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Filed on 23-10-17 at 9:57 am  
Regis  
COMMERCIAL DIVISION OF THE  
HIGH COURT, ACCRA

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
(COMMERCIAL COURT)  
ACCRA – A.D. 2017

SUIT NO. MISC/0159/2017

THE REPUBLIC

VRS.

COMMISSIONER-GENERAL  
GHANA REVENUE AUTHORITY  
ACCRA

RESPONDENT/RESPONDENT

CERTIFIED TRUE COPY

EX-PARTE

REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION, LLC-ACCRA

GHANA TELECOMMUNICATIONS CO. LTD.  
ACCRA

APPLICANT/APPLICANT

MOTION ON NOTICE FOR LEAVE TO AMEND RELIEFS AND GROUNDS  
OF APPLICATION  
ORDER 55 RULE 5(5)

TAKE NOTICE that this Honourable Court will be moved by counsel for the Applicant/Applicant (“Applicant”) herein for an order granting leave to:

- 1. vary/modify the reliefs sought in this suit to read as follows:

*An order of certiorari, bringing up and quashing the decision of the Respondent dated 4<sup>th</sup> October 2017 refusing the Applicant’s request for a waiver of the payment of the 30% of the disputed assessment pending the objection determination, on the grounds that the decision resulted from an improper exercise of the discretion vested in the Respondent by section 42(6) of the Revenue Administration Act, 2016 (Act 915) and in contravention of article 296(a) and (b) of the Constitution, 1992.*

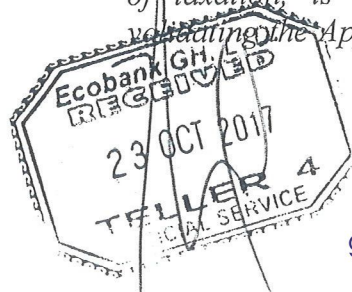
- 2. amend the grounds stated in the affidavit in support as follows:

- (a) by inserting new paragraphs “5A”, “5B” and “5C” to read as follows:

5A. That the Applicant submitted in **Exhibit TA** that the Transfer Pricing Regulations, 2012 (L.I. 2188), which was made pursuant to the then Internal Revenue Act, 2000 (Act 592) for the purposes of taxation, is the applicable legislation for verifying and calculating the Applicant’s transfer pricing transactions, and that

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Sh - 20.00

Mat - 50.00  
Exh - 20.00

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total 70.00

*the Respondent's application of the Technology Transfer Regulations, 1992 (L.I. 1547), which was made under the then Investment Code, 1985 (P.N.D.C.L. 116) by the then Ghana Investment Centre for the purposes of investment promotion within Ghana, was wrongful.*

5B. *That, in effect, although the tax statute, L.I. 2188 contained provisions for verifying the Applicant's compliance with the Arm's Length principles in the transactions audited, the Respondent refused or failed to apply L.I. 2188 and instead applied the provisions of the non-tax statute, L.I. 1547 in the audit exercise, an act which is not sanctioned by law.*

5C. *That the Respondent had an obligation under the Constitution to adjudicate and give due consideration to the Applicant's concerns as set out in **Exhibit TA**, and the Applicant was entitled to and did expect same in earnest from the Respondent.*

(b) by amending paragraphs 7, 8 and 9 to read as follows:

7. *That the Respondent completely ignored the Applicant's submissions on the wrongful application of the non-tax statute L.I. 1547, and instead repeated his assessment using L.I. 1547 without giving reasons, and then demanded the payment of GHc162,468,361.90 within 14 days of **Exhibit TAI**.*

8. *That, exercising its statutory rights, the Applicant objected to the Respondent's assessment and demand in **Exhibit TAI** by an objection letter dated 17<sup>th</sup> August 2017, which set out the basis for the objection and reiterated the Respondent's wrongful application of a non-tax statute to determine the Applicant's transfer pricing tax liability. (A copy of the Applicant's objection letter is attached as "**Exhibit TA2**".)*

9. *That, again, the Respondent completely ignored the Applicant's **Exhibit TA2**, and without stating any reasons, informed the Applicant in writing about his intention to audit all transactions to determine whether they "meet the Arm's Length Test", requested for certain information, named his officers to conduct the exercise and then demanded the Applicant's "maximum co-operation" in the audit exercise. (A copy of the Respondent's said letter dated 21<sup>st</sup> August 2017 is attached as "**Exhibit TA3**".)*

(c) by inserting new paragraphs "9A" and "9B" to read as follows:

9A. *That the terms of **Exhibit TA3** clearly meant, and the Applicant understood them to mean, that, the assessment of GHc162,468,361.90 stated in **Exhibit TAI** and the payment demanded therein stood suspended and/or cancelled.*



9B. *That Exhibit TA3 also meant, and the Applicant understood it to mean that the assessment of GHc162,468,361.90 did not result from an audit exercise and that the audit exercise is about to start.*

(d) by amending paragraph 10 to read as follows:

10. *That in complete contradiction to the terms and understanding conveyed by Exhibit TA3, the Applicant received the Respondent's letter dated 23rd August 2017 (erroneously addressed to "PRICEWATERHOUSECOOPERS (GH) LTD.) acknowledging receipt of Exhibit TA2 and demanding payment of thirty percent (30%) of the sum assessed in Exhibit TAI, being GHc48,740,508.57, within 5 days. (A copy of the said letter is attached as "Exhibit TA4".)*

(e) by inserting new paragraphs "12A", "12B" and "12C" as follows:

12A. *That the Applicant provided a full and reasoned outline of the factual and legal basis for its request for a waiver in Exhibit TA5.*

12B. *That although the Respondent is yet to publish the constitutionally mandated instrument regulating the exercise of the discretion vested in him under section 42(6) of Act 915, the Applicant was entitled under the Constitution, 1992, to have its request in Exhibit TA5 judicially considered.*

12C. *That the Constitution, 1992, mandated the Respondent to obtain and review all relevant materials and information including those requested in Exhibit TA3, and then consider the Applicant's request for a waiver with due reference and regard to all relevant principles before arriving at his decision in a matter justified by the relevant facts and legal principles.*

(f) by amending paragraph 13 of the affidavit in support to read as follows:

13. *That in complete disregard of the constitutional obligation to be fair, avoid arbitrariness and capriciousness, and in breach of the Applicant's lawful entitlement to a full, fair and judicial determination of its request for a waiver, the Respondent wrote a reply dated 4<sup>th</sup> September 2017 letter to say that although he is empowered to waive or suspend the payment of the 30% of the disputed tax pending the objection determination, he was "yet to consider a decision to exercise that authority." (A copy of the Respondent's reply to the request for waiver is attached as "Exhibit TA6".)*

(g) by inserting a new paragraph "13A" in the affidavit in support as follows:

13A. *That the Respondent then demanded payment of the 30% of the assessment in Exhibit TA1, being GHc48,740,508.30, within 7 days of Exhibit TA6.*

(h) by amending paragraph 14 of the affidavit in support to read as follows:

14. *That alarmed by the Respondent's refusal to exercise the statutory discretion vested in him, the Applicant followed up and held several discussions with the Respondent on the issue but the Respondent remained adamant in his refusal to consider the Applicant's application for a waiver.*

(i) by deleting paragraphs 15 to 21 and replacing same with the following paragraphs:

15. *That, in pursuit of the 30% payment in Exhibit TA6 the Respondent sent officers to the Applicant's offices to demand payment even before the expiry of the 7 days deadline.*

16. *That the Respondent ignored countless pleas by the Applicant to reconsider his decision not to exercise his statutory discretion on the Applicant's request, and repeatedly demanded payment of the colossal amount of GHc48,740,508.30 before determining the objection to the overall assessment.*

17. *That with no other option left to seek redress, the Applicant was compelled to commence this action on 13<sup>th</sup> September 2017 and sought orders of:*

a. *Certiorari, to quash the Respondent's decision in Exhibit TA6 refusing to exercise the statutory discretion vested in him, and demand for payment of the 30%, and*

b. *Mandamus, to compel the Respondent to exercise the discretion and judicially determine the request for waiver.*

18. *That upon being served with the instant action, the Respondent filed his affidavit in opposition on 10<sup>th</sup> October 2017, and:*

a. *denied that he has refused to exercise his discretion on the Applicant's request for waiver, and that his decision in Exhibit TA6 was made "in the light of section 42(7)" of Act 915.*

b. *referred to the periods stipulated in Act 915 for objection determination and claimed that the instant action "is premature".*

c. *that the "transfer pricing audit of the Applicant is still ongoing" and "is different from the Audit and tax assessment" of "GHc162,468,361.90".*

19. *That the Respondent also made unsubstantiated claims regarding transfers to the Applicant's parent company to justify his demand for the payment of the 30%.*



20. *That the parties attended court in this matter for the first time the following day, 11<sup>th</sup> October 2017, and the matter was adjourned for hearing on 18<sup>th</sup> October 2017.*
21. *That shortly after the proceedings on 11<sup>th</sup> October 2017, the Applicant received from the Respondent, a letter in which he referred to **Exhibit TA5** and **Exhibit TA6** and stated that he has considered the request for a waiver and refused same and then asked the Applicant “to comply with” **Exhibit TA6**. (A copy of the Respondent’s said letter is attached as “**Exhibit TA7**”.)*
22. *That the Applicant considers the Respondent’s conduct leading to his refusal of the request for waiver as grossly improper and a flagrant abuse of the discretion vested in him by the law.*
23. *That the Respondent’s gross disregard and failure to refer to any of the grounds stated in the Respondent’s request for waiver, clearly exhibit his prejudice towards the Applicant’s case in this dispute and a complete abuse of the statutory powers vested in him and violation of the constitutional obligation on him under article 296(b) of the Constitution, 1992.*
24. *That the Respondent’s failure to demonstrate his awareness of the guiding principles in the Constitution and Act 915 in exercise of his discretion resulting in the decision contained in **Exhibit TA7** is in contravention of his constitutional obligation not to be capricious in the exercise of his statutory powers.*
25. *That the Respondent’s reference to alleged transfers by the Applicant to its parent company to justify his assessment in **Exhibit TA1** and his refusal in **Exhibit TA7** violates the Applicant’s right to a fair hearing, shows the Respondent’s arbitrariness in the exercise of his powers, and his gross disregard for the basis for taxation as provided under the relevant tax law and the Constitution.*
26. *That the Respondent’s denial of his own clear and unequivocal statements in **Exhibit TA6** and claims that the “transfer pricing audit is still ongoing” and “different from Audit and tax assessment” demonstrate the Respondent’s utter lack of candour in the exercise of his statutory duties and violation of the article 296(a) of the Constitution.*
27. *That the Respondent’s insistence on the use and application of non-tax statute to assess the Applicant’s tax obligation violates the constitutional obligation on him to follow and apply due process of law in the discharge of his duties.*
28. *That altogether, the Respondent has shown that he neither desires nor intends to apply the law in discharging his statutory duties and enforcing the tax statutes, and his decisions in **Exhibit TA6** and **Exhibit TA7** cannot be justified as emanating from the proper and lawful exercise of the discretion vested in him to consider the Applicant’s request for a waiver of the 30% of the disputed assessment pending the determination of the objection raised by the Applicant.*

29. That in all the circumstances outlined herein, the Respondent's decision contained Exhibit TA7 cannot be justified and the Applicant therefore prays this Honourable Court for an order of certiorari, to bring up and quash the Respondent's decision.

ON THE grounds stated in the accompanying affidavit and for any further order(s) as this Honourable court may deem fit.

COURT TO THE MOVED on the 20th day of NOV, 2017 at 9 o'clock in the forenoon or so soon thereafter as counsel may be heard.

DATED THIS 20<sup>TH</sup> DAY OF OCTOBER 2017.



Daad Akwesi (Mrs.)  
Bentsi-Enchill, Letsa & Ankomah  
Lawyers for Applicant  
Licence No.: GAR 16289/17  
Firm licence number: Pp 0003109/17

The Registrar  
High Court (Commercial Court)  
Accra

And to the Respondent.

CERTIFIED TRUE COPY  
REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION. LLC-ACCRA

23-10-17  
Filed on.....  
at..... 9:50 am/pm  
Registrar  
COMMERCIAL DIVISION OF THE  
HIGH COURT, ACCRA

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
(COMMERCIAL COURT)  
ACCRA – A.D. 2017

SUIT NO. MISC/0159/2017

THE REPUBLIC

VRS.

COMMISSIONER-GENERAL  
GHANA REVENUE AUTHORITY  
ACCRA

RESPONDENT/RESPONDENT

EX-PARTE

GHANA TELECOMMUNICATIONS CO. LTD    APPLICANT/APPLICANT  
ACCRA

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AFFIDAVIT IN SUPPORT

---

I, Theodore Albright, of 8 Abidjan Street East Legon, Accra, Head of Legal of the Applicant Company, make oath and say as follows:

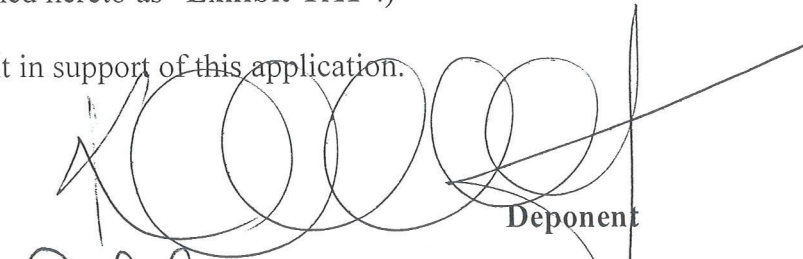
1. That I am the deponent herein and I have the authority of the Applicant to swear to this affidavit and to depose to these matters which have come to my personal knowledge and belief in the course of my duties.
2. That on 13<sup>th</sup> September 2017, the Applicant commenced this action and prayed for orders of:
  - a. Certiorari, to quash the Respondent's decision to refuse to exercise the statutory discretion vested in him, and demand for payment of the 30%, and
  - b. Mandamus, to compel the Respondent to exercise the discretion and judicially determine the request for waiver.
3. That the Respondent was duly served with the application on 13<sup>th</sup> September 2017.
4. That the Respondent filed his affidavit in opposition on 10<sup>th</sup> October 2017 and denied that he has made the decision alleged by the Applicant, among others.

CERTIFIED TRUE COPY  
  
REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION, LLC-ACCRA



5. That the parties attended court on 11<sup>th</sup> October 2017 and due to the late filing of the Respondent's affidavit in opposition the matter was adjourned to 18<sup>th</sup> October 2018 for hearing.
6. That after the proceedings on 11<sup>th</sup> October 2017 the Applicant received a letter from the Respondent in which the Respondent had referred to the Applicant's request for a waiver and his decision refusing to exercise his discretion.
7. The Respondent further stated that he has now considered and refused the Applicant's request for waiver and demanded that the Applicant pay the amount stated in his earlier decision. (A copy of the Respondent's said letter is attached as "Exhibit TA".)
8. That the clear import of **Exhibit TA** is that the Respondent no longer stands by his earlier decision which was the cause of this action.
9. That the Applicant is of the view that the Respondent issued **Exhibit TA** to undermine the action and overreach the Honourable Court's duty to determine the dispute by rendering the reliefs no longer necessary.
10. That, however, the Respondent's entire conduct leading to his decision in **Exhibit TA** shows an improper and unlawful exercise of the statutory discretion vested in him and has occasioned a grave injustice to the Applicant.
11. That the Applicant is desirous of seeking appropriate remedies to protect its legitimate interest and hereby applies for leave of the Honourable Court to amend its pleadings to reflect the new cause of action.
12. That the amendments proposed by the Applicant are as set out on the face of the motion paper and the Applicant, humbly prays for leave of the Honourable Court to amend its pleadings to seek the appropriate remedies. (A draft of the proposed amended suit is attached hereto as "**Exhibit TA1**".)

WHEREFORE I swear to this affidavit in support of this application.

  
Deponent

SWORN THIS 23<sup>rd</sup> DAY OF October 2017

BEFORE ME



"Exhibit TA"

GHANA REVENUE AUTHORITY

CG/TELCOS/01/17

Our Ref. No. ....  
Your Ref. No. ....



4<sup>th</sup> October, 2017

THE MANAGING DIRECTOR  
GHANA TELECOMMUNICATIONS COMPANY LTD  
HEADQUARTERS  
VODAFONE GHANA  
SOUTH LIBERATION LINK  
MANET TOWER  
AIRPORT CITY  
ACCRA, GHANA

Handwritten notes and signatures: "TA", "Exhibit", "3rd Oct 2017", and a signature.

Dear Sir,

RE: TRANSFER PRICING AUDIT REPORT 2012 - 2016 YEARS OF ASSESSMENT  
GHANA TELECOMMUNICATIONS COMPANY LTD

We refer to your application dated 25<sup>th</sup> August, 2017 requesting for a waiver of the payment of 30% of the tax objected to by your company

We also refer to the Authority's letter of 4<sup>th</sup> September, 2017 in which you were informed that the Commissioner-General was yet to consider a decision to exercise his discretionary power under subsection 6 of section 42 of the Revenue Administration Act, 2016, Act 915.

Having thereafter considered your said request of 25<sup>th</sup> August, 2017, the Commissioner-General has refused to grant your application for a waiver of the payment of the said 30% of the tax in dispute.

In line with subsection 5 of section 42 of the Revenue Administration Act, 2016, Act 915, you are advised to comply with the Authority's letter of 4<sup>th</sup> September, 2017.

Yours faithfully,

EMMANUEL KOFI NTI  
AG. COMMISSIONER-GENERAL

CERTIFIED TRUE COPY  
  
REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION, LLC-ACCRA

Cc: Commissioner, DTRD  
Deputy Commissioner, LTO

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Integrity. Fairness. Service.

IN THE SUPERIOR COURT OF JUDICATURE  
IN THE HIGH COURT OF JUSTICE  
(COMMERCIAL COURT)  
ACCRA – A.D. 2017

SUIT NO. MISC/0159/2017

THE REPUBLIC

v.

COMMISSIONER-GENERAL  
GHANA REVENUE AUTHORITY  
ACCRA

RESPONDENT  
23rd Sept 2017  
*[Signature]*

EX-PARTE

GHANA TELECOMMUNICATIONS CO. LTD. -  
ACCRA

APPLICANT

MOTION ON NOTICE FOR AN ORDER OF CERTIORARI  
ARTICLE 33(1) OF CONSTITUTION & ORDER 55 RULE 4

FILED BY LEAVE OF COURT GRANTED ON [] BY HIS LORDSHIP []

TAKE NOTICE that lawyers for the Applicant shall move this Honourable Court praying for:

*an order of certiorari, bringing up and quashing the decision of the Respondent dated 4<sup>th</sup> October 2017 refusing the Applicant's request for a waiver of the payment of the 30% of the disputed assessment pending the objection determination, on the grounds that the decision resulted from an improper exercise of the discretion vested in the Respondent by section 42(6) of the Revenue Administration Act, 2016 (Act 915) and in contravention of article 296(a) and (b) of the Constitution, 1992.*

On the grounds stated in the accompanying affidavit, and for any further order(s) as this Honourable Court may deem fit.

Court to be moved on the day of 2017 at 9 O'clock in the forenoon or so soon thereafter as counsel may be heard.

Dated this 12<sup>th</sup> day of September 2017.

CERTIFIED TRUE COPY  
*[Signature]*  
REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION, LLC-ACCRA



Daad Akwesi (Mrs.)  
Bentsi-Enchill, Letsa & Ankomah  
Lawyers for Applicant  
Licence No.: GAR 16289/17  
Firm licence number: Pp 0003109/17

The Registrar  
High Court (Commercial Court)  
Accra

And to the Respondent.

EXHIBIT TA1

CERTIFIED TRUE COPY  
  
REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION, LLC-ACCRA

IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE  
(COMMERCIAL COURT)  
ACCRA – A.D. 2017

SUIT NO.

THE REPUBLIC

v.

COMMISSIONER-GENERAL  
GHANA REVENUE AUTHORITY  
ACCRA

-

RESPONDENT

EX-PARTE

GHANA TELECOMMUNICATIONS CO. LTD.  
ACCRA

-

APPLICANT

---

AFFIDAVIT IN SUPPORT

---

I, Theodore Albright, of 8 Abidjan Street East Legon, Accra, Head of Legal of the Applicant company, make oath and say as follows:

1. That I am the deponent herein and I have the authority of the Applicant to swear to this affidavit and to depose to these matters which have come to my personal knowledge and belief in the course of my duties.
2. That in July 2017, the Respondent conducted a Transfer Pricing audit of the Applicant for the 2012-2016 years of assessment.
3. That during the course of the audit, the Applicant disagreed with the Respondent's use of the Technology Transfer Regulations, 1992 (L.I. 1547) instead of the Transfer Pricing Regulations, 2012 (L.I. 2188), in the audit exercise.
4. That the parties met several times to resolve the Applicant's disagreements without success and consequently the Respondent requested the Applicant to submit its grievance in writing.
5. That by a detailed memo to the Respondent dated 3<sup>rd</sup> August 2017, the Applicant, through its consultant, KPMG, set out the issues arising from the audit, juxtaposed the Applicant's position with the Respondent's and requested that the Respondent review its computations. (A copy of the Applicant's memo issued by KPMG to the Respondent is attached and marked as "Exhibit TA".)

- 5A. *That the Applicant submitted in Exhibit TA that the Transfer Pricing Regulations, 2012 (L.I. 2188), which was made pursuant to the then Internal Revenue Act, 2000 (Act 592) for the purposes of taxation, is the applicable legislation for verifying and validating the Applicant's transfer pricing transactions, and that the Respondent's application of the Technology Transfer Regulations, 1992 (L.I. 1547), which was made under the then Investment Code, 1985 (P.N.D.C.L. 116) by the then Ghana Investment Centre for the purposes of investment promotion within Ghana, was wrongful.*
- 5B. *That, in effect, although the tax statute, L.I. 2188 contained provisions for verifying the Applicant's compliance with the Arm's Length principles in the transactions audited, the Respondent refused or failed to apply L.I. 2188 and instead applied the provisions of the non-tax statute, L.I. 1547 in the audit exercise, an act which is not sanctioned by law.*
- 5C. *That the Respondent had an obligation under the Constitution to adjudicate and give due consideration to the Applicant's concerns as set out in Exhibit TA, and the Applicant was entitled to and did expect same in earnest from the Respondent.*
6. *That whilst waiting for the Respondent's response to Exhibit TA , the Applicant received an audit report with a tax assessment of GHc162,468,361.90 (One Hundred and Sixty-Two Million, Four Hundred and Sixty-Eight Thousand, Three Hundred and Sixty-One Cedis, Ninety pesewas), on 8<sup>th</sup> August 2017, from the Transfer Pricing Unit of the Ghana Revenue Authority ("GRA"). (A copy of the said audit report is attached as "Exhibit TA1".)*
7. *That the Respondent completely ignored the Applicant's submissions on the wrongful application of the non-tax statute L.I. 1547, and instead repeated his assessment using L.I. 1547 without giving reasons, and then demanded the payment of GHc162,468,361.90 within 14 days of Exhibit TA1.*
8. *That, exercising its statutory rights, the Applicant objected to the Respondent's assessment and demand in Exhibit TA1 by an objection letter dated 17<sup>th</sup> August 2017, which set out the basis for the objection and reiterated the Respondent's wrongful application of a non-tax statute to determine the Applicant's transfer pricing tax liability. (A copy of the Applicant's objection letter is attached as "Exhibit TA2".)*
9. *That, again, the Respondent completely ignored the Applicant's Exhibit TA2, and without stating any reasons, informed the Applicant in writing about his intention to audit all transactions to determine whether they "meet the Arm's Length Test", requested for certain information, named his officers to conduct*



*the exercise and then demanded the Applicant's "maximum co-operation" in the audit exercise. (A copy of the Respondent's said letter dated 21<sup>st</sup> August 2017 is attached as "Exhibit TA3".)*

- 9A. *That the terms of Exhibit TA3 clearly meant, and the Applicant understood them to mean, that, the assessment of GHc162,468,361.90 stated in Exhibit TA1 and the payment demanded therein stood suspended and/or cancelled.*
- 9B. *That Exhibit TA3 also meant, and the Applicant understood it to mean that the assessment of GHc162,468,361.90 did not result from an audit exercise and that the audit exercise is about to start.*
10. *That in complete contradiction to the terms and understanding conveyed by Exhibit TA3, the Applicant received the Respondent's letter dated 23rd August 2017 (erroneously addressed to "PRICEWATERHOUSECOOPERS (GH) LTD.) acknowledging receipt of Exhibit TA2 and demanding payment of thirty percent (30%) of the sum assessed in Exhibit TA1, being GHc48,740,508.57, within 5 days. (A copy of the said letter is attached as "Exhibit TA4".)*
11. *That Exhibit TA4 neither referred to the request for information and cooperation demanded to facilitate the audit, in Exhibit TA3, nor responded to Exhibit TA.*
12. *That in response to Exhibit TA1 and Exhibit TA4 and pursuant to section 42(6) of the Revenue Administration Act, 2016 (Act 915), the Applicant applied to the Respondent to exercise his discretion under the law and waive the 30% objection payment precondition. (A copy of the Applicant's application for a waiver is attached as "Exhibit TA5".)*
- 12A. *That the Applicant provided a full and reasoned outline of the factual and legal basis for its request for a waiver in Exhibit TA5.*
- 12B. *That although the Respondent is yet to publish the constitutionally mandated instrument regulating the exercise of the discretion vested in him under section 42(6) of Act 915, the Applicant was entitled under the Constitution, 1992, to have its request in Exhibit TA5 judicially considered.*
- 12C. *That the Constitution, 1992, mandated the Respondent to obtain and review all relevant materials and information including those requested in Exhibit TA3, and then consider the Applicant's request for a waiver with due reference and regard to all relevant principles before arriving*

at his decision in a matter justified by the relevant facts and legal principles.

13. That in complete disregard of the constitutional obligation to be fair, avoid arbitrariness and capriciousness, and in breach of the Applicant's entitlement to a full, fair and judicial determination of its request for a waiver, the Respondent wrote a reply dated 4<sup>th</sup> September 2017 to say that although he is empowered to waive or suspend the payment of the 30% of the disputed tax pending the objection determination, he was "yet to consider a decision to exercise that authority." (A copy of the Respondent's reply to the request for waiver is attached as "Exhibit TA6".)
- 13A. That the Respondent then demanded payment of the 30% of the assessment in **Exhibit TA1**, being GHc48,740,508.30, within 7 days of **Exhibit TA6**.
14. That alarmed by the Respondent's refusal to exercise the statutory discretion vested in him, the Applicant followed up and held several discussions with the Respondent on the issue but the Respondent remained adamant in his refusal to consider the Applicant's application for a waiver.
15. That, in pursuit of the 30% payment in **Exhibit TA6** the Respondent sent officers to the Applicant's offices to demand payment even before the expiry of the 7 days deadline.
16. That the Respondent ignored countless pleas by the Applicant to reconsider his decision not to exercise his statutory discretion on the Applicant's request, and repeatedly demanded payment of the colossal amount of GHc48,740,508.30 before determining the objection to the overall assessment.
17. That with no other option left to seek redress, the Applicant was compelled to commence this action on 13<sup>th</sup> September 2017 and sought orders of:
  - a. *Certiorari*, to quash the Respondent's decision in **Exhibit TA6** refusing to exercise the statutory discretion vested in him, and demand for payment of the 30%, and
  - b. *Mandamus*, to compel the Respondent to exercise the discretion and judicially determine the request for waiver.
18. That upon being served with the instant action, the Respondent filed his affidavit in opposition on 10<sup>th</sup> October 2017, and:
  - a. denied that he has refused to exercise his discretion on the Applicant's request for waiver, and that his decision in **Exhibit TA6** was made "in the light of section 42(7)" of Act 915.



- b. referred to the periods stipulated in Act 915 for objection determination and claimed that the instant action “is premature”.
- c. that the “transfer pricing audit of the Applicant is still ongoing” and “is different from the Audit and tax assessment” of “GHc162,468,361.90”.
19. That the Respondent also made unsubstantiated claims regarding transfers to the Applicant’s parent company to justify his demand for the payment of the 30%.
20. That the parties attended court in this matter for the first time the following day, 11<sup>th</sup> October 2017, and the matter was adjourned for hearing on 18<sup>th</sup> October 2017.
21. That shortly after the proceedings on 11<sup>th</sup> October 2017, the Applicant received from the Respondent, a letter in which he referred to **Exhibit TA5** and **Exhibit TA6** and stated that he has considered the request for a waiver and refused same and then asked the Applicant “to comply with” **Exhibit TA6**. (A copy of the Respondent’s said letter is attached as “**Exhibit TA7**”).
22. That the Applicant considers the Respondent’s conduct leading to his refusal of the request for waiver as grossly improper and a flagrant abuse of the discretion vested in him by the law.
23. That the Respondent’s gross disregard and failure to refer to any of the grounds stated in the Respondent’s request for waiver, clearly exhibit his prejudice towards the Applicant’s case in this dispute and amount to a gross abuse of the statutory powers vested in him and a violation of the obligation on him under article 296(b) of the Constitution, 1992.
24. That the Respondent’s failure to demonstrate his awareness of the guiding principles in the Constitution and Act 915 in the steps leading to the decision contained in **Exhibit TA7** contravenes his constitutional obligation not to be capricious in the exercise of his statutory powers.
25. That the Respondent’s reference to alleged transfers by the Applicant to its parent company to justify his assessment in **Exhibit TA1** and his refusal in **Exhibit TA7** violates the Applicant’s right to a fair hearing, shows the Respondent’s arbitrariness in the exercise of his powers, and his gross disregard for the basis for taxation as provided under the relevant tax laws and the Constitution.
26. That the Respondent’s denial of his own clear and unequivocal statements in **Exhibit TA6** and claims that the “transfer pricing audit is still ongoing” and “different from Audit and tax assessment” demonstrate the Respondent’s utter



*lack of candour in the exercise of his statutory duties and a violation of article 296(a) of the Constitution.*

27. *That the Respondent's insistence on applying a non-tax statute to assess the Applicant's tax liability violates the constitutional obligation on him to follow and apply due process of law in the discharge of his duties.*
28. *That altogether, the Respondent has shown that he neither desires nor intends to apply the law in discharging his statutory duties and enforcing the tax statutes, and his decisions in Exhibit TA6 and Exhibit TA7 cannot be justified as emanating from the proper and lawful exercise of the discretion vested in him to consider the Applicant's request for a waiver of the 30% of the disputed assessment pending the determination of the objection raised by the Applicant.*
29. *That in all the circumstances outlined herein, the Respondent's decision contained Exhibit TA7 was arrived at in breach of article 296 of the Constitution, Act 915 and other fundamental principles of law, and same cannot be justified, and the Applicant therefore prays this Honourable Court for an order of certiorari, to bring up and quash the Respondent's decision.*
30. *That the Respondent is the person directly affected by the orders sought and his address for service is at: Ghana Revenue Authority, Off Starlets 91 Road, Near Accra Sports Stadium, Accra.*

WHEREFORE I swear to this affidavit in support.

DEPONENT

SWORN THIS      DAY OF SEPTEMBER 2017.

BEFORE ME

COMMISSIONER OF OATHS

CERTIFIED TRUE COPY  
REGISTRAR  
HIGH COURT  
COMMERCIAL DIVISION, LLC-ACCRA