

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE,
HELD IN TEMA ON THE 30TH DAY OF OCTOBER 2018
BEFORE HIS LORDSHIP JUSTICE EMMANUEL ANKAMAH (MR)

SUIT NO. E12/66/2018

ACS AFRICA COASTAL SERVICES (GH) LTD. --- PLAINTIFF

VRS

GHANA REVENUE AUTHORITY DEFENDANT

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By its Writ of Summons the Plaintiff is claiming for the following reliefs:-

- (i) A declaration that, the Plaintiff's Company by its operations does not come within the scope of NFSL (National Fiscal Stabilization Levy)
- (ii) A declaration that the imposition of the NFSL, in the sum of GH¢661,611.07 by the Defendant is unlawful, irregular and arbitrary and without any basis in law.
- (iii) An injunction to restrain the Defendant's agents, servants, etc from imposing sanctions on the Plaintiff's Company in the form of declining requests from the Plaintiff.
- (iv) Further or any other order(s) as to this Court may deem fit.

The Writ of Summons was accompanied with 13 paragraphs Statement of Claim.

The Defendant filed a 14 paragraph Statement of defence and in paragraph 12 thereof stated as follows:-

"The Plaintiff's action is incompetent as it seeks to challenge the tax imposed by the Defendant and the proper mode of challenging a tax liability is by way of tax appeal and not Writ of Summons."

At the application for Directions stage therefore the following two legal issues were agreed upon by the parties for determination. They are:-

- (a) Whether or not the High Court has jurisdiction to hear the instant case?
- (b) Whether or not the Plaintiff by a proper interpretation of Act 862 as amended is subject to the National Fiscal Stabilization Levy 2013 (Act 862)?

Having read, the submissions of Counsel for the Defendant with respect to paragraph 12 of the Defendant's Statement of defence, my understanding of what Defendant saying is that, this suit has not properly invoked the jurisdiction of this Court and as such same is incompetent. The defendant's Counsel by her submission to the Court clearly and rightly stated that, the High Court has jurisdiction to hear matters that relate to tax imposed by the Defendant but it is the mode of redress the Plaintiff adopted, is what the Defendant is challenging.

It is trite learning that where the law or any enactment provides a means or mode by which one may access the Court for a redress of a wrong; failure to comply with that procedure or mode shall disable the said Court from entertaining the applicant or the Petitioner Order 2 rule 2 of C.I.47 states thus:-

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'Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a Writ of Summons.

By relief (ii) of the Plaintiff's Claim, it admitted that the Commissioner General of Ghana Revenue service had determined that under the National Fiscal Stabilization Levy 2013 (Act 862) the Plaintiff is liable to pay the tax envisaged under same. Obviously, the Plaintiff is dissatisfied with this determination. The question then is:- How does the Plaintiff properly invoke the jurisdiction of the Court?

Act 915, section 44 having provided the mode by which the decision of the Commissioner General of the Revenue Authority may be challenge, which is by way of appeal to the High Court, the Plaintiff erred in issuing a Writ of Summons. As a result, the Plaintiff has not properly invokes jurisdiction of the High Court.

Having reached the conclusion that the High Court's jurisdiction has not been properly invoked, it will be out of place for the Court to go further and determine issue two (2) namely: - Whether or not Plaintiff by a proper interpretation of Act 862 is subject to the National Fiscal Stabilization Levy.

Accordingly, the Plaintiff's action is dismissed as same is incompetent before the Court.

Cost of GH¢10,000.00 to the Defendant.

(sgd) EMMANUEL ANKAMAH (MR)
(JUSTICE OF THE HIGH COURT)

Yvette Ofosu Asante for the Plaintiff
Doris Agbetise for the Defendant

/dd/

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