

IN THE SUPERIOR COURT OF JUDICATURE. IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON FRIDAY, THE 30TH DAY OF OCTOBER 2020 BEFORE HER LADYSHIP JUSTICE AKUA SARPOMAA AMOAH (MRS.)

SUIT NO. CM/OCC/1033/2019

BISHOP DANIEL OBINIM
 Unnumbered House
 Adjacent International Godsway Church
 Ashaley Botwe, Accra

... PLAINTIFF

VRS.

1. GHANA REVENUE AUTHORITY
 Ministries, Accra

2. FIDELITY BANK LIMITED
 Ridge Towers
 Ridge, Accra

... DEFENDANTS

PARTIES: - ABSENT

COUNSEL: - ADE RONKE ADE FARAKAN WITH ABENA POMAA
 BAMFO HOLDING BRIEF FOR BARIMA MANU FOR
 2ND DEFENDANT PRESENT

COUNSEL FOR PLAINTIFF ABSENT

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

JUDGMENT

By an application filed on the 11th day of July, 2019, the 1st Defendant/Applicant (1st Defendant) seeks an order of this Court setting aside the Plaintiff/Respondent's (Plaintiff) writ and dismissing his suit.

The grounds upon which the application is mounted are stated in the supporting affidavit. The crux of the 1st Defendant's case is that the Plaintiff has failed to properly invoke the jurisdiction of this Court by his failure to comply with the provisions of the *Revenue Administration Act, 2016 (Act 915)* and *Order 54* of the *High Court Civil Procedure Rules (CI 47)*.

For a better understanding of the issues raised by this application, it is apposite, I think, to give a brief summary of Plaintiff's case as disclosed by his Statement of Claim.

The Plaintiff's case is that by a letter dated the 18th day of December, 2018, the 1st Defendant demanded payment of the sums of *Seven Hundred and Nineteen Thousand, Eight Hundred and Ninety Ghana Cedis (GH¢719,890.00)* and *Twenty-eight Thousand, Nine Hundred and Ninety Ghana Cedis (GH¢28,990.00)* respectively from Plaintiff. These sums were alleged to be taxes owed by Plaintiff for the period 2014 - 2018 as assessed by the 1st Defendant's Commissioner-General. The said assessment was not only in respect of rent taxes allegedly owed on some Twenty-one (21) unit shops situate at Tema but also in respect of Value Added Tax (VAT) charged for the business operations of a separate corporate entity known as the Abroso Guest House.

Plaintiff complained that it was wrongful for the Applicant to make him liable for taxes owed by Abroso Guest House if at all, as the same is a separate legal entity and not under his management and control.

In any event, the 1st Defendant in or about July, 2018 had in conjunction with the Economic and Organized Crime Office, already conducted an audit and assessment on him and submitted an assessment in the sum of *Thirty-nine Thousand, Five Hundred and Fifty-five Ghana Cedis (GH¢39,555.00)* in respect of rental of the Twenty-one (21) shops for the period of 2014 - 2018. The Abroso Guest House had however been excluded from the assessment by the 1st Defendant as it had been found not to be under the Plaintiff's control.

Pursuant to this finding, the Plaintiff had proceeded to pay the entire amount assessed as being his tax liability for the rental of the Twenty-one (21) shops to the 1st Defendant. The 1st Defendant had accordingly issued Plaintiff with receipts in acknowledgement of the said payment. The receipts are attached to Plaintiff's supplementary affidavit as *Exhibit A1*.

Plaintiff says that it was subsequent to these payments, that the 1st Defendant again sent the letter of the 18th day of December, 2018, demanding payment of the an alleged tax liability of *Seven Hundred and Nineteen Thousand, Eight Hundred and Ninety Ghana Cedis (GH¢719,890.00)*. Having already made good his tax liabilities to the 1st Defendant, Plaintiff says he caused his assistant to visit the offices of

1st Defendant in Tema with evidence of such payments. Upon being presented with the said evidence, the 1st Defendant is said to have admitted that the Plaintiff had settled all his indebtedness to them and appeared to have laid the matter to rest until sometime in April 2019, when the 1st Defendant wrote to Plaintiff inviting him for a discussion on tax liabilities. The Plaintiff says he again caused his assistant to attend the said meeting with evidence of payment whereupon it was again confirmed that the Plaintiff was not indebted to the 1st Defendant as he had fully settled his indebtedness in respect of the Twenty-one (21) unit shops. The 1st Defendant further confirmed that the Plaintiff was not liable for the VAT allegedly owed by the Abroso Guest House after a perusal of the said Company's registration documents.

To the Plaintiff's chagrin however, on the 3rd day of June, 2019 an attempt to access funds from his accounts held with the 2nd Defendant bank was denied. Upon enquiring about the reason for this denial, the Plaintiff was informed by the 2nd Defendant that it had been served with a Garnishment Notice by the Commissioner-General of the 1st Defendant ordering the 2nd Defendant to withhold an amount of *Seven Hundred and Sixty-nine Thousand, Ninety-five Ghana Cedis, Eighty-seven Pesewas (GH¢769,095.87)* and with a further order that the 2nd Defendant responds to 1st Defendant within Seven (7) days of receipt of same.

Upon contacting the 1st Defendant directly, he was to his surprise informed that the Garnishment Notice was in respect of the same Twenty-one (21) unit shops and the Abroso Guest House, which issue to the best of Plaintiff's knowledge and understanding had long been resolved. No explanation was given for 1st Defendant's issuance of the Garnishment Notice without notice to him. Plaintiff describes the 1st Defendant's conduct as *"unfair, arbitrary, and oppressive, calculated to attack his person and harass him."* Consequently, he prays this Court for the following reliefs;

- a) *A declaration that, the Plaintiff has paid all taxes due and demanded by 1st Defendant from the Plaintiff in respect of rent taxes payable on the Twenty-one (21) shops for the period of 2014 to 2018 and that; he does not owe taxes, in the sum of Seven Hundred and Sixty-nine Thousand, Ninety-five Ghana Cedis, Eighty-seven Pesewas (GH¢769,095.87) purportedly representing rents taxes payable on the Block of Twenty-one (21) units of shops for the period 2014 to 2018.*
- b) *A further declaration that, the Plaintiff is not personally liable for any Value Added Tax (VAT) due and owed (if any) by Abroso Guest House Limited to the 1st Defendant.*
- c) *An order to set aside and/or strike out the Garnishment Notice issued at 10 am, 27th day of June, 2019 by the Commissioner-General of the Ghana Revenue Authority; 1st Defendant herein, directed at the 2nd Defendant to pay to the 1st Defendant the sum of Seven Hundred and Sixty-nine Thousand, Ninety-five Ghana Cedis, Eighty-seven Pesewas (GH¢769,095.87) as being unlawful.*

- d) *An order that, the 1st Defendant having audited and assessed the Plaintiff in respect of the rents taxes payable on the Block of Twenty-one (21) units of shops for the period of 2014 to 2018 at the sum of Thirty-nine Thousand, Five Hundred and Fifty-five Ghana Cedis (GH¢39,555.00) on Plaintiff and the Plaintiff having paid same to the 1st Defendant, the 1st Defendant is estopped from pursuing the Plaintiff for the same rent taxes for the same period.*
- e) *An order for perpetual injunction restraining the 1st Defendant either by itself, officers and agents from pursuing, demanding and/or taking from the Plaintiff, rents taxes payable on the Block of Twenty-one (21) units of shops for the period of 2014 to 2018 and also; payment of any Value Added Tax (VAT) due and owed by Abroso Guest House Limited (if any) personally from the Plaintiff.*
- f) *An order for perpetual injunction restraining the 2nd Defendant from placing lien on the Plaintiff's bank accounts and from paying any of the funds held in the Plaintiff's bank accounts and fixed deposits to the 1st Defendant in respect to the Garnishment Notice issued at 10 am, 27th day of June, 2019 by the Commissioner-General of the Ghana Revenue Authority, 1st Defendant herein and in respect of any future Garnishment Notice issued in respect of the same rents taxes payable on the Block of Twenty-one (21) units of shops for the period 2014 to 2018 and also payment of any Value Added Tax (VAT) due and owed by Abroso Guest House Limited (if any) without recourse to a Court Order.*
- g) *An order directed at the 2nd Defendant to remove any lien and/or charge placed on the Plaintiff's funds in his bank accounts a [sic] and all other fixed deposit investment held with the 2nd Defendant and make all/same accessible to Plaintiff.*
- h) *Punitive Damages against the 1st Defendant for unlawful issuance of the Garnishment Notice.*
- i) *Costs, including Solicitor's professional fees.*

It is this writ that the 1st Defendant seeks to have set aside and dismissed. In the 1st Defendant's opinion, an examination of the Plaintiff's Writ and Statement of Claim will reveal that the Plaintiff's complaint relates to a tax decision arrived at by the 1st Defendant. In light of this, the 1st Defendant contends that the Plaintiff ought to have followed the dispute resolution procedure prescribed under *Act 915*. Specifically, that set out under *Sections 42 to 44* of the said Act. These provisions require that Plaintiff exhausts the procedures and mechanisms under the said Act before approaching this Court. Having failed to do so, the Plaintiff suit was premature and incompetent.

The Plaintiff however challenges the basis of the 1st Defendant's application. The case of the Plaintiff in my understanding is that, there exists no tax decision which should require the Plaintiff to comply with the procedure and mechanisms laid down under *Sections 42 to 44 of Act 915* before approaching this Court. The Plaintiff maintains that the essence of his action is not to challenge a tax decision but to invoke the supervisory jurisdiction of this Court in respect of the unlawful conduct of the Applicant. Documents referred to as "*Exhibits A and A series*," have been attached in support of this contention.

I would note that the Plaintiff in breach of *Order 20 Rule 14(1)* of *CI 47* failed to exhibit some of the documents attached to his Supplementary Affidavit. *Rule 14 (1)* of *Order 20* states that;

"14(1) Any document to be used in conjunction with an affidavit shall be exhibited and not merely annexed or attached to the affidavit."

However, only one of the receipts referred to in *Paragraph 3* of the Supplementary Affidavit has been marked "*A1*". The rest of the receipts have been merely attached to the Plaintiff's affidavit.

Again, the Plaintiff failed to attach a certificate as required by *Order 20 Rule 14) (2)*. The said provision states that;

"(2) Any exhibit to an affidavit shall be identified by a certificate of the person before whom it was sworn."

It should be noted that the word "*shall*" used in the said rules makes these requirements mandatory. Thus, Plaintiff's failure to comply with the said rules could by virtue of *Order 81 (2) (a)* of *CI 47*, have resulted in the said process being set aside. However, in light of 1st Defendant's omission to raise an objection to this non-compliance, it should be deemed to have waived same. I therefore proceed to determine the application on its merits.

Now, in order to ascertain whether or not the jurisdiction of this Court has been properly invoked, I think the basic matter for determination is whether or not the Plaintiff's suit constitutes a tax dispute within the meaning of *Act 915* or is simply an action that seeks to invoke the supervisory jurisdiction of this Court.

As a first step there is the need to gain an understanding of what amounts to a tax dispute under *Act 915*. For our purposes the relevant provisions are *Sections 41 to 44 of Act 915*. I intend only to reproduce portions of the said provisions that I consider necessary for the determination of this application.

From a reading of the provisions falling under the heading "*DISPUTE RESOLUTION*", a tax dispute should be understood to have arisen when a person raises an objection to a tax decision of the Commissioner-General.

What then is a tax decision? *Section 41* defines a tax decision as;

"...a decision made by the Commissioner-General under a tax law, including an assessment or omission..."

In light of Plaintiff's contention that there is no tax decision for which he should be required to exhaust the mandatory procedure set out under *Section 42*, there is the need to ascertain whether or not on the facts, a tax decision was made in the instant case.

By *Sub Section 2 of Section 41 (supra)*,

(1) A tax decision is made

- a) in the case of an assessment made by the Commissioner-General when the notice of assessment is served on the taxpayer;*
- b) In the case of any other tax decision, when the Commissioner-General serves the affected person with written notice of the decision.....*

On the Plaintiff's own showing, particularly by *Paragraphs 5 and 6* of his Statement of Claim and *Exhibit A2* attached to his Supplementary Affidavit, he was by a letter dated the 18th day of December, 2018 requested by the Commissioner-General to pay an amount of *Seven Hundred and Nineteen Thousand, Eight Hundred and Ninety Ghana Cedis (GH¢719,890.00)* in full within Thirty (30) days. The fact that this constituted service of a notice of assessment on Plaintiff (within the meaning of *Section 41 (2)*) is quite clear to me and needs no further elaboration. I am therefore unable to agree with Counsel for Plaintiff that no tax decision was made in this case.

Again, what can be inferred from the Plaintiff's conduct after being served with *Exhibit A2* is that he disagreed or objected to the decision of the 1st Defendant. This is because instead of proceeding to comply with same, he sent his assistant on two separate occasions to the 1st Defendant's offices with the necessary documentation to prove that he was not liable as *Exhibit A2* sought to suggest.

It is significant to note that the Plaintiff's claim that officials of the 1st Defendant had admitted or conceded that he had duly paid all outstanding taxes and therefore did not owe the 1st Defendant is not borne out by any evidence on record. Indeed, by the record the 1st Defendant's conduct at all times material to this suit negatives any such concession.

In any case, my task at this stage is not to unravel whether or not the 1st Defendant was justified in serving the Plaintiff with *Exhibit A2*. It is to ascertain whether the papers before me disclose a tax dispute or an intention to invoke the supervisory jurisdiction of this Court.

What is clear from the pleadings and the reliefs endorsed on the Plaintiff's writ is that, it is his disagreement with the tax decision of the 1st Defendant's Commissioner-General that has provoked the instant suit.

Shorn of verbiage, all the reliefs endorsed on Plaintiff's writ seek to invite this Court to reverse the tax decision of the 1st Defendant. The fact that Plaintiff describes the conduct of the Applicant as unfair, arbitrary and oppressive in his pleadings does not convert this action into one invoking the supervisory jurisdiction of this Court. In other words, this Court has not been called upon to decide whether or not the conduct

of the Applicant was capricious, oppressive and arbitrary. Indeed, nowhere in his writ does Plaintiff seek a declaration to that effect.

The demand by the 1st Defendant for the payment by Plaintiff of the sum of *Seven Hundred and Nineteen Thousand, Eight Hundred and Ninety Ghana Cedis (GH¢719,890.00)* is principally a tax decision. It is pursuant to this decision that the 1st Defendant (rightly or wrongly) exercised his powers under *Section 60* to garnish the Plaintiff's account. The denial by the Plaintiff that he owes the amount alleged by the 1st Defendant in my understanding constitutes an objection which brings the present suit within the purview of *Section 42 of Act 915*.

Section 42 of Act 915 states that;

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

Consequently, the Plaintiff was by law required to first mount his challenge to the tax decision by lodging an objection to same with its Commissioner – General. It is only upon determination of the said objection by the Commissioner that the Plaintiff could approach this Court by way of an appeal under *Section 44* if dissatisfied with same. *Order 54 of C 147* sets out the procedure to be followed in such circumstances. It bears emphasis that *Sections 41 to 44 of Act 915* do not operate to oust the jurisdiction of this Court. However, the dispute resolution procedure set out under *Act 915* is mandatory and cannot be side-stepped by an aggrieved taxpayer except for *"substantial reasons."* See the oft-cited case of *BOYEFIO v NTHC PROPERTIES [1996-97] SCGLR, 531*.

In the *Boyefio case (supra)* the Supreme Court emphasized that;

"...the law is clear that where an enactment has prescribed a special procedure by which something is to be done, it is that procedure alone that has to be followed."

I also fail to appreciate the basis for Plaintiff's complaint that the 1st Defendant issued the Garnishment Notice without notice to him. I say so because *Section 60 of Act 915* does not make the notification or service of the Garnishment Notice on the taxpayer, a prerequisite to serving the third party debtor. What *sub section 2* states is that the Commissioner-General shall *"as soon as practicable after service of the notice on the third party debtor"* serve a copy of same on the taxpayer. Thus, even though one would expect the Commissioner-General to serve the taxpayer within a reasonable time, the law allows the notice to be served at the Commissioner's convenience and not before or at the time it is served on the third party debtor.

I am therefore persuaded by the 1st Defendant's contention that the present suit is not properly before this Court.

That said, assuming without necessarily admitting that the Plaintiff by the present suit sought to invoke the supervisory jurisdiction of this Court, it is well-settled that

the mode of commencement of such an action should be by an Application for Judicial Review under *Order 55* of *CI 47* and not by Writ of Summons. The fact that the Plaintiff seeks declaratory reliefs did not necessarily require the issuance of a Writ as the Court is empowered under *Rule 2* to make declarations upon hearing such an application.

In the premises it is my considered opinion that the Plaintiff has failed to properly invoke the jurisdiction of this Court owing to his failure to exhaust the mandatory domestic remedies set out under *Act 915*. Upon exhausting the said remedies, the Plaintiff, if dissatisfied with the decision of the Commissioner-General, is to approach this Court by way of appeal as provided for by *Section 44* of *Act 915* and *Order 54* of *CI 47* and not by writ. Consequently, the 1st Defendant's application is granted as prayed. Plaintiff's writ dated the 4th day of July, 2019 is hereby set aside and his suit dismissed. Needless to say, the reliefs sought against the 2nd Defendant fall away with the dismissal of the suit.

(SGD)

MRS. AKUA SARPOMAA AMOAH
JUSTICE OF THE HIGH COURT

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