

04-05-2022

IN THE SUPERIOR COURT OF JUDICATURE, THE SUPREME COURT (CIVIL
DIVISION) SITTING IN ACCRA ON WEDNESDAY THE 4TH DAY OF MAY, 2022.

CORAM: AMEGATCHER J.S.C (PRESIDING), PROF. KOTEY, OWUSU,
LOVELACE-JOHNSON, TORKORNOO, PROF. MENSA - BONSU
& KULENDI JJ.S.C

WRIT

NO. J1/19/2022

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5/5/2022
REGISTRAR
SUPREME COURT, ACCRA, G/R

1.HARUNA IDDRISU
2. MAHAMA AYARIGA
3.SAMUEL OKUDZETO ABLAKWA

VRS

THE ATTORNEY-GENERAL

Parties

Parties present.

Lawyers

Godwin Kudzo Tameklo for the Plaintiff /Applicants with Seth Nyarba and Saeed Moomin.

Godfred Yeboah Dame(Attorney-General) with Alfred Tuah Yeboah(Deputy Attorney-General), Miss Diana Asonaba Dapaah (Deputy Attorney –General) and Dr. Sylvia Adusu (Chief State Attorney) for the Respondent.

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RULING

The Applicants pray for an Interlocutory Injunction restraining the Government of Ghana through the Ghana Revenue Authority (GRA) from commencing the implementation of the Electronic Transfer Levy passed by an Act of Parliament.

It is the case of the Applicant that the Electronic Transfer Levy Bill 2021 was taken through the various consideration stages of its passage into an Act of Parliament with only 136 or 137 member of the Majority Caucus.

Their case is that since the members did not constitute half of all the members of Parliament in accordance with Article 104(1) of the 1992 Constitution, the passage of the Bill into an Act of Parliament was unconstitutional. The Defendant in his affidavit in opposition disputes the assertion by the Applicants.

We have reviewed the Submissions of Counsel in Court, the affidavits and the Statement of Case filed.

In exercising our discretion on whether to grant or refuse this application we have considered:

- (i) The nature of the reliefs sought i.e. a declaration that an Act of Parliament is null and void.
- (ii) The greater inconvenience or irreparable harm or loss which the parties will suffer including the likely issues in refunding numerous tax deductions should the writ succeed.
- (iii) The nature of the Legislation which is under attack including the fact that the Act under review is not just any Legislation, it is a tax Legislation.
- (iv) Whether Public Interest and welfare of the Ghanaian people is better protected by a grant or refusal of the Injunction sought.

Being a Public Law application we have also considered the legal maxim *Omnia Praesumitur Rite esse acta* and its application to the official Acts such as an Act of Parliament.

This is a Legal presumption which has gained statutory recognition under section 37(1) of the Evidence Act 1975 (NRCD 323) in this Jurisdiction.

The official Acts by Organs of the State and government departments are presumed to be regularly performed unless there is strong evidence in rebuttal. The passage of Act 1075 by Parliament, a Public Law Act which is contested by the Applicants fall within this category.

A Court's duty when confronted with a choice between restraining in the Interim the implementation of an Act of Parliament and permitting the same Act to achieve its purpose, is enjoined to respect and indeed defer to the Statute enacted by the Legislature until otherwise declared null and void. See the decision

of this Court in **Ranford France v. Attorney –General (No.1) [2012] 1 SCGLR 689** at 694 -695.

This approach to dealing with applications of this nature in our opinion, is the best way of ensuring that citizens respect Laws passed by Parliament pending the determination of any suit in an orderly manner in the Courts.

We are, therefore, enjoined by Law pending the hearing and determination of this Constitutional challenge to presume the regularity of the passage of Act 1075 by the Parliament of Ghana.

The other matter which has engaged our attention in the exercise of our discretion in this application is the balance of hardship in the grant or refusal.

In this Jurisdiction, an application for Interlocutory Injunction in Public Law matters would likely succeed where the applicant demonstrate that they stand to suffer irreparable harm, loss or injury.

The applicants in this case submits at Paragraph 19 of their Statement of Case that irreparable harm would be occasioned them as the Government of Ghana would not be in a position to reimburse all monies paid by millions of citizens of Ghana and all other persons. It is not clear from the Affidavit and Statement of Case how the Applicants came to this conclusion. We can only conclude that it was a conjecture.

In dealing with the balance of hardship we have taken into account the implications of the Act complained of and the likely damage to the public interest of restraining its implementation. Ghana is among the comity of nations whose Constitution requires all citizens to satisfy their tax obligations to enable the development of the country.

The subject matter of the writ, Act 1075 has to do with the payment of tax on Electronic Transactions.

The Country has Laws in place by which excess tax paid is either refunded to the payee or treated as a tax credit.

In balancing the hardships, in the event of the Applicants succeeding in their claim to declare the Electronic Transfer Levy Act 2022(Act 1075) unconstitutional and

therefore null and void, the sums deducted on transactions could be refunded as aforesaid.

On the other hand, if the Levy is Injuncted by this Court and at the end of the day the Applicants failed in their substantive writ, the GRA would be unable to recover the levies that would have been applicable on transfers already made which were required to be levied with the tax.

In our opinion, greater hardships would be caused to the State in meeting its developmental obligations to the people who would end up in suffering for the greater majority of the people. The balance of hardship, therefore tilts in favour of the Respondent.

Accordingly, we dismiss the application for Interlocutory Injunction. We order the Ghana Revenue Authority to keep accurate records of tax levies deducted as a result of such electronic transfers so that at the end of the determination of the substantive writ no party would be disadvantaged.

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

(SGD) PROF. N.A. KOTÉY
JUSTICE OF THE SUPREME COURT

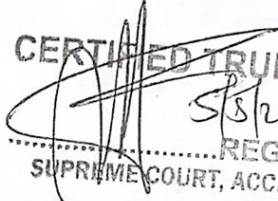
(SGD) M. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

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

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

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

(SGD) E. YONNY KULENDI
JUSTICE OF THE SUPREME COURT


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