THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: ADINYIRA (MRS.), JSC (PRESIDING)

DOTSE, JSC

YEBOAH, JSC

BAFFOE-BONNIE, JSC

BENIN, JSC

PWAMANG, JSC

AMEGATCHER, JSC

WRIT NO.
J1/61/2018

30TH JULY, 2019

CENTER FOR JUVENILE DELIQUENCY ..... PLAINTIFF

VRS

1. GHANA REVENUE AUTHORITY ..... 1ST DEFENDANT

2. THE ATTORNEY GENERAL ..... 2ND DEFENDANT

J U D G M E N T

ADINYIRA (MRS), JSC: -

INTRODUCTION

My Lords, this delivery which happens to be my valedictory judgment after nearly 30 years on the bench with 13 years on the Supreme Court Bench, addresses a 'fundamental

prerequisite to the full enjoyment of fundamental human rights,' that is the right of access to the courts. I have always believed the Judiciary would aspire to enforce legislation, but where legislative abridgement of human rights and freedoms is asserted, then, the court should be astute to examine the effect of the challenged legislation.

The Plaintiff, the Center for Juvenile Delinquency, is a Ghanaian Non-Governmental Organization; the Ghana Revenue Authority is sued as the 1st Defendant being the authority in charge of the administration and collection of the country's revenue and the Attorney General has been made the 2rd Defendant as the principal legal advisor to the government

The challenge by the Plaintiff is in respect of the provision in the Revenue Administration Act, 2016, (Act 915) to the effect that: a person shall not be permitted to file a case with the Courts or conduct any official business with them unless that person quotes the Taxpayer Identification Number (TIN) issued to that person by the 1st Defendant. The Plaintiff's concern is that this requirement under Act 915 is in breach of the letter and spirit of the Constitution as it places a fetter on the right to access the courts.

Both Defendants brushed aside the plaintiff's claims as unfounded and said the requirement of a TIN is merely regulatory and not a fetter, as obtaining a TIN comes with no cost or delay. The 2nd Defendant submitted further that the Plaintiff's claim was unfounded, unsubstantiated and not justiciable.

My Lords, is the Plaintiff making a mountain out of a molehill as the Defendants are telling this Court? Or is the Plaintiff raising a fundamental issue on the rights of the ordinary citizen to be able to access the courts freely and unhindered?

FACTS OF THE CASE

In 2016 Parliament passed the Revenue Administration Act, (Act 915), which came into force on 10th August, 2016. Section 10 of Act 915 required the Commissioner-General to maintain a system of Taxpayer identification number; and Tax clearance certificates, for

the purpose of identification of taxpayers and promoting tax compliance. Section 11 of Act 915 requires that:

> **(1)** A person shall show the Taxpayer Identification Number of that person in any claim, declaration, notice, return, statement or other document **used for the purpose of a tax law.**
>
> (2) Except where otherwise directed by the Commissioner-General in writing, an institution specified in the First Schedule shall request for
>
> (a) a Taxpayer Identification Number from a person who conducts official business with that institution

: The First Schedule of the Act provides:

The Tax payer Identification Number System

1. The Taxpayer Identification Number System applies to the following—

(1) the Ghana Revenue Authority;

(2) the Controller and Accountant General's Department;

(3) the Registrar General's Department;

(4) the Registrar of Co-operatives;

(5) the Lands Commission;

(6) the Immigration Service;

(7) the Passport Office;

(8) the Driver and Vehicle Licensing Authority;

(9) the Courts;

(10) Ministries, Departments and Agencies;

(11) Metropolitan, Municipal and District Assemblies;

(12) Government, Sub-divisions of Government and Public Institutions not listed above;

(13) Persons required to withhold tax under the Income Tax Act, 2015 (Act 896);

(14) Banks, Insurance Companies and other Financial Institutions;

(15) Manufacturing companies; and

(16) Any other institution or person which the Minister may by Regulations prescribe.

Use of Taxpayer Identification Number for specified transactions

2. A person shall not be permitted—

(1) to clear any goods from any port or factory;

(2) to register any title to land, interest in land or any document affecting land;

(3) to obtain any Tax Clearance Certificate from the Ghana Revenue Authority;

(4) to obtain a certificate to commence business or a business permit issued by the Registrar-General or a Local authority;

(5) to register a co-operative;

(6) to receive payment from the Controller and Accountant-General or a Local Government Authority in respect of a contract for the supply of any goods, works or provision of any services;

(7) to receive a payment subject to withholding under the Income Tax Act, 2015, (Act 896);

(8) to file a case with the Courts; or

(9) to conduct any official business with the institutions and persons specified in paragraph 1

unless that person quotes the Taxpayer Identification Number issued in respect of that person under the System. [Emphasis mine]

The Plaintiff's Writ

On 13th April 2018, the Plaintiff brought this action to invoke the original jurisdiction of this Court under articles 2(1) and 130 of the Constitution, 1992, claiming nine reliefs which may be summed up as follows:

a) A declaration that paragraphs 1(9), 2(8) and 2(9) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) which prohibits a person from filing a case in court or conducting any official business with the courts unless that person quotes the Taxpayer Identification Number issued in respect of that person under the Taxpayer Identification Number System of the 1st Defendant are inconsistent with and are in contravention of the spirit of the Constitution in terms of articles 2(1), 33(1), 48(2), 130(1), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of the 1992 Constitution which guarantee a person's right of access to court hence null, void and unenforceable.

b) A declaration that the requirement of the use of TIN in paragraphs 1 (9), 2 (8)and (9)of the First Schedule of the Revenue Administration Act, 2016 (Act 915) is overbroad as it applies to juveniles and is thereby inconsistent with and in contravention of the spirit of the Constitution in terms of articles 2(1), 33(1), 130(1), 132, 133(1), 135, 137(1) 140, 273 (1) and (5) and 280 of the 1992 Constitution which guarantee the right of a person, including a juvenile, to have access to the courts, and consequently null, void and unenforceable.

c) An order striking down Paragraphs 1(9), 2 (8) and 2 (9) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) for being inconsistent with the letter and spirit of the 1992 Constitution and consequently null and void.

The Plaintiff's Statement of Case

Lawyer Dennis Adjei Dwomoh, for the Plaintiff, submits that articles 2(1), 33(1), 130(1), 132, 133(1), 135, 137(1), 140, 273 (1) and (5) and 280 of the 1992 Constitution by their wording guarantee an unimpeded right of access to the Courts, however Paragraph 1(9), 2(8) and 2(9) of the First Schedule of Act 915, by requiring that a person shall not be permitted to file a case with the courts and shall not transact business with them unless that person quotes his/her Taxpayer Identification Number, infringe on the right of access to the courts, especially of vulnerable groups such as the aged, the incapacitated, juveniles and accused persons in custody who may not be in a position to readily obtain a TIN. The Plaintiff further contends that the provisions are discriminatory against such groups of persons and prays the Court to declare the said provisions unconstitutional.

The 1st Defendant's Statement of Case

Lawyer C. Odartey Lamptey submits for the 1st Defendant that the requirement for quoting a TIN on a court process before filing is merely regulatory and akin to other constitutional and statutory requirements contained in the Courts Act, and is therefore not in violation of the Constitution. The 1st defendant submits further that, obtaining a TIN comes with no cost and delay and thus its endorsement on a process before it is filed in court cannot be called a fetter on the right to access the courts anymore than the requirement for payment of filing fees to access the courts. He also submits that the requirement of TIN is one of the measures put in place by Parliament to ensure tax compliance as provided for under Article 41 (j) of the Constitution.

In response to the Plaintiff's claim that the acquisition of a TIN is overbroad and inherently discriminatory and may result in juveniles being denied access to the courts, Mr. Lamptey

submits that the argument is not legally tenable as a juvenile is not liable to pay tax and therefore not obliged to obtain a TIN. Counsel submits further that a taxpayer or potential taxpayer who chooses not to apply for and obtain a TIN is to be considered as electing not to access the courts and not that a fetter is being placed on his or her right.

The 2nd Defendant's Statement of Case

The Principal State Attorney, Mrs. Grace M-Ewoal on behalf of the Attorney-General [AG] raised a preliminary legal objection to the Plaintiff's writ on the grounds that the Plaintiff has not properly invoked the original jurisdiction of the Supreme Court under articles 2(1) and 130 of the Constitution.

Relying on the case of ***Daasebre Asare Baah III and 4 Others v The Attorney General and the Electoral Commission [2010] SCGLR 463 ,*** the AG submits that the Plaintiff merely asserted that paragraphs 1(9), 2(8) and 2(9) of the Act 915 contravene articles 2(1), 33(1), 48(2), 130(1), 135, 137(1), 140, 273(5) and 280 of the Constitution without providing any proof and therefore has not properly invoked the jurisdiction of this Court.

The AG describes as flawed and misconceived, the Plaintiff's claim that the said requirement is overbroad, for the reasons that a juvenile is not liable to pay tax and therefore not required to obtain a TIN. She submits further that a juvenile has no capacity to institute an action in court on his own except through a guardian ad litem and it is that person who is required to possess a TIN. She also argues that the law does not apply to criminal proceedings or to the original jurisdiction of the Supreme Court under articles 2 (1) and 130 of the Constitution.

ISSUES FOR DETERMINATION

The issues agreed upon by the parties and filed on 5 February 2019, are:

1. Whether or not the Plaintiff has properly invoked the original jurisdiction of the Supreme Court under articles 2(1) and 130 of the 1992 Constitution

2. Whether or not paragraph 1(9), 2(8) and 2(9) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) which prohibits a person from filing a case in court and from conducting any official business with the court unless the person quotes his or her tax identification number on his or her process contravenes articles 2(1) 130, 33(1), 48(2), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of the 1992 Constitution and the right of access to court and justice.
3. Whether or not paragraphs 1(9), 2(8) and 2(9) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) violate the rights of juveniles of access to the court and justice in criminal proceedings.

CONSIDERATION

Issue 1 ***Whether or not the Plaintiff has properly invoked the original jurisdiction of the Supreme Court under articles 2(1) and 130 of the 1992 Constitution***

On the point of jurisdiction, Article 1(2) of the 1992 Constitution provides:

> "(2) The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."

Articles 2(1) (a) and 130 (1) (b) of the Constitution also provides respectively as follows:

> "2. (1) A person who alleges that –
>
> an enactment or anything contained in or done under the authority of that act or any other enactment…
>
> is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."

130. (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in -

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

These two constitutional provisions empower any person who alleges that an enactment contravenes the Constitution, to proceed to this Court to have it declared void or to the extent of the inconsistency.

Presumption of Legality of Statutes and Principle of Severability

Two cardinal principles guiding the judicial review of legislation is firstly, the presumption that every enactment by the legislator is presumed to be valid or constitutional until the contrary is proven and secondly the principle of severability of impugned legislation; that is the power of this Court to strike down offending parts of legislation leaving the other part unaffected. These principles make it imperative that particulars of invalidity or want of constitutionality be identified with sufficient clarity to enable this Court to determine, infringements, violations, conflicts or non-compliance with constitutional provisions and procedures in the exercise of our exclusive jurisdiction under articles 2(1) and 130(1). See ***Daasebre Asare Baah III, supra at page 471***

On the issue of jurisdiction, the main point of the objection raised by the Attorney General is that the Plaintiff cited several constitutional provisions with a bare assertion that the said paragraphs 1(9), 2(8), and (9) of the First Schedule of Act 915 are in conflict with these constitutional provisions without any evidence in proof.

I have examined the writ, affidavit in support and statement of case filed by the Plaintiff and find that contrary to this assertion by the Attorney-General, the plaintiff did not merely refer to those constitutional provisions but went to great lengths to demonstrate how each gives a an automatic right of access to the courts. He further discussed the effect of the enforcement of the impugned provisions in the administration of justice, such as the jurisdiction of the courts, enforcement of human rights, criminal justice, civil cases and the effect on the vulnerable, particularly juveniles. The Plaintiff contended that

the impugned requirement is an affront to the spirit of the Constitution as described in the celebrated case of **Tuffuor v Attorney-General [1980] GLR 637**.

In **Ghana Independent Broadcasters Association v The Attorney-General & National Media Commission, Writ No J1/14/2016 dated 30 Nov 2016, SC, Unreported**; the Plaintiff therein claimed that the National Media Commission, which is the regulatory body responsible for the media in Ghana, went beyond bounds and was acting in a manner inimical to the attainment of the right of free expression. The Plaintiff raised concerns about certain provisions in the National Media Commission (Content Standards) Regulations, 2015, L.I. 2224 which it claimed were *"unconstitutional as same amounts to censorship, control and direction of operators of mass media communication in so far as the said regulations require an operator to seek authorization of his/her content before carrying same on any of the platforms of mass media communication…….and therefore contrary to Articles 162(2) and (4), 167(d) and 173 of the 1992 Constitution".* They therefore applied to the Court to have same declared void and unconstitutional and to be struck down:

The Defendants in that case also raised objection to the jurisdiction of the Court in a tone similar to the 2nd Defendant in this case, to wit: *"it is not appropriate, as what plaintiff has done in this case is to assemble as many statutory provisions in the enactment complained about in relation to his/her case, and then throw it at the Court, for the court to now determine the extent of their inconsistency with or contravention of the Constitution."*

Benin JSC in rejecting this argument as unsustainable said:

> *"The reliefs sought herein are clearly [recognizable] under the Constitution. It is noted that there is no magical or standard formula in setting out a constitutional case before this court; what is important is that the contents of the reliefs sought and the affidavit in support must raise a case [recognizable] under the Constitution. However inelegant the words used in expressing the reliefs, what is important are that they are couched in language that the court will appreciate*

without difficulty. The court will then look at the substance of the claim in order to do substantial justice."

In considering this issue, my Lords, I feel it pertinent to remark that the constitutional development of our country as a modern democracy has evolved dramatically since the landmark case of **In re Akoto [1961] 2 GLR 523**, with the entrenchment of the fundamental rights and freedoms of the individual in our 1969, 1979 and 1992 Constitutions. It was imperative that not only were these rights of the individual enshrined and entrenched in the Constitution but also that a mechanism was provided for their enforcement. Consequently, Article 33 (1) is entrenched in the Constitution for the protection and enforcement of these rights whenever a person alleges that a provision of the Constitution of the fundamental rights and freedoms ***"has been, or is being or is likely to be contravened in relation to him, then without any prejudice to any other action that is lawfully available, that person may apply to the High Court for redress." [Emphasis mine]***

The other articles which the Plaintiff relied on, viz 2(1), 48(2), 130(1), 135, 137(1), 140, 273(5) and 280 of the 1992 Constitution by their combined effect give free and unimpeded right of access to other courts for a person to seek other redress that is legally available.

Section 108 of Act 915 defines 'Court' as 'High Court', but upon reading the Act as a whole this definition, applies to section 44 of the Act dealing with appeals to the High Court against a decision by the Commissioner. However, the use of the word 'the Courts' in the context of the First Schedule is intended to apply to the courts as an institution and therefore not limited to the High Court. Accordingly the submission by the 2nd Defendant that the Supreme Court is not affected by the impugned provisions is misplaced.

From the foregoing, I am of the view that the Plaintiff is not making a mountain out of a molehill but has raised very cogent and important constitutional issues; which brings into question the very function of the Judiciary as the watchdog of the Constitution, the protector of human rights and upholder of the rule of law and the power of judicial review

of legislative action by the Supreme Court per Article 2(1) (a) and 130(b) of the Constitution. This Court is therefore under a duty to look at the substance of the Plaintiff's claim in order to do substantial justice.

Accordingly, I hold on issue 1 that the Plaintiff has properly invoked our jurisdiction under articles 2(1) and 130 (b) of the Constitution. The objection on grounds of jurisdiction is therefore dismissed.

My Lords, it will be expedient to consider issues 2 and 3 together.

Issue 2

Whether or not paragraph 1(9), 2(8) and 2(9) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) which prohibits a person from filing a case in court and from conducting any official business with the court unless the person quotes his or her tax identification number on his or her process contravenes Articles 2(1) 130, 33(1), 48(2), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of the 1992 Constitution and the right of access to court and justice

Issue 3

Whether or not paragraphs 1(9), 2(8) and 2(9) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) violate the right of juveniles of access to court and justice in criminal proceedings.

It is a matter of statutory construction for the Court to determine whether the purpose of the said provisions is such that it impliedly prohibits the filing of a court process without a TIN.

My Lords, at this point, I will discuss the concept of access to justice and the principle of proportionality to determine whether the limitation on access to the law courts as being alleged is proportional and constitutional.

Access to Justice

A cardinal principle of the Rule of Law is equality before the law and therefore Article 17(1) of the Constitution guarantees all persons equality before the law which includes equal access to courts in order to prosecute or defend a claim or a violation of a right. This right requires the access to be adequate, effective and meaningful.

For example, for a person to institute an action in this Court, under Article 2 (1) the only prerequisite is that the person must be a citizen of Ghana. For the enforcement of any of the fundamental human rights, every person in Ghana, whether a citizen or non-citizen is competent to bring an action under Article 33(1) to the High Court.

In every other actions whether civil or criminal every person in Ghana, citizen and non-citizens alike, who has a cause of action or a criminal complaint, has access to all courts in Ghana by complying to the rules of procedure applicable to each court. There is no prior statutory restraint for a form of identity before one can access the courts. Elements such as capacity, jurisdiction and the nature of the claim are some of the factors a person should consider before filing a process in court.

There are two sides to the concept of access to justice: the first is the freedom to walk into the court and initiate a cause of action and secondly the ability to meaningfully and effectively participate in proceedings i.e. the right to a fair trial in both civil and criminal trials. See Article 19 of the Constitution. This second aspect of access to justice was considered in the case of The **Republic v Eugene Baffoe-Bonnie & 4 Ors [2019] GLTR 1.**

Article 12 (1) requires all 3 arms of government to respect and uphold the fundamental human rights and freedoms enshrined in the Constitution.

> *"(1) The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution."*

The Proportionality test

In **Eugene Baffoe-Bonnie** case, I discussed the proportionality test in some great detail and I quoted with approval the following words of Akuffo JSC (as she then was) in **Civil and Local Government Staff Association of Ghana [CLOSAG] v The Attorney-General and 2 Ors. Suit No. J1/1/2016 dated 14 June 2017, unreported**:

> *"Prima facie, constitutional rights and freedoms are to be enjoyed fully subject to the limits which the Constitution itself places thereon in terms of Article 12 (2)...Hence in determining the validity of any statutory or other limitation placed on a constitutional right, the question that need to be determined are**:***
>
> *a. Is the limitation necessary? In other words is the limitation necessary for the enhancement of democracy and freedoms of all, is it for the public good?*
> *b. Is the limitation proportional? Is the limitation over-broad such as to effectively nullify a particular right or freedom guaranteed by the Constitution?*

In the **CLOSAG** case, the Supreme Court in applying the proportionality test examined the role of members of the Civil Service and Local Government Service in the overall governance structure in Ghana to determine whether the limitations on the enjoyment of their political rights are proportional and constitutional.

The Court held that: it was clear from the functions of the Civil and Local Government Services that a large measure of apparent political anonymity or neutrality is required in order for these Services to function satisfactorily and effectively as part of the national government machinery. Accordingly, the Court held that their Codes of Conduct in general do not deny them the freedom of association, particularly the right to join political parties of their choice and that they merely seek to place a limitation on the manifestation of that right while in-service, in order to maintain the neutrality of the Civil and Local Government Services and foster the principles of anonymity and permanence.

The importance of the right of access to the courts lies in the fact that it enables every person to enjoy all the other fundamental human rights and freedoms enshrined in Chapter Five of the 1992 Constitution. Further, access to justice enables people who are more vulnerable to socio-economic hardships, discrimination and general human rights abuses to access and enforce their inalienable human rights. Generally, the majority of persons face obstacles when trying to bring cases to court due to lack of access to legal aid. So that any additional impediment introduced by any arm of government that prevents a person from invoking the jurisdiction of the court and thereby results in a denial of justice is unacceptable.

In **Labone Weavers Enterprises Ltd V Bank of Ghana [1977] 2 GLR 156, t**he Court held as follows:

> " *every person has an unimpeded access to the law courts and this basic fundamental right could only be taken away by an express provision of a Decree or an Act of Parliament* ***provided the Act did not run counter to any provisions of the Constitution that the country might have."[Emphasis mine]***

Hayfron-Benjamin JSC in **New Patriotic Party v Inspector General of Police [1993-94] 2GLR 459 at 504**, said**:**

> *"[T]he framers of the Constitution, 1992 intended that the citizens of this country should enjoy the fullest measure of responsible human and civil rights. Therefore any law which seeks to abridge these freedoms and rights must be struck down as unconstitutional."*

My Lords I will now examine the impugned provisions to determine whether the harm it does to freedom of access to the courts plainly outweighs whatever benefit it aims to achieve.

Interpretative Approach

As with every enactment there is a presumption that the drafters chose with utmost care, every word included therein and that unless the contrary is established, such words must be given their normal and ordinary meaning.

The First Schedule is headed 'Transactions **for which Taxpayer Identification Number and Tax Clearance Certificate is required**'. Part 1 is headed **The Tax Payer Identification Number System** and subparagraphs (1) to (15) list the institutions that the TIN System applies. Paragraph 1(9) provides that it applies to the courts. Paragraph 2 is headed 'Use **of Taxpayer Identification Number for specified transactions'** and makes provision for the use of TIN for specific transaction without which a person shall not be permitted under 2 (8) to file a case with the Courts and per 2(9) a person cannot conduct any official business with the institutions and persons specified in paragraph 1.

The words used in the said paragraphs are simple, clear and unambiguous and do not need any further interpretation, except to give them their normal and ordinary meaning Though it is trite law, I will refer to section 42 of the Interpretation Act of 2009, Act 792 which provides: "In an enactment the expression, "may" shall be construed as permissive and empowering, and the expression "shall" as imperative and mandatory." Thus by the use of the word 'SHALL' in the opening sentence of paragraph 2: that a person shall not be permitted… to file a case with the courts, the legislator clearly intended to impose a statutory prohibition of the filing of any process with the courts, unless that person quotes his or her TIN.

Accordingly, the submissions by the Defendants that the requirement for the use of TIN does not place a fetter on the right to access justice is very limp as the use of the word "shall' makes it a mandatory requirement. Therefore the requirement bluntly put is: no TIN no access to a court.

'Business' is defined under section 108 of the Act 915 to: "include a trade, profession or vocation, but does not include employment." According to the **Black's Law Dictionary** a 'transaction' is "the act of conducting business or other dealings; especially the

formation, performance, or discharge of a contract or something performed or carried out in a business agreement or exchange". The **Cambridge Advanced Learner's Dictionary &Thesaurus** defines a 'transaction' as an occasion when someone buys or sells something or when money is exchanged or the activity of buying or selling something.

With the exception of filing a case in the courts, all the transactions specified in paragraph 2 of the First Schedule such as the clearing of goods at the harbour, registering land or a company, receiving payment from the Controller and Accountant General's Department ultimately or potentially require the person, transacting business with the specified institutions, either to pay some form of tax or be properly taxed for receiving some payment from the state.

'Tax' is defined under section 9(1)of Act 915 to mean "a duty, levy, charge, rate, fee, interest, penalty or any other amount imposed by a tax law or to be collected by or paid to the Commissioner- General under a tax law". I believe the taxes would include stamp duty, customs and excise duties, investment tax, sales tax, VAT and withholding tax to be paid to the institution by the person conducting such transaction with same.

However, the filling of a case in court clearly does not fit in the above description of business transactions. The official business of the court is to administer justice for the people and on behalf of the people by the Judiciary as stated in article 125(1) of the 1992 Constitution. When it comes to transactions such as a contract for the supply of goods or services, logistics and works, that role is played by the Judicial Service and not the courts or the Judiciary. In such business transactions the Judicial Service like any other public service has to comply with the tax laws and financial regulations and it is therefore mandatory for it to require the use of TIN and Tax Clearance Certificate in such business transactions,

The application of section 11 (2) by the other institutions listed in paragraph 1 of the First Schedule to request for TIN from a person who conducts any business specified in

paragraph 2 with that institution is therefore legal, necessary and reasonable in order to ensure tax compliance.

Both Defendants contend that the said provisions is similar to payment of filing fees or the endorsement by a lawyer of his licence number on any process filed in Court.. This comparison with respect to counsel begs the question and diminishes the issue before us. It is like comparing apples with oranges as the idiom goes.

A filing fee is the amount of money a person pays to file any process before the court. The amount depends on the nature of the case and the court. But then by the definition of 'tax', under section 9(1) ***supra***, filing fee is a form of tax***,*** and thus refusing a person from filing a case for not possessing a TIN rather defeats the purpose of widening the tax net to rake in revenue.

The endorsement of a lawyer's licence is to provide proof that the lawyer is licensed to practice law under the Legal Professional Act and Regulations for that particular legal year. A person quoting his TIN on a Court process does not necessarily mean he has fulfilled his or her tax obligation, so in effect it is a mere inconvenience if one may say so. Where an administrative body has alternatives by which it can achieve the outcome expected from a policy, then that is preferable to the option that creates a greater inconvenience to the larger public and in this context impede access to justice.

In the case before us, the underlying policy for a person to obtain a TIN as stated in section 10 of Act 915 is to identify taxpayers. So invariably, the purpose of TIN is to widen the tax net to facilitate tax collection for more revenue to accrue for the development of the state and also to ensure the compliance by citizens with their public duty under Article 41 (j) to be tax compliant. However the harm it does to freedom of access to the courts plainly outweighs whatever benefit it aims to achieve.

My Lords, beyond the issue of cost or delay is the wider question of how to obtain a TIN by the majority in a society where there are several barriers to public services such as geographic, illiteracy, financial and gender-specific challenges. As was acknowledged by

this court in the case of **Attisogbe v CFC Construction Co. (WA) Ltd & Reid [2005-2006] SCGLR 858 at 872:**"*It is unfortunate that illiteracy remains a widespread phenomenon in Ghana. It is a fact of which judicial notice may legitimately be taken."*

The bulk of the populace resides in rural areas and operates in the informal sector. GRA offices may only exist in urban, high populated areas and enforcing these provisions will leave the rest of the country without proper access to the formal justice system. There is no doubt that it is not practical for people in remote areas to have easy access to a tax office to obtain a TIN. The promise of GRA to provide facilities for registering persons for TIN at court premises is noted but that is outside the control of the court for as the law stands it is only taxpayers who are to obtain TIN and how does a filing clerk determine who is exempted from tax.

It is important that we maintain the confidence that the ordinary person has in our ability to compel observance of the Constitution by invalidating in appropriate cases, enactments that are in breach of constitutional rights.

My Lords, from the foregoing, it is my considered opinion that the requirement under paragraph 2(8) of the First Schedule of Act 915 that a person shall not be permitted to file a case in Court unless he quotes his TIN is an unjustified interference with the right of an individual to access the court for justice. It is an unreasonable restriction and limitation on the right to access the law courts and therefore fails the proportionality test.

We need to strike a balance between the need for citizens to pay tax and the need to encourage free access to the law courts which is one of the basic characteristics of constitutional democracy where the rule of law is prevalent and serves as a barometer to measure good governance and accountability in a country through judicial review. . Judicial review has been described as a strong bulwark against illegality and impunity and insulates citizens against their human rights violations. It is through the vigilance of persons like the Plaintiff herein that actions can be taken to protect the Constitution.

I do not think the decision we are compelled to arrive at in this case will be subversive of the important public duty of every citizen to comply with his or her tax obligations as expected by the Constitution and revenue statutes. It is rather a decision which seeks to balance the democratic rights of citizens as enshrined in the Constitution to have unimpeded access to justice in the courts against bureaucratic impediments, imposed obviously in the public interest for the GRA to collect revenue.

As Kpegah JSC said in **Awuni v West African Examination Council [2003-2004] 1 SCGLR 471 at 499 to 500:**

> "I do not think this case is one in which injustice to one individual can be said to be of no consequence because the larger interest owed to society is more important. And a nation that stands by and looks on while the rights of the individual are slowly pecked at, eventually pays the ultimate price of finding its own rights eroded… **We accept some limitation on the fundamental rights of the individual only if it is justified and proportionate." [Emphasis mine]**

In the instant case, enforcing these provisions will deprive a majority of people of their right to exercise their fundamental human right to access justice which is not only against the spirit and tenets of our 1992 Constitution but also against international conventions to which Ghana as a truly constitutional and democratic state is committed.

Also, Date-Bah JSC in **Adofo v. Attorney-General & Cocobod [2005-2006] SGCLR 42** at page 51 of the report said:

"The unhampered access of individuals to the courts is a fundamental prerequisite to the full enjoyment of fundamental human rights. This court has a responsibility to preserve this access in the interest of good governance and constitutionalism. Unhampered access to the courts is an important element of the rule of law to which the Constitution, 1992 is clearly committed. Protection of the rule of law is an important obligation of this court."

He added that:

"A further reason for prohibiting the barring of access to the courts is that it brings into question the very function of the judiciary. Under our Constitution, 1992, the judiciary is given the role of a watch-dog against abuse or excess of power by the executive or the legislature. This function of the judiciary as a third pillar of responsible and accountable government would be undermined by the ouster of the jurisdiction of the courts in any matters relating to justiciable rights."

Though there is of lack of clarity in the Plaintiff's submissions in respect of juveniles, I appreciate its concern, as a juvenile can only access the courts by a next friend. This person being an adult may require a TIN before filing a court process on behalf of his next friend who is a juvenile. The said provisions are therefore overbroad as it affects the rights of juveniles to access justice in both criminal and civil cases.

From the foregoing I have no hesitation to reach the conclusion that the said paragraphs 1(9) and 2(8) of the First Schedule of Act 915 clearly offend the letter and spirit of the Constitution as they violate the right of access to law courts by persons in Ghana including juveniles. These provisions are in contravention of Articles 2(1), 33(1), 130(1), 132, 133(1), 135, 137(1), 140, 273 (1) and (5) and 280 of the Constitution and the same are unconstitutional, void and of no effect; and I so declare.

I will therefore resolve issues 2 and 3 in favour of the Plaintiff save paragraph 2(9) for the following reasons.

The use of the word 'or' after the punctuation comma, at the end of paragraph 1(8) shows that it is disjunctive from the next paragraph, 2(9), which applies to other official business not listed in the preceding paragraphs. Similarly the last part of paragraph 2: "unless the person quotes the Taxpayer Identification Number issued in respect of that person under the System", is not limited to the courts but applies to the other institutions listed in paragraph 1 and the activities mentioned in paragraph 2 and is therefore not affected by the declaration of paragraphs 1(9) and 2(8) as void and unconstitutional and can therefore by applying the severability test described hereafter be severed from the offending sub paragraphs.

Applying the Test of Severability

This Court's power to pronounce on the constitutionality or legality of legislations, acts or omissions that are ultra vires or where there exist breaches, violations, conflicts, or non-compliance with constitutional requirements or procedures, is exercised, pursuant to articles 2(1) and 130(1). However, the Court cannot modify or adapt the law to bring it within the lawmaker's intent or purpose. The proper approach is for the Court to sever and strike down the offending part, leaving other parts intact and unaffected by the exercise. See **Asare Bah III v Attorney-General & Electoral Commission [2010] SCGLR 463.**

In applying the severability test, I will strike down paragraphs 1(9) and 2(8) of the First Schedule of Act 915. I will leave paragraph 2(9) intact as well as the concluding portion of paragraph 2 which reads:"*unless that person quotes the Taxpayer Identification Number issued in respect of that person under the System."*

Conclusion

On a true and proper interpretation of the Constitution I resolve issues 1 and 3 in favour of Plaintiff, whilst issue 2 is resolved in part in favour of the Plaintiff. Accordingly, I grant reliefs (a) and (b). I also grant relief (c) in part.

Consequently, paragraphs 1 (9) and 2 (8) of the First Schedule of the Revenue Administration Act, 2016 (Act 915) are hereby struck down as unconstitutional and in contravention of the letter and spirit of articles 2(1) 130, 33(1), 48(2), 132, 133(1), 135, 137(1), 140, 273(1), 273(5) and 280 of the 1992 Constitution.

(SGD) S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

DOTSE JSC:-

I agree with the reasoning and conclusion of my sister Adinyira JSC.

SGD. V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

YEBOAH JSC:-

I agree with the reasoning and conclusion of my sister Adinyira JSC.

SGD. ANIN YEBOAH

(JUSTICE OF THE SUPREME COURT)

BAFFOE – BONNIE JSC:-

I agree with the reasoning and conclusion of my sister Adinyira JSC.

SGD. P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

BENIN JSC:-

I agree with the reasoning and conclusion of my sister Adinyira JSC.

SGD. A. A. BENIN

(JUSTICE OF THE SUPREME COURT)

PWAMANG JSC:-

I agree with the reasoning and conclusion of my sister Adinyira JSC.

SGD. G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

AMEGATCHER JSC:-

I agree with the reasoning and conclusion of my sister Adinyira JSC.

(SGD) N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

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