

Tax Law Alert

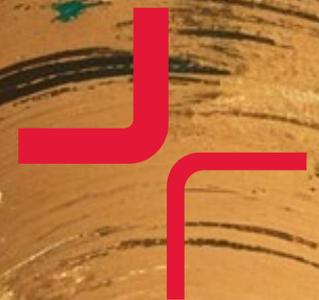
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CASE SUMMARY

PERSEUS MINING GHANA LIMITED VRS
COMMISSIONER GENERAL (GRA)

SUIT NO: CIVIL MOTIONS: J8/34/2024 & J8/112/2024

CASE IN THE SUPREME COURT



BACKGROUND OF THE CASE

On 6 January 2020, the Ghana Revenue Authority (GRA) conducted a tax audit on Perseus Mining Ghana Limited, assessing its tax liability at US\$8,725,387.47. Perseus Mining Ghana Limited disagreed with the assessment and paid GHS13,385,180.41, representing the required 30% minimum payment to object to the tax assessment formally.

After reviewing the objection, the GRA revised the tax liability down to \$7,509,110.29 on 15 March 2021. Dissatisfied with the decision of the GRA, Perseus Mining Ghana Limited filed an appeal at the High Court, which was ruled in favour of the GRA. Subsequently, Perseus Mining Ghana Limited filed a further appeal on 25 February 2022 to the Court of Appeal. The Court upheld the appeal of Perseus Mining Ghana Limited and set aside the judgment of the High Court.

The GRA (the "Appellant"), dissatisfied with the judgment of the Court of Appeal, filed a notice of appeal to the Supreme Court on 29 August 2023 and another application, seeking the rectification of the record of appeal. Perseus Mining Ghana Limited (the "Respondent") objected to the substantive appeal and the application for rectification of the record of appeal.

THE APPELLANT'S CASE

The Appellant, being discontented with the judgment of the Court of Appeal, filed a notice of appeal on 29 August 2023 and two applications on 8 December 2023 and 25 June 2024 seeking an order from the Supreme Court for rectification of the record of appeal on 2 February 2024 and 16 July 2024 respectively.

THE RESPONDENT'S CASE

The Respondent filed an affidavit in opposition to the notice of Appeal of the Appellant and its application for rectification of the record of appeal on the following grounds:

- a. The Appellant's right to appeal to the Supreme Court was not an inherent right or an automatic right but one that is meticulously considered by the 1992 Constitution, the Courts Act, 1993 (Act 459), and the Supreme Court Rules (as amended);

- b. The Appellant did not obtain a special leave before proceeding to submit the instant appeal to the Supreme Court;
- c. The Appellant did not properly invoke the jurisdiction of the Supreme Court; and
- d. The Appellant did not follow due process before proceeding to appeal to the Supreme Court. Consequently, its appeal should be dismissed as being incompetent and a nullity.

DECISION OF THE SUPREME COURT

The Supreme Court dismissed the appeal of the Appellant together with the motion on notice for rectification of the record of appeal based on the following legal reasons:

- a. Under Article 131 (1)(a) of the 1992 Constitution and Section 4(1)(a) Courts Act, an appeal from the decision of the Court of Appeal can be filed as of right to the Supreme Court only when the case is appealed to the Court of Appeal from a decision given by the High Court in the exercise of its original jurisdiction. Since the decision of the High Court was not given in the exercise of its original

jurisdiction, the Appellant cannot file an appeal to the Supreme Court without leave from the Court of Appeal or special leave from the Supreme Court.

- b. The background of the instant matter shows that the case did not originate from a court lower than the High Court, but commenced from an administrative action by the Commissioner General of the Appellant. Therefore, the Appellant is not lawfully permitted to file its notice of appeal before the Supreme Court without special leave.
- c. The proper procedure was for the Appellant to apply for special leave from the Supreme Court to file its appeal. There was no evidence to demonstrate that special leave was obtained, hence, the notice of appeal was filed in breach of the Constitution and the Courts Act. Consequently, its application for rectification of the record of appeal was also dismissed.

IMPLICATIONS AND KEY TAKEAWAYS OF THE SUPREME COURT'S DECISION

1. An appeal lies to the Supreme Court as of right only where the case was appealed to the Court of Appeal from a decision of the High Court, made in exercise of its original jurisdiction.
2. The decision of the Supreme Court underscores the distinction between administrative decisions and judicial decisions. Since the case originated from an administrative action by the Commissioner General, it did not qualify for an automatic appeal to the Supreme Court.
3. This ruling sets a precedent for future cases, reinforcing that appeals must be grounded in the correct procedural context. It serves as a cautionary tale for other entities to ensure their appeals are procedurally sound.
4. The ruling reinforces the need for strict adherence to the Constitution and the Courts Act. Any deviation from these legal frameworks can result in the dismissal of appeals.

CONCLUSION

The Supreme Court dismissed the substantive appeal and the motion for rectification of the record of appeal filed by the GRA on the grounds of procedural impropriety. The Court held that GRA did not follow the constitutional and statutory requirements to properly invoke its jurisdiction to hear the appeal and the motion for rectification of the record of appeal.

If you have any questions on the matters referred to in this Alert, do not hesitate to contact the author below.

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Theophilus Tawiah
Managing Partner

T: +233302500107/+233508646424

E: theophilus.tawiah@wtsnobisfields.com



Joseph Tamakloe
Partner

T: +233 302 500107

M: + 233 50 864 6484

E: joseph.tamakloe@wtsnobisfields.com



Wilhelmina Joana Buckman
Associate Director
T: +233 302 500107
M: +233 50 864 6424
E: wilhelmina.buckman@wtsnobisfields.com



Abraham Honour Otoo
Tax Manager
T: +233 302500107
M: + 233 50 864 6424
E: Abraham.otoo@wtsnobisfields.com



Michael Tandoh
Tax Manager
T: +233 302 500107
M: +233 50 864 6424
E: michael.tandoh@wtsnobisfields.com



Rosemary Anakwa Boadu
Senior Associate
T: +233 302 500107
M: +233 50 864 6424
E: rosemary.boadu@wtsnobisfields.com

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