

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(GENERAL JURISDICTION)
ACCRA – A.D. 2019

SUIT NO. CM/MISC/0945/2019



DM KOJO TRADING ENT LTD
H/NO. 78/3, PARCEL 2B
KANDA - ACCRA

... APPLICANT

VS.

THE COMMISSIONER GENERAL
GHANA REVENUE AUTHORITY

... RESPONDENT

(SGD)

AKUA SARPOMAA AMOAH (MRS.)
JUSTICE OF THE HIGH COURT

ORDER TO INVOKE THE REVIEW JURISDICTION
OF THE HIGH COURT

UPON READING the Affidavit of **JOHN KOFI NTSEFUL** of H/No. 35, Aparpar, Labadi, Accra, the Law Clerk of the Solicitors for the Applicant, filed on the 10th day of June, 2019 in support of Motion on Notice for an order to Invoke the Review Jurisdiction of the High Court: **AND** the Affidavit in Opposition of **MAXWELL OWUSU BOADI** of H/No. GS-0558-0992, Galilea, near Weija, Accra, a Principal Revenue Officer and a Lawyer at the Ghana Revenue Authority, filed on the 19th day of June, 2019:

AND UPON HEARING **BOBBY BANSON WITH ALEXANDER BONDZIE IMPRAIM, ESQ.**, Counsel for and on behalf of the Applicant herein: And **MAXWELL OWUSU BOADI**, Counsel for and on behalf of Respondent herein:

IT IS HEREBY DECLARED that the Garnishment Notice served by the Respondent on the Applicant's Bankers, the Agricultural Development Bank pursuant to *Section 60 of the of the Revenue Administration Act (Act 915)* for the payment to Respondent of the sum of *Five Hundred and Fifteen Thousand, Four Hundred and Ninety Three Ghana Cedis and Eighty Four Pesewas (GH¢515,493.84)* standing in the account of the Applicant, is a nullity for the failure of Respondent to comply with the procedure outlined under *Sections 25 and 40 of Act 915* and the rules of natural justice.

IT IS HEREBY ORDERED that the Respondent be and is hereby restrained from proceeding to enforce the collection of the said sum of *Five Hundred and Fifteen Thousand, Four Hundred and Ninety Three Ghana Cedis and Eighty Four Pesewas (GH¢515,493.84)*, being tax assessed by the Respondent, from the Applicant's bankers, the Agricultural Development Bank unless and until it complies with the requirements imposed by law.

CERTIFIED TRUE COPY
REGISTRAR
HIGH COURT
COMMERCIAL DIVISION LLC-ACCRA

GIVEN UNDER MY HAND AND THE SEAL OF THE HIGH COURT
(COMMERCIAL DIVISION), ACCRA THIS 7TH DAY OF NOVEMBER,
2019.

(SGD)
STEPHEN AFOTEY
REGISTRAR

CERTIFIED TRUE COPY


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

JUDICIAL SERVICE

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON THURSDAY, THE 7TH DAY OF NOVEMBER 2019 BEFORE HER LADYSHIP JUSTICE AKUA SARPOMAA AMOAH (MRS.)

CM/MISC/0945/19

DM KOJO TRADING ENT LTD

H/NO. 78/3, PARCEL 2B,
ACCRA – KANDA

-

APPLICANT

VRS

THE COMMISSIONER GENERAL

GHANA REVENUE AUTHORITY

-

RESPONDENT

**PARTIES: - HENRY BRANFORD SAM REPRESENTS
RESPONDENT**

APPLICANT ABSENT

**COUNSEL: - BOBBY BANSON WITH ALEXANDER BONDZIE
IMPRAIM FOR APPLICANT**

MAXWELL OWUSU BOADI FOR RESPONDENT

JUDGMENT

The present application seeks to invoke the review jurisdiction of this Court under *Order 55* of the *High Court Civil Procedure Rules, 2004(CI 47)*.

The Applicant's case is that it holds an account with the Agricultural Development Bank. On the 7th day of June, 2019, its Relationship Manager with the said bank informed the Applicant that it had been served with a Garnishment Notice by the Respondent to pay out of the Applicant's account an amount of *Five Hundred and Fifteen Thousand, Four Hundred and Ninety-Three Ghana Cedis and Eighty-Four Pesewas (GH¢515,493.84)* to the Respondent. The said Notice is attached to the said motion as *EXHIBIT DMK 1*.

CERTIFIED TRUE COPY

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 REGISTRAR
 HIGH COURT
 COMMERCIAL DIVISION, LLC/ACCRA

According to Applicant, **EXHIBIT DMK 1** which is dated the 29th day of May, 2019 was received by the bank on the 30th day of May, 2019 but was only brought to its attention on the 7th day of June, 2019. In the said notice, the Respondent alleged that it had served the Applicant with a notice and a demand to pay the said amount but the Applicant had failed or refused to pay the amount, for which reason it had proceeded to serve **EXHIBIT DMK 1** on the bank. The Applicant maintains that it has not been served with any such notice to pay any amount as tax to the Respondent. It contends that by law the Respondent could only proceed to garnish the Applicant's account after the Applicant had been duly served with a tax assessment and a demand to pay the amount assessed and had refused to comply with same. It further contends that the Applicant ought to have been also informed of the Respondent's decision to garnish its account as soon as practicable but had failed to do so. The Applicant charges the Respondent with the breach of the rules of natural justice and prays this Court to restrain the Respondent from proceeding to enforce the collection of the amount assessed.

The Respondent denies the Applicant's claims. In the affidavit in opposition filed on the 19th of day June, 2019, Respondent maintains that in compliance with the **REVENUE ADMINISTRATION ACT, 2016 (Act 915)**, it did serve the Applicant with a Notice of Tax Assessment after which it served it with a Garnishment Notice. Respondent says that after a careful evaluation of credit lodgments in Applicant's bank account on the 14th day of May, 2019 it raised a Tax Assessment on Applicant for the period August 2017 to March 2019. This is attached to its affidavit as **EXHIBIT GRA B**.

The Respondent says that, in line with the provisions of **Section 25 of Act 915**, a copy of the said Assessment was sent to the Applicant by ordinary mail on the 16th day of May, 2019. Thereafter a Debt Management and Compliance Officer of the Respondent, in a bid to discuss the Applicant's tax affairs and to inform them of their tax assessment called the Applicant on a telephone number said to be associated with it but the Applicant on realizing that it was Respondent ended the call abruptly. Subsequent calls made by the Respondent to the said number were ignored. This notwithstanding, the Respondent in a further attempt to afford the Applicant the opportunity to be heard in the matter says it sent text messages to certain telephone numbers which it obtained from the Applicant's bankers.

According to Respondent, these were telephone numbers the Applicant itself had supplied to the said bank at the time of opening its accounts. **EXHIBIT GRA D** is attached to the Respondent's affidavit as evidence that all these messages were

duly delivered to the Applicant. Respondent says that it was after the Applicant had persistently refused to acknowledge receipt of **EXHIBIT GRA B** and **D**, that it proceeded to serve its bankers with **EXHIBIT GRA E**, and then served Applicant itself with same, first, by ordinary mail on the 29th day of May, 2019 and again, out of abundance of caution, served both **EXHIBITS GRA B** and **GRA E** being the Tax Assessment and the Garnishment Notice, on the Applicant the same day by registered post. **EXHIBIT GRA F**, a Ghana Post slip has been attached as proof of dispatch of the said documents by registered mail.

Respondent says that it has been reliably informed that the Applicant has till date failed or refused to accept **EXHIBIT GRA F**, which is needed to collect the said documents. Respondent is adamant that it is not in breach of the principles of natural justice and insists that it is rather the Applicant, which by its conduct, has clearly demonstrated an intention to avoid interfacing with the Respondent so as to avoid its tax responsibilities.

Now, it is clear that the main ground upon which the present application is founded is the alleged failure of the Respondent to serve the Applicant with a Notice of assessment as required by **Section 40** of **Act 915** which states;

“(1) Where the Commissioner General makes an assessment under a tax law, the Commissioner- General shall serve the Notice of the Assessment on the tax payer”.

There is therefore the need for a critical understanding and appreciation of what constitutes service of a document under **Section 25** of **Act 915** in order to determine the issues germane to the instant application.

The relevant provisions for our purposes are **Sections 25(1) (b)** and **(c)** as well as **Subsections 3 (b)**. Which I will reproduce here for their full force and effect

“25. Service of paper documents

- (1) The Commissioner- General sufficiently serves a paper document on a person under tax law if the document is –**
 - b) left or sent by post to the usual or last known place of abode, business office, post office box or other address of the person; or**

c) sent by registered post addressed to the usual or last known place of abode, business, office, post office box or other address of that person;

(3) A document is considered served at the following time;

(b) in case of service by registered post, at the time the document is delivered or the person is informed that the document awaits collection by that person;

(c) in the case of other service by post to an address within the country, ten days after posting.”

Among the various modes of service listed under **Section 25**, the Commissioner General has the discretion to serve the tax payer with a Notice of assessment by post. The combined effect of **Sections 25** and **40** however, is that a tax payer will only be deemed duly served if the Commissioner General does so in the manner and within the timelines set by statute.

Thus in the case of service by registered post, the clock only starts ticking against the tax payer when the document is delivered to the tax payer or he is informed that the document awaits him for collection. In the case of service by ordinary post it is not until the expiry of ten (10) days after the said document is posted.

It is quite obvious from the papers filed by the Respondent that it is very familiar with this legal requirement. No discretion is permitted the Commissioner General to waive these set time lines.

From a reading of **Section 40** of **Act 915**, the purpose of service of the Notice of assessment is self-evident. In sum, it is not only to inform the tax payer of the amount assessed by the Commissioner General and the basis for the assessment but to alert him of the date by which the amount assessed is to be paid. This affords the tax payer the opportunity to accept and to take steps to effect payment or to object to the tax decision.

Bearing in mind the basic rule of statutory interpretation which requires that an Act be read as a whole in order to ascertain the meaning of a particular section in the statute, I think it becomes clear from a reading of **Section 60** that a Garnishment Notice may be only served on a third party debtor upon the failure of the tax payer to pay the amount assessed on the due date. Of course, a tax payer cannot be deemed to have failed to effect payment within the meaning of **Section**

60 unless and until he has been served with the tax assessment in accordance with law and afforded a fair opportunity to respond to same.

Turning to the instant application, I find that the Respondent has failed to provide any evidence to substantiate its claim that *EXHIBIT GRA B* was served on Applicant by ordinary post on the 16th day of May, 2019 for which reason it had met the (ten) 10-day requirement stipulated under *Subsection (3) (b) of Section 25* and for which reason it was at liberty to proceed with service of the Garnishment Notice on Applicant's bankers.

The Supreme Court's case of *IN RE YENDI SKIN AFFAIRS; ANDANI v ABDULAI [1982-83] GLR 1080* is authority for the proposition that where the issue of service became crucial in the determination of a matter, the party alleging service, or relying on service for success assumed the burden to prove it strictly.

It is a well-settled principle of our jurisprudence that a statutory requirement must be complied with and cannot be waived unless there is provision for such waiver. See the cases of *TEMA DISTRICT ASSEMBLY v DJABATEY [1992] 1 GLR 228* and *GHANA COMMERCIAL BANK v TABURY [1977] 1 GLR 329*. I find no such power of waiver vested in the Commissioner General under *Act 915*

It follows therefore that the claims that the Applicant was notified by text messages are of no avail to the Respondent. It cannot and should not be assumed that the Applicant was duly notified of the tax assessment merely because phone calls and text messages (even if true) were delivered to Applicant as these are not the prescribed modes of service under the Act.

The evidence before me raises a basic question as to whether or not the Respondent complied with the requirements of the law and I am compelled to the conclusion that it did not.

The Applicant was not duly served with the Notice of assessment as required by *Section 25*. Not having done so, the service of the Garnishment Notice on Applicant's bankers and the attempt to serve that Applicant with both the Notice of assessment and the Garnishment Notice at the same time constitutes a denial of justice and a violation of the audi alterem partem rule for which reason the Respondent should not be permitted to enforce its decision to collect the amount assessed against the Applicant.

I also agree with Counsel for Applicant's contention that, the alleged violations of tax laws (even if true) are immaterial or inconsequential to determining the issue presented by this application, which is whether or not the Plaintiff had been duly notified of the Commissioner's assessment as required by law. See the Case of *ABOAGYE v GHANA COMMERCIAL Bank [2001-2002] SCGLR*.

Article 23 of the *1992 Constitution* provides that

"Administrative bodies and administrative officials shall act fairly and reasonably and comply with requirements imposed by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."

Also instructive are the observations of *WOODE JSC* (as she then was) in the Supreme Court case of *TEMA DEVELOPMENT CORPORATION v MUSAH & ATTAH BAFFUOR [2005-2006] SCGLR 121*, at *page 130* where she quoted with approval the dictum of Lord Diplock in the case of *COUNCIL OF CIVIL SERVICE UNIONS v MINISTER FOR CIVIL SERVICE [1984] 3 AER 935*.

With regards to what he termed "*illegality*" and "*procedural impropriety*", this is what the eminent jurist had to say;

"...The first ground I would call 'illegality'....By illegality as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision -making power and must give effect to it I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve a denial of natural justice."

It is in light of the above that I consider this a case in which this Court ought to exercise its review jurisdiction under *Order 55* of *CI 47* to restrain the Respondent from enforcing the Garnishment Notice issued in violation of the laid down provisions of *Act 915*.

I will however dismiss relief (iii) as the Applicant has failed to provide any evidence to support that claim. In any event the said relief appears to have been directed at the Applicant's bankers, who, though initially made Parties to the instant application were subsequently struck out by this Court (differently constituted).

In the premises the Application is granted as follows;

I DECLARE THAT THE GARNISHMENT NOTICE SERVED BY THE RESPONDENT ON THE APPLICANT'S BANKERS, THE AGRICULTURAL DEVELOPMENT BANK PURSUANT TO SECTION 60 OF THE REVENUE ADMINISTRATION ACT, ACT 915 FOR THE PAYMENT TO RESPONDENT OF THE SUM OF FIVE HUNDRED AND FIFTEEN THOUSAND, FOUR HUNDRED AND NINETY-THREE GHANA CEDIS AND EIGHTY-FOUR PESEWAS, (GH¢515,493.84) STANDING IN THE ACCOUNT OF THE APPLICANT, IS A NULLITY FOR THE FAILURE OF RESPONDENT TO COMPLY WITH THE PROCEDURE OUTLINED UNDER SECTIONS 25 AND 40 OF ACT 915 AND THE RULES OF NATURAL JUSTICE.

THE RESPONDENT IS HEREBY RESTRAINED FROM PROCEEDING TO ENFORCE THE COLLECTION OF THE SAID SUM OF FIVE HUNDRED AND FIFTEEN THOUSAND, FOUR HUNDRED AND NINETY-THREE GHANA CEDIS, EIGHTY-FOUR PESEWAS (GH¢515,493.84) BEING TAX ASSESSED BY THE RESPONDENT, FROM THE APPLICANT'S BANKERS, THE AGRICULTURAL DEVELOPMENT BANK UNLESS AND UNTIL IT COMPLIES WITH THE REQUIREMENTS IMPOSED BY LAW.

RELIEF (III) IS DISMISSED

I make no order as to costs.

(SGD)

**MRS. AKUA SARPOMAA AMOAH
JUSTICE OF THE HIGH COURT**

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 REGISTRAR
 HIGH COURT
 COMMERCIAL DIVISION, LLC-ACCRA