

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, CRIMINAL COURT 4, HELD IN ACCRA ON TUESDAY, THE 11<sup>TH</sup> DAY OF OCTOBER, 2022, BEFORE HER LADYSHIP COMFORT KWASIWOR TASIAME, JUSTICE OF THE HIGH COURT.**

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**SUIT NO.: CR/0568/2021**

**THE REPUBLIC  
VRS.**

**THE COMMISSIONER GEN., G.R.A**

**CERTIFIED TRUE COPY**  
*[Signature]* 26/10/22  
**REGISTRAR**  
**HIGH COURT**  
**CRIMINAL COURT**  
**LAW COURT COMPLEX**  
**RESPONDENT**

**EX PARTE:**

**CEREAL INVESTMENT COMPANY GH LTD.**

**- APPLICANT**

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**RULING**

Applicant filed this application on the 24/6/2021 seeking the following reliefs:

- a. Declaration that on a true and proper interpretation of the provisions of Revenue Administration Act, 2016 (Act 915) in particular section 39, the respondent is bound to adjust an assessment in a manner that ensures that the taxpayer is liable for the correct amount of tax and use best judgement and information reasonably available in the making any tax audits/assessments or adjusted assessments or tax reports.
- b. A declaration that on true and proper interpretation of the provisions of the Revenue Administration Act 2016 (Act 215), in particular section 39 thereof, the respondent did not ensure that the applicant is liable for the correct amount of tax and did not use its best judgement and information reasonably available in the making, preparing and issuing the tax audits

- or assessments dated 30<sup>th</sup> November, 2020, 31<sup>st</sup> January 2021 and 16<sup>th</sup> March, 2021 and the said reports were therefore made in breach of its statutory obligations under section 39 of Act 915.
- c. A declaration that the respondent breached Articles 23 and 296 of the Constitution in that it acted unfairly and unreasonably in issuing a tax audit report dated 16<sup>th</sup> March, 2021 as a final report without having taken into account information reasonably available in making its report.
  - d. An order for an injunction to restrain the Respondent from acting on the tax audit report issued to the applicant on 18<sup>th</sup> March, 2021 but dated 16<sup>th</sup> March, 2021 and demanding for any payments under the said tax audit report.
  - e. A declaration that the respondent effectively waived the payment of 30% tax liability requirement under section 42(5) of the Revenue Administration Act 2016 (Act 215) when it issued a revised tax audit report following an application by then applicant for a waiver.
  - f. An order for an injunction to restrain the respondent from acting on the tax audit report issued to the applicant on the 18<sup>th</sup> March, 2021 but dated 16<sup>th</sup> March, 2021 and demanding for any payments under the said tax audit report until and unless the independent tax appeals board to be set up under the Revenue Administration Amendment Act 2020 (Act 1029) has been so set up and the applicant has not within 30 days of the date of its establishment filed an appeal with it.
  - g. An order of certiorari to quash the respondent's tax audit report dated 16<sup>th</sup> March, 2021.

Attached to the application is an affidavit in support and Exhibits.

The respondent filed for preliminary legal objection. The ground of objection is as follows:

The Applicant failed to comply with the requirement of Rule 6 sub-rule (2) of **Order 55 of C.I.47**. **Order 55 rule 6(2) of C.I. 47** states **ORDER 55 Rule 6(2)** states within fourteen days after filing the notice of application, the applicant shall file such number of copies of the applicant's statement of case as the Registrar shall determine setting out fully his arguments and relevant Statutes or decided cases the applicant wishes the court to consider.

The issue is: whether or not the Applicant complied with the procedure as enumerated in Order 55? The application was filed on the 24<sup>th</sup> June, 2021. Learned Counsel for the Applicant then filed his statement of case on 10<sup>th</sup> August, 2021. Looking at the time the application was filed and the time Applicant filed statement of case, surely he did not comply with the rules and procedure under Order 55 rule 6(2) of C.I. 47. The next question I ask is whether or not this non-compliance renders the application incompetent?

The law is that Non-compliance with the rules generally do not render an action incompetent. The Supreme Court has overruled the decision in **Heward Mills V. Heward Mills [1992-93] GBR 239** which held that non-compliance with rules of court renders an action incompetent. See **Boakye V. Tutuyehene [2007-2008] SCGLR 970**.

**GIHOC V. HANNA ASSI [2005-2006] SCGLR 458**

**GHANA MEDICAL ASSOCIATION (CHRIS ACKMANN-ACKUMMEY Interested party) [2012] 49 GMJ 26 SC.**

Order 81 (1) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) allows the courts to ignore the sort of non-compliances that are not fundamental or go to the root of the matter, or situations of want of jurisdiction or infringements of statutes. In that vein, I find that the failure to file statement of case on time is not fundamental and therefore do not render the action incompetent. In stating this, I am mindful of the fact that, I am not sure if the Registrar of this court determined the number or copies of the statements to be filed by the Applicant. And, in order to do justice to this case before the court, the preliminary objection by learned counsel for the Respondent is overruled. "But it is trite that the courts have a duty to ensure that justice is done in cases before them and should not let that duty be circumvented by mere technicalities. See the case of **Mozama Disco Christo Church v. Jehu Appiah [2010] 27 MLRG 56 at 77.**

Back to the issues before this court. SECTION 42 of the Revenue Administration Act 2016 [915] states:

1. Subject to a tax law to the contrary, a person who is dissatisfied with a tax decision that directly affect that person may lodge an objection to the decision with the Commissioner General within thirty days of being notified of the tax decision.
2. An objection to tax decision shall be in writing and state precisely the grounds upon which the object is made.
5. an objection against a tax decision shall not be entertain 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 sub section (5) the Commissioner General may waive, vary or suspend the requirement of sub section (5) pending the determination of the objection or take any other action that the Commissioner General considers appropriate including the deposit of security. 43(1) states after consideration of an objection the Commissioner General may vary the tax decision in whole or in part.

SECTION 39(1) of the Revenue Administration Act, 2016 states;

- (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 relate.
- (2) The Commissioner General shall use best judgment and information reasonable available in making an adjusted assessment.

Learned Counsel for the Respondent submitted that, Applicant did not follow the dispute resolution mechanisms set out in the Revenue Administration Act, 2016(Act 915).

He argued that, Section 44 of Act 915 states that;

Section 44 (1) states "A person who is dissatisfied with a decision of the Commissioner General may, within thirty days appeal against the decision to the Independent Tax Appeals Boards referred to in this Act as "The Appeals Board" as set out in the Fourth Schedule. (2) A person who is dissatisfied with

the decision of the Appeals Board may appeal against the decision to the Court within thirty days from the date the decision was served on the person."

Also, that rule 1 of Order 54 of the CI 47 states: 'Where in any enactment provision is made for an appeal to be made to the High Court against a decision or order of the Commissioner, the provisions of this Order shall apply to the appeal'.

Section 41 of the Revenue Administration Act, 2016 defines a tax decision to mean "tax decisions

- (1) A "tax decision is a decision made by the Commissioner General under a tax law including an assessment or omission but does not include...

Act 915 defines the court as the High Court.

In the case before me, the Applicant was served with the tax assessment which is the decision of the Commissioner General. This is in line with section 39 of Act 915. The Commissioner is bound by law to use best judgement in assessing a tax-payer. Assuming The Commissioner did not use his best Judgement, the Tax-payer is urged to raise an objection. By Section 42 of Act 915, the Tax-payer is enjoined to pay all taxes and or 30% of the Tax in dispute. Applicant did not show proof of any payment. However, the law also allows the Commissioner General to waive the payment and deal with the objection. There is no evidence that the 30% tax payment but it is on record that the Commissioner General waived the payment of the 30% and fairly heard the objection of the Applicant. Applicant was not satisfied with the decision taken by the Commissioner General with respect to its objection. He therefore filed this motion of certiorari to quash the decision of the Commissioner-General.

Section 44(1) of act 915 states "A person who is dissatisfied with a decision of the Commissioner General may within thirty days appeal against the decision to the Independent Tax Appeals Board referred to in this Act as "The Appeals Board" as set out in the Fourth Schedule. Section 44(2) states "a person who is dissatisfied with the decision of the Appeals Board may appeal against the decision to the court within thirty days from the date the decision was served on the person.[S. 44 substituted by section 1 of act No. 1029 of 2022].

I think with this, the Applicant has jumped the step of appealing to Tax Appeals Board by coming to High Court herein. Learned counsel for the Respondent submitted that, in the case of **BOYEFIO V. NTHC PROPERTIES [1996-97] SCGLR 531**. Where it was stated 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."

Also, in the case of Republic vs. High Court (Fast Track Division); Ex-parte National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties) (2009) SCGLR 390, Justice (Mrs.) Dordzie JSC held "No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament ... The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders. "See also the case of **REPUBLIC VS. THE HIGH COURT, SEKONDI EX PARTE: NANA BRAFO DADZIE II EBUSUAPANYIN S.K. OBENG & 3 ORS [2021] DLSC 10812** at page 9 per Kulendi.

The Revenue Administration Act is the 915<sup>th</sup> Act of Parliament assented to on the 10<sup>th</sup> day of August, 2016. This court cannot condone the illegality of

Applicant bypassing the procedure laid down in the Act to deal with the issues herein. It is therefore my judgement that, the Applicant did not exhaust the laid down procedure under the Revenue Administration Act, 2016 before coming to court for reliefs A,B,C,D,E and G,. In view that, reliefs A-E and G are hereby dismissed. Relief F which is for 'An order for an injunction to restrain the respondent from acting on the tax audit report issued to the applicant on the 18<sup>th</sup> March, 2021 demanding for any payments under the said tax audit report until and unless the independent tax appeals board be set up under the Revenue Administration Amendment Act, 2020 (Act 1029) Is hereby granted. It is hereby ordered that the Respondent puts in place Tax Appeals Board within one month from Monday 17<sup>th</sup> October, 2022 to deal with the tax issues of the Applicant.

No Order as to cost.

(SGD)

**COMFORT KWASIWOR TASIAME**  
**(JUSTICE OF THE HIGH COURT)**

**COUNSEL: KWEKU EYIAH HOLDING BRIEF FOR MARIAN EKUA HAYFRON-BENJAMIN FOR THE APPLICANT – PRESENT**  
**DAVID SOWAH KPOBI HOLDING BRIEF FOR MAXWELL OWUSU BOADI FOR THE RESPONDENT – PRESENT**

**REFERENCE**

- **BOAKYE V. TUTUYEHENE [2007-2008] SCGLR 970.**
- **GIHOC V. HANNA ASSI [2005-2006] SCGLR 458**

- JUDICIAL SERVICE OF GHANA
- GHANA MEDICAL ASSOCIATION (CHRIS ACKMANN-ACKUMMEY INTERESTED PARTY) [2012] 49 GMJ 26 SC.
  - MOZAMA DISCO CHRISTO CHURCH V. JEHU APPIAH [2010] 27 MLRG 56 AT 77.
  - BOYEFIO V. NTHC PROPERTIES [1996-97] SCGLR 531.
  - REPUBLIC VS. THE HIGH COURT, SEKONDI EX PARTE: NANA BRAFO DADZIE II EBUSUAPANYIN S.K. OBENG & 3 ORS [2021] DLSC 10812.

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*R. N. A.* 26/10/22  
REGISTRAR  
HIGH COURT  
CRIMINAL COURT  
LAW COURT COMPLEX