IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
PWAMANG JSC
PROF. KOTEY JSC
LOVELACE-JOHNSON (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

WRIT NO. J1/23/2021

30TH NOVEMBER, 2022

KWASI AFRIFA --- PLAINTIFF

VRS

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

JUDGMENT

TORKORNOO (MRS.) JSC:-

THE PLAINTIFF'S CASE

The plaintiff commenced the action by Writ accompanied by a Statement of his case. He presented no background documentation verified by affidavit. In paragraph 4 of the Statement of case filed with the Writ, the plaintiff set out the capacity in which he brought the action and stated that the action was commenced to ostensibly seek

an alignment of the 'far-reaching powers' given to the Ghana Revenue Authority in its administration of tax levied on citizens with, the directions of the 1992 Constitution.

It reads:

4. *The Plaintiff brings this action as a citizen of Ghana to challenge the awesome and far-reaching powers which practically gives judicial power to the 1st defendant in the Revenue Administration Act, 2016 (Act 915) and in some instances enables it to have powers over and above that of the courts in a manner clearly subversive of and inconsistent with the 1992 Constitution of Ghana*.

He continued with the general premise of these contentions in Paragraph 5.

5. *The plaintiff states that both the letter and spirit of the 1992 Constitution of Ghana are breached by the enormous and unfettered power granted the 1st defendant by virtue of Act 915*.

The plaintiff went in paragraph 5 to quote the Preamble of the Constitution, and Articles 1 and 2 of the Constitution.

In Paragraph 6, plaintiff slightly expanded on the general premise of his suit and stated:

6. *The plaintiff states that both the letter and spirit of the 1992 of Ghana are breached by the enormous powers given the 1st defendant which makes it wield powers greater than the courts of Ghana who have exclusive judicial power under the 1992 Constitution of Ghana*

Paragraph 7 specifically identified particular sections of Act 915 which allegedly grant the impugned power to the 1st defendant. These add up to thirty nine sections of Act 915. It states

7. *The plaintiff states that amongst other powers of the 1st defendant are the following as set out in the under listed sections of Act 915:*

Section 31

Section 41-45

Section 51-57

Section 70- 96

In paragraph 10, the plaintiff quoted Article 125 of the 1992 Constitution which directs that justice is to be administered by the Judiciary which shall be independent and subject only to the Constitution.

Despite these positions stated early in the Statement of case, the identification of thirty-nine sections of Act 915 and Articles 1, 2(1) and 125 of the Constitution that plaintiff sets out as being relevant to his suit, the rest of the Statement of Case fails to distil in any precise manner, the exact terms in which the identified sections of Act 915 violate these several provisions of the Constitution. The Statement of Case waxes long and hard around the primary complaints found in paragraphs 4 to 6.

THE DEFENDANTS' CASE

The defendants filed their responses to the Plaintiff's Statement of case.

In the present suit, we note that counsel for the 1st defendant identifies in paragraph 1 of his Statement of Case that the jurisdiction of this court has been invoked pursuant to Articles 2 (1) and 130 (1)(a) of the 1992 Constitution though he goes on to state in paragraph 9 that '*the manner the plaintiff couched his reliefs is incongruous with some of the sections of Act 915 and does not create a good setout of his case*'. Counsel for the 1st defendant then goes on to identify that the plaintiff is seeking reliefs or declaratory orders that the identified sections of Act 915 such as sections 42 (5), 52, 53, 54, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 72, 73, 74, 75, 76, 78, 80, 81, 82, 87, 88, 92, and 93 are '*generally unconstitutional*', contravene fundamental rights enshrined in the Constitution, superimposes GRA authority over the courts, and are unfair, arbitrary, devoid of transparency and inimical to good governance and due process. Finally, that the entire Act 915 is unconstitutional.

Despite all of the above, counsel for the 1st defendant is unable to find and point out from the Plaintiff's case, which specific provisions of the Constitution the impugned sections of the enactment are alleged to specifically violate. The 1st defendant

invited this court to resolve the following issues from the Plaintiff's Statement of Case:

A. *Whether or not Act 915 or the myriad of sections or provisions cited by the Plaintiff are aberrations to human rights and therefore unconstitutional*
B. *Whether or not, the powers of the Commissioner-General as provided for in Act 915 superimposes his office over the constitutional Courts*.

The rest of the Statement of Case of counsel for the 1st defendant is dedicated to giving an overview of the tax regulations in the jurisdiction, the powers of the Commissioner General, and the manner in which the provisions of Act 915 are designed to ensure the achievement of the public interest in effective and efficient administration of taxes

On the part of the 2nd defendant, he is adamant that the jurisdiction of this court has not been properly invoked on account of failure by the plaintiff to identify with sufficient particularity, the provisions of the Constitution that Act 915 allegedly violates. He states this position in paragraph 43 of his Statement of case

43. *Accordingly, a person who invokes this honourable court's jurisdiction must demonstrate clearly that an enactment or anything contained in or done under the authority of that or any other enactment is inconsistent with some particular provisions of the Constitution he alleges to have been contravened*.

We must however note that both defendants have taken the trouble to examine the sections of Act 915 quoted in paragraph 7 of the plaintiff's statement of case, examine jurisprudence on tax law and administration, and they do this in order to show that these statutory provisions do not violate any provisions of the Constitution, and that Act 915 does not give the Commissioner-General of tax powers beyond the Judiciary.

ISSUES

The parties agreed a Joint Memorandum of Issues to be determined by this court in these terms:

1. *Whether or not the plaintiff has properly invoked the original jurisdiction of the Supreme Court*
2. *Whether or not sections 42, 52-54, 56-67, 72-76, 78, 80-82, 86-88 and 92-93 of the Revenue Administration Act 2016, Act 915 are inconsistent with the spirit and letter of the Preamble, Article 1, Chapter 5, Chapter 6 and Article 125 of the 1992 Constitution of Ghana and to the extent of the inconsistency, void*?

CONSIDERATION OF ISSUES

Jurisdiction

Has the original and exclusive jurisdiction of this court under articles 2 and 130 (1) been properly invoked or at all?

Article 2 (1) reads:

Enforcement of the Constitution

2(1) A person who alleges that –

a. ***An enactment or anything contained in*** *or done, under the authority of that or any other enactment;*
   or
b. *Any act or omission of any person;*

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*

And article 130 (1) (a) reads:

Exclusive jurisdiction of the Supreme Court

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 -

a. *All matters relating to the enforcement or interpretation of this Constitution; and*
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*

It is much appreciated that where jurisdiction does not exist in a court at all, any decision rendered, except to affirm that lack of jurisdiction, is a nullity. As this court put it in **Ghana Bar Association v Attorney-General and Another (ABBAN CASE) [2003-2004] SCGLR 250 at 266**, '*Jurisdiction is simply the power of a court to hear and determine a cause or matter brought before it, lack of which would render any decision taken or order made null and void and of no effect. If jurisdiction is granted a court by a statute, then what is already specified therein determines the nature and extent of that jurisdiction so granted to that court which cannot be extended or modified. Where jurisdiction is wrongly assumed, however, all proceedings taken would be a nullity. For this reason, it is the court's duty to act only within the jurisdiction with which it has been clothed'*

This situation is to be distinguished from one in which the court has jurisdiction, but that jurisdiction has not been properly invoked. Going on in the Abban Case, this court identified that matters to take into consideration regarding whether this court's jurisdiction to interpret and enforce the constitution has been invoked, and following after the tests long established from cases such as **Gbedemah v Awoonor-Williams 1969 2 G & G 527**, applied in **Tait v Ghana Airways Corporation 1970 G & G 527**, would be to ask whether the writ, statement of claim and reliefs raise an issue relating to (1) the enforcement of a provision of the constitution, (2) the interpretation of a provision of the constitution, or (3) a question whether an enactment was made ultra vires parliament, or any other authority or person by law or under the constitution.'

In **Oppong v Attorney –General [2003-2004] SCGLR 376 at 380**, this court made clear that the original jurisdiction of this court under **article 2(1) and article**

130 (1) (a) to interpret and enforce the provisions of the Constitution is a ` special *exclusive jurisdiction meant to be exercised in suits raising genuine and real issues involving interpretation of the provisions of the Constitution, its enforcement and a question whether an enactment was made ultra vires the powers of parliament or other authority or person by law or under the Constitution*' . This court does not sit as a court of first instance to determine disputes in private rights.

It is from this context that as much as this court has shown its willingness to uphold the constitutional foundations of the nation by vigorously engaging its original jurisdiction to declare the (un) constitutionality of any enactment and action under article 2 (1), the court has also not shied away from declaring that parties have failed to invoke its original and exclusive jurisdiction to interpret and enforce the Constitution when suits dressed up as claims for interpretation and enforcement are grounded on clear and unambiguous provisions of the Constitution, and the claims or reliefs sought are properly determined under the jurisdiction of another court

An example in point is the case of **Edusei v Attorney General and Another [1996-1997], SCGLR 1**, where this court pointed out that the issue for determination resided in fundamental human rights and freedoms, properly determined by the High Court pursuant to articles 33 (1), 130 (1) and 140 (2). In **Bimpong Buta v General Legal Council & Others [2003-2004] 2 SCGLR 1200, t**he decision of this court was that, shorn of the references to the Constitution, the contentions of the plaintiff had to do with claims for private rights, and not interpretation or enforcement of constitutional provisions. See also **Adumoa II and Others vs. Adu Twum 11 [2000] SCGLR 165** where the object and effect of the reliefs sought lay within the laws regulating chieftaincy and so administrable by the appropriate chieftaincy tribunal.

A necessary strand for consideration in the substantive issue raised by the 2nd defendant as to whether the jurisdiction of this court is properly invoked under articles 2(1) and 130 (1) (a), though not addressed in his submissions, is the position raised in **Osei-Boateng v National Media Commission & Apenteng 2012 2 SCGLR 1038** regarding when a constitutional provision sought to be enforced raised no question of interpretation because it is clear, precise,

unambiguous, and admitting of no controversy in its meaning, though the reliefs seek an enforcement of constitutional provisions. This court in its majority decision **in Osei-Boateng** held that the requirement of an ambiguity or imprecision or lack of clarity in a constitutional provision was a precondition for the exercise of the exclusive original enforcement jurisdiction of the Court under articles 2 (1) and 130 of the 1992 Constitution.

By 2016, this dictum had been straightened in **Kor v Attorney-General & Justice Duose 2015 – 2016 1 SC 114** to assure the firm position that even if a suit seeks enforcement of constitutional provisions without any correlative claims for interpretation, it cannot be said that the Supreme Court cannot, under article 2(1), compel the observance of a constitutional provision unless that provision was ambiguous or admitted of controversy in meaning, thereby requiring parallel processing in the 'interpretative refinery' of the court.

For reiterative purposes therefore, when a party urges that this court's exclusive jurisdiction in article 2(1) has not been properly invoked because no dispute requiring interpretation of a constitutional provision has been raised pursuant to article 130 (1) (a), the position of this court is that to the extent that the court's jurisdiction is invoked for only enforcement of a Constitutional provision under article 2(1), the court is right to assume jurisdiction over the merits of the dispute. The exception that arises is where the enforcement jurisdiction over that particular constitutional right, such as the exclusive jurisdiction of the high court to enforce fundamental human rights and freedoms under article 33, is carved out for a different court.

In invoking the jurisdiction of this court to determine whether named provisions are violated by an enactment, Article 2(1) requires a plaintiff who issues a writ for resolution of an allegation thereunder to discharge a basic duty of showing which enactment or act done under the authority of an enactment is in *inconsistent with, or is in contravention of* ***a provision of the Constitution***. Two basic pillars must be present and identifiable to the court. The offensive enactment or action done pursuant to the authority (or lack of authority) arising from the enactment, and the provisions of the Constitution sought to be protected.

Wood CJ elucidated on the applicable legal doctrines behind the two pillars at page 470 of ***Asare Baah III and Others v The Attorney General and Electoral Commission [2010] SCGLR 463.*** '*A court's duty is to determine the real matters in controversy between parties effectually. It is therefore imperative in actions of this kind, as indeed, in other civil causes or matters, that all alleged acts of statutory and constitutional invalidity, breaches or violations, inconsistencies or non-compliance be identified with sufficient particularity, with nothing being left to chance or conjecture. It is equally crucial that the relevant constitutional requirement alleged by a party to have been violated, be sufficiently identified, to enable the court effectively measure the allegations against the confines of the relevant constitutional provisions. Therefore, unless the circumstances clearly warrant it, a general reference to an entire article or provision is insufficient. This just requirement of the law, which is based on plain good sense, serves the interests of justice well in all civil actions. It enables issues in controversy between parties to be clearly identified, so each side can adequately prepare to meet the case alleged against him or her, thereby enabling the court to firmly and effectually determine all disputed issues*'.

The honourable Chief Justice went on:

'*Thus in constitutional litigation, two important principles make it imperative that particulars of invalidity or want of constitutionality be clearly stated: they are the presumption of validity or constitutionality in favour of legislation and the principle of severability of impugned legislation. The presumption is that every enactment by the legislature is presumed to be valid and constitutional, until the contrary is proven. A law would not be adjudged unconstitutional, unless the case is so clear as to be devoid of any doubts. The principle is so hallowed that it has been observed that to doubt the constitutional validity of a law, is to resolve it in favour of its validity. In other words, doubts are resolved in favour of constitutionality and not the person challenging it*'

Citing with approval this dictum in **Center for Juvenile Delinquency v Ghana Revenue Authority & Another, [2019] GHASC 29,** Adinyira JSC reiterated that the principles of presumption of legality of statutes and the principle of severability of statutes guide the judicial review of legislation. These two principles '*make it*

imperative that particulars of invalidity or want of constitutionality are 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)'.

In **Asare Baah III and Others** cited supra, the plaintiff's action founded on the subsidiary legislation E.I. 11 of 2007 was dismissed because of failure to link the impugned legislation to any specific constitutional provision.

On the other hand, the plaintiff in **Ghana Independent Broadcasters Association v Attorney General & National Communication Authority. J1/24/2020 23rd June 2020** (hereafter referred to as the GIBA case) had sought the striking down of eleven provisions of **National Media Commission (Content Standards) Regulations 2015, LI 2224** being **Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 22** on account of their allegedly being inconsistent with the directions of Articles 162(1), 162(2), 162(4), 167(d) and 173 of the 1992 Constitution.

The 1st defendant urged that the plaintiff had '*assembled many statutory provisions in the enactment complained about in relation to his/her case, and thrown it at the Court, for the court to determine the extent of their inconsistency with or contravention of the Constitution*."

The 2nd defendant also urged that a reading of plaintiff's reliefs confirmed that plaintiff sought the striking down of almost the entirety of L.I. 2224 without a scrutiny of each of its provisions for purposes of assisting the court determine just to what extent the pervasive provisions of regulations 3-12 and 22 of L.I. 2224 were inconsistent with or in contravention of the Constitution.

The holding of this court on the effect of pointing to a big number of sections of an enactment and urging that they are inconsistent with provisions of the Constitution was that prima facie, the objection was not sustainable on the facts and law. This is because the reliefs in the suit made reference to specific provisions of L.I. 2224 which plaintiffs said were inconsistent with Articles 162(1), 162(2), 162(4), 167(d)

and 173 of the 1992 Constitution for stated reasons in each case. The plaintiff also explained why and how these regulations affected the constitutional guarantee of media freedom. Benin JSC said these words for clarity on why the craft of the reliefs and affidavit in support were enough to invoke the jurisdiction of the court:

> *"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."*

Ergo, this satisfied the requirement of article 2(1) of the Constitution.

It is therefore clear that for the jurisdiction of this court granted by Article 2 (1) to be invoked where there is the allegation that legislation is inconsistent with the Constitution, there is a doctrinal need for the identification of the offending sections of the enactment, or the whole enactment if that is the case put forward, and the sacred provisions of the Constitution sought to be preserved, no matter how wide a scope these provisions are.

It is upon these two pillars that the suit around the identifiable dispute in relation to these two sets of provisions can be housed. The dispute may be in relation to different interpretations put on the same constitutional provision because of imprecision and ambiguity, and its effect on the enactment in question, or allegations of inconsistency or conflict between the letter or effect of provisions of the enactment with the clear meaning of identified provisions of the Constitution. See also the oft cited dictum of **Republic v Special Tribunal; Ex Parte Akosah [1980] GLR 592,** outlining the different circumstances that may trigger the interpretative and enforcement jurisdiction of this court. That dispute itself must be sufficiently identified to enable the court to conduct a proper consideration of the issues raised.

From the opening paragraphs of the Plaintiff's case, it is understood that the action seeks to invoke this court's jurisdiction under **Article 2 (1)** of the Constitution to determine whether the powers conferred on the tax authorities through a plethora of provisions in Act 915 are inconsistent with the exclusive constitutional mandate of the judiciary in article 125, and whether the impugned provisions violate the guaranteed rights of citizens under the Constitution under Chapter 5 of the Constitution, as well as the spirit of the Constitution expressed in Chapter 6. From this premise, this court will evaluate the submissions and reliefs presented.

Are the plaintiff's submissions and reliefs sustainable?

Contrary to the GIBA case (cited supra) which also dealt with a wide sweep of an enactment, albeit a subsidiary legislation, the difficulty with the case before us is that much of the 47 pages of the Statement of Case are dedicated to direct extrapolations from **Article 1, and references to Chapters 5, 6, and 11** of the Constitution and vast texts from what is quoted as part of the dicta in the following cases:

NPP v Attorney General 1994-95 1 GBR 1

NPP vs Inspector General of Police 1993-94 2 GLR 45

Bilson v Apaloo (No 2) 1981 GLR 24

In the course of the Statement of Case, the plaintiff makes the following statements which would have greatly assisted this court in the evaluation of the contentions presented by Plaintiff had they been developed into legal submissions:

***Paragraph 24**: The plaintiff contends that there should be no pre-condition or detraction from the enjoyment of the constitutional rights eloquently set out in Chapters 5 and 6 of the 1992 Constitution*

***Paragraph 30:** The plaintiff states that the pith of the present suit is whether the stated provisions of Act 915 infringes(sic) the letter and spirit of the 1992 Constitution*

***Paragraph 32:** the plaintiff states that it is the clear position of the law as held in **Penkro v Kumnipa 11 1987-88 1 GLR 558 at 563** that whenever anything is a*

nullity and same is brought to the attention of the court it is the duty of the court to so declare it and time is irrelevant when making the said declaration

Beyond these perfunctory legal doctrinal statements, Plaintiff does not develop the statements into legal submissions regarding any specific constitutional provision linked to any specific sections of Act 915.

Chapter 5 of the Constitution deals with fundamental human rights and freedoms and contains Articles 12 to 33. None of the submissions point to which specific human right and freedom is violated by which specific provision of Act 915.

In the same way, Chapter 6 of the Constitution deals with Directive Principles of State Policy and contains Articles 34 to 41. None of the submissions point to which specific directive principle of state policy is violated by which specific provision of Act 915. This court is also not informed which specific provisions of the Constitution ought to be read as rendering void which specific sections of Act 915 set out in paragraph 7 of the Statement of Case, and the compelling jurisprudence that should assist this court in finding those provisions in Act 915 inconsistent with the identified provisions of the Constitution.

In the face of the three statements set out above from paragraphs 24, 30 and 33 of his statement of case, which point to the doctrinal positions that the essence of the whole of Act 915 and the selected provisions *infringe the letter and spirit of the 1992 Constitution,* because they compel *pre-conditions or detractions from the enjoyment of the constitutional rights eloquently set out in Chapters 5 and 6 of the 1992 Constitution,* and so this court must *declare the provisions and the entire law a nullity*, we will continue to take the trouble to carefully sift through the reliefs to evaluate if any of them require enforcement of a constitutional provision

We do this because of the grave public interest in ensuring that the relationship between citizen and state when it comes to enforcement of tax laws are properly regulated, and the duty of this court to do substantial justice and ensure the constitutionality of every enactment and official act. This duty is not premised on the elegance of the supplications before the court – as pointed out in the GIBA case.

Evaluation of plaintiff's reliefs

It must first be stated that on a reading of the reliefs sought by the plaintiff, it becomes clear that not a single one of them carries the prescription for conciseness required by **Rule 45 (2) of the Supreme Court Rules 1996 CI 16. Rule 45 (2) of CI 16** directs that when a party commences an action invoking the original jurisdiction of this court, '*the writ shall set out as concisely as possible the nature of relief sought by the plaintiff*'.

Relief a reads:

a. *A declaration that the power given the 1st defendant in the Revenue Administration Act, 2016 (Act 915) entitling it to demand the payment of 30% of tax assessment objected to by a tax payer before an appeal against a tax decision would be entertained, the power to restrain a person as well as restraining orders, other penal powers and the entire Act 915 is unconstitutional, void and unenforceable by reason of its inconsistency with and contravention of the Preamble, Article 1, Chapter 5, Chapter 6 and Article 125 of the 1992 Constitution of Ghana to the extent that it puts a financial precondition to the Constitutional right of appeal of the citizenry prescribed in the Constitution and the Courts Act, 1993 (Act 459) as amended*.

This relief is argumentative, sweeping in scope and vague in terms of the exact provisions in Act 915 that are alleged to be inconsistent with and in contravention of *the Preamble, Article 1, Chapter 5, Chapter 6 and Article 125 of the 1992 Constitution of Ghana.* It however seems to attack the entire Act 915 on three grounds namely (1) the power given to the 1st defendant to demand pre-payment of 30% of tax assessed before an appeal against the assessment can be considered; (2) the power to restrain a person and issue restraining orders and (3) the ability to exercise other penal powers.

The relief seems to urge that the unidentified provisions contravene the preamble and article 1 of the Constitution which assert the sovereign intention of the people of Ghana to adopt the 1992 Constitution and its provisions as their guiding light in

terms of legality, Chapter 5 of the Constitution that confers fundamental human rights and freedoms, Chapter 6 that provides directive principles of state policy and article 125 that places administration of justice in the hands of the judiciary. Further, the point of contravention of these chapters and articles of the Constitution occurs at the point that Act 915 '*puts a financial precondition to the Constitutional right of appeal of the citizenry prescribed in the Constitution and the Courts Act, 1993 (Act 459) as amended* and allows the 1st defendant to restrain or issue restraining orders as part of their administrative duties.

In the earlier decision of this court entered also on 30th November 2022 in ***Afrifa v GRA (J1/2/2022),*** the court clarified that to the extent that any 'tax decision' taken by the Commissioner General is an administrative decision, and such 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'. This disposes of the complaint regarding Act 915 creating a 'financial pre-condition' prior to the exercise of the right to appeal.

On the other two complaints in relief (a), we note that relief (d) dealt with hereunder deals with the alleged restraining powers of the Commissioner General, and relief (h) deals with the provisions on penalties under Act 915. To that extent, our ruling on relief (a) will be made subject to our rulings on reliefs (d) and (h)

Relief b

b. *A declaration that on a true and proper interpretation of the Preamble, Article 1, Chapter 5, Chapter 6 and Article 125 of the 1992 Constitution of Ghana judicial power is vested in the judiciary and therefore the powers given the 1st defendant is a continuing constitutional aberration which ought to be halted for its inherently unconstitutional nature and for its gross violation of the letter and spirit of the 1992 Constitution of Ghana*.

Our evaluation is that relief b. raises no proper question for interpretation or enforcement of any provision of the Constitution. Apart from there being no provision of Act 915 cited as being inconsistent with the constitutional mandate given to the Judiciary under the preamble, Article 1, Chapters 5, 6 and Article 125 of the 1992 Constitution, the answer to the complaint against the 'powers' exercised by the 1st defendant lies within the clear provisions of the very same Constitution.

The 1992 constitution confers on many public offices and institutions powers of a judicial and quasi-judicial nature, which powers are inherently subject to judicial review by operation of article 141 of the Constitution. In the same vein the decisions of administrative bodies and officials are also made subject to judicial review under article 23 of the Constitution. Articles 23 and 141 read:

Article 23:

23. Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal

Article 141

The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and direction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers.

Thus without specificity regarding how '*the powers given the 1st defendant (that) are a continuing constitutional aberration*' in the face of the judicial power vested in the Judiciary by article 125, this relief cannot be entertained for consideration. It is dismissed

Relief (c)

c. *A declaration that the wide power granted the Commissioner-General of Ghana Revenue Authority under Sections 52-54 of the Revenue and Administration Act 2016 (Act 915) to create charges over assets of a tax payer without recourse to the courts of law in Ghana is arbitrary, wrongful, illegal, and subversive of the judicial function and authority exclusively vested in the judiciary under Article 125 of the 1992 Constitution of Ghana in that a non-judicial body has powers which a court cannot exercise by itself thus usurping the judiciary and gravely undermining the spirit, letter and intent of the 1992 Constitution of Ghana*.

Relief c. raises the issue whether sections 52 to 54 of Act 915 which allow the Commissioner General to exercise an option to create a charge in favour of the Government over an asset owned by the tax payer without a first recourse to the courts for an order allowing the creation of such a charge, '*is arbitrary, wrongful, illegal, and subversive of the judicial function and authority exclusively vested in the judiciary under Article 125 of the 1992 Constitution'*.

We must first point out that prior to section 52, the law provides in section 51 that tax is a debt due to the government, and the Commissioner General may commence an action in court for unpaid taxes. Sections 51 and 52 read:

Recovery of Tax from Taxpayer

Tax as debt due to Government

51. (1) *Tax is a debt due to the Government on the date it becomes payable.*
(2) The Commissioner-General may initiate proceedings in court for the recovery of unpaid tax as well as the cost of the suit.

Creation and extent of charge over assets

52. (1) *Where a taxpayer fails to pay tax on the due date, the Commissioner-General may create a charge in favour of the Government over an asset owned by the taxpayer by serving the taxpayer with a notice in writing specifying (emphasis ours)*
(a) the name of the taxpayer;
(b) the Taxpayer Identification Number of that taxpayer;
(c) the asset charged and the extent of the charge;
(d) the tax or taxes to which the charge relates; and
(e) the power of the Commissioner-General to take possession and sell the assets as specified under sections 53 and 54.

Sections 51 and 52 provide that the option given to the Commissioner General to set about creating the charge in section 52 cannot be invoked without the tax debt first being identified in quantum and being due. Second, that act is subject to due notice of the decision to create the charge being given to the tax payer.

By necessary inference, this due notice allows the tax payer to take whatever step they may wish to dispute the alleged debt, and or to allow or prevent the implementation of the Commissioner General's decision to create the charge referred to in section 52. The procedures provided under section 42 regarding tax decisions therefore apply. Again, under sections 51 and 52, by reason of the necessary factual context which must exist prior to the exercise of an option to commence the creation of a charge over the assets of a tax payer, it is clear that any (mis) steps in arriving at the assertion of the debt identified prior to the procedure, or in due process, may be resolved by courts clothed with jurisdiction to determine private rights inter-partes. Relief (c) is therefore refused as not raising any issue of interpretation or enforcement of the 1992 Constitution

Relief (d)

d. *A declaration that sections 56-67 of the Revenue and Administration Act 2016 (Act 915) empowering the Commissioner-General of the Ghana Revenue Authority to restrain a person without recourse to the courts are unconstitutional and in conflict with the guaranteed constitutional right of*

freedom of movement of an individual which can legitimately be interfered with only by the courts pursuant to due process.

Relief (d) attacks a wide scope of provisions from sections 56 to 67 of Act 915 with specific emphasis on alleged power given to the Commissioner General to restrain the right of freedom of movement by an individual without recourse to the courts. It is however to be noted that sections 56 to 67 range from the Commissioner General of GRA seeking the assistance of the Comptroller General of Immigration to stop a person with tax indebtedness from travelling; distraining of goods and service; the work of receivers, the liability of managers of indebted corporate entities and more besides.

The issue raised by this relief regarding section 56 is whether the statute '*empowers the Commissioner-General of the Ghana Revenue Authority to restrain a person without recourse to the courts'* and if it does, whether this provision is *'unconstitutional and in conflict with the guaranteed constitutional right of freedom of movement of an individual which can legitimately be interfered with only by the courts pursuant to due process'.* Section 56 reads:

Restraint of person

56. (1) *Where a person fails to pay tax on the due date and the Commissioner-General has reason to believe that the person may leave the country, the Commissioner-General may, by notice in writing, request the Comptroller-General of Immigration to prevent the person from leaving the country.*
(2) The Comptroller-General of Immigration shall, on receiving the notice under subsection (1), prevent the person from leaving the country for a period of seven days from the time the notice is served on the Comptroller-General of Immigration.
(3) The Commissioner-General shall withdraw the notice if the person pays the tax or arranges to pay the tax in a manner satisfactory to the Commissioner-General.
(4) The High Court-may, on an application by the Commissioner- General, extend the period referred to in subsection (2).

Section 56 clearly therefore, does not empower the Commissioner General as an official *to restrain any person without recourse to the courts*, as urged by Plaintiff before us. The statute confers on the Commissioner-General, the right to request the restraint of a person from leaving the jurisdiction on account of default in tax payment, and this request is made to the Comptroller General of Immigration.

So the real question in issue is whether the regulated privilege given to the Commissioner General to seek the restraint of a person owing tax, from travelling for the first seven days, is *'unconstitutional and in conflict with the guaranteed constitutional right of freedom of movement of an individual which can only be legitimately interfered with by the courts pursuant to due process'*

The answer lies within article 14 of the 1992 Constitution which protects the fundamental human right and freedom to liberty but allows the deprivation of personal liberty under certain identified circumstance if such deprivation is effected in accordance with procedure permitted by law. Article 14(g) allows the deprivation of personal liberty

(g) *upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana*

Now **sections 78 to 86 of Act 915** set out various offences arising out of a citizen's failures regarding tax administration and obligations. Clearly therefore, as long as these 'offences' remain in the statute books of this country, a request to the Comptroller General of Immigration to prevent a citizen from travelling on account of 'commission' or 'suspicion of commission' of any of these offences would not be unconstitutional, by reason of the operation of article 14(b). What is also noteworthy is that should the Comptroller General of immigration accede and stop that travel, section 56 (4) directs that the power to restrain travel may not be exercised beyond seven days without leave of the High Court. We therefore find no inconsistency

between sections 56 to 67 and any provisions of the 1992 Constitution. There is no merit in relief (d).

Relief e

e. *A declaration that section 58 of the Revenue and Administration Act, 2016 (Act 915) which makes a person jointly and severally liable with an entity which has purportedly failed to pay tax is unlawful, illegal and contrary to all notions of law, equity and fairness and manifestly unconstitutional to the extent that it fixes liability on a natural person who is separate and distinct from the entity which has not paid tax.*

Relief e. is not a proper question for interpretation of any provision of the Constitution to the extent that it does not identify the provision of the Constitution that Section 58 of Act 915 allegedly violates. Further, the legal context of joint liability for indebtedness - whether between human parties or between legal entities - resides in private rights in contract, company, and commercial law. Relief (e) must therefore fail as not properly invoking the jurisdiction of this court over constitutional issues.

Relief f.

f. *A declaration that sections 60-61 of the Revenue and Administration Act 2016 (Act 915) empowering the Commissioner-General of the Ghana Revenue Authority to serve notice on a third party debtor of an alleged tax defaulter so as to compel the third party to settle the alleged tax owed is unlawful contrary to Common Law and unconstitutional in so far as it compels the third party to precipitately settle an alleged debt unconnected with him/her in any way without recourse to the courts of the land who have jurisdiction to make any such order.*

Relief f is also not a proper question for enforcement of the Constitution to the extent that it does not identify the provision of the Constitution that Sections 60 to 61 of Act 915 allegedly violate. Again, the legal context in which third party obligations are imposed on another person resides in private rights in the law of contract. Indeed, the plaintiff himself urges within the relief that the alleged violation is contrary to common law. Relief (f) must fail

Relief g.

g. *A declaration that Section 62 of the Revenue and Administration Act 2016, Act 915 is illegal, unlawful and unconstitutional to the extent that same seeks to transfer tax liability from the primary tax payer to another person in breach of the principle that tax liability is personal and therefore not transferable save in compliance with or pursuant to due process*.

Relief g is not a proper question for enforcement of the Constitution to the extent that it does not identify the provision of the Constitution that Section 62 of Act 915 allegedly violates. Indeed, the plaintiff correctly identifies within the relief sought, that the alleged violation deals with issues in private rights. It is dismissed

Relief h.

h. *A declaration that sections 72-76; 78, 80-82, and 86-87 of the Revenue and Administration Act, 2016 (Act 915) are unfair, arbitrary, devoid of transparency and inimical to good governance, due process, proper administration, governance and undermines the fundamental rights of citizens*.

Relief h is not a proper question for interpretation of or enforcement of the Constitution to the extent that it does not identify the provision of the Constitution that Sections 72 – 76, 78, 80-82, and 86 – 87 of Act 915 allegedly violate. These provisions of Act 915 deal with the subject matter of penalties, offences and compounding of offences. The plaintiff also seems to suggest that the alleged

breaches are in administrative law. Be that as it may, this court must state our strong deprecation of this burden of pointing at concepts and administrative tools for managing the industrial landscape of tax expressed in the tax statute, with bare statements that the said concepts and tools are unconstitutional, without the appropriate discipline of providing legal submissions for the position espoused. Relief (h) is dismissed as unsupported by any material before us.

Relief i.

i. *A declaration that section 87 of the Revenue Administration Act 2016, (Act 915) is unlawful, inconsistent with, and in contravention of settled Common Law principles and the 1992 Constitution as well as known legal practice/desire of avoidance of multiplicity of proceedings and the principle that the laws of the country shall not be crafted in a manner which intimidates the citizenry and oppresses them or IN THE ALTERNATIVE a declaration that the provision indirectly obliterates the rights of citizens to lawfully challenge any person or authority as of right thereby immobilizing the constitutional right*.

Reliefs (i) raises no issue in constitutional law for interpretation and enforcement of the Constitution to the extent that it does not identify the provision of the Constitution that Section 87 of Act 915 allegedly violates. It is argumentative and lacks precision. It fails and is dismissed

Relief j.

j. *A declaration that section 88 of the Revenue and Administration Act 2016, (Act 915) which vests the Commissioner-General of the Ghana Revenue Authority with the power of seizure, search or arrest without recourse to the courts is unconstitutional and in conflict with the guaranteed fundamental human rights of citizens under the Constitution*.

Reliefs (j) is absolutely misleading because Section 88 of Act 915 states in its opening lines that a tax officer '*shall apply to a magistrate for an order*' authorising any of the steps that the section allows the tax officer to take where they have reason to believe that a person has

(a) Committed an offence under a tax law,
(b) Will abscond before the person is prosecuted for an offence under a tax law, or
(c) Will destroy, tamper with or otherwise dispose of evidence of an offence under a tax law.

Relief (j) is dismissed as having no merit.

Relief k.

k. *A declaration that section 92 of the Revenue and Administration Act 2016, (Act 915) which places the burden of proof on the tax payer offends Common Law principles, statute, due process and in conflict with the guaranteed constitutional right of a citizen to the presumption of innocence in that it shifts the burden of proof against all norms of decent democratic societies governed by the rule of law*.

Section 92 (1) and (2) read:

Burden of proof

(1) Subject to subsection (2), in proceedings on appeal under section 41 to 45 or for the recovery of tax under a tax law, the burden of proof is on the taxpayer or person making an objection to show compliance with the provisions of the tax law
(2) *With respect to the imposition of a penalty, including in proceedings on appeal under or for the recovery of a penalty, the burden of proof is on the commissioner general to show non-compliance with the provisions of the tax law*

Relief (k) complains that the placement of the burden of proof on a tax payer to show compliance with tax law during proceedings under appeal or for the recovery of tax, is in contravention of '*constitutional right of a citizen to the presumption of innocence'.* While continuing to express our extreme disapproval of this vacuous form of prosecution of a case allegedly premised on constitutional law, and presented without reference to any constitutional provision, we are also satisfied that the resolution of the purported dispute lies both in the face of the statutory provisions cited, and the only constitutional provision relevant to the language of the relief. Article 19 (2) (c) provides for the presumption of innocence of a person charged with a criminal offence. It reads:

Art. 19 (2) *A person charged with a criminal offence shall –*

c. Be presumed to be innocent until he is proved or has pleaded guilty

It can be seen on the very face of this constitutional provision that the subject matter of regulation is criminal trials, and not all arena of law. Section 92 on the other hand, segregates the regulation of the issue of 'burden of proof' into two parts. Section 92 (1) deals with tax decisions pursuant to sections 42 to 45. These matters reside in civil law, and not criminal law. In this context, section 92 (1) places the burden of proof '*on the taxpayer or person making an objection to show compliance with the provisions of the tax* law'.

Now this is a primary position in the law of Evidence**. Section 14 of the Evidence Act 1975 NRCD 323** directs

14. **Allocation of burden of persuasion**

'Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.

It is he who asserts that must prove. Since it is the objector to a tax decision who compels the dispute in the circumstances catered for under section 92 (1), section 92 (1) of Act 915 lines up with the primary position regulated by section 14 of NRCD 323.

On the other hand, when it comes to the regime on penalties under sections 72 to 77, the burden of proof is placed on the Commissioner -General by section 92(2).

92(2) *With respect to the imposition of a penalty, including in proceedings on appeal under or for the recovery of a penalty, the burden of proof is on the Commissioner-General to show non-compliance with the provisions of the tax law*

This absolutely lines up with requirements of **article 19 (2) (c).** Relief (k) is dismissed as being without merit.

Relief (l)

l. A declaration that section 93 of the Revenue and Administration Act 2016, (Act 915) which insulates decisions of the Commissioner-General of the Ghana Revenue Authority from pending court proceedings or decisions is in conflict with the well-known practice, legal principles, unlawful and unconstitutional status of a SUPER COURT to which the courts of Ghana are subject, subordinate, inferior and bound by its decisions or proceedings even without due process.

Reliefs (l) raises no issue for interpretation and enforcement of any of the provisions of the 1992 Constitution. This is because it does not identify any provision of the Constitution that Section 93 of Act 915 allegedly violates save to state that this statutory provision is in conflict with well-known legal principles and practice.

Section 93 provides

Tax decisions unaffected

93. *A tax decision is not stayed or otherwise affected*
a. by the institution of proceedings
i. for the recovery of tax; or
ii. with respect to an offence under a tax law; or
b.By reason that the Commissioner-General compounds an offence

There is only one way to understand section 93. Act 915 allows no presumptions in law by reason of the occurrence of the events provided for under Section 93. Any party who requires the stay of a tax decision or an order affecting a tax decision ought to take a positive step to obtain stay of implementation of the decision. This provision lines up with the basic legal tenet that dictates a strict construction of fiscal legislation reiterated by this court in **Multichoice Ghana Ltd v Internal Revenue Service 2011 2 SCGLR 783,** and cited by counsel for 1st defendant in their statement of case. The duty of this court is to interpret and apply law, and not 'strain' the words of statute to apply letter and spirit of either statute or unidentified provisions of the 1992 Constitution. And this is especially so when we cannot discern a general principle of law in this jurisdiction that render the operation of any administrative decision halted or stayed by the simple filing of a law suit.

Relief (l) is dismissed as being without merit.

Relief (m)

m. A declaration that the definition of "compounding offence" under section 86 without recourse to the default is unlawful and contravenes fundamental principles of law, equity and fairness in administration and guaranteed human rights provisions under the 1992 Constitution.

Relief (m) also raises no issue for interpretation and enforcement of any provision of the Constitution to the extent that it does not identify the provision of the Constitution that Section 86 of Act 915 allegedly violates. It is not for this court to walk through the provisions of the national constitution guaranteeing fundamental

human rights in order to decipher what plaintiff intended by this claim. Relief (m) is dismissed as unsupported by any material before us.

Reliefs (n) and (o)

n. An order of perpetual injunction restraining the 1st defendant, its agents, assigns representatives, officers persons or institutions acting at its behest or direction from in any manner enforcing and/or relying on the provisions of Act 915 assailed in the instant proceedings and other similar subsidiary legislation and/or rule(s) promulgated/utilized/relied upon by virtue of the said Act 915.

o. SUCH FURTHER ORDER(S) as the honourable court may deem it.

There being no claims or reliefs granted by this court, **reliefs (n) and (o)** cannot attract consideration by this court, since they are premised on any orders that may first be made pursuant to reliefs (a) to (m).

Conclusion

With the exception of relief (d), none of the several reliefs presented in this suit, and the statement of case of the plaintiff raised any submissions for interpretation and enforcement of any constitutional provision. In essence, they failed to invoke the jurisdiction of this court under article 2(1) or article 130 (1) (a) in any coherent manner.

Our view is that when a party such as the plaintiff chooses to allege violation of constitutional provisions, and to seek enforcement of same, it is not the duty of defendants to second guess what the plaintiff could have intended to contend despite a failure to distinctly identify the constitutional provisions allegedly violated. Neither is it the duty of defendants to attempt to defend themselves in the fear that this court would follow suit in the second guessing of what the plaintiff meant in his case.

The duty lay with the plaintiff to set out his own case, and support it with cogent legal arguments. As said by Ampiah JSC in **National Democratic Congress v Electoral Commission [2001-2002] 1 GLR 954 at 962**, if a party before this court fails to present sufficient details to the court this court is not entitled to speculate, and neither is it its duty to find evidence for the parties.

The plaintiff's reliefs are refused in their entirety.

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)
(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

KWASI AFRIFA ESQ. APPEARS IN PERSON FOR THE PLAINTIFF.

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

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