

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION  
HELD IN ACCRA ON WEDNESDAY THE 8<sup>TH</sup> DAY OF JULY, 2020  
BEFORE HIS LORDSHIP GEORGE K. KOOMSON 'J'.

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SUIT No. CM/MISC/1186/2019

REPUBLIC

VRS

GHANA REVENUE AUTHORITY ..... RESPONDENT

EX PARTE:

EXPORT FINANCE COMPANY LTD ..... APPLICANT

UNIVERSAL MERCHANT BANK ..... INTERESTED PARTY

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JUDGMENT

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The applicant herein has invoked the supervisory jurisdiction of this court to quash the administrative decision of the Commissioner General of Ghana Revenue Authority (hereinafter referred to as "the Respondent"), dated the 26<sup>th</sup> day of February, 2019 together with the notice of "GARNISHMENT" garnishing the account of the applicant with the Universal Merchant Bank (Kwame Nkrumah Avenue Branch), Accra (hereinafter referred to as the "Interested Party").

The facts as presented are that sometime on the 10<sup>th</sup> day of December 2018, the Respondent by a notice of assessment annexed as exhibit A requested Applicant to pay the amount of GH¢2,502,701.54 and GH¢57,113.04 being its Tax Liability and NFSL liability for the year 2013 and October 2018 year of Assessment.

The Applicant by a letter dated 17<sup>th</sup> December 2018 objected to the assessment which letter has been annexed as (Exhibit C). It is the case of the Applicant that the Respondent by Exhibit D which is a letter dated 21<sup>st</sup> December 2018 duly

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acknowledged receipt of the letter of objection and was therefore required to have taken a decision on the objection within 60 days of having received the objection in accordance with Section 42(2) of the Revenue Administration Act, 2016 (Act 915).

1. Applicant contends that Respondent rather than complying with 60 day period to take a decision, disallowed the decision on the 26<sup>th</sup> day of February 2019 by Exhibit E for which reason the decision was void and of no legal effect.

Respondent thus proceeded to garnish Applicant's account with the interested party by a letter dated 26<sup>th</sup> July 2019 as shown from Exhibit G and it was thereafter that on the 8<sup>th</sup> day of August 2019 by Exhibit F, the Applicant wrote to the Respondent informing the Respondent that it (Applicant) had treated the Respondent's conduct of not having complied with the mandatory statutory period of 60 days as an allowance of the Applicant's objection on 17<sup>th</sup> December 2018 and therefore its actions were void.

Respondent on the other hand contended that the Applicant did not comply with the mandatory conditions for objecting to a Tax decision being the payment of thirty percent (30%) of the tax assessed for which reason the Applicant's letter of objection dated 17<sup>th</sup> December 2018 could not be deemed a legal objection.

Respondent further contends that the failure of the Respondent to take a decision on objection within 60 days rather allows a party such as the applicant to treat the non-response as the Respondent having disallowed the objection and thereafter the remedy opened to the person is by way of a Tax Appeal.

Article 141 of the 1992 Constitution has put the judicial review [supervisory] jurisdiction of the High Court on a statutory basis. The article circumscribes that jurisdiction and limits it to cover only lower courts properly so-called and any other lower adjudicating authorities, such as, for example, a public arbitration panel. It provides as follows:

*"The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers." see also section 16 of the Courts Act, 1993 (Act 459).*

This was made clear by Dr. Twum JSC in the case of **Republic v High Court, Denu, Ex parte Kumapey (Dzenu IV Interested Party)** [2003-2004] 2 SC GLR 719 where the learned Justice held that:

*"The supervisory jurisdiction of Her Majesty's High Court of Justice in England never exercised any inherent supervisory jurisdiction. It was rather a derivative of the royal prerogative. Our High Court has therefore never exercised any inherent supervisory jurisdiction either. And today, article 141 of the 1992 Constitution has put the supervisory jurisdiction of the High Court on a statutory basis. The article circumscribes that jurisdiction and limits it to cover only lower courts properly so-called and any other lower adjudicating authorities, such as, for example, a public arbitration panel."*

2. The above provision clearly confirms my jurisdiction to entertain the present application. In the case of **Republic v High Court, Kumasi; Ex parte Bank of Ghana (Rev Samuel Gyamfi & 693 Others Interested Parties)** Justice Jones Dotse referred to the judgment of Ansah JSC in the **Republic v High Court, Accra Ex parte; Ghana Medical Association (Chris Arcmann-Akummey-Interested Party)** [2012] 2 GLR 768 and held that the aforesaid case; "laid down the grounds upon which this court proceeds to exercise its supervisory jurisdiction thus:

- i. *Want or excess of jurisdiction,*
- ii. *Where there is an error of law on the face of the record,*
- iii. *Failure to comply with the rules of natural justice, and*
- iv. *The Wednesbury principle"*

The case therefore clearly established **error of law on the face of the record** as one of the grounds upon which a Superior Court's supervisory jurisdiction may legitimately be invoked. The Supreme Court has however pointed out that the error of law that necessitated the application invoking the supervisory jurisdiction of this Court must be a serious one. This was made clear by the apex Court in the **Republic v Court of Appeal, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612** case. In that case Wood JSC (as she then was) held that:

*"...It stands to reason then that the error(s) of law as alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter. A minor, trifling, inconsequential or unimportant error which does not go to the core or root of the decision complained of; or, stated differently, on which the decision does not turn would not attract the courts supervisory jurisdiction."*

The determination of this suit hinges mainly on the interpretation of Sections 42 (2) and (5), and 43 (2) and (3) and 44 of the Revenue Administration Act, 2016 (Act 915). I shall thus reproduce the said provisions;

*“42(2) An objection to a tax decision shall be in writing and state precisely the grounds upon which the objection is made.*

*(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.”*

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

*(3) Where the Commissioner-General does not serve the person with notice of the decision within sixty days, the person may, by notice in writing to the Commissioner-General, elect to treat the Commissioner- General as having made a decision to disallow the objection.”*

*“44 A person who is dissatisfied with a decision of the Commissioner- General may appeal against the decision to the Court within thirty days of the decision.”*

The grammatical meaning of Section 42(5) (b) is plain and simple deserves of no complex interpretation. It simply means that the Ghana Revenue Authority can only entertain an objection if the person making the objection had paid thirty percent (30%) of the tax being disputed. The simple question then is did the Applicant in this suit satisfy this condition precedent?

From a reading of Applicant’s own Exhibit D, Applicant was reminded that although Respondent had received its objection, before the objection could be

entertained, Applicant was required to pay 30% of the disputed assessment in accordance with section 42(5) (b) of Act 915. There is no evidence of the said 30% payment having been made, although Applicant was silent on this fact both in its affidavit in support and the statement of case, Respondent at paragraph 14 of its affidavit in opposition deposed to the fact that Applicant had failed to pay the 30% and this deposition has not been denied by the Applicant and thus remains an admission of non – payment.

The failure to adhere to procedures mandated by statute and its effect has been given judicial blessing in a plethora of authorities. In the case of **Republic v High Court, Koforidua; Ex-parte Asare (Baba Jamal & Others Interested Parties) 2009 SCGLR 460 at 509**, Dotse JSC explained thus:-

*“Where a statute has made provisions for certain steps to be taken in order to comply with the requirements of the law, then no other steps other than those prescribed must be taken or followed. In this case, once the first interested parties have failed to strictly adhere to the provisions of PNDCL 284 as will be shortly established, it follows that their actions falls flat in the face of the law.”*

Again in a much recent decision of the Supreme Court in **Kwabena Obeng & Eric Akwasi Prempeh v Kumasi Metropolitan Assembly & Kojo Bonsu Civil Appeal No. J4/53/2016 DATED 14<sup>TH</sup> JUNE, 2017**, the Supreme Court again held;

*“In our considered opinion therefore, where a statute has set out the procedure for seeking relief, a party cannot resort to any other procedure especially when that procedure is statutory. See the effect of decisions such as Republic v Central Regional House of Chiefs and others, Ex-parte Nana Ehunabobrim unreported judgment of the Supreme Court Civil Appeal No. J4/11/13”*

I must add that I am quite surprised that the Applicant who has cited a number of authorities to the effect that the Respondent has breached statute and thus same amounts to a nullity which this Court cannot grant immunity to, would seek to be granted immunity by this same Court for having breached a tax provision in a statute which as laid down in the case of **Multichoice Ghana Limited v IRS [2011] 2 SCGLR 783** ought to be construed strictly.

Be that as it may, on the 26<sup>th</sup> day of February 2019, the Respondent took a decision on the Applicant's objection of 17<sup>th</sup> December, 2018 by refusing to amend the assessment and indicating that the liability as communicated in the letter of 10<sup>th</sup> December 2018 remains the same for which reason the Applicant was to pay within 10 days. This in my view constitutes a waiver of the mandatory requirements of Section 42(5) (b) of Act 915. In fact Section 42(6) allows for such an action by the Respondent. It provides as follows;

*“(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”*

The interrogatory, again, is what then is the effect of the Respondent's failure to give an objection decision within sixty (60) days of receipt of the objection?

Applicant's contention is in two fold, the first contention is that Respondent having failed to give the objection decision within the mandatory sixty (60) days, any decision thereafter was void and of no legal effect as it sinned against statute and secondly, in accordance with Section 43(3) of Act 915, the Applicant opted to treat the Respondent's failure to make a decision within sixty (60) days as “allowing the objection”.

This argument by the Applicant is totally flawed. First of all, Section 43 (3) of Act 915 does not give a person such as Applicant the option to consider the Respondent's failure to give a decision as allowing the objection, the only option is to treat the objection as having been disallowed by the Respondent.

The combined effect of Sections 43(2) and (3) of Act 915 is not to preclude or prevent the Respondent from making a decision on an objection raised by a party such as the Applicant after a sixty (60) day period but rather to ensure that parties who have objected to a decision by the Respondent do not hold on in the performance of their tax obligations on the basis that they are waiting the outcome of the decision. This is to allow for a party to treat the objection as having been refused so as to invoke the appeal process as set out in Section 44 of Act 915 if he so wishes.

I do not think the framers of the statute intended to prevent or preclude the Respondent from making a decision to an objection after sixty (60) days. Just as the High Court (Civil Procedure) Rules, 2004 C.I. 47 particularly Order 41 rule 2(1), should a Judge fail to deliver its judgment within the stipulated six (6) weeks, would he be precluded from making a judgment thereafter. I think not

The Applicant's attempt to now change the wording of the statute to read "allow the objection", I must say is very disingenuous, especially, having regard to the timing of the letter indicating that it was treating the failure of the Respondent to make a decision within sixty (60) days as having allowed the objection.

At the time Applicant wrote Exhibit F being the 8<sup>th</sup> day of August 2019, Applicant had already been notified of the Respondent's decision by Exhibit E dated the 26<sup>th</sup> day of February 2019. In fact, it was after the Applicant had got wind of Exhibit G which was directed at the interested party to pay the Applicant's tax liability that, the Applicant to my mind, quickly wrote Exhibit F, so as to invoke this Court's supervisory jurisdiction six (6) days after.

I must add that tax obligations in our country are taken very seriously as taxes form a huge chunk of the Country's GDP and that is the reason the Court's, have time and again ensured the strict interpretation of tax provisions so as to ensure all persons pay their taxes. Assuming that Applicant's understanding of the law was the correct position, a strict enforcement of the law would amount to an inequitable or fraudulent use of statute which our Court's do not countenance. See the case of *Republic v High Court (Lands Division) Accra, Ex-parte Lands Commission (Nungua Stool and Others - Interested Parties, Civil Motion No. J5/4/14 dated 5<sup>th</sup> December 2013* where Wood CJ, presiding quoted with approval the dictum of Atuguba JSC in the case of *Network Computers Limited v Intelsat Global Sales and Marketing [2012] 1 SCGLR 218 at page 231* where our respected jurist observed thus:-

*"Unless a substantive Act can be regarded as directory and not mandatory or its infraction is so minimal that it can be observed that it can be covered by the maxim de minimis non curat lex or such that the complaint about it is mere fastidious stiffness in its construction or the breach relates to part of it which in relation to others, can be regarded as subsidiary and therefore should not be allowed to prejudice the operation of the dominant part or purpose thereof, or the strict enforcement of the statute would amount to a fraudulent or inequitable use of the statute or some other*

*compelling reason, I do not see how a court can gloss over the breach of a statute.”*

Apart from Applicant's contention that the decision of 26<sup>th</sup> February 2019 was void and of no legal effect, Applicant failed to demonstrate that Exhibit G titled “Garnishment” was not in accordance with Sections 60 and 61 of Act 915 and one can only assume that the contention was based solely on the allegation that the letter of 26<sup>th</sup> February 2019 was null and void.

I have given consideration to all the evidence put before me and also given consideration to the written submissions filed by both counsel. I hold the opinion that the facts and the law applicable do not demonstrate any error of law or illegality committed by the Respondent in its decision of 26<sup>th</sup> February 2019 to warrant the grant of the present application. The remedy open to the Applicant if it is dissatisfied with the decision of 26<sup>th</sup> February 2019 was one of an appeal as provided in Section 44 of Act 915. In the circumstance, the application is refused. Same is accordingly dismissed.

(SGD)  
**GEORGE K KOOMSON**  
**JUSTICE OF THE HIGH COURT**

**COUNSEL:**

***GEORGE ANKAMA FOR THE APPLICANT***

***MAXWELL OWUSU BUADI FOR THE RESPONDENT***

**REFERENCE**

1. *Republic v High Court, Denu, Ex parte Kumapey (Dzelu IV Interested Party) [2003-2004] 2 SC GLR 719*
2. *Republic v High Court, Kumasi; Ex parte Bank of Ghana (Rev Samuel Gyamfi & 693 Others Interested Parties)*
3. *Republic v High Court, Accra Ex parte; Ghana Medical Association (Chris Arcmann-Akummey-Interested Party) [2012] 2 GLR 768*
4. *Republic v Court of Appeal, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612*
5. *Republic v High Court, Koforidua; Ex-parte Asare (Baba Jamal & Others Interested Parties) 2009 SCGLR 460 at 509,*
6. *Kwabena Obeng & Eric Akwasi Prempeh v Kumasi Metropolitan Assembly & Kojo Bonsu Civil Appeal No. J4/53/2016 DATED 14<sup>TH</sup> JUNE, 2017,*
7. *Multichoice Ghana Limited v IRS [2011] 2 SCGLR 783*
8. *Republic v High Court (Lands Division) Accra, Ex-parte Lands Commission (Nungua Stool and Others – Interested Parties, Civil Motion No. J5/4/14 dated 5<sup>th</sup> December 2013*
9. *Network Computers Limited v Intelsat Global Sales and Marketing [2012] 1 SCGLR 218 at page 231*

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