

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON THE 5TH DAY OF APRIL, 2022 BEFORE HIS LORDSHIP JUSTICE JUSTIN KOFI DORGU

SUIT NO. CM/TAX/0101/2022

SEADRILL GHANA OPERATIONS LTD

PLAINTIFF

VRS.

THE COMMISSIONER GENERAL (GRA)

DEFENDANT

PARTIES: ABSENT

COUNSEL: SEFAKOR KUENYEHIA WITH MERCY NANA AMA MENSAH AND PHILIP NYARKO FOR THE APPELLANT - PRESENT

MOHAMMED IBRAHIM WITH JOSEPH OWUSU AND EDUAFO-ABRAHAM REBECCA FOR THE RESPONDENT PRESENT

RULING

On the 8th of November, 2021, the Appellant herein, Seadrill Ghana Operations Ltd filed in this Court a Notice of Appeal against the Tax assessment by the Respondent and its consequential objection decision dated the 8th of October, 2021. Upon service of the Notice of Appeal on Respondent, he also filed on the 23rd of November 2021 an application on notice praying the Court to strike out and dismiss the Tax Appeal filed by the Applicant pursuant to the inherent jurisdiction of the Court on the basis that the said appeal was filed out of time and in contravention of Section 44 of Revenue Administration Act, 2016 (Act 915) and

Order 54 Rules 2(1) and (2) of the High Court (Civil Procedure) Rules, 2004 (C.I.47). The Respondent accompanied the notice with a 17 paragraph Affidavit in support to which he attached various exhibits. I will reproduce the pertinent paragraphs which I think are paragraphs 7 through 12 of the Affidavit in Support for their full effects.

- “7. That per the provisions of Section 44 of the Revenue Administration Act, 2016 (Act 915) and Order 54 rule 2 (1) & 2 of the C.I 47, the Respondent was required to file its tax appeal against Applicant objection decision in Court within thirty (30) days after being served with the objection decision unless the Respondent has applied for an extension of time within three (3) months from the date of the one month and same granted by the Court in accordance with Order 54 rule 2 (2) of the C.I 47.
8. That per the evidence on record through various correspondences exchanged between the Appellant and Respondent and Respondent’s own admission, the final objection decision was made on 1st December, 2020 (attached herein are copies of the Objection Decision marked as ‘Exhibit CG1’)
9. That the Respondent was duly notified of the Objection Decision and this evidenced by the acknowledgement in its letter dated 30th December, 2020 exhibited as Exhibit J by the Respondent and re-exhibited as Exhibit CG2’ herein
10. That the Applicant responded to Respondent’s letter of 30th December, 2020 by a letter dated 24th March, 2021 to the effect that the objection decision dated 1st December, 2020 was made in accordance with the law

and cannot be reviewed (a copy of the letter dated 24th March 2021 and exhibited by the Respondent as Exhibit 'Q' is re-exhibited herein as Exhibit CG3

11. That by law therefore, the Respondent should have filed its tax appeal latest 30 days from 30th December, 2020 as prescribed by law.
12. That the Respondent having been notified of the Applicant's objection decision of 1st December, 2020 pursuant to Section 43 of Act 915 as at 24th March, 2021, the time limit within which the Respondent was required to file its tax appeal as prescribed by Section 44 of Act 915 and Order 54 rule 2 (1) of the C.I 47 ought to be not later than 1st February, 2021 and not 8th November, 2021"

The Appellant responded to this preliminary objection and filed 29 paragraphs Affidavit in Opposition. It is the contention of the Appellant that it is not true that the final Objection Decision was rendered on the 30th of December, 2020 since after that correspondence, they still continued to engage the Respondent for a 2nd and 3rd objections and summarized their opposition in paragraphs 24 through 27 as follows:

- "24. That I am informed by the Respondent and I believe same to be true that ultimately, the Respondent's alleged outstanding tax liability was brought to a finality on 8th October, 2021 by the final objection decision.
25. That I am informed by counsel and verily believe same to be true that the Respondent is mandated by law to appeal the final objection decision within thirty days of receipt of service of the final Objection Decision

26. That I am informed by the Respondent, and I believe same to be true that the Respondent received service of the Final Objection Decision on 12th October, 2021 through its tax advisor
27. That I am advised by counsel and I believe same to be true that the Respondent appealed against the final Objection Decision to this Honourable court on 8th November, 2021 within thirty days' time limit of filing tax appeal
28. That I am advised by Counsel and I believe same to be true that the Respondent's appeal of the Final Objection Decision is competent as filed within the statutory period
29. That in the circumstances, it is in the interest of justice that this Honourable Court dismisses the Application."

Now, since the Parties in this appeal have taken two extreme positions of the argument, the primary issue to be determined in this preliminary legal objection is to the effect that what was the dates the objection Decision was rendered and delivered to the Appellant. I must be mindful that this preliminary issue is not concerned with the merits and or otherwise of the appeal but whether or not based on some technicality or procedural flaw or similar challenge, the appeal should not be heard. This brings to mind the decision in the case of the **TRUSTEES OF THE SYNAGOGUE CHURCH OF ALL NATIONS V. AGYEMAN [2010] SCGLR 717** at 724 and 725 which cited with approval the Gambian Case of **KABO AIRLINES LTD VS. THE SHERIFF COURT OF APPEAL, GAMBIA** dated 27th March, 2002 and rendered thus on the issue of what a preliminary objections are for Gelaga-King JA

“Let me say at once that the purpose of a preliminary objection as we understand it, is to prevent the application in the notice of motion before the Court from being heard on its merits, either on the grounds of irregularity or for non-compliance with some legal provisions or for some other good and sufficient reason. The fundamental and crucial requirement however, is that the alleged irregularity, defect or default must be apparent on the face of the notice of motion so that the objection does not have to condescend to the Affidavits or other documents accompanying the motion to support his objection. In other words, Counsel is not permitted at any stage to refer to the Affidavits and Exhibits. He may only do so if at all, after the Court had disposed of the preliminary objection....”

It is in light of the above decision, I will proceed to deal with the preliminary objection, ignoring to a large extent the detailed submissions submitted especially by the Appellant which go to the merits of the case. What is not in doubt in this appeal is that the Appellant lodged an appeal against its tax liability as assessed by the Respondent after an audit of the Appellant's activities in which a report was issued on 8th November, 2019. Dissatisfied with the assessment contained in the 8th November, 2019 letter, the Appellant lodged an objection per their letter dated the 11th of December, 2019 exhibited in the Appellant's Affidavit in Opposition as Exhibit PM4. In line with one of the conditions precedent for the Commissioner General to entertain the objection, they paid in the objection deposit and the receipt of the payment exhibited by the Appellant as Exhibit PM5. In response, the Respondent herein issued a report on the objection in a letter date 8th July, 2020 revising the tax liability of the Appellant herein. Still dissatisfied with the assessment, that Appellant further wrote for a reconsideration of the

assessment in a letter dated 28th July, 2020. Again, in response the Respondent herein per a letter dated 1st December, 2020 adjusted further the tax liability of the Appellant downward to USD17, 948, 1152.66. This is attached to the Affidavit in Opposition of the Appellant marked Exhibit PM8. It is instructive to note that the said letter is headed 'Final Tax Audit on Seadrill Ghana Operations Ltd for the 2012 to 2018 years of Assessment'.

There is no doubt that the Appellant was served with this Final Tax Audit Report as the final decision on the objection he had filed on the 11th December, 2019.

Now, the general consensus is that appeals are creatures of law, they ought to conform to the provisions of the statutes that created that right. It is also trite and as submitted by both Counsel, Tax Appeals are regulated by Section 44 of the Revenue Administration Act 2016 (Act 915). Now Section 44 of Act 915 stipulates;

"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"

Order 54 rule 2 (1) of the C.I 47 also provides;

"The appeal shall be commenced by the filing of five copies of the notice of appeal together with five copies of all relevant documents with the Registrar within thirty days of receipt of service of the decision or order of the Commissioner"

Section 54 (2) of the C.I 47 provides a leeway of applying for leave or extension of time if one could not file the appeal within the thirty days but within three months. Now this Order 54 rule 2 (3) of the C.I 47 provides:

“No application for extension of time shall be entertained after the time specified in sub rule 2”

And to buttress this closure, Section 45 of the Revenue Administration Act, 2016 (Act 915) also provides:

“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 above provision do not, to my mind make room for an ad infinitum repeat objections by an aggrieved tax payer. The law says that if you are dissatisfied, go to Court. The resort to the repetitive correspondence with the Respondent after an objection decision has been given and delivered or served on an objector to me cannot qualify as fresh and new objections whose response or reply would amount to a new decision over which further objections could be raised and ruled over again as being canvassed by the Learned Lawyer for the Appellant. That cannot also mean the intention and connotation of Section 44 (2) of Act 915 which I would quote hereunder. Applying these principles to the instant case, I hold that the only objection raised in the instant case is the objection filed on the 11th December, 2019 by the Appellant. It is this objection that the Commissioner, the Respondent in this case considered upon the Respondent paid the objection Deposit which is a prerequisite for the hearing of the objection so filed.

There is no evidence that another objection was subsequently filed for which a deposit was demanded by the Respondent herein. The Objection Decision on this was rendered through a letter dated 8th July, 2020 whereupon the Applicant's liability was reduced from USD\$22, 722, 849.35.

On 28th July, 2020, the appellant again wrote to the Respondent drawing his attention to some lapses in the Auditor's Report which was again duly considered and a decision issued on it per the Respondent's letter dated 1st December 2020. This is the Exhibit PM5 which revised the tax liability to USD17, 945, 152.15. The said decision was served on the Appellant which receipt was acknowledged on the same 1st December, 2020. Now, to me, this reviewed or whatever description one will give to it, falls under Section 42 (9) of Act 915 (Revenue Administration Act, 2016) which Learned Counsel for the Appellant quoted as

"In this Section, 'tax decision' means the tax decision objected to as may have been amended by Objection Decision"

This to me was to be the end of the road for administrative redress and if still the tax payer was dissatisfied, then his rights under Section 45 of Act 915 kicks in. The time for filing the appeal therefore started running on the 1st December, 2020 when the Objection Decision was served on the Appellant. This also means that from that 1st December, 2020, the Appellant had 30 days within which to file an appeal to the High Court. If the tax payer after the expiration of the 30 days period was unable to file but still desirous of filing, then it ought to seek leave to file out of time. This is the position of the law as espounded in the case of **NYE VRS. NYE [1967] GLR 76 at 79** (see also the cited case of **INTERNATIONAL ROM VRS VODAFONE**). All these cases emphasize the need for Parties to act within the four corners of the law/statute that confer the right of appeal on the party. Reading through the various provisions on this tax appeal, I do not see any provision that empowers the tax payer to continue to engage the Respondent repeatedly on the exercise of his discretion and to treat each response as an

objection decision. As I indicated earlier on, I hold the view that the first and only objection filed was that of 11th December, 2019 and determined with the issuance of the Amended tax decision given on 1st December, 2020. All other correspondences from the Appellant were inconsequential and do not amount to separate objections over which the Respondent was expected to give separate decisions. It is in that vein that I will go along with the Respondent's preliminary legal objection that as at the time the Appellant filed his notice of appeal on 8th November, 2021, he was woefully out of time and since he did not seek an extension of time as provided by the Rules of Court, the said appeal is incompetent and cannot invoke there jurisdiction of this Court.

The preliminary legal objection is accordingly upheld and the appeal struck out as incompetent. I must add that this is in consonance with the principles established in the Supreme Court case of **MULTI-CHOICE (GH) LTD VS. THE COMMISSIONER, INTERNAL REVENUE SERVICE [2011] 2 SCGLR 789** to which I am bound and per Atuguba JSC as follows:

“My conclusion has been dictated by the strict constructionist approach to interpretation of statutes reserved for fiscal legislation. The general principle is that the Tax Statutes are to be construed strictly”.

(SGD)
JUSTICE JUSTIN KOFI DORGU
(JUSTICE OF THE HIGH COURT)

CERTIFIED TRUE COPY
..... REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA