IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
AMEGATCHER JSC
OWUSU (MS.) JSC
LOVELACE-JOHNSON (MS.) JSC
HONYENUGA JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

WRIT NO.
J1/07/2021

30TH NOVEMBER, 2022

EXPORT FINANCE COMPANY LTD. ..... PLAINTIFF

VRS

1. GHANA REVENUE AUTHORITY
2. ATTORNEY GENERAL ..... **DEFENDANTS**

JUDGMENT

AMEGATCHER JSC:-

INTRODUCTION

The plaintiff's writ seeks the following reliefs from this court:

A) A declaration that section 42(5) (a) of the Revenue Administration Act, 2016 (Act 915) in so far as it requires a taxpayer objecting to a tax assessment in respect of import duties to fully pay the very tax liability being disputed is

inconsistent with and in contravention of articles 2(1), 17, 19 (13), 33(1), 130(1), 132, 137(1) and 140 of the 1992 Constitution.

B) A declaration that section 42(5) (b) of the Revenue Administration Act, 2016 (Act 915) in so far as it mandatorily requires a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30% of the tax assessed as a prerequisite for the notice of objection to be considered is inconsistent with and in contravention of articles 2(1), 17, 19 (13), 33(1), 130(1), 132, 137(1) and 140 of the 1992 Constitution which guarantees a fair hearing and a person's right of access to the court and consequently null, void and unenforceable.

C) A declaration that section 42(6) of the Revenue Administration Act, 2016 (Act 915), in so far as it gives the Commissioner-General the discretion to waive, vary or suspend the requirements of subsection 5 of Act 915 is discriminatory and arbitrary, and in contravention of the letter and spirit of articles 2(1), 17, 19(13), 33(1), 130(1), 132, 133(1), 137(1) and 140 of the Constitution which guarantees a fair hearing and the right of all persons to have equal access to the Courts of justice and is consequently null, void and of no effect because it gives the Commissioner the discretion to decide on persons that may have access to the Courts.

D) A declaration that section 43(3) of the Revenue Administration Act, 2016 (Act 915), which gives the Commissioner General the option to ignore a notice of objection within the statutory period of sixty (60) days with the resulting effect that the taxpayers is to treat such a failure to make a decision as an election to disallow the tax payer's notice of objection is an abuse of discretionary power and therefore in conflict with articles 2 (1), 23, 33(1) and 296 of the 1992 Constitution and consequently null and void and of no effect.

E) A declaration that Order 54 rule 4 of the High Court Civil procedure rules 2004 C.I. 47, which requires a taxpayer to pay an amount not less than a quarter of the amount payable in the first quarter of the year of assessment as contained

in the notice of assessment is inconsistent with an in contravention of articles 2(1), 17, 19 (13), 33(1), 130(1), 132, 137 (1) and 140 of the 1992 Constitution which guarantee a fair hearing and a person's right of access to court and consequently null, void and unenforceable.

PLAINTIFF'S CASE

The gravamen of plaintiff's action as can be gleaned from its statement of case is that in 2016, Parliament passed the Revenue Administration Act, 2016 (Act 915), to regulate tax administration in the country. According to the plaintiff, Section 40 of Act 915 empowers the Commissioner General to make a tax assessment and serve a written notice of the assessment on the taxpayer. A taxpayer who is dissatisfied with the notice of assessment made by the Commissioner General is entitled to proceed under section 42(1) of Act 915 to lodge an objection to the decision of the Commissioner General within thirty days of being notified of the tax decision. It is the case of the plaintiff that the right to lodge an objection is curtailed under section 42(5) (a) and (b) of Act 915 which requires the taxpayer to pay in the case of import duties and taxes, all outstanding taxes including the full amount of the tax in dispute or a minimum of thirty percent (30%) of the tax in the case of other taxes as a condition precedent for the notice of objection to be heard by the Commissioner General.

The plaintiff further argues that the fetter on a taxpayer's right to access the court is further exacerbated when the taxpayer decides to go to the High Court for redress and is confronted with Order 54 rule 4 of C.I. 47 which provides that before an aggrieved person who has filed an appeal against an assessment, decision or order of the Commissioner can be heard he must pay an amount which should not be less than a quarter of the amount payable in the first quarter of that year of assessment as contained in the notice of assessment. In that respect, the plaintiff submits that the onerous and extremely burdensome financial obligations placed on an aggrieved taxpayer before he is heard is a fetter and a clog on his right to a fair hearing and access to the courts.

It is the plaintiff's case further that Order 54 Rule 4 of The High Court (Civil Procedure) Rules, 2004 (C.I. 47) which provides a taxpayer an avenue to appeal the decision of the Independent Tax Appeals Board by virtue of the Revenue Administration (Amendment) Act, 2020 (Act 1029), compounds the issue by requiring the aggrieved taxpayer to pay not less than a quarter of the amount payable in the first quarter of the year of assessment as contained in the notice of assessment before appealing to the High Court.

The plaintiff says this contravenes Articles 2(1), 17, 19(13), 33(1), 130(1), 132, 135, 137(1), and 140 of the 1992 Constitution which guarantees a fair hearing and a person's right of access to the court. Consequently, Section 42(5) of Act 915 and Order 54 rule 4 of C.I. 47 are inconsistent with, and in contravention of, the Constitution and to that extent are null and void and of no legal effect.

1ST DEFENDANT'S CASE

The 1st defendant is a body corporate established under the Ghana Revenue Authority Act, 2009 (Act 791). The object of the 1st defendant is the entity responsible for the efficient collection of taxes in the country.

The 1st defendant's contention is that tax statutes are strictly interpreted so that taxes due are made available for the government to run the country. According to the 1st defendant, the rationale for requiring the payment of a portion of the disputed tax assessed is to discourage the filing of frivolous tax appeals. Moreover, a taxpayer who seeks to object to a tax assessment may seek a waiver, variation, or suspension of the amount to be paid as a percentage of the disputed tax assessed under Section 42(6) of The Revenue Administration Act, 2016 (Act 915). Therefore, there is no fetter on the taxpayer's right to object to a tax assessment or to appeal to the High Court.

It is the case of the 1st defendant that the discretionary power given to the Commissioner-General under Section 42(6) of The Revenue Administration Act, 2016 (Act 915) is neither discriminatory nor arbitrary because it is provided for, and regulated, under the 1992 Constitution.

2ND DEFENDANT'S CASE

The 2nd defendant avers that the present suit is an action for the enforcement of fundamental human rights as opposed to one for the interpretation and enforcement of the 1992 Constitution. According to the 2nd defendant, a look at the plaintiff's Writ and Statement of Case reveals that the plaintiff instituted this action to enforce The Revenue Administration Act, 2016 (Act 915) with reference to the actions of the 1st defendant which the plaintiff says curtails the right of taxpayers to access the court. In the opinion of the 2nd defendant, this is not a matter to be brought before this Court. Therefore, according to the 2nd defendant, the plaintiff has not properly invoked the jurisdiction of the Court.

About the substantive issues, the 2nd Defendant avers that the provisions cited by the plaintiff as unconstitutional fit in with the catchphrase in tax jurisprudence known as 'pay now, argue later,' which balances the taxpayer's rights against the need for the efficient collection of taxes. According to the 2nd defendant, in any event, there is some respite for a taxpayer who seeks to file a notice of objection to a tax assessment under Section 42(6) of The Revenue Administration Act, 2016 (Act 915), where the Commissioner-General may waive, vary or suspend the payment of the percentage of the disputed tax assessed.

CONSTITUTIONALITY OF SECTION 42 OF ACT 915

Earlier today, this Court differently constituted interpreted in its judgment the relevant constitutional provisions against the test of constitutionality of Section 42(5) of the Revenue Administration Act, 2016 Act 915 following a reference to it by the Court of Appeal, Kumasi in suit number **J6/02/2022 intituled Kwasi Afrifa vrs Ghana Revenue Authority & Anor [SC 30th November 2022 unreported].** The reference was formulated as follows:

"Whether upon a true and proper interpretation of Article 23 of the 1992 Constitution, section 42 (5) of the Revenue Administration Act, 2016 Act 915 is inconsistent with and violative of the constitutional right to

administrative justice guaranteed under the provisions of Article 23 of the 1992 Constitution."

In a well-reasoned opinion on the reference, Torkornoo JSC speaking on behalf of the Court considered the various constitutional provisions, statutes, and case law and concluded as follows:

"**We are of the firm view that if any citizen has any objection to any tax decision, section 42(5) of Act 915 does not create a fetter to the due hearing of that objection, because of the rest of the dispute resolution provisions under Act 915. To the question under reference, our answer is that upon a true and proper interpretation of Article 23 of the 1992 Constitution, section 42 (5) of the Revenue Administration Act, 2016 Act 915 is not inconsistent with and violative of the constitutional right to administrative justice guaranteed under the provisions of Article 23 of the 1992 Constitution**

Further, to the extent that any 'tax decision' taken by the Commissioner General is an administrative decision, and tax decisions are by Act 915 made subject to objection, judicial review, and appeal, the regime provided under Act 915 for the regulation of tax decisions by the Commissioner General passes the test of constitutionality."

Similar cases, statutes, and constitutional provisions have also been urged on us in this writ. We agree with the interpretation this court delivered itself earlier in the day to the Constitution and section 42(5) of Act 915. In view of the fact that this writ calls on us to interpret the same constitutional provisions in the light of the section of Act 915, we adopt the reasoning of this court in Afrifa's case (supra). Accordingly, we dismiss reliefs a, b, c, and d sought by the plaintiff in this writ.

CONSTITUTIONALITY OF ORDER 54 RULE 4 OF C.I. 47

Relief 'e' of the plaintiff's action questions the constitutionality of Order 54 rule 4 of the High Court Civil Procedure Rules, 2004 C.I. 47. This rule requires a taxpayer to

pay an amount not less than a quarter of the amount payable in the first quarter of the year of assessment as contained in the notice of assessment. An appeal shall not be entertained by the Court unless the appellant has paid that amount. The plaintiff says the rule is capricious and the justification cannot be fathomed given that the High Court is the repository of justice. According to the plaintiff, this provision is a further fetter on a taxpayer's right to access the court. It is the submission of the plaintiff that Order 54 rule 4 contravenes Articles 2(1), 17, 19(13), 33(1), 130(1), 132, 135, 137(1), and 140 of the 1992 Constitution which guarantees a fair hearing and a person's right of access to the court and consequently inconsistent with and in contravention of the Constitution and to the extent are null, void and of no legal effect.

Order 54 rule 4 of C.I. 47 provides as follows

Payment of Tax

4. (1) An aggrieved person who has filed an appeal against an assessment, decision or order of the Commissioner under rule 1 of this Order shall, pending the determination of the appeal, pay an amount not less than a quarter of the amount payable in the first quarter of that year of assessment as contained in the notice of assessment.

(2) An appeal shall not be entertained by a Court under these rules unless the Appellant has paid the amount set out in sub rule (1) of this rule.

(3) Where the payment of tax has been held over pending an appeal, any tax outstanding under the assessment shall be payable within thirty days from the date of the decision of the Court.

It must be observed that the High Court Civil Procedure Rules C.I. 47 was passed in 2004 pursuant to powers vested in the Rules of Court Committee under Article 157 of the Constitution, 1992. When this subsidiary legislation came into effect Parliament had not passed Act 915 but the predecessors to that legislation had since the Income Tax Decree, 1975, (SMCD 5) and the Internal Revenue Act 2000 (Act 592) all made provision for the "pay now argue later" provision. The Rules of Court Committee also exercised the powers vested in it by the Constitution and included in the rules this

important public policy provision which ensures that while the citizens exercise their right to access the courts to challenge tax assessments made by the Commissioner General, they also do not delay indefinitely and unreasonably to meet their tax obligations to the state.

In 2016 Parliament passed the Revenue Administration Act 915. Among the provisions included for efficient tax administration is Section 42 which is a reproduction of the catchphrase 'pay now, argue later' earlier introduced by the Rules of Court Committee in Order 54 of C.I. 47. This 'pay now, argue later' phrase is acknowledged in many jurisdictions as a necessary public policy provision ensuring that revenue from taxes is available for the machinery of government business to continue to run. It is a public policy provision because the taxpayer's limitations (if any) on access to courts is a necessary evil and, therefore, justified under the Constitution in the public interest.

We agree with the rationale behind this policy and as a court, would be wary to pronounce legislation that promotes the welfare of the state to be unconstitutional unless there is the clearest evidence on which such a pronouncement could be based. In the same vein, we do not intend to accede to any interpretation of the law that will open wide the floodgates for the citizenry to take advantage and avoid or delay meeting their tax obligations to the state. Therefore, where the provisions of legislation have been carefully crafted to promote the state's welfare and eliminate public mischief of tax avoidance as we have in the legislation under discussion, we would not accede to any invitation to strike it down as unconstitutional, void, and of no effect.

According to the English and Empire Digest (Vol. 12), para. 2120 public policy is defined as being "**that principle of law which holds that no subject can lawfully do that which has the tendency to be injurious to the public, or against the public good.**..." There is a clear public policy rationale against allowing taxpayers and citizens in general to delay or evade their obligations to the state established in statutory rules by taking advantage of loopholes in the law or the slow pace of our justice delivery system to deny the state the needed revenue for developmental purposes. This may have prompted Lord Greene MR in the English case

of **Howard de Walden v IRC [1942] 1 KB 389**, to issue a stern warning to tax avoiders in the following words:

"For years a battle of manoeuvre has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders on to those of their fellow subjects. In that battle, the Legislature has often been worsted by the skill, determination and resourcefulness of its opponents, of whom the present appellant has not been the least successful. It would not shock us in the least to find that the Legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers."

Lord Greene's words of wisdom are recommended to all taxpayers to stay away from playing with fire when it comes to discharging their tax obligations to the state. On that basis, it is our opinion that the Rules of Court Committee did not act unconstitutionally in inserting rule 4 into Order 54 when it was formulating the rules and procedures regulating tax appeals in the country.

Our position is Order 54 rule 4 is in the rules to complement the provisions of Section 42 of Act 915. However, Order 54 rule 4 being a subsidiary legislation must yield to the parent legislation in all cases. This implies that where an appellant to a tax assessment by the Commissioner General had complied with the requirements of Section 42 of Act 915, that appellant is not required to comply with Order 54 rule 4 before invoking the appellate jurisdiction of the High Court in a tax appeal. An appellant to a tax appeal would only be required to comply with rule 4 of Order 54 if, at the time of invoking the jurisdiction of the High Court, that appellant had not complied with Section 42 of Act 915. This interpretation accords with common sense and fairness for it could not have been the intention of the lawmaker to compel a prospective appellant to a tax appeal to pay the percentage twice before invoking the jurisdiction of the High Court. See the decisions of the Court of Appeal in **Beiersdorf Gh. Ltd vrs The Commissioner General, Ghana Revenue Authority [H1/140/2019 (unreported) 5th December 2019]** and **Fan Milk Limited v**

Commissioner General, Ghana Revenue Authority [CM/TAX/0004/18 (unreported) 7th April 2022].

UGANDA'S SECTION 15 OF THE TAX APPEALS TRIBUNAL ACT

The plaintiff cited section 15 of Uganda's Tax Appeals Tribunal Act which like Ghana also requires a tax objector to pay 30% of the assessed tax before the objection so raised would be determined. The plaintiff then supported his submissions with the case of **Fuelex (U) Ltd. V. Uganda Revenue Authority [Constitutional Petition No.3 of 2009**] which according to the plaintiff the Supreme Court of Uganda, a Commonwealth country, declared the section unconstitutional. The plaintiff invites us to follow and apply the decision in that case to the current case.

Though the plaintiff got the title and citation of the Fuelex case right in extending the invitation to us to follow that decision, the plaintiff failed to accurately refer us to the court within the hierarchy of the Ugandan justice system which delivered the judgment and its legal import. The **Fuelex (U) Ltd. V. Uganda Revenue Authority** case **(supra)** was decided by the Constitutional Court of Uganda and not the Supreme Court of Uganda as the plaintiff stated emphatically in his submissions. Secondly, the Constitutional Court in Uganda is on the same level as the Court of Appeal. Thus, its decisions are appealed to the Supreme Court, Uganda's highest and final court. In the **Fuelex (U)** case, the Constitutional Court in a split decision held that Section 15 of the Tax Appeals Tribunal Act which requires a taxpayer who had lodged a notice of objection to an assessment to pay 30% of the tax assessed before the dispute can be entertained was unconstitutional as it infringed on articles 21 (1) and 44 (c) of the 1995 Constitution of Uganda and denied aggrieved taxpayer the right to be treated equally before the law and to be provided a fair hearing before a trial.

There is a controversy, in our view surrounding the decision in the Fuelex (U) case. Before the delivery of that judgment by the Constitutional Court, the constitutionality of the "pay now argue later" provision had been called to question on an appeal from the Constitutional Court to the Supreme Court in the case of **Uganda Project**

Implementation and Management Centre V. Uganda Revenue Authority [SC Const. Appeal No. 2 of 2009]. In that case, the Uganda Revenue Authority (UGA) levied the petitioner's Community mobilization and voter education activities. The petitioner consequently filed an objection with the Tax Appeal Tribunal on the grounds that the activities taxed were not taxable supplies. The respondent on the other hand challenged the objection on grounds among others that the applicant had not paid 30% of the tax it had objected to before lodging the objection thereby making the petition incompetent. This raised the issue of the constitutionality of the provision requiring the payment of 30% of the tax levied. The petitioner contended that section 34 C (3) of the Value Added Tax (as amended by the Finance Act, 2001) contravened articles 21 and 126(2) (a) of the Constitution.

The Constitutional Court of Uganda held that section 34 C (3) of the Value Added Tax Act was not in contravention of the Constitution. On appeal to the Supreme Court of Uganda, it was argued that the restrictions in the Act denied an aggrieved party of a tax assessment access to the court and the right to a fair hearing thereby exceeding what was acceptable and demonstrably justifiable in a free and democratic society. The Supreme Court of Uganda upheld the decision of the Constitutional court and held, citing the South Africa **Metcash** principle that the "pay now argue later" was not unconstitutional and, therefore, applicable in the case of Uganda's VAT Act.

After a comparative analysis of the various approaches for the resolution of tax assessment disputes in various commonwealth jurisdictions we have come to the conclusion that although such tax disputes are regulated differently in various jurisdictions, public policy considerations play a key role in the interpretation of such constitutional provisions affecting tax laws which invariably end up limiting to some extent an aggrieved taxpayer's access to the courts. We, therefore, prefer the decision of the Supreme Court of Uganda (which is the highest court in the country) in the **Uganda Project Implementation and Management Centre** case to the split decision of the Constitutional Court which was bound to follow the decisions of the Ugandan Supreme Court. Our position is supported by the fact that the Supreme Court of Uganda in arriving at its decision cited with approval another judgment on the subject matter from South Africa also a Commonwealth Country in the case of

Metcash Trading Ltd V. Commissioner For The South African Revenue Service (CCT3/00) [2000] ZACC 21].

In the Metcash case, Section 36(1) of the Value-Added Tax Act 89 of 1991 states that the obligation to pay and the right to receive and recover any tax shall not unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, amounts paid in excess being refunded with interest and amounts short-paid being recoverable with penalty and interest calculated as provided in the Act.

The constitutionality of this provision was called in question in the Metcash case before the Constitutional Court of South Africa. The South African Revenue Service (SARS) issued a VAT assessment to Metcash in respect of its trading activities during the period from July 1996 to June 1997. Metcash objected to the assessment. SARS disallowed the objection and gave Metcash a 48 hours' notice to pay the full amount, failing which summary proceedings permitted by the Act would be implemented. This resulted in an urgent application to the High Court to block the threatened action by the SARS. At issue was the constitutionality of the principle, enshrined in the "pay now, argue later." Legislation. The issue was whether section 36(1) and subsections (2)(a) and (5) of section 40 of the Value-Added Tax Act 89 of 1991 (the Act) was in contravention of Section 34 of the 1996 Constitution of South Africa which guaranteed the right of access to court.

The High Court found that the relevant sections of the Act infringed the fundamental right of access to the courts afforded by section 34 of the Constitution. It accordingly declared the provisions invalid and issued an interdict preventing the SARS from enforcing payment of the assessed amount pending the conclusion of Metcash's appeal to the Special Income Tax Court. The order of constitutional invalidity was referred to the Constitutional Court for confirmation.

The Constitutional Court of South Africa held that the requirement of section 36 of the Value Added Tax Act was not unconstitutional. The court indicated that section 36(1)

had two objectives, which were to ensure that the obligation of an aggrieved taxpayer to pay tax was not delayed pursuant to other remedies, and secondly that the necessary refunds be made later.

Kriegler J. held that the "pay now, argue later" rule did not border on access to the court and contained no provision ousting the court's jurisdiction. He further elaborated on the functioning of the Special Tax Court and the fact that it functioned like an ordinary court. The taxpayer would therefore have access to the courts by appealing to the Special Tax Court. In agreeing with SARS, the court further noted that, in exercising their discretion in terms of section 36(1) of the VAT Act, the Commissioner's conduct constituted an administrative action that would be reviewable in terms of administrative law. The court, therefore, held the section 36 rule to be constitutional.

The rationale behind the principle of "pay now argue later" was aptly put in the subsequent case of **Capstone 556 (Pty) Ltd V. Commissioner For SARS [**2011 6 SA 65 (WCC)] by Binns-Ward J thus;

> **The considerations underpinning the 'pay now, argue later' concept include the public interest in obtaining full and speedy settlement of tax debts and the need to limit the ability of recalcitrant taxpayers to use objection and appeal procedures strategically to defer payment of their taxes.**

In essence, this approach which has also been adopted under the Revenue Administration Act is grounded on public policy considerations of ensuring that recalcitrant taxpayers do not abuse the dispute resolution process afforded them in objecting to tax assessment to the detriment of the tax mobilization efforts of the government.

THE PROPORTIONALITY TEST

It must, however, be emphasized that the restrictions put on the individual's fundamental rights and liberties must be proportional to the public interest that such restrictions aim to protect.

Mudrecki accordingly notes in his article, "**The Contemporary Significance of the Principle of Proportionality in Tax Law**", Bialystok Legal Studies, Białostockie Studia Prawnicze, 2021 vol. 26 nr 4 as follows:

"Proportionality is one of the basic criteria for ensuring the proper exercise (protection) of constitutional rights. As A. Barak points out, the contemporary understanding of human rights is based on the distinction between the scope of a constitutional right (defined in the Constitution) and the legal justification for its exercise or protection (resulting from the norms contained in lower-order acts of law). Additionally, most constitutional rights are relational, in the sense that there are legal justifications that limit the scope of their exercise as defined in the Constitution."

The concept of proportionality is accordingly reflected in the limitations on several fundamental human rights provisions enshrined in the Constitution. By way of example, article 164 of the 1992 Constitution of Ghana provides that the provisions of articles 162 and 163 (on the rights and freedoms of the media) under the constitution are subject to laws that are reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights, and freedoms of other persons. Others include article 24 (4) which allows the prescription of limitations to economic rights by laws reasonably necessary in the interest of national security, public order, or for the protection of the rights and freedoms of others. Similar provisions include, Article 13(2), 16(3) (c) & (d) 17(4) among others in the 1992 Constitution.

In the absence of section 42(5) (a) & (b) of Act 915 and Order 54 rule 4, a person who is liable to pay a tax assessed could use the filing of an objection to unduly delay the payment of taxes. The devastating effect could be felt in the case of major corporations with higher tax obligations who can pursue protracted litigation to unnecessarily delay the government from receipt of its revenue. The government will lose its much-needed revenue for development and the taxpayer could also suffer the cumulative accrual of interest on the assessed amount if they do not succeed in their objection.

In the Ghanaian context, the slow pace of our justice delivery system poses a significant threat to the revenue mobilization effort of the government if there are no mechanisms in place to ensure that government receives either full payment or a portion of the disputed tax pending the determination of the dispute. This tends to cripple government business and stifle economic progress given the high dependence of the government on internal revenue.

Consequently, in our opinion, as rightly expounded in the Afrifa case, the perceived limitations to the rights of access to the courts and fair hearing placed by sections 42(5) (a) & (b) of Act 915 and Order 54 rule 4 in the interest of the national revenue mobilization for development should be deemed as an implied limitation to the said rights under the 1992 Constitution even in the absence of any express stipulation in the constitution. This will accord with interpreting the Constitution as a living organism capable of growth which was expressed by Sowah JSC in the celebrated **TUFFOUR V. ATTORNEY [1980] GLR 637** case thus:

> **Its (the constitution) language, therefore, must be considered as if it were a living organism capable of growth and development Indeed, it is a living organism capable of growth and development, as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles**

and bring that consideration to bear, in bringing it into conformity with the needs of the time. (Emphasis added).

CONCLUSION:

As harsh as they may seem, sections 42(5) (a) & (b) of the Revenue Administration Act, 2016 (Act 915) and Order 54 rule 4 of C.I. 47 are not inconsistent with the 1992 Constitution as they do not deny a person access to the courts and the right to a fair trial. Rights under the 1992 constitution are not absolute. They may be subject to limitations in the interest of the public and the state. The principle of proportionality however requires a fair balancing of the competing rights of a person to access the courts against the needs of the state in obtaining tax for the running of the State. Accordingly, sections 42(5) (a) & (b) of Act 915 and Order 54 rule 4 should be viewed as reflecting a balance in favour of the revenue mobilization of Ghana in line with the economic status and aspirations of the country.

The plaintiff's writ, accordingly, fails in its entirety. We dismiss all the reliefs.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

PROF. H.J.A.N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

COUNSEL

CECIL METTLE-NUNOO ESQ. FOR THE PLAINTIFF LED BY GEORGE ANKOMA MENSAH ESQ. WITH MICHAEL QUARTEY

ODARTEY LAMPTEY ESQ. FOR THE 1ST DEFENDANT WITH FREEMAN SARBAH AND PATRICK INTARMAH

ALFRED TUAH YEBOAH ESQ. (DEPUTY ATTORNEY GENERAL) FOR THE 2ND DEFENDANT WITH REGINALD NII ODOI (ASSISTANT STATE ATTORNEY)