

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA AD 2015**

**CORAM: ATUGUBA, JSC (PRESIDING)
ANSAH, JSC
YEBOAH, JSC
BONNIE, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), JSC
BENIN, JSC**

**WRIT
NO. J1/2/2013**

11TH JUNE 2015

**JOHN DEPORRES AYIMBIRE
NO. 12 APPLE STREET
HAATSO, ACCRA**

...

PLAINTIFF

VRS

**1. THE ATTORNEY-GENERAL
MINISTRY OF JUSTICE
MINISTRIES, ACCRA**

...

1ST DEFENDANT

**2. GHANA REVENUE AUTHORITY
OSU, ACCRA**

...

2ND DEFENDANT

JUDGMENT

ATUGUBA JSC:

By his writ dated 30/10/2012 the plaintiff claims as follows:

- "1. A declaration that sections 17 and 30(5) read together with No. 10 in the Schedule on consequential amendments and repeals] of the Ghana Revenue Authority Act, 2009 (Act 791) contravene or are inconsistent with article 190(1)(a) of the Constitution, and therefore are null, void and of no effect to the extent that the said sections of Act 791 purport to collapse the Customs, Excise and Preventive Service (CEPS) into an integrated authority called the Ghana Revenue Authority (GRA);
2. A declaration that sections 17(b), 30(3) and (5) of the Ghana Revenue Authority Act, 2009 (Act 791) as applied to CEPS contravene or are inconsistent with 107 (a) read together with article 2(1) of the Constitution, and therefore are null, void and of no effect to the extent that the Ghana Revenue Authority Act, 2009 (Act 791), particularly sections 17 (b), 30(3) and (5) thereof, is used as the basis for allowing or permitting CEPS employees to unionize;
3. A declaration that section 30(3) of Act 791 contravenes or is inconsistent with articles 8(2)(e), 83(j), 289 and/or 290(1)(f) of the Constitution, and therefore same is null, void and of no effect to the extent that the said section 30(3) of Act 791 purports to substitute in an enactment (and this includes the 1992 Constitution) the Commissioner-General of the Ghana Revenue Authority for the Commissioner of CEPS;
4. Any further or other consequential orders as this Honorable Court may deem fit for the purpose of ensuring compliance with the above provisions of the 1992 Constitution.

The issues for trial as per the plaintiff's memorandum of issues dated 3/1/2014 are as follows:

- "1. Whether or not upon a true and proper interpretation of Article 190(1) (a) of the Constitution Parliament is entitled to integrate any of the Services specified therein without recourse to an express and specific amendment pursuant to article 289 of the said Article 190(1)(a) of the Constitution to so permit any such integration;
2. Whether or not by purporting to convert the Customs, Excise and Preventive Service into a department of the Ghana Revenue Authority without an express amendment of Article 190(1) of the Constitution, sections 17 and 30(5) [read together with No. 10 in the Schedule on consequential amendments and repeals] of the Ghana Revenue Authority Act contravene Article 190(1) (a) of the Constitution;
3. Whether or not by purporting to convert the Customs, Excise and Preventive Service into a department of the Ghana Revenue Authority without an express amendment of Article 190(1) of the constitution to permit such integration, sections 17 and 30(5) [read together with No. 10 in the Schedule on consequential amendments and repeals] of the Ghana Revenue Authority Act contravene Article 289(2) of the Constitution;
4. Whether or not by seeking to substitute the Commissioner-General of the Ghana Revenue Authority for Commissioner of CEPS as provided for in Article 83(1)(j), section 30(3) of the Ghana Revenue Authority Act 2009 (Act 791) contravenes Articles 289(2) and 290 of the Constitution;
5. Whether or not by the purported integration of the Customs, Excise and Preventive Service (CEPS) into the Ghana Revenue Authority pursuant to the Ghana Revenue Authority Act, 2009 (Act 791), CEPS employees are entitled to unionize contrary to the decision of this Court in Customs, Excise and Preventive Service (No. 02) v National Labour Commission & Attorney-General [2011] SCGLR 85."

This case has posed quite a challenge to this court. Our duty is to uphold protect and enforce the constitution of Ghana against violations thereof. We are resolute as to the discharge of this duty. On the other hand is the need for awareness as to legal thinking on the nature of a constitution and how it is to be judicially implemented through interpretation and enforcement. The dilemma therefore is how far imaginative as opposed to literalistic the court can be in constitutional adjudication. Needless to say therefore that our minds went back and forth as to the decision of this case. And now to the issues of the case.

ISSUE 1

- "1. Whether or not upon a true and proper interpretation of Article 190(1) (a) of the Constitution Parliament is entitled to integrate any of the Services specified therein without recourse to an express and specific amendment pursuant to article 289 of the said Article 190(1)(a) of the Constitution to so permit any such integration;"

As this action concerns only the Customs, Excise and Preventive Service we would restrict ourselves to that Institution in resolving this issue. Articles 190(1)(a) and 289 of the 1992 Constitution of Ghana are as follows:

"190(1). The Public Services of Ghana shall include -

- (a) the Civil Service,
- the Judicial Service,
- the Audit Service,
- the Education Service
- the Prisons Service,
- the Health Service,
- the Statistical Service
- the National Fire Service
- the Customs, Excise and Preventive Service,*
- the Internal Revenue Service,
- the Police Service
- the Immigration Service, and

the Legal Service; (e.s)

289. Amendment of the Constitution

- (1) Subject to the provisions of this Constitution, Parliament may, by an Act of Parliament, amend any provision of this Constitution.
- (2) This Constitution shall not be amended by an Act of Parliament or altered whether directly or indirectly unless
 - (a) The sole purpose of the Act is to amend this Constitution, and
 - (b) The act has been passed in accordance with this Chapter."

Since article 289 relates to amendment to the provisions of the Constitution but the Customs, Excise and Preventive Service was established by ordinary legislation, namely, the Customs, Excise and Preventive Service Law, 1986 (PNDCL 144) and the Customs, Excise and Preventive Service (Management) Law, 1993 (PNDCL 330) the effectuation of any perceived amendments would relate to such ordinary legislation the amendment of which has no truck with the said article 289 except the same contravenes or is inconsistent with any provision of the constitution e.g the removal of CEPS from its membership of the Public Services. As will be demonstrated later the Ghana Revenue Authority Act 2009 (Act 791) has done nothing in that direction.

ISSUE 2

- "2. Whether or not by purporting to convert the Customs, Excise and Preventive Service into a department of the Ghana Revenue Authority without an express amendment of Article 190(1) of the Constitution, sections 17 and 30(5) [read together with No. 10 in the Schedule on consequential

amendments and repeals] of the Ghana Revenue Authority Act contravene Article 190(1) (a) of the Constitution;"

Mutatis mutandis the answer to Issue 1 supra should cover this issue as well. Sections 17 and 30(5) read together with No. 10 in the schedule of amendments in converting CEPS into a department of the GRA are dealing with the constitution of CEPS under aforementioned ordinary legislation and it is trite law that a subsequent statute may expressly or impliedly and properly so, repeal or alter an earlier statute. It must be emphasized that CEPS as an institution has been preserved under the GRA Act 2009 (Act 791) in s.30(5) of the GRA Act per the schedule as follows:

"(b) ... *the Customs, Excise and Preventive Service* established under section 1 of the Customs, Excise and Preventive Service Law, 1986 (PNDCL 144 and in existence immediately before the commencement of this Act *is hereby continued in existence as a Department under this Act*" [our emphasis]"

It is the substance of the change introduced by an enactment that is to be measured against the constitutional provision allegedly breached not nomenclature, see *Hinds v. R*(1976)2 WLR 366, *PC* and *Brownlee v R* (2001)5 LRC 180.

ISSUE 3

3. Whether or not by purporting to convert the Customs, Excise and Preventive Service into a department of the Ghana Revenue Authority without an express amendment of Article 190(1) of the constitution to permit such integration, sections 17 and 30(5) [read together with No. 10 in the Schedule on consequential amendments and repeals] of the Ghana Revenue Authority Act contravene Article 289(2) of the Constitution;

The preceding answers to the first two preceding issues do cover this issue also. In short since the act of conversion of CEPS into a department under the GRA does not derogate from any constitutional provision Article 289(2) is irrelevant to that act.

ISSUE 4

4. Whether or not by seeking to substitute the Commissioner-General of the Ghana Revenue Authority for Commissioner of CEPS as provided for in Article 83(1)(j), section 30(3) of the Ghana Revenue Authority Act 2009 (Act 791) contravenes Articles 289(2) and 290 of the Constitution;

Article 83 (1)(j) which is in this Issue alleged to be wounded by s.30(3) of the GRA Act without recourse to articles 289 (2) and 290 is as follows:

"83. The National Security Council

- (1) There shall be a National Security Council which shall consist of,
...
(j) *the Commissioner of Customs, Excise and Preventive Service;"*(e.s)

Article 289(2) has already been set out *ut supra*. Article 290 for its part, relates to the amendment of entrenched articles of the constitution and has no role to play in this Issue. *Prima facie* the substitution of the Commissioner-General of the Ghana Revenue Authority for the Commissioner of CEPS contravenes article 83(1) (j) which relates to the latter. However it is in such matters that the well established principles of constitutional interpretation come into play. As eternally laid down in the

celebrated case of *Tuffuor v Attorney-General* (1980) GLR 637 C.A (sitting as the Supreme Court) at 647-648 per Sowah JSC (as he then was),

"A written Constitution such as ours is not an ordinary Act of Parliament. It embodies the will of a people. It also mirrors their history. Account, therefore, needs to be taken of it as a landmark in a people's search for progress. It contains within it their aspirations and their hopes for a better and fuller life.

The Constitution has its letter of the law. Equally, the Constitution has its spirit. It is the fountain-head for the authority which each of the three arms of government possesses and exercises. It is a source of strength. It is a source of power. The executive, the legislature and the judiciary are created by the Constitution. Their authority is derived from the Constitution. Their sustenance is derived from the Constitution. Its method of alteration are specified. In our peculiar circumstances, these methods require the involvement of the whole body politic of Ghana. Its 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. 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.

And so we must take cognizance of the age-old fundamental principle of constitutional construction which gives effect to the intent of the framers of this organic law. Every word has an effect. Every part must be given effect."

In essence this means that a constitution must be interpreted to advance its core values, see *Amegatcher v. Attorney-General (No.1) & Others* (2012) ISCGLR 679. These principles are endorsed by the Constitution itself. Hence article 1(1) provides thus:

“(1) The Sovereignty of Ghana resides in the people of Ghana in whose name and *for whose welfare the powers of government are to be exercised* in the manner and within the limits laid down in this Constitution.(e.s)”

Similarly the Interpretation Act, 2009 (Act 792) provides in s.10(4)(2) (a) (c) and (d) that a purposive non technical interpretation must be given to the Constitution and its memorandum counsels interpretation which will avoid if possible the need for constitutional amendment.

When one looks at the membership of the Commissioner of CEPS of the National Security Council against the background of the list of the other members thereof in the light of the maxim *noscitur a sociis*, one sees that article 83(1) gathers together, mainly the topmost officers of institutions connected with national security as being persons well placed to handle security issues concerning the country. By the GRA Act the Commissioner-General of GRA is the head of all the divisions specified in s.17 thereof namely Domestic Tax Revenue Division, Customs Division, Support Services Division and any other division determined by Parliament. It is clear that the office of Commissioner-General of the GRA suffers no diminution but rather an exaltation of the office of the commissioner of Customs Excise and Preventive Service, in terms of security knowledge and competence. Therefore the spirit behind article 83(1)(j) is not ruffled in the least but better placated by the exalted status of the Commissioner-General of the GRA. The letter of the description of the office of the Commissioner of CEPS is not breached either. Article 297(h) provides thus:

“297. Implied power

In this Constitution and in any other law,

- ...
(h) words directing or empowering a public officer to do any act or thing, or *otherwise applying to him by the designation of his office*, include *his successors in office* and all his deputies and all other assistants; "(e.s)

Section 30(3) of the GRA Act provides thus "... reference in any enactment to the Commissioner of Customs, Excise and Preventive Service ... shall be read as a reference to the Commissioner-General [of the Ghana Revenue Authority] provided for under this Act." This simply means that the Commissioner-General of GRA takes the place of the Commissioner of CEPS.

Therefore he is the successor of the Commissioner of CEPS. The words "successors in office" in article 297(h) must receive their ordinary meaning, see *Awoonor-Williams v Gbedemah* (1969)2 G&G 442. The Oxford Advanced Learner's Dictionary, Fifth edition defines successor as follows:

"a person or thing that comes after and takes the place of sb/sth: *appoint a successor to the presidency. This car is the successor to our popular hatchback model.*"

It is therefore clear that the words "Commissioner of Customs and Excise" in the constitution are not limited by their particular alphabetical characteristics but extend to and include his successors in office and therefore include his successor the Commissioner-General of the GRA, in this case and is therefore constitutional. Of course if a person, without disrespect, like a hairdresser were purportedly appointed as such successor such a grotesque absurdity could not have been within the contemplation of article 297(h), but such is not the case here.

ISSUE 5

5. Whether or not by the purported integration of the Customs, Excise and Preventive Service (CEPS) into the Ghana Revenue Authority pursuant to the Ghana Revenue Authority Act, 2009 (Act 791), CEPS employees are entitled to unionize contrary to the decision of this Court in *Customs, Excise and Preventive Service (No. 02) v National Labour Commission & Attorney-General* [2011] SCGLR 85."

As noted earlier in this judgment CEPS is preserved under the GRA Act and nothing therein detracts from its character and functions as they were when this court decided the case of *Customs, Excise and Preventive Service (No. 2) v National Labour Commission & Attorney-General (2011)* SCGLR 85. In so far as therefore any store is put on the integration of CEPS into GRA as jolting the basis of the decision in that case, the same is misconceived. Whether this court should depart from that decision cannot be anchored solely on such premises, nor do we think for now that the question whether that decision should be departed from or not impinges much on the particular constitutional issues arising in this case.

Miscellaneous Matters

In developing his arguments the plaintiff, inter alia, contends that by placing CEPS under the GRA the former ceases to be a member of the Public Services and taken off the authority of the Public Services Commission under articles 190(1), 196 198 and s.4(1) of the Public Services Commission Act, 1994 (Act 482). The latter provides thus:

"Functions of the Commission

The functions of the Commission are, in addition to the functions provided for in article 196 of the Constitution,

...

- (i) *to review the organization, structure and manpower requirements of agencies and bodies in the Public Services* and advise Government on the manpower rationalization necessary for maximum utilization of human resources in the Public Services;" [our emphasis]

At the time of the enactment of the GRA Act, 1993 the Public Services Commission Act, 1994 had not been enacted and therefore the former could not have infringed the latter. In any case it is clear that the GRA is part of the Public Services by reason of article 190(1)(b) and ss.1(2), 4 of the GRA Act. If the GRA is within the Public Services so must CEPS as a Division thereof. In any case the amalgamation of CEPS with GRA by ordinary legislation does not operate to make CEPS no longer within the Public Services under article 190(1)(a) of the Constitution.

Conclusion

It is clear that the plaintiff's action overlooks the facts that CEPS has not been constituted by the 1992 Constitution as an institution but by ordinary legislation aforementioned and merely continued in existence by the constitution and therefore remains within the remit of ordinary legislation as shown above. See *Sallah v Attorney-General* (1970)2 G&G 493 and article 11(4),(5) and (6). The Constitution is a living document and therefore ordinary legislative growth, inter alia, is legitimate unless demonstrably unconstitutional, see *Tuffuor v Attorney-General*, supra, *Reference by the Head of State* (1989) LRC (Const) 671 SO at 676.

For all the foregoing reasons we dismiss this action.

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE
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(SGD) N. S. GBADEGBE
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JUSTICE OF THE SUPREME COURT

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