service on 15th October 2018. The Notice of Assessment itself is exhibited as Exhibit C-G '3'. The Notice of Assessment provided 31st October 2018 as the date of payment of the tax assessed in accordance with section 46(2)(a) of Act 915.

Counsel for 1st Respondent submits that there is therefore no doubt whatsoever that as far back as 15th October, 2018 and 15th November, 2018 Applicant had notice of

the tax assessment and that both documents contain sufficient details of the tax liability of the Applicant.

In reading the governing law, Section 41 (1) of the Act 915 provides that a “tax decision” by the Commissioner-General includes an assessment and a tax decision is made under section 41(2) as follows:

(2) *A tax decision is made*

(a) *In the case of an assessment made by the Commissioner-General, when the notice of assessment is made on the taxpayer; and*

(b) *In the case of any other tax decision, when the Commissioner –General serves the affected person with a written notice of the decision.*

Again per the law, the time prescribed for a taxpayer to lodge an objection against a tax decision which according to Counsel for 1st Respondent in the instant case is an assessment, is clearly set out in section 42(1) of the Act 915 as follows:

*“42.(1) Subject to the tax law of the country, a person who is dissatisfied with a tax decision, that directly affects that person may lodge an objection to the decision of the Commissioner-General within **thirty days** of being notified of the tax decision ”*

The law provides for available remedies in exercise of Judicial Review in events where public authorities such as the 1st Respondent indeed acts in breach of its enabling law.

In **REPUBLIC V. HIGH COURT, SEKONDI, EX-PARTE AMPONG (2011) 2 SCGLR 716**, the Supreme Court held that “It was well settled that certiorari was not concerned with the merits of the decision; it was rather a discretionary remedy which would be granted on grounds of excess or want of jurisdiction and / or some breach of rules of natural justice.”

Then also Akuffo JSC (as she then was) held in **The REPUBLIC V THE CHIEF REGISTRAR OF LANDS: EX-PARTE DZANE (2003-2004) 2 SCGLR 955** that “Prohibition is a prerogative order of the High Court directed at a Lower Court, inferior tribunal or public authority which forbids such Court, tribunal or authority from acting or doing something that would be in excess of its jurisdiction or against the law.”

The question this Court asks is; did the Applicant object to tax assessment within the time prescribed by law?

The evidence before the Court shows that the Applicant reacted and filed a Notice of Tax Objection which was served on the 1st Respondent on the 30th of July 2019. The Court finds as a fact that the Applicant did not timely exercise his right of objection within the 30 days prescribed by law. He rather raised an objection to a final Demand Notice which 1st Respondent Counsel says and the Court agrees with that it is (not an assessment) dated 17th June, 2019. A conservative tabulation shows that this is over **six months** after being served with the Notice of Assessment and Notice of Tax Due respectively.

The Court is persuaded by the submission of 1st Respondent's Counsel that the Final Demand Notice (Exhibit. B), not being a tax decision, the Applicant cannot purport to lodge an objection to same under section 42 of Act 915. That the 1st Respondent was therefore under no legal obligation to respond to Exhibit B as a tax objection.

The case of **BOYEFIO V NTHC PROPERTIES (1996-97) SCGLR 533** held that the law is clear that where an enactment has prescribed a special procedure by which something was to be done it was that procedure alone that was to be followed. That means that timelines of the procedure must be followed and if for any reason they cannot be met, extension of time ought to be requested for to do the needful.

This then moves into the arena of the question; did the 1st Respondent breach the rules of Natural Justice?

The evidence on record shows that the Applicant was given adequate notice to respond to the issues raised in relation to his tax affairs. Exhibit C-G 3 shows that between 04/01/2017 and 28/07/2018 Applicant was served with five (5) different letters relating to filing of tax returns and invitation to discuss the draft Notice of Assessment but he failed to respond to the notices or invitation. Furthermore Applicant failed or refused to take advantage of the law to lodge an objection to the tax assessment within the time provided by law. How then can Applicant belatedly be heard to say that there has been a breach of rules of Natural Justice? The Court cannot make a finding in favour of Applicant that the rules of natural justice were breached but rather that equity will aid the vigilant and not the indolent.

Flowing from the above, was the service of the 3rd Party Notice dated 19th February, 2020 on the 2nd Respondent unlawful? Again, from a reading of the law, the use of

Third Party Notices is one of the ways prescribed by the law to be employed by the 1st Respondent to enforce the collection of unpaid taxes.

Section 60(1) of Act 915 provides as follows:

“60. (1) where a taxpayer fails to pay tax on the due date, the Commissioner – General may serve a notice in writing on the third party debtor.”

The third party debtor so served is obliged under the law to pay any amount it is holding on behalf of the Applicant to the 1st Respondent to satisfy the tax liability specified in the notice. The Applicant not having timely exercised his rights under the law to object and having failed to pay the assessed tax by the due date, the 1st Respondent is entitled under the law to fall on the third party for the tax due assessed as owing by the Applicant and the Court so finds.

ISSUE II. WHETHER OR NOT THIS IS AN APPROPRIATE CASE FOR THE COURT TO EXERCISE ITS POWERS OF JUDICIAL REVIEW.

In **Boyefio v. NTCH Properties Ltd supra** the Supreme Court stated as follows:

“The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed...”

From the totality of evidence before the Court, the Applicant has failed to demonstrate that 1st Respondent failed to follow the procedure prescribed by the Revenue Administration Act, Act 915 in notifying him of his tax liability. It was rather the Applicant who failed to file his tax returns and avail himself to discuss the draft tax assessment within the time limits prescribed by law. Applicant also failed to timely object to the assessment and cannot therefore be heard to say that he has not been given a hearing.

Again from a reference to the law, the tax laws also have special provisions for dealing with tax disputes. Section 44 of Act 915 provides as follows:

“A person who is dissatisfied with the decision of the Commissioner-General may appeal against the decision to the court within thirty days of the decision”

Order 54 of the High Court (Civil Procedure) Rules, 2004 C.I 47 also has special rules on appeals by aggrieved taxpayers to the High Court.

The Applicant, having admitted that he was served with notice of his tax liability, should have followed the prescribed rules to have his grievances addressed. He cannot use his failure as a ground to seek judicial review. This instant case is not a proper and appropriate case for the Court to exercise its powers of judicial review.

From the affidavit evidence and applicable statutes and authorities, the 1st Respondent followed procedure in determining and notifying the Applicant of his tax liability. The Applicant, not having followed the laid down procedure to make his objections to be given a hearing as required by law, in the considered opinion of this Court, is just setting up his own willful failure and default as grounds for seeking judicial review.

The Court refuses the application as the rules of natural justice were not breached and Applicant has not been able to demonstrate that the Court ought to exercise its power of Judicial Review over the official actions of 1st Respondent. The present application being founded on Order 55 of C.I. 47 with its wide remedial powers to make orders ranging from Prohibition, Mandamus, Certiorari, Injunction and even declaratory reliefs, the Court dismisses the application in its entirety.

(sgd.)

**DOREEN G. BOAKYE-AGYEI (MRS.)
JUSTICE OF THE HIGH COURT**

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.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

CITED CASES:

- **REPUBLIC V. MINISTER OF INTERIOR; EX-PARTE BOMBELLI (1984-86) GLR 205**
- **REPUBLIC V. HIGH COURT ACCRA; EX-PARTE SALLOUM & OTHERS (SENYO COKER, INTERESTED PARTY) 2011 1 SCGLR 574**
- **TEMA DEVELOPMENT CORPORATION & MUSA V. ATTA BAFFOUR (2005-2006) SCGLR 121**
- **REPUBLIC V KORLE GONNO DISTRICT MAGISTRATE GRADE 1; EX-PARTE AMPOMAH (1993-94) 2 GLR @ 270**
- **BOYEFIO V. NTHC PROPERTIES (1997-98) 1 GLR 768 SC**

- PEOPLE'S POPULAR PARTY V ATTORNEY GENERAL (1971) 1 GLR 138-152.
- REPUBLIC V HIGH COURT, ACCRA EX-PARTE ALLGATE CO. LTD (2007-2008) SCGLR 1041.
- ACCRA HEARTS OF OAK SPORTING CLUB V. GHANA FOOTBALL ASSOCIATION (1982-83) GLR 111-120
- THE REPUBLIC VRS HIGH COURT GENERAL JURISDICTION 5, ACCRA EX-PARTE THE MINISTER FOR INTERIOR AND THE COMPROLLER-GENERAL OF IMMIGRATION SERVICE., ASHOK KUMAR SIVRAM (INTERESTED PARTY)
- REPUBLIC V. HIGH COURT, SEKONDI, EX-PARTE AMPONG (2011) 2 SCGLR 716
- REPUBLIC V THE CHIEF REFISTRAR OF LANDS: EX-PARTE DZANE (2003-2004) 2 SCGLR 955

CITED LAWS:

- *High Court Civil Procedure Rules, 2004 (C.I. 47)*
- The Revenue Administration Act, 2016, Act 915