

**IN THE HIGH COURT OF JUSTICE HELD AT KUMASI IN THE
ASHANTI REGION THIS MONDAY THE 6TH DAY OF JULY, 2020. BY HIS
LORDSHIP JUSTICE FREDERICK TETTEH**

SUIT NO: C12/149/19

**IN THE MATTER OF ARTICLES 23 AND 33 OF THE 1992
CONSTITUTION OF THE REPUBLIC OF GHANA**

AND

**IN THE MATTER OF AN APPLICATION BY KWASI AFRIFA ESQ.,
FOR THE ENFORCEMENT OF HIS FUNDAMENTAL HUMAN RIGHTS**

BETWEEN

**KWASI AFRIFA,
HOUSE NO.7
ESSEX DRIVE,
ESSIENIMPONG, ASHANTI,**

AND

**GHANA REVENUE AUTHORITY,
ODUM DISTRICT,
KUMASI**

RULING:

In reliance of Article 33(1) of the 1992 Constitution and Order 19 rule 1(1) and (2) of the High Court Civil Procedure) Rules, 2004, C.I 47, the Applicant filed a notice of motion for the enforcement of fundamental human Rights on the 8th August, 2019. Counsel filed the instant application for and on behalf of the Applicant herein praying this Honourable Court for the reliefs deposed to in the affidavit in support thus;

- i. A declaration that the Authority's refusal to issue to me the Tax Clearance Certificate as stated in the Authority's letter of 26/07/19 (exhibit T) is unreasonable and irrational.

- ii. A declaration that upon a true and proper interpretation of article 23 of the 1992 Constitution of the Republic of Ghana, section 42(5) of the Revenue Administration Act, 2016 (Act 915) is inconsistent with and violative of my constitutional right to administration justice guaranteed under the provisions of article 23 of the 1992 Constitution and is accordingly unconstitutional.
- iii. A declaration that the Authority's letter of 26/07/19 (exhibit T) is null, void and of no effect to the extent that it is inconsistent with my right to administrative justice as provided for in Article 23 of the 1992 Constitution of the Republic of Ghana.
- iv. An order of mandamus compelling the Authority to issue to me, the Tax Clearance Certificate in terms of my letter dated 3rd June, 2019 (exhibit K).
- v. General damages for violation of Applicant fundamental human rights.

Further, the grounds upon which the Applicant made this instant application for the enforcement of his fundamental human rights are as follows;

- i. The Authority's refusal to issue to me the Tax Clearance Certificate is, having regard to all the factual circumstances of this case, unreasonable and irrational.
- ii. Section 42(5) of the Act which forbids the Authority from entertaining an objection against a tax decision unless the person objecting has paid Thirty percent (30%) of the tax in dispute is inconsistent with the right to administrative justice guaranteed under Article 23 of the 1992 Constitution of the Republic of Ghana and is accordingly unconstitutional.

In his affidavit in support to the instant application, the Applicant deposed among others that, as a taxpayer, he pays his tax at the Respondent's Small Tax Office at Adum in Kumasi in the Ashanti Region, and that his tax details are as follows: FILE NO. **KS 1207749**, TIN: **P0008672822**.

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The Applicant deposed that, on the 12th of June 2017, he was handed a letter dated 6th June 2017, with reference No. GAR/SRMTF/247/2017, which same, was annexed and marked as exhibit 'A'. The letter was addressed thus; MR. KWASI AFRIFA (ESQ.), AFRIFA CONSULT, KUMASI". According to the Applicant, in the said letter, (exhibit 'A'), the Respondent communicated to him, that it has assessed his tax obligations for the period January 2010 to April 2017 and that by virtue of the said assessment, the Respondent took the view that his tax obligations to the State summed up to Sixty-Six Thousand, Nine Hundred and Thirty Two Ghana Cedis, Fifty-Eight Pesewas (**GH¢66,932.58**). The Applicant deposed that, by a letter dated the 20th day of June, 2017 also exhibited and marked as 'B', he wrote to the Respondent, objecting to the tax assessment made on him on the grounds that the assessment made on him was arbitrary, since the assessment was made oblivious of, and did not take into account his true income level. Applicant added that, the assessment was definitely conjectural, because the supposed assessment was reached without his input or any information from him whatsoever.

The Applicant further deposed that, per a letter dated the 31st day of July 2017, a copy of which was exhibited and marked 'C', the Respondent in response to Applicant's objection evidenced by exhibit B, demanded that, as a pre-condition for the determination of the objection, the Applicant makes a deposit payment of the sum of Twenty-Thousand, Seventy-Nine Ghana Cedis, Seventy - Seven Pesewas (GH¢20,079.77) being 30% of the purportedly assessed tax (**GH¢66,932.58**) within seven (7) days, failing which the Respondent will proceed to enforce collection of the **GH¢66,932.58** as assessed by the it. The Applicant added that, subsequent to his letter of 20/06/17 (exhibit B), he wrote another letter dated the 1st of August, 2017 exhibited and marked as 'D', which notified the Respondent, that he had been suspended from legal practice by the General Legal Council (GLC). Applicant then made available to the Respondent, proof of his suspension by way of attaching to exhibit D, the letter from the GLC suspending him from legal practice which is also exhibited and marked as 'D1'. Further, the Applicant stated that, he resumed practice in May, 2019 whereupon Respondent immediately served him with a letter dated the 27th day of May 2019, which has as well been exhibited and marked as 'E'.

According to the Applicant, in the Respondent's letter, (exhibit E), the Respondent demanded that he paid his personal income tax assessed by the it, from

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the examination of his financial statements for the period 2012 to 2016 in the sum of Three Hundred and Forty-Two Thousand, Four Hundred and Thirty-Two Ghana Cedis, Forty-Nine Pesewas (**GH¢342,432.49**) and penalties for late filing also assessed in the sum of Eight Thousand and Thirty-Four Ghana Cedis (**GH¢8,034.00**), within 30 days from the date of the notice or face the necessary sanctions under the Act.

Pursuant to exhibit E, the Applicant by letter dated the 28th day of May 2019 exhibited and marked as 'F', wrote to the Respondent and explained that the assessment was excessive and totally unjustifiable having regard to his true income level and the information examined by the Respondent, which in any case, as stated in the Respondent's exhibit E, was subject to finalization by a field audit.

The Applicant deposed that, he has made full payment of his outstanding personal income tax for the period 2012-2016 in the sum **GH¢17,665.07** as evidenced by the receipts issued by the Respondent, exhibited and marked as 'J', 'J2', 'J3', 'J4' and 'J5' which the Respondent accepted. He further deposed that, exhibit 'H' apart, by another letter also dated the 3rd day of June 2019 exhibited and marked 'K', he applied to the Respondent for a Tax Clearance Certificate which he required for purposes of applying for a visa to enable him travel for medical attention and also to satisfy requirements specified in a directive from the General Legal Council.

According to the Applicant, in response to his request (exhibit K), the Respondent wrote to him by letter dated the 7th of June 2019, exhibited and marked 'L', and demanded payment of the sum of Eight-Five Thousand, Two Hundred and Sixty-Four Ghana Cedis, Sixty-Eight Pesewas (**GH¢85,264.68**) being his outstanding taxes including 30% of the tax in dispute for the period 2012 to 2016 within seven (7) days. The Applicant deposed that, he subsequently fully discharged his tax obligations in the assessed sum of **GH¢85,264.68** including the penalty of **GH¢8,054.00** within the seven (7) days period as demanded by the Authority as a condition sine qua non for addressing his objection, and for the issue of the Tax Clearance Certificate to him.

The Applicant further deposed that, for emphasis, after fully paying the outstanding taxes of Eighty-Five Thousand, Two Hundred and Sixty-Four Ghana

Cedis, Sixty-Eight Pesewas (GH¢85,264.68), within the one week as evidenced by exhibits 'M1,01,02,03,04,P1 and P2', he had satisfied the requirements specified by law for the issuance of the Tax Clearance Certificate, having earlier fully paid his taxes-not-in-dispute. The above notwithstanding, the Applicant deposed that, to his surprise and utter shock, the Respondent made a fresh assessment and served him with notice of the assessment bearing the date 14th day of June, 2019 exhibited and marked 'Q' for the year ending 2019. According to the Applicant, in this latter assessment, the Respondent demanded payment of another sum of Forty-Four Thousand, Three Hundred and Forty-Five Ghana Cedis, Sixty-Five Pesewas (GH¢44,345.65) for the year ending 2019 to which assessment the Applicant objected per letter dated 15th July, 2019 exhibited and marked 'R'.

The Applicant added that, per a letter dated 5th day of July 2019, exhibited and marked 'S', the Respondent informed him that his request for the Tax Clearance Certificate made a month earlier (03/06/19, (exhibit K) was "being processed" but also requested that he made available to it (the Respondent) information regarding his clients' accounts, medical and electricity expenses to enable the Respondent properly assess his tax liability for the years 2012-2016. Applicant at this stage contended that, the Respondent's new request clearly confirmed a witch-hunt especially, when he had fully paid the assessed tax for the said period as confirmed by his depositions in paragraphs 24 to 30.

Again, the Applicant deposed that to his utter shock and dismay, the Respondent informed him per letter dated the 26th day of July, 2019, exhibited and marked 'T' that, the Applicant does not qualify for the Tax Clearance Certificate, the reason among others being that, he had not complied with the provisions of Section 42(5) of Act 915.

The Applicant finally deposed that, as confirmed by his depositions in his present affidavit, at all times material to his demand for the Tax Clearance Certificate, he had fully complied with all his tax obligations which is the only statutorily prescribed precondition for the issuance of same by the Respondent to him. Applicant added that, reasons stated in exhibit 'T' by Respondent, in refusing to issue to him the Tax Clearance Certificate are completely unjustifiable having regard to all the circumstances of the matter.

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In its affidavit opposing the instant application, deposed to by one, Isaac Kofi Minneaux Quaye, an officer of Ghana Revenue Authority (Respondent herein), Domestic Tax Division, the Respondent deposed among others that, Tax Compliance Checks were undertaken on the Applicant's firm by the Respondent, on 6th June, 2017, as its usual practice, to ensure tax compliance, by Special Revenue Mobilization Task Force of the Respondent from its Head Office, Accra, from the 2010 to 2017 years of assessment. The Respondent further deposed that, on the 12th day of June 2017, an assessment letter dated 6th June, 2017, was given to the Applicant, informing him of his tax obligations which amounted to Sixty Six Thousand, Nine Hundred and Thirty Two Ghana Cedis, Fifty-Eight Pesewas (GH¢66,932.58) from the tax assessment undertaken by the Special Revenue Mobilization Task Force Officers.

According to the Respondent, the assessment raised by the officers of the Authority was done based on the Applicant's own records from 2012 to 2017, hence the assessment raised was not conjectural, but the true income level of the applicant. The Respondent added that, the Applicant objected to the assessment, and as a result, the Respondent asked him to pay thirty percent of the tax in dispute in accordance with Section 42 (5b) of the Revenue Administration Act 2016, Act 915, which stipulates that; **"An objection against a tax decision shall not be entertained unless the person has in the case of other taxes, paid all outstanding taxes including thirty percent 30% of the tax in dispute"**. The Respondent further deposed that, the Applicant at this point has not paid the tax assessed by the Special Mobilization Task Force.

The Respondent admitted to the fact that, the Applicant provided his Financial Statements for the years ended 31 December, 2012, 2013, 2014, 2015 and 2016 to it, from which they were examined and as a result an assessment of Three Hundred and Fifty Thousand , Four Hundred and Sixty Sixty-Six Cedis, Forty Nine Pesewas (GH¢350,466.49) including a penalty of Eight Thousand, and Thirty Four Cedis (GH¢8,034.00) was raised as the liability for the Applicant within these years of assessment. The Respondent in a letter dated 27th day of May 2019, which informed the Applicant of his assessment, also informed him that if he had any concerns and issues, he had the right to direct them to the office in writing within thirty (30) days

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of the receipt of the letter for those issues to be addressed in accordance with Section 42 of Revenue Administration Act, Act 915.

Accordingly, the Applicant in a letter dated 28th day of May 2019, objected to the assessment, explaining that the assessment in dispute was excessive and unjustifiable, to which a reply from the Respondent to the said objection dated 30th May, 2019, was also sent to the Applicant, the Respondent added. The Respondent further informed the Applicant to pay all his outstanding taxes as well as thirty percent (30%) of the tax in dispute in accordance with section 42(5) of the Revenue Administration Act for his objection to be considered.

According to the Respondent, the Applicant on the 3rd day of June 2019 made payment of Seventeen Thousand Six Hundred and Sixty-Six Cedis, Sixty-Five Pesewas (GH¢17,666.65) which happens to be part payment of the tax assessed. The Respondent further added that, after series of payments, the Applicant made a total payment of Eighty-Five Thousand, Two Hundred and Sixty-Four Cedis, Sixty-eight Pesewas (GH¢85,264.68) as well as a penalty of Eight Thousand and Fifty-Four Cedis (GH¢8,054) by 13th day of June 2019.

After the above stated payment, the Respondent deposed that, the Applicant by a letter, indicated to the Authority that he needed Tax Clearance Certificate to enable him process his visa to travel outside the country but was refused by the Respondent, relying on Section 14(3) of Act 915, since Applicant does not qualify to be issued a Tax Clearance Certificate.

The Respondent deposed that, the above decision was communicated to the Applicant, by a letter dated 26th July, 2019. According to the Respondent, the letter sent to the Applicant explained to him the following; that he has not paid all his outstanding taxes, all his returns due have not been filed, (i.e. 2017 and 2018 years of assessment including Pay As You Earn (PAYE)) as well as the fact that, information requested regarding the clients' account and other expenses for assessment from the Applicant, by the Respondent has not been responded to. The Respondent added that the applicant's failure to respond to the above request amount to infractions which contravene section 14(3) (b) and (c) of the Revenue Administrative Act, 2016, Act 915.

The Respondent contended that, the Applicant is not co-operating with it, to enable it execute its mandated duty and that the Respondent's refusal to give the Applicant the Tax Clearance Certificate is never actuated by malice. The Respondent finally deposed that, this is not the right forum for the Applicant if he truly believes that the requirements of Section 42(5) of the Revenue Administration Act, 2016, Act 915 are unconstitutional and a gross violation of his fundamental human right. The Respondent added that, the Applicant can proceed to the Supreme Court for a declaration to be made to that effect, in accordance with Article 2(1) of the 1992 Constitution of the Republic of Ghana.

The Respondent added further that, the rights of the Respondent are not being infringed upon by the Respondent and that, the Respondent is performing its mandated duty by ensuring that, correct taxes are paid at all times. In view of the above, Respondent deposed that the Applicant is not entitled to his claims and same must be dismissed. Interestingly, after the initial exchange of correspondence between the parties, nothing transpired between them, from 1st August, 2017 till 27th May, 2019, when the correspondence regarding the subject between the parties herein resumed. Indeed, both parties went to sleep and both parties did not indicate any reasons why the parties failed to address their disagreements for almost two years.

Having perused the affidavit evidence in its entirety, the following are to be determined by this court, with the sole aim of determining the instant application to a finality.

- a. Whether the Applicant ought to seek leave of the court prior to filing his further affidavit in support.
- b. Whether there is the need to refer the alleged issue of unconstitutionality of Section 42 (5b) of the Revenue Administration Act 2016, Act 915, having regard to Article 31(1) of the 1992 Constitution to the Supreme Court.
- c. Whether the instant procedure adopted by Counsel for Applicant is appropriate.

- d. Whether the Applicant is entitled to an order of mandamus for the issuance of a Tax Clearance Certificate after the payment of a total sum of GH c 85, 264.68

Order 67 Rule 4(3) of the High Court (Civil Procedure) Rules, 2004, C.I 47 provides as follows;

- (3) The Court may upon application permit a party to the action to amend the grounds relied upon or to file a further affidavit not later than seven days from the date of grant of the leave.

From the above stated provision, this court may, upon an application, permit a party to amend the grounds relied upon or to file a further affidavit in support, within seven days of the grant of leave to do so. In other words, a party who is minded to file a further affidavit, ought to have applied to the court for leave to be granted. The rules also provide that, when leave is granted, the Applicant must file the further affidavit within 7 days. The above stated rule in my considered view has been couched in mandatory terms, regarding a party's intention to file a further affidavit. It is the law that, if under the rules, a party has to seek the leave of the court before taking a step in a matter and no leave is sought, that party's failure to comply with the rules cannot be saved under Order 81 because by not obtaining the leave as required by the rules, the court's jurisdiction in the matter will not have been properly invoked and as such will lack the jurisdiction to proceed. In sum, where the non-compliance is against statute, and where the non-compliance goes to jurisdiction, Order 81 becomes inapplicable. See the cases of Republic vrs. High Court, Koforidua, Ex Parte Ansa Otu [2009] SCGLR page 141, Republic vrs. High Court, Accra, Ex Parte Allgate Co. Ltd. (Amalgamated Bank Ltd – Interested Parties) [2007-2008] SCGLR page 104.

In the instant application, the Applicant filed a 23 paragraph further affidavit on the 12th November, 2019 relying on Order 67 Rule 4(3) of C.I 47 as well as a supplementary statement of case filed 15 days later, specifically 27th November, 2019. This step by the Applicant is in flagrant disregard to the rules of court and thus not curable under Order 81 of C.I 47. In spite of the fact that, Counsel for Respondent failed to raise issues regarding the filing of the further affidavit in support, I am of the considered view that, the further affidavit in support and supplementary statement of case are incompetent, notwithstanding paragraphs 5, 6, 7, and 8 of the further affidavit in support filed by the Applicant herein. As a result,

this court will not have regard to the said further affidavit and supplementary statement of case in the determination of the instant application.

It is provided in Article 1(2), 2(1) & (2) of the 1992 Fourth Republican Constitution thus: -

Article 1(2);

“This Constitution shall be the Supreme Law of Ghana and any other law found to be inconsistent with any provision of this constitution shall, to the extent of the inconsistency, be void.”

Article 2(1) (a) and (b) provides:

“A person who alleges that

- a. an enactment or anything contained in or done under the authority of that or any other enactment, or**
- b. any act or omission of any person**

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect”.

There is no doubt in my mind that articles 1(2), 2 (1) (a) and (b) of the 1992 Constitution, stipulates the Supreme Court as the defender of the Constitution 1992. To that extent, the Applicant’s contention that, Section 42(5) of the Revenue Administration Act which forbids the Authority from entertaining an objection against a tax decision, unless the person objecting has paid thirty percent (30%) of the tax in dispute, is inconsistent with the right to administrative justice guaranteed under Article 23 of the 1992 Constitution of the Republic of Ghana and is accordingly unconstitutional, should be considered as an exercise of his right in the Constitutional provisions in the articles of the Constitution 1992 referred to above.

In response to Applicant’s contention that, Section 42(5) of Act 915 is inconsistent with the provisions of Article 23 of the 1992 Constitution and for that matter should be declared unconstitutional, the Respondent submitted that, the Applicant is in the wrong forum and for that matter, he can proceed to the Supreme Court for a declaration to be made to that effect.

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Article 130(1) and (2) of the 1992 Constitution provides thus;

- (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in -
 - a. all matters relating to the enforcement or interpretation of this Constitution; and
 - b. all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.
- (2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

I have perused exhibit 'G', dated 30th May, 2019, which states among others that, **"...we wish to state that the Commissioner General shall not entertain any objection against a tax decision unless the person has paid all outstanding taxes including thirty percent (30%) of the tax in dispute in accordance with Section 42, sub-section (5) b of the Revenue Administration Act, 2016, Act 915"**, and formed the view that, the Respondent failed to also draw the Applicant's attention to Section 42(6) of Act 915, which the Applicant may well have been a beneficiary.

In Exhibit L, dated 7th June, 2019, while acknowledging receipt of an amount of GH c 17, 665.07 from the Applicant, the Respondent indicated that, the Respondent has to pay an amount of GH c 85, 264.68 before the determination of the objection raised by the Applicant. In exhibit 'O' dated 13th June, 2019 prepared by the Applicant but without a signature, there was an indication that, the said amount GH c 85, 264.68 has been paid. However, Exhibit 'O' can't be relied upon by this court for want of a signature. The figure stated in exhibit 'O' was admitted by the Respondent in paragraph 16 of its affidavit in opposition. Again, in exhibits 'M', and 'P', the Applicant in both letters indicated that, he made two payments without prejudice (i.e. without loss of any rights; or curtail the legal rights or privileges of a

party). In other words, since the two payments were made without prejudice, the Applicant has not lost any right in pursuing a declaration by the Supreme Court as to whether or not Section 42 (5) (b) of Act 915 is unconstitutional. However, some payments were also made by the Applicant without the indication of without prejudice. It is worth adding that, inspite of the numerous correspondence between the parties coupled with the work done by the Respondent so far regarding the depositions by the Applicant, the Respondent failed to exhibit any document in support of their affidavit in opposition, neither did they exhibit any document in answer. This failure by the Respondent has denied the Court the opportunity to verify whether or not the entire GH c 85, 364.68 paid by the Applicant, was without prejudice. The Respondent must not lose sight of the fact that, one of its key objectives is to administer tax legislation fairly, uniformly and impartially as well as with diligence, courtesy and efficiency. I do not think they have done so in the present circumstances.

Section 42(5), (6) and (7) of the Revenue Administration Act, 2016, Act 915 provides thus;

- (5). An objection against a tax decision shall not be entertained unless the person has;
 - (a). in the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and
 - (b). in the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute
- (6). Despite subsection (5) the Commissioner General may waive, vary or suspend the requirements of subsection (5) pending the determination of the objection or take any other action that the Commissioner General considers appropriate including the deposit of security
- (7). The Commissioner – General shall consider the need to maintain the integrity of the dispute resolution procedure and the need to protect Government revenue and the integrity of the tax system as a whole in exercising a discretion under subsection (6)

From the above stated statutory provisions, coupled with affidavit evidence and the respective statement of case, I am of the considered view that, the required 30%

of the tax in dispute has been paid by the Applicant thereby making his contestation of Section 42(5) of Act 915, as being unconstitutional moot. In coming to this conclusion, I took into consideration the monies paid without prejudice and those paid without an indication of without prejudice.

The doctrine of mootness comes into play when in the course of hearing a suit or claim, an event or changed circumstances occur which render the continued hearing or determination of the claim pointless or unnecessary. See the cases of **CHRAJ vrs. Attorney General & Baba Camara** [2011] 35 GMJ page 1 at page 15 per Sophia Akuffo, JSC (as she then was). In the case of **Amidu vrs. President Kuffour** [2001-2002] 2 SCGLR page 86 at page 106, Acquah JSC (as he then was) delivered himself thus;

“An action is generally considered moot when it no longer presents a justiciable controversy because issues involved have become academic or dead. This may happen when the matter has either been resolved already and hence there is no need for judicial intervention, or events happening thereafter have rendered the issue no longer alive. In either situation, unless the issue is a recurring one and likely to be raised again between the parties, the courts would not entertain such dead issue”

It may well be a waste of time to refer a matter which is currently moot to the Supreme Court. The Applicant is a seasoned and a senior lawyer, who inspite of his rights, paid the 30% of the tax in dispute to the Respondent. Once that money has been paid, the Respondent is duty bound to determine the objection raised by the Applicant. This the Respondent also failed to do, alleging that, it had requested for some documentations from the Applicant, which the Applicant had failed to make available.

Further, Section 42(6) of Act 915 above, gives the Commissioner General the power to waive, vary or suspend the requirement of Sub-section (5) pending the determination of the objection, or take any other action that he/she considers appropriate including the deposit of security. In the instant application, whereas there is no indication that the Applicant had ever relied on Section 42(6) by way of application, the Respondent also failed to indicate to the Applicant the essence of Section 42(6) and the modalities regarding its application. There is also no indication

as to the reasons why the Applicant has been denied the benefit of Section 42(6) by the Respondent. In as much as the Respondent has a discretion in determining who to benefit from Section 42(6) of Act 915, it ought not lose sight of the provisions of Article 296 of the 1992 Constitution regarding its duty, in its application, of its discretionary powers.

It is worth stating at this stage that, the general principle in tax disputes is that, tax statutes are to be construed strictly. Viscount Simon LC in the Privy Council case of Canadian Eagle Oil Company Limited and The King [1946 AC 119 at 140] relied on Rowlatt J's formulation of the rule in Cape Brandy Syndicate v IRC [1921 1KB 64, 71]. He observed: "In the words of the late Rowlatt J whose outstanding knowledge of this subject was coupled with a happy conciseness of phrase, "in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Having read Section 42(5) and (6) of Act 915 together, I am of the considered view that, there is no ambiguity, conflict, doubt in the meaning of the provisions of the statute referred to above and above all, it is in tandem with the right to administrative justice guaranteed under Article 23 of the 1992 Constitution of the Republic of Ghana. As a result, no issue of interpretation arises thereby. I am of the further view that, the fact that a party says an issue is unconstitutional does not automatically bind the court to refer same to the Supreme Court for interpretation or declaration.

The law is well settled that, it is not every question of interpretation raised before a court or tribunal which must be referred to the Supreme Court for an opinion. Where no difficulty of interpretation exists, it would be unnecessary for the High Court to refer the matter to the Supreme Court. In other words, if the words of say a statute are simple and clear, unambiguous or precise, the issue of interpretation does not arise. See the Supreme Court cases of E Properties Ltd vrs. Awoonor-Williams, digested in (1970) CC page 12, Republic vrs. Maikankan [1971] 2 GLR page 473 at page 478, Republic vrs. Asiamah [1971] 2 GLR page 478 and Yiadam I vrs. Amaniampong [1981] GLR page 3.

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I wish to at this stage, refer to oft-quoted dictum of Edmund Bannerman CJ speaking for the Supreme Court in Republic vrs Maikankan supra, where he stated at page 478 thus;

“...a lower court is not bound to refer to the Supreme Court every submission alleging as an issue the determination of a question of interpretation of the constitution...If in the opinion of the lower court the answer to a submission is clear and unambiguous on the face of the provisions of the Constitution or laws of Ghana no reference need be made since no question of interpretation arises and a person who disagrees with... the ruling of the lower court has his remedy by the normal way of appeal, if he chooses. To interpret the provisions of Article 106(2) of the [1969] in any other way may entail and encourage references to the Supreme Court of frivolous submissions, some of which may be intended to stultify proceedings or the due process of law and may lead delays such as may in fact amount to denial of justice”.

Commenting on the above dictum of Edmund Bannerman CJ, Taylor J (as he then was) in Republic vrs. Special Tribunal: Ex parte Forson (1980) GLR page 529 at page 542, delivered himself thus;

“In my view, it is plausible in every court to raise a constitutional issue of a sort and if the utilitarian principle so ably enunciated by Bannerman CJ is not constantly kept in mind, the Supreme Court will be inundated with problems which it can never conveniently handle”.

The issue sought to be referred is in my view clear and does not require interpretation/declaration. A reference to the Supreme Court of the question regarding the constitutionality of Section 42(5)(b) or otherwise, will in no way resolve any issue before this court. In otherwise, the determination by the Supreme Court will not be necessary to a decision in the instant application. It would be a sheer waste of mental effort and a thoroughly pointless exercise to refer the issue of Section 42(5)(b) of Act 915 to the Supreme Court for a declaration or interpretation. In sum I am not inclined to refer the issue to the Supreme Court for its interpretation and declaration. See the cases of Nana Yiadom I v Nana Amaniampong [1981] GLR 3 at 8, and Ghana Bar Association v Attorney-General [1995-96] 1 GLR 598, SC.

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Georgina Wood C.J. (as she then was) in the case of **Republic vs. High Court, Koforidua, Ex Parte Nana Otutu Kono III** in Civil Motion No. J5/9/2008 dated 22ND October, 2008 and reported in [2009] SCGLR admonished courts thus;

“It is important to bear in mind that it is possible to couch a purely commercial or labour dispute as a human rights matter. So, can we couch a cause or matter affecting chieftaincy as not falling into that category. A Court’s duty at all times is to be on the alert and unmask such clever undertakings or camouflages so that cases may be assigned to their proper forum”.

Regarding the instant application, under Article 12(1) of the 1992 Constitution, the fundamental human rights and freedoms as enshrined in Chapter 5 of the 1992 Constitution, **“shall be respected and upheld by the Executive, Legislature and the Judiciary and all other organs of government and its agencies”**. Under Articles 33(1), 130(1) and 140(2) of the 1992 Constitution, a person who alleges a breach of the fundamental human rights and freedoms as enshrined in chapter 5 of the Constitution, may apply to the High Court for redress. Article 23 deals with the right to administrative justice.

Under Article 33(1) which deals with the protection of human rights and freedoms and other rights by the courts, the personal interest requirement is a pre-requisite condition for standing which would enable a Plaintiff to enforce his human rights and freedoms.

The said Article 33(1) provides;

“Where a person alleges that a provision of this constitution on the fundamental human rights and freedoms has been, or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress”.

The words in **‘relation to him’** and **‘that person’** imply that a Plaintiff must have personal interest in the litigation. Therefore, it is only when a person seeks the enforcement of his fundamental human rights and freedom that he ought to have **‘personal interest’** in the case. This would invariably mean that, there must have arisen a controversy or dispute concerning an infringement or intended infringement of the person’s said rights which he seeks to enforce through the High Court. See the

Supreme Court cases of Sam (No. 2) vrs. Attorney General [2000] SCGLR page 305 at page 314 per Bamford Addo JSC; Adjei-Ampofo vrs. Attorney-General (No. 1) [2007-2008] SCGLR page 611. In the instant application, there is no doubt that the Applicant has a personal interest

I have carefully examined the affidavit evidence and the exhibits annexed coupled with the reliefs being sought for in this court, and formed the view that, although the Applicant couched his reliefs in the nature of an infringement of his fundamental human rights, it was clear from the affidavit evidence and the respective statements of case that, the Applicant was in substance and effect seeking for a determination of the assessment of tax liability served on him by the Respondent herein, which tax liability he had served at least three notices of objection. It is evident that he is in effect seeking this court's intervention to resolve the tax dispute he has with the Respondent. That, indeed is the reality. To obtain this relief, I do not think, the Applicant should have applied to the High Court for an enforcement of his fundamental human rights.

The High Court (Civil Procedure) Rules, 2004, C.I. 47 provided for a Commercial Court Division of the High Court in which tax matters are considered part of its jurisdiction. Per the rules, provision has also been made for tax appeals and review of administrative actions, which includes acts of revenue agencies. The learned authors Benjamin Kunbour,(PHD), Abdallah Ali – Nakyea and William Kofi Owusu Demitia in their book, Law of Taxation in Ghana, 4th edition, 2017 published by Type Publishing, did summarise the procedure for the determination of a tax dispute at pages 239 – 240 as follows; by virtue of Act 915, when the Commissioner General issues and serves a notice of assessment on a tax payer, the Commissioner-General is deemed to have made a tax decision when a written notice of the decision is served on the tax payer. Generally, 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. The objection must be in writing and state precisely the grounds upon which the objection is made.

It is worth mentioning that, beyond tax appeals from objection decisions, an aggrieved taxpayer can institute legal action on any tax matter in the High Court. Order 58 provides the rules of procedure to be followed in commercial claims and tax matters. Actions on tax claims can be instituted in the High Court under the same rules of procedure as any other action except that the High Court rules provides to the contrary. Therefore, the normal rules for filing a writ, entry of appearance, statement of claim, defence and reply applies to such claims.



various correspondence with the Applicant. There are also at least two assessments made by the Respondent.

Section 14(3) of the Revenue Administrative Act, (Act 915) 2016, stipulates that;

“The Commissioner General shall issue a Tax Clearance Certificate where the Commissioner-General is satisfied that the applicant;

- a. Has been issued with a Taxpayer Identification Number and the number is specified in the Application.**
- b. Has no outstanding tax, returns or other obligations under the tax law, and**
- c. Has satisfied any other condition that the Commissioner-General may determine.**

In a nutshell, having regard to the nature and circumstances surrounding this instant application, it would require the adduction of evidence from all relevant parties and witnesses or some form of alternative dispute resolution. That is exactly what has been provided for under Order 58 of C.I 47. Indeed, in the present circumstances, the procedure under Order 58 of C.I. 47, is the procedure to adopt and not the instant application. Until a hearing is conducted and the contesting issues resolved to a finality, this court in line with Section 14(3) of Act 915 will not be in a position to determine whether or not the Applicant is entitled to his tax clearance certificate.

Finally, Order 67 Rule 8 of the High Court (Civil Procedure) Rules, 2004, C.I 47 provides thus;

8. The Court may issue such directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms of the Constitution to the protection of which the applicant is entitled.

Having regard to the discussion of the law above, affidavit evidence, statements of case, coupled with the conclusions of this court in the instant application, I am of the considered view that, the instant application lacks merits and it is accordingly dismissed. Further, the application for an order of mandamus is also refused.

SGD
H/L JUSTICE FREDERICK TETTEH
JUSTICE OF THE HIGH COURT

THADDEUS SORY ESQ. FOR APPLICANT
AKOSUA AGYEMANG DUAH ESQ FOR RESPONDENT.

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HIGH COURT-GENERAL JURISDICTION
KUMASI