

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING)

BAFFOE – BONNIE JSC

PROF. MENSA – BONSU (MRS.) JSC

ASIEDU JSC

ADJEI – FRIMPONG JSC

11TH MARCH, 2025

CIVIL MOTIONS:

J8/34/2024 & J8/112/2024

**PERSEUS MINING GHANA LIMITED
APPLICANT/APPELLANT/**

...

RESPONDENT/RESPONDENT

VRS.

**COMMISSIONER GENERAL
GHANA REVENUE AUTHORITY**

...

**RESPONDENT/RESPONDENT
/APPELLANT/APPLICANT**

RULING

ASIEDU, JSC;

[1]. My Lords, the Appellant/Applicant herein, the Commissioner General of the Ghana Revenue Authority (GRA), assessed the tax liability of the Respondent, Perseus Mining Ghana Limited, on the 6th January 2020, and issued a final tax audit report with a tax liability of \$8,725,387.47.

[2]. The Respondent objected to the assessment and paid the statutory minimum tax required to be paid upon objection to an assessment in the sum of GH¢13, 385,180.41 which was the cedi equivalent of \$2,501,902.88

[3]. After considering the objection filed by the Respondent herein, a final decision on the objection was issued by the Appellant/Applicant on the 15th March 2021 wherein the tax liability was revised to the sum of \$7,509,110.29.

[4]. My Lords, dissatisfied with the objection decision, the Respondent filed an appeal with the High Court which, after hearing the said appeal, dismissed same on the 8th February 2022, and, entered judgment in favour of the Appellant/Applicant.

[5]. A further appeal was filed by the Respondent on the 25th February 2022 to the Court of Appeal which, on the 1st June 2023, upheld the appeal and set aside the judgment of the High Court and consequently, granted the reliefs sought by the Respondent herein.

[6]. My lords, dissatisfied with the outcome of the judgment of the Court of Appeal, the Appellant/Applicant filed a Notice of Appeal to this Court on the 29th August 2023 in suit No. J4/48/2024. My Lords, by a motion on notice filed on the 8th December 2023 and another one also filed on the 25th June 2024 in civil motion numbers J8/34/2024 and J8/112/2024 respectively, the Appellant seeks an order from this Court for the rectification of the record of appeal (ROA). The Respondent filed an affidavit in opposition to the

application for an order for the rectification of the record on the 2nd day of February 2024 and on the 16th July 2024 respectively.

[7]. The Respondent relies on article 131(2) of the Constitution, 1992, and section 4(2) of the Courts Act, 1993, (Act 459) (as amended) to object to the application for an order for the rectification of the record of appeal and the substantive appeal itself; on the grounds that this Court's jurisdiction to entertain the appeal has not been properly invoked and for that matter, the application before this court is as incompetent as the Notice of Appeal filed by the Appellant/Applicant. In particular, the Respondent deposed in paragraphs 22 to 28 of their affidavit in opposition filed on the 16th July 2024 as follows:

"22. That I am advised by counsel and verily believe same to be true that this is an appeal from a judgment of the Court of Appeal against a decision of the Applicant herein, Commissioner General, Ghana Revenue Authority, under section 44 of the Revenue Administration Act, 2016, (Act 915) which falls under the provisions of clause 2 of Article 131 of the 1992 Constitution, section 4(2) of the Courts Act, 1993, (Act 459) (as amended) and rule 7(4) of the Supreme Court Rules, 1996 (CI.16) (as Amended).

23. That I am further advised by Counsel and verily believe same to be true that the right to appeal to the Supreme Court in respect of the judgment of the Court of Appeal, is not as of right and/or an automatic right but one carefully circumscribed by Article 131 (2) of the 1992 Constitution, Section 4(2) of the Courts Act, 1993 (Act 459) and Rule 7(4) of the Supreme Court Rules, 1996 (C.I. 16) (as Amended).

24. That I am further advised by Counsel and verily believe same to be true that the Applicant would have no direct access to the Supreme Court without first satisfying the special leave requirement.

25. That I am advised by Counsel and verily believe same to be true that the Applicant ought to have first obtained special leave, per Article 131 (2) of the 1992 Constitution, Section 4(2) of the Courts Act, 1993 (Act 459) and Rule 7(4) of the Supreme Court Rules, 1996 (C.I. 16) (as Amended), before proceeding to submit the instant appeal to this Honourable Court.

26. That I am advised by Counsel and verily believe same to be true that the appeal against the decision of the Court of Appeal arising from the Applicant's decision under section 44 of Act 915, can only be brought with the special leave from this Honourable Court.

27. That I am further advised by Counsel and verily believe same to be true that the jurisdiction of this Honourable Court has therefore not been properly invoked to entertain the instant appeal and to hear the instant motion.

28. That, I am also advised by Counsel and verily believe same to be true that to the extent that the instant appeal was filed without due process as required by Article 131(2) of the 1992 Constitution and Section 4(2) of the Courts Act, 1993 (Act 459) before proceeding to submit the instant appeal to this Honourable Court, same should be dismissed as being incompetent and a nullity".

[8]. My Lords, Article 131(1) and (2) of the Constitution, 1992 states that:

“131. Appellate jurisdiction of the Supreme Court

(1) An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court,

(a) as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or

(b) with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.

(2) Notwithstanding clause (1) of this article, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly”.

In similar language, section 4(1) and (2) of the Courts Act, 1993, (Act 459) (as amended) also provides that:

“4. Appellate jurisdiction

(1) In accordance with article 131 of the Constitution, an appeal lies from a judgment of the Court of Appeal to the Supreme Court

(a) as of right, in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction;

(b) with the leave of the Court of Appeal, in a cause or matter, where the case was commenced in a Court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest to grant leave of appeal;

(c) as of right, in a cause or matter relating to the issue or refusal or writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.

(2) Notwithstanding subsection (1), the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in a cause or matter, including an interlocutory matter, civil or criminal, and may grant leave accordingly”.

[9]. As shown above, the genesis of the case before this Court began with an assessment by the Appellant/Applicant ending up with an appeal to the High Court. Thus, the High Court was not called upon to exercise its original jurisdiction when the matter went before it. It was the **appellate** jurisdiction of the High Court that was invoked by the Appellant/Respondent herein under article 140(1) of the Constitution, section 44 of the Revenue Administration Act, 2016, Act 915 as well as Order 54 rule 1 of the High Court (Civil Procedure) Rules, 2004, CI.47. Under article 131(1)(a) of the Constitution and section 4(1)(a) of the Courts Act, an appeal from the decision of the Court of Appeal may be filed **as of right** to this Court only where the case was appealed to the Court of Appeal

from a decision given by the High Court in the exercise of its original jurisdiction. In the instant matter, in so far as the decision of the High Court was not given in the exercise of its original jurisdiction, the Appellant/Applicant herein cannot file his appeal to this Court from the decision of the Court of Appeal as of right. See *Coker vs. NDK Financial Services Ltd* [2017-2020] 1 SCGLR 766.

[10]. Under Article 131(1)(b) and section 4(1)(b), the leave of the Court of Appeal is required to enable a dissatisfied party appeal to this Court from a decision of the Court of Appeal where the case was commenced in a court lower than the High Court. In addition to this requirement, an applicant must satisfy the Court of Appeal that the matter “involves a substantial question of law or it is in the public interest to grant leave to appeal”. This provision was necessary in order to prevent frivolous appeals from being filed before this Court, with the ultimate aim of bringing litigation to an end as soon as possible.

[11]. The history of the instant matter shows that, the case did not even start from a court lower than the High Court. It did not start from a court at all. “Court” as defined in article 295(1) of the Constitution “includes a court of competent jurisdiction established by or under the authority of this Constitution and a tribunal”. The instant matter started from the administrative action of the Commissioner General of the Ghana Revenue Authority wherein he assessed tax on the Respondent herein. Hence, the Appellant/Applicant could not, lawfully, file its Notice of Appeal before this Court under article 131(1)(a)(b) of the Constitution and section 4(1)(a)(b) of the Courts Act. See *General Legal Council & Another vs. Koduah* [2017-2020] 1 SCGLR 1065

[12]. It stands to reason, therefore, that the only avenue open to the Appellant/Applicant herein was to apply for the Special leave of this Court under article 131(2) and section

4(2) of the Courts Act in order to file its appeal to the Supreme Court. The Notice of Appeal filed by the Appellant/Applicant herein on the 29th August 2023, bears no evidence to show that the special leave of this Court was obtained as required by article 131(2) of the Constitution and section 4(2) of the Courts Act. The said Notice of Appeal was therefore, filed in breach of the Constitution and the Courts Act, and it is, therefore, a nullity upon which no application can be founded. See Coker vs. NDK Financial Services Ltd (supra).

[13]. In the circumstances, we proceed to dismiss the appeal in limine together with the motion on notice for an order for rectification of the record of appeal.

(SGD.)

S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

(SGD.)

G. SACKY TORKORNOO (MRS.)
(CHIEF JUSTICE)

(SGD.)

P. BAFFOE – BONNIE
(JUSTICE OF THE SUPREME COURT)

(SGD.)

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

(SGD.)

R. ADJEI-FRIMPONG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

**PROF. ABDALLAH ALI-NAKYEA ESQ. WITH BENEDICT ASARE ESQ. FOR THE
APPLICANT/ APPELLANT/ RESPONDENT/RESPONDENT**

**MOHAMMED IBRAHIM ESQ. WITH KWAME DANKYI ESQ. AND MAWUSE
DAKE ESQ. FOR THE RESPONDENT/RESPONDENT/APPELLANT/APPLICANT**