

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON MONDAY THE 15TH DAY OF FEBRUARY 2021
BEFORE HIS LORDSHIP EMMANUEL KWESI MENSAH 'J'.**

SUIT NO. CM/TAX/0683/2020

**IN THE MATTER OF AN APPEAL AGAINST TAX ASSESSMENT BY THE
COMMISSIONER-GENERAL, GHANA REVENUE AUTHORITY**

AND

**IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME TO FILE
A NOTICE OF APPEAL AGAINST TAX ASSESSMENT BY THE
COMMISSIONER-GENERAL, GHANA REVENUE AUTHORITY**

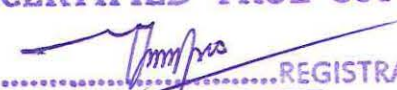
BETWEEN

UNILEVER GHANA LIMITED	-	APPLICANT
VS		
THE COMMISSIONER-GENERAL, GRA	-	RESPONDENT

R U L I N G

Unilever Ghana Limited on the 27th June, 2020 filed a motion on notice for extension of time to file a Notice of Appeal against Tax Assessment by the Commissioner General, Ghana Revenue Authority (GRA) pursuant to the provisions of Order 54 Rule 2 (2) of C.I. 47 of the year 2004. The Applicant per the records filed two affidavits in support of the application.

(a) The first of such affidavits is the twenty six (26) paragraph affidavit deposed to and filed by Ama Agyemang filed on the 27th June 2020 and (b) a twenty one (21) paragraph supplementary affidavit filed on the 19th May, 2020 which date I consider a mistake on the face of the record because the application itself was filed on the 27th June, 2020. Per the

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records before me, no affidavit in opposition was filed but a twenty three (23) supplementary affidavit in opposition was filed on the 4th June, 2020. Personally, I cannot give any reason(s) for the wrong dating on the processes filed in the instant application.

This Court on the 11th November, 2020 ordered the Suitors to file written submissions in support of their respective sides of the application. The Parties complied and on the 25th November, 2020, the Applicant filed its written submissions. The Respondent had earlier filed its written submissions on the 24th November, 2020.

Having properly reviewed the affidavit evidence before the Court in respect of the instant application, the Court came to the conclusion that the application should be allowed and it is accordingly granted. The Court based its decision on the following reasons:

1. Order 54 Rule 2 of the High Court Civil Procedure Rules, C.I. 47 provides that *“a person aggrieved by a tax decision may file a notice of appeal within 30 days of receipt of the decision. However, where the aggrieved person does not file the appeal within the prescribed time he may file for extension of time within 3 months from the expiry date and the Court may, if satisfied that the delay in filing the notice of appeal was due to his absence from the Country, sickness or other reasonable cause and that there has been no unreasonable delay on his part, grant him extension of time to file his Notice of Appeal.”* The import of order 54 Rule 2 of C.I 47/04 is that the application herein has a grounding in law and was taken out within the confines of the law.
2. It is on record that per a letter dated on the 21st February, 2019, but delivered to the Applicant on the 8th May, 2019, the Respondent informed the Applicant that a transfer pricing examination had resulted in a tax liability of GH¢6,236,200.00 (Exhibit AA1) objected to the said Tax Assessment. It is part of the evidence in this application that on the 19th September, 2019, the Respondent responded to the issues raised in the Applicant’s objection but did not expressly vary or disallow the objection and so the Applicant on the 23rd October, 2019 applied to the Respondent

under Section 42 (6) of Act 915 for a waiver of the requirement to pay 30% of the Tax in dispute for a consideration of its objection, and it is on record further that the Respondent varied the requirement and requested that the Applicant pay GH¢1,000,000.00 being part of the 30% of the disputed tax liability. It is on record that after the payment of the GH¢1,000,000.00 the Respondent considered and disallowed the Applicant's request per a letter dated 19th March, 2020 (Exhibit AA3). It is the considered view of this Court that by the Commissioner General's letter, which had requested the Applicant to pay GH¢1,000,000.00 representing part of the 30% of the tax in dispute, the Respondent had in fact opted to vary the requirement as provided for in Section 42 (6) of Act 915 of 2016. In fact the said letter also stated that if the Applicant did not settle the GH¢1,000,000.00 then the Commissioner General, Ghana Revenue Authority shall consider the total liability assessed of GH¢6,236,200.00 as final and conclusive.

3. Flowing from the reason just stated above, it is evident that if the Respondent considered the 19th September, 2019, letter as its objection decision, it would not have written to the Applicant on 4th November, 2019 offering it the three options available to a party aggrieved by a tax assessment. In fact and as said earlier on in the said letter Respondent categorically requested the Applicant to settle the GH¢1,000,000.00 being part of the 30% of the disputed tax liability of GH¢6,236,200.00 within seven (7) days from receipt of the letter.
4. It is also my considered view that the mere fact that the Respondent acknowledges giving the Applicant seven (7) days to settle part of the 30% of the tax in dispute in its 4th November, 2019 letter is an implicit admission that as at 4th November, 2019, it had not yet considered the Applicant's objection because the requirement to pay 30% of the tax in dispute precedes the consideration of the objection application and it is therefore untenable for the Applicant to insist that the 19th September, 2019 letter was the objection decision. The objection decision from the affidavit evidence

on record is rather dated on the 19th March, 2020 and not 19th September, 2019 as the Respondent claims.

5. In this application, the Court will not lose sight of the fact that on the 29th March, 2020 and before the time limit for the Applicant's desired appeal would lapse, the President of the Republic of Ghana by an executive Instrument, specifically imposed a restriction of movement of persons that is (lockdown) within the Greater Accra Region which is within the jurisdiction of this Court. The Chief Justice of the Republic of Ghana also by a press release on 30th March, 2020, did categorically indicate that lawyers were not exempted from the restrictions of movement of persons within the affected area; and infact the press release of the Chief Justice in no doubt affected the filing of processes at the Registry of this Court. I will therefore allow this application as earlier ordered.

Consequently, the Applicant is ordered to file its Notice of Appeal against the Tax Assessment placed on it as a liability by the Commissioner General, Ghana Revenue Authority (GRA) within **thirty (30) days** from today, 15th February, 2021. No order as to cost.

(SGD)
EMMANUEL KWESI MENSAH
(JUSTICE OF THE HIGH COURT)

COUNSEL

MELISA AMARTEIFIO FOR APPLICANT

MAXWELL OWUSU BOADI FOR RESPONDENT

REFERENCE

1. C.I. 47/04
2. ACT 915 (2016)

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