IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION, HELD IN ACCRA ON TUESDAY, THE 5TH DAY OF MAY, 2026 BEFORE HIS LORDSHIP JUSTICE JOHN-MARK NUKU ALIFO

SUIT NO. GJ-CM/MISC/0378/2026

FBC PARTNERS GHANA LIMITED - APPLICANT/ APPLICANT

VRS

GHANA REVENUE AUTHORITY - RESPONDENT/RESPONDENT

RULING

INTRODUCTION

1. The Applicant filed an originating motion pursuant to Section 18 of the Value Added Tax 2013 (Act 870) on notice at the High Court Registry on 25th March 2025 praying for the following reliefs:

   i. A declaration that the applicable Value Added Tax (VAT) rate payable on the real estate transaction entered into pursuant to the Letter Agreement dated 26th June 2025 between the Applicant and Bay Developers and Realty Limited is the VAT rate applicable under the law in force in 2025 being 5% and not the rate introduced under the Value Added Tax (Amendment) Act 2025 (Act 1151)

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ii. A declaration that the transaction having been initiated and partly performed in June 2025 is governed by the tax regime applicable at the time the taxable transaction arose

iii. An order affirming that the VAT rate payable in respect of the said transaction is the rate applicable in 2025.

2. On 31st March 2026, the Applicant filed an amended originating motion pursuant to section 3 of the Value Added Tax Act 2013 (Act 870) as amended by Act 1107 and the inherent jurisdiction of High Court on notice at the High Court Registry deposing to same facts and praying for the same reliefs as contained in the initial originating motion filed on 25th March 2025 as stated above. The Applicant filed Supplementary Affidavit filed on 30th April, 2026 with Exhibit AKD1 evidencing the payment of USD300,000.00 by the Applicant to ENSAfrica.

FACTS

APPLICANT'S CASE

3. The Applicant's through one Abraham Nkrumah-Baah who described himself as the Chief Executive Officer of the Applicant Company deposed to 19 paragraphs Affidavit. He deposed that on 26th June 2025, the Applicant entered into a Letter Agreement with Bay Developers and Realty Limited for the purchase of real estate property at USD 3,000,000, (Three Million United States Dollars).

4. The transaction was to be completed on or before August 2025 (Exhibit A). He deposed that the Applicant paid USD300,000 (Three Million United States Dollars) to the Seller (Bay Developers and Realty Limited) in June 2025 as part payment of the purchase price.

5. It is the Applicant's case that at the time the Letter Agreement was executed and the initial payment were made, the applicable VAT regime was the Value Added Tax Act, 2013 (ACT 870) as amended by Act 1107 and it imposed a VAT rate of 5% on the said transaction. That the parties subsequently executed a more comprehensive sale agreement in January 2026 in furtherance of the transaction. That on 1st January 2026 the Value Added Tax (Amendment) 2025 (Act 1151) came into force and it increased the VAT rate of such transactions to 20%. That the Seller has since then requested the Applicant to pay VAT at 20% on the purchase price (Exhibit B).

6. The Applicant deposed that the tax statute should be given strict interpretation and that the Value Added Tax Act, 2025 (Act 1151) should not take a retrospective effect especially when the said transaction was entered into in 2025 as well as when substantial payment in reliance on the tax regime in force in 2025.

7. The Applicant argues that the Application before the Court is not seeking to challenge a tax imposed by the Respondent and the Applicant is not under any obligation to first writ to the Respondent to seek clarification or a

ruling as same is not a condition precedent to the invocation of the jurisdiction of the Court.

8. The Applicant contends that the date of supply should be 2025 and not 2026 as alleged by the Respondent as the transaction was concluded and the Applicant has partly performed based on the Agreement. Counsel for Applicant emphasized that Tax laws are interpreted strictly hence there must be certainty in the application of the law which is a cardinal principle in the administration justice.

RESPONDENT'S CASE

9. On 6th April, 2026, the Respondent filed its opposition deposed to by Maxwell Owusu Boadi, who described himself as a lawyer employed by the Respondent.

10. The Respondent says that the Applicant reliance on section 3 of Act 870 as amended for judicial review is misplaced and erroneous in law since the provision is not applicable to C.I 47. That the Applicant has not conveyed his position of the relevant statute to the Respondent for which it is seeking judicial review.

11. The Respondent says that the Applicant motion is founded on wrong statutory provision and further raised preliminary objection to the jurisdiction of the Court. The Respondent invites this court to dismiss the

motion for being incompetent and that the Applicant has not properly invoked the jurisdiction of the Court.

12. The Respondent claims the Applicant and the seller should have first applied to the Respondent on class ruling on the subject matter under section 103 of the Revenue Administration Act 2016 Act 915 as amended. The Applicant has rather sued the Respondent without including the Seller.

13. The Respondent states that under Act 870 and Act 1151, section 39(1)(c),(2) and (6) each payment is considered by law as made for a separate supply and the time of supply is the earliest of the dates on which receipt of payment occurred or a tax invoice or sales receipt is issued.

14. The Respondent states that the Applicant did not provide evidence of the payment of USD300,000. The Respondent states Exhibit B of the Applicant is an invoice of USD3,000,000 issued on 2nd February 2026 at the time Act 1151 is in force and same must be applied.

15. The Respondent further states the Applicant executed comprehensive sale agreement with the seller in January 2026 per the Applicant's own paragraph 8 of his Affidavit but failed to exhibit said document. The Applicant invites this Court to strictly apply section 39 of Act 1151.

16. There is no Act in Ghana called Value Added Tax (Amendment) 2025 (Act 1151). The proper Act is the Value Added Tax 2025 (Act 1151).

17. Having read the motion and supporting affidavits in support and in opposition and listened to the erudite legal arguments of both Counsel two issues have been formulated to help the Court make a determination.

ISSUES

18. The issues for determination are as follows:

a) Whether or not this Court has jurisdiction to entertain the instant Application.

b) Whether or not the Value Added Tax 2025 (Act 1151) shall take retrospective effect.

APPLICABLE LAWS

19. Jurisdiction of court goes to the root of every matter. It is crucial for every court sitting on a case to resolve the issue of jurisdiction first when it is raised in any dispute. Where the jurisdiction of the court is challenged, it must be addressed first before going into the merit of the case since jurisdiction is fundamental to every proceeding. Any decision by a court without jurisdiction is void. **See: OWUSU-MENSAH VRS. NATIONAL BOARD FOR PROFESSIONAL AND TECHNICAL EXAMINATION (NAPTEX) & OTHERS [2017-2020] 2 SCGLR 708.**

20. In the case of **GHANA BAR ASSOCIATION VRS. ATTORNEY-GENERAL AND ANOTHER [1995-96] 1 GLR 598, KPEGAH JSC** (as he then was) had this to say on jurisdiction.

The concept of "jurisdiction" in its esoteric and jurisprudential sense is said to be "a DIGNITY which a man hath by a power to do justice in causes of complaint made before him." In a technical

sense, when one is considering whether a properly constituted court has jurisdiction or not one cannot resolve this issue without necessarily relating it to:

(a) the parties to the dispute—that is, whether the court has jurisdiction over them;

(b) the subject matter of the dispute—whether it is one which falls within its jurisdiction;

(c) the relief being sought—that is, whether the said court can grant the relief the plaintiff is seeking; and, lastly

(d) territorial limitation.

21. Jurisdiction has also been defined as the authority which a court has to decide matters which are litigated before it, or to take cognizance of matters presented before it in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted, and may be extended or restricted by like means.

See the case of **YEBOAH VRS. MENSAH [1998-1999] SCGLR 492; EDUSEI (NO.1) VRS. ATTORNEY-GENERAL AND ANOTHER [1996-97] SCGLR 1; EDUSEI (NO.2) VRS. ATTORNEY-GENERAL [1998-99] SCGLR 753**

Therefore, jurisdiction is determined by the real issues between the parties. See the case of **ANIN VRS. ABABIO AND OTHERS [1973] 1 GLR 509**

The issue of a court's jurisdiction to entertain a matter is very central to every issue. That is why the court itself can raise it suo motu.

See: BIMPONG BUTA VRS. GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200; ANTHONY SAKYI VRS. GA SOUTH MUNICIPAL ASSEMBLY [2022] 178 GMJ 216 CA.

22. The Jurisdiction of the High Court is rooted in the 1992 Constitution. Article 140(1) of the 1992 Constitution of provides that ***"The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law."***

23. Section 103 of the Revenue Administrative Act 2016 (Act 915) makes provision for private ruling or a class ruling. It is provided in section 103(1&2) of Act 915 as follows:

(1) Subject to section 104, the Commissioner-General may, on an application in writing by a person, issue to that person a private ruling or a class ruling setting out the position of the Commissioner-General regarding the application of a tax law with respect to an arrangement proposed or entered into (a) in the case of a private ruling, by the person; or (b) in the case of a class ruling, by persons in a specified class.

(2) A private or class ruling may apply to multiple arrangements and multiple tax laws.

24. Section 3 of the Value Added Tax 2013 (Act 870) as amended by Act 1107 paragraph 5 provides that where a taxable person who is an estate developer makes a taxable supply of an immovable property, that person shall account for the tax payable at a flat rate of five per cent calculated on the value of the taxable supply.

25. Section 3(a) of the Value Added Tax 2025 (Act 1151) provides that except otherwise provided in Act 1151, the rate of tax is fifteen per cent (15%) and is calculated on the value of the taxable supply of goods or services. Under section 72 of Act 1151 goods include movable and immovable tangible property, among others.

26. Section 47 (1) (a) of National Health Insurance Act, 2012 Act 852 imposes two and half per cent (2.5%) VAT on supply of goods and services. Section 3(a) of Ghana Education Trust Fund Act, 2000 Act 581 allows for imposition of two and one half per cent (2.5%) VAT on supply of goods and services. This brings the total effective VAT rate on supply of goods and services under Value Added Tax 2025 Act 1151 regime to 20%.

27. As far back as 1980 the issue of whether or not a statute can take a retrospective effect was determined. In the case of **ESSILFIE VRS. GHANA PORTS AUTHORITY [1980] GLR 469-478,** the court pointed out as follows:

Section 8 (1) of the Interpretation Act, 1960 (C.A. 4), provides:

"8. (1) the repeal or revocation of an enactment shall not—

(a) revive anything not in force or existing at the time when the repeal or revocation takes effect; or

(b) affect the previous operation of the enactment or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed there under; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked."

28. The Court further held that **"these provisions in section 8 (1) of C.A. 4 especially subsection 1 (c) and (e) have the effect of saving every liability which attached to the erstwhile Railway and Ports Authority and which was to be adjudicated upon as well as all rights of any person in a legal proceeding to recover any damages, compensations, debt, etc. This, indeed, must dispel the applicant's enchantment that the plaintiff's action abated when S.M.C.D. 95 and S.M.C.D. 96 came into force."**

29. The effect of Section 8(1)(c) of the Interpretation Act, 1960 is that: where any person has acquired any right or privilege or incurred any obligation or liability under an enactment, the subsequent repeal of that enactment shall not affect the continued enjoyment of that right, privilege or the satisfaction of that obligation or liability under the repealed enactment. **See. INDUSTRIAL AND COMMERCIAL WORKERS' UNION OF THE TRADES UNION CONGRESS VRS. BANK OF GHANA [2003-2005] 1 GLR 37.** Therefore, under Section 8(1) (c) of C.A 4 any right, privilege, obligation or liability acquired, under the repealed enactment shall not be affected by the repealing enactment.

30. The interpretation Act 1960 (C.A. 4) was repealed by the Interpretation Act, 2009 (Act 792). Section 32 of Act 792 provides that ***"Where in an enactment it is declared that the whole or a part of any other enactment is to cease to have effect, that other enactment shall be deemed to have been repealed to the extent to which it is so declared to cease to have effect."*** Even though interpretation Act 1960 (C.A. 4) has been repealed its section 8 is equivalent to Section 34 of Act 792. Thus Section 34 of Act 792 provides in states that:

"34. Effect of repeal

(1) Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,

(a) revive an enactment or a thing not in force or existing at the time at which the repeal or revocation takes effect;

(b) affect the previous operation of the enactment that is repealed or revoked, or anything duly done or suffered under the enactment;

(c) affect a right, a privilege, an obligation or a liability acquired, accrued or incurred under the enactment that is repealed or revoked;

(d) affect an offence committed against the enactment that is repealed or revoked, or a penalty or a forfeiture or a punishment incurred in respect of that offence; or

(e) affect an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation, a liability, a penalty, a forfeiture or a punishment; and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

(2) Subsection (1) does not authorize the continuance in force after the repeal or revocation of an enactment or of an instrument made under that enactment.

(3) Where an enactment expires, lapses or otherwise ceases to have effect, this section shall apply as if that enactment had then been repealed or revoked.

31. The Court in the case of the **REPUBLIC VRS. EDMUND ADDO. SUIT NO. J3/04/2022 DATED 31ST MAY 2023** held that to enable Section 34(1)(c) to have effect, the right or privilege **"must have become in some way vested by the date of repeal."**

32. Article 107(b) of the 1992 Constitution provides that ***"Parliament shall have no power to pass any law which operates retrospectively to impose any limitations on or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under Articles 178 to 182 of this Constitution."***

EVALUATION, ANALYSIS AND DECISION

33. The High Court has jurisdiction in all matters. Article 140(1) of the 1992 Constitution of provides that the ***"High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law."***

34. Under Section 103(1) of Act 915(supra), the framers used the word "MAY" which means that it is not mandatory for a person to first apply to the Commissioner-General for clarification on tax statute neither is it mandatory for the Commissioner-General to issue to that person (even if that person applies) a private ruling or a class ruling setting out the position of the Commissioner-General regarding the application of a tax law.

35. Act 915 left the person on his/her faith to decide whether to go to court or the Commissioner-General. Where the framers intended a particular condition to be satisfied the word "SHALL" is used. The High Court has jurisdiction in all tax disputes. This Court shall assume jurisdiction on this matter since it has jurisdiction to entertain this suit. This Court shall now consider the merit of this case.

36. Per the EXHIBIT "A" dated 26th June 2025, the Seller accepted the Applicant's offer for the purchase of the real estate property at Three Million United States Dollars (USD3,000,000) and the Seller requested that initial 10% must be made by the Applicant. The Applicant claimed that it paid Three Hundred Thousand United States Dollars (USD300,000) which is 10% of the purchase price as evidenced by EXHIBIT AKD1. However, the Applicant by Exhibit B introduced a tax invoice with invoice number 22/4781347 dated 20th February, 2026 containing effective VAT rate of 20% in accordance with Value Added Tax 2025 (Act 1151).

37. It could be seen that the Applicant's liability to the Seller and its obligation to pay VAT to the Respondent through the Seller accrued on 26th June 2025 at the time the acceptance of the offer for the purchase of the real property was made. At the time of conclusion of the contract, the Purchaser and the Seller were clear in their mind that the purchase price was Three Million United States Dollars and the VAT rate was 5% as stated in Section 3 of Act 870 as amended by Act 1107.

38. The Value Added Tax 2025 (Act 1151) came into effect on 1st January 2026 and this was at the time that the Applicant had already incurred the obligation to pay VAT under Act 870 at the Rate of 5% and gone ahead to pay the initial deposit of 10%.

39. The Value Added Tax 2025 (Act 1151) cannot operate retrospectively to impose obligation or liability (i.e. paying additional 15% VAT) on any person except in the case of a law enacted under Articles 178 to 182 of the 1992 Constitution. To hold otherwise will be contrary to Article 107(b) of the 1992 Constitution.

40. The Value Added Tax 2025 (Act 1151) was not enacted under Articles 178 to 182 of the Constitution, 1992 which deal with finances and public funds. It thus seems clear to me that the obligation of the Applicant as existed under Act 870 is not affected by the subsequent repeal by Act 1151.

CONCLUSION

41. From the foregoing the Court grants the Applicant`s Application in its entirety and make the following Orders:

   i. A declaration that the applicable Value Added Tax (VAT) rate payable on the real estate transaction entered into pursuant to the Letter Agreement dated 26th June 2025 between the Applicant and Bay Developers and Realty Limited is the VAT rate applicable under the law in force in 2025 being 5% and not the rate introduced under the value Added Tax Act 2025 (Act 1151).

ii. A declaration that the transaction having been initiated and partly performed in June 2025 is governed by the tax regime applicable at the time the taxable transaction arose.

iii. An order affirming that the VAT rate payable in respect of the said transaction is the rate applicable in 2025.

iv. A declaration that the tax invoice with invoice number 22/4781347 dated 20th February, 2026 containing effective VAT rate of 20% is void.

v. An order that the Seller should issue a new VAT invoice to reflect the VAT rate of 5% in accordance with Value Added Tax 2013 (Act 870) as amended by Act 1107.

42. This court enters Ruling in favour of the Applicant and makes no order as to cost.

(SGD)

JOHN-MARK NUKU ALIFO

(JUSTICE OF THE HIGH COURT)

COUNSEL

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AUTHORITIES

1. OWUSU-MENSAH VRS. NATIONAL BOARD FOR PROFESSIONAL AND TECHNICAL EXAMINATION (NAPTEX) & OTHERS [2017-2020] 2 SCGLR 708
2. GHANA BAR ASSOCIATION VRS. ATTORNEY-GENERAL AND ANOTHER [1995-96] 1 GLR 598
3. YEBOAH VRS. MENSAH [1998-1999] SCGLR 492; EDUSEI (NO.1) VRS. ATTORNEY-GENERAL AND ANOTHER [1996-97] SCGLR 1
4. EDUSEI (NO.2) VRS. ATTORNEY-GENERAL [1998-99] SCGLR 753
5. ANIN VRS. ABABIO AND OTHERS [1973] 1 GLR 509
6. BIMPONG BUTA VRS. GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200
7. ANTHONY SAKYI VRS. GA SOUTH MUNICIPAL ASSEMBLY [2022] 178 GMJ 216 CA
8. ESSILFIE VRS. GHANA PORTS AUTHORITY [1980] GLR 469-478
9. INDUSTRIAL AND COMMERCIAL WORKERS' UNION OF THE TRADES UNION CONGRESS VRS. BANK OF GHANA [2003-2005] 1 GLR 37
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