

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, GENERAL JURISDICTION 2, HELD IN ACCRA, ON THURSDAY, THE 10<sup>TH</sup> DAY OF FEBURARY 2022, BEFORE HER LADYSHIP, JUSTICE GIFTY AGYEI ADDO, HIGH COURT JUDGE.

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SUIT NO. HRCM 345/15

CHARTERED INSTITUTE OF CERTIFIED  
TAX ACCOUNTANTS, GHANA

APPLICANT

VERSUS

1. NATIONAL ACCREDITATION BOARD  
2. INSTITUTE OF CHARTERED ACCOUNTANTS GHANA  
3. ATTORNEY-GENERAL

RESPONDENTS

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### JUDGMENT

#### INTRODUCTION

If the plaint of the Applicant is merely in respect of an attack on a portion of its name "Chartered", then it beats imagination why the Applicant was first incorporated as a professional body and or a company. It is rudimentary legal knowledge that intended names for corporate and or professional bodies ought not to be misleading and or at variant with the dictates of statute. Where there is a default in conforming to the policy of the law regarding names of juristic persons, the law prescribes special procedures for dealing with same. Such a procedure does not include defamatory publications and or attempts to force that juristic person out of business.

It must be noted however that this immediate observation excepts instances where the registration has been procured through the instruments of fraud and or misrepresentation. In such instances, the authorities are legion that same must be set aside.

The Court however understands the substance of the Applicant's action to be that by the terms of the **Professional Bodies Registration Act, 1973 (NRCD 143)**, the Applicant is a duly registered professional body that does not need any

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special parliamentary vehicle to further its objects. That is, to the Applicant, once it is registered under **NRCDC 143**, it is competent to train, educate and issue professional certificates to its members without more. The Respondents deny this. For the Respondents, the Applicant's claim of engaging in the tutoring and or issuance of certificates in respect of "Chartered Tax Accountants" flies in the face of the enacting statute of the 2<sup>nd</sup> Respondent which reserves such training to only, the 2<sup>nd</sup> Respondent. The Respondents contend further that in any event, the alleged publication by 1<sup>st</sup> and 2<sup>nd</sup> Respondents was done in the public interest, to protect the unsuspecting public from the negatives of the Applicant's engagements.

The Court further notices that the Applicant's cause of action is a mixed bag of the tort of defamation and an alleged breach of the Applicant's fundamental human rights. While recognising that the Rules of this Court has circumscribed the procedure for dealing with defamatory actions, the **Constitution of the Republic of Ghana, 1992**, allows any person asserting an alleged violation of a right to apply to this Court for redress, notwithstanding any other available remedy. **Article 33 (1)** of the 1992 Constitution provides:

*Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.*

However, it is the Court's understanding of this constitutional provision that the cause of action must lend itself to an action for the enforcement of fundamental human rights. That is the Court is proscribed from determining whether or not the Respondents have made defamatory statements against the Applicant, unless the Applicant could demonstrate that by making the said defamatory statements,

same has violated the fundamental human rights and freedoms of the Applicant. In such instance also, the Court must not jerk into invitations to determining defamation but confine itself to the violations of the fundamental human rights and freedoms.

Therefore in this action, the Court's concern shall first be to interrogate the rights alleged by the Applicant to have been violated or breached. In so doing, the Court shall subject the alleged violation to the respective defences mounted against the Applicant's claim and find out whether same justify the alleged violation. Such justification must, in terms of the law, be to protect the interest of the public and or the protection of the rights of others.

That said, it must be stated at the outset that the Court will not detain itself with matters which do not touch on the allegations of breaches of the rights of the Applicant. It follows that the invitation to the Court to pronounce on the alleged defamatory conduct of the Respondents are beyond the human rights jurisdiction of the High Court in terms of the procedure for invoking the jurisdiction of the Court.

Whereas, as observed under **Article 33 (1)** of the 1992 Constitution, an application is the acceptable mode of commencing a human rights action, in terms of **Order 67** of the **High Court Civil (Procedure Rules), 2004 (C.I. 47)**, in respect of a defamatory action, the procedure ought to be by way of a writ of summons with the necessary particulars of the alleged libel endorsed and or given in consonance with **Order 57 Rule 2** of **C.I. 47**. Thus, this Court will not waste its time in dismissing reliefs "k" and "m" being sought by the Applicant before this Court as the Applicant misapprehends the procedure to attaining those reliefs. The said reliefs state:

- k. A declaration that the publications made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents under the guise of Public Notices about Applicant in the

Daily Graphic of Tuesday, July 7, 2015, Graphic Business of Tuesday, July 7, 2015 and the Ghanaian Times of July 8, 2015 as well as The Spectator of Saturday, July 11, 2015 are defamatory of Applicant.

- m. An order directed at Respondents to buy space in the Daily Graphic, Ghanaian Times, Graphic Business and The Spectator and all other media that have published the defamatory publications of and about Applicant retracting and apologizing to Applicant for the publications made of and about the Applicant; which have become the subject matter of this suit within a stipulated number of days after the judgment of this Honourable Court.

The law is that the procedure for invoking the jurisdiction of a court for a particular relief must be strictly and specifically followed else the court assumes improper jurisdiction. In the case of **REPUBLIC VRS: HIGH COURT, SEKONDI; EX PARTE PERKOH II [2001-2002] GLR 460**, the Court of Appeal held in holding 1 of the report as follows:

*Where an enactment sets out the procedure for invoking the jurisdiction of a court or tribunal, failure of a party to follow the procedure laid down in the enactment would be fatal to the suit because non-compliance with the rules of procedure would be treated as a mere irregularity only where it was in respect of steps taken in the action, after the appropriate originating process had been filed at the right place and was before the right forum for the case.*

Likewise, in the case of **BOYEFIO VRS: NTHC PROPERTIES LIMITED [1997-98] 1GLR 768**, the Supreme Court held in holding 3 of the report that:

*The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed.*

The Court would not have relented in dismissing the suit outright if the Applicant's cause of action was just grounded on the tort of defamation yet pursued through an application as same would be in tune with the learning in the **Perkoh II** case, supra. However, the Applicant alleges some violation of his fundamental human rights and thus instituted these proceedings to enforce those rights as well. In doing substantial justice therefore, I shall entertain the anchorage on the human rights matters while discarding the issues of defamation.

The Court observes that both parties make monument of compliance and or non-compliance with various statutes. In analysing the issues raised by the suit, the Court is mindful of the judiciary's obligation to give respect and effect to legislations of the land. The law is that unless the effect of a breach of a statute is *de minimis*, the court cannot immune the consequences of the breach. In the case of **NETWORK COMPUTER SYSTEM LIMITED VRS: INTELSAT GLOBAL SALES AND MARKETING [2012] 1 SCGLR 218**, Atuguba JSC (as he then was) stated the position of the law at page 231 of the report as follows:

*Unless a substantive Act can be regarded as directory and not mandatory or its infraction is so minimal that it can be observed that it can be covered by the maxim de minimis non curat lex or such that the complaint about it is mere fastidious stiffness in its construction or the breach relates to part of it which in relation to others, can be regarded as subsidiary and therefore should not be allowed to prejudice the operation of the dominant part or purpose thereof or the strict enforcement of the statute would amount to a fraudulent or inequitable use of the statute or some other compelling reason, I do not see how a court can gloss over the breach of a statute.*

Recently also, the Supreme Court pronounced in the case of **KWABENA OBENG AND ANOTHER VRS: KMA AND ANOTHER, CIVIL APPEAL NO. J4/53/2016** that:

*Unless the provisions in the statute are so manifestly and incurably bad, no Judge or court for that matter has the right or authority to grant immunity to a party from the consequences of the breach of an Act of Parliament or disable the provisions of an Act of Parliament.*

See also the case of the **REPUBLIC VRS: HIGH COURT (FAST TRACK DIVISION) ACCRA, EX PARTE NATIONAL LOTTERY AUTHORITY (GHANA LOTTO OPERATORS ASSOCIATION AND OTHERS, INTERESTED PARTIES) [2009] SCGLR 390.**

### **BACKGROUND AND FACTS**

Per an Originating Motion on Notice dated the 16<sup>th</sup> day of July 2015, the Applicant claimed the under-listed reliefs against the Respondents:

- a. A declaration that by reason of Section 1 of the Professional Bodies Registration Act, 1973; NRCDC 143, Applicant is a professional body set up by an Act of Parliament.
- b. A declaration that by reason of Section 1 of the Professional Bodies Registration Act, 1973; NRCDC 143, Applicant does not need its own enabling Act to make it a chartered institution.
- c. A declaration that contrary to 1<sup>st</sup> Respondent's own publication at its website, there is no law that requires Applicant to be granted a Presidential Charter, Parliament to scrutinise its statutes, examination procedures, quality assurance standards or be affiliation to a mother institute in the United Kingdom to entitle Applicant to use the word "Chartered" in its official name which is the Chartered Institute of Certified Tax Accountants.

- d. A declaration that the word 'chartered' as used in Applicant's official name, the Chartered Institute of Certified Tax Accountants is a term of art which has been given legal backing by virtue of Applicant's registration pursuant to Section 7 of NRCD 143 and also Section 1 (1) and (2) of NRCD 143 and is therefore not subject to 1<sup>st</sup> Respondent's understating of the use of the word 'Chartered' as posted on its official website.
- e. A declaration that 1<sup>st</sup> Respondent has violated **Article 23 of the 1992 Constitution** in its dealings with Applicant to the extent that the newspaper publications of and about Applicant in Daily Graphic of Tuesday, July 7, 2015, Graphic Business of Tuesday, July 7, 2015 and the Ghanaian Times of July 8, 2015 as well as the Spectator of Saturday, July 11, 2015 were unfair and an infringement on Applicant's fundamental human rights and duty imposed on 1<sup>st</sup> Respondent thereof.
- f. A declaration that 1<sup>st</sup> and 2<sup>nd</sup> Applicant's claim in the publications complained of that they are **the only bodies empowered by law to accredit and regulate the Accounting programme/profession respectively in Ghana** is a violation of Applicant's constitutional and fundamental human rights pursuant to **Article 21 (1) (e) of the 1992 Constitution**, which entitles Applicant and its members to freedom of association.
- g. A declaration that there is no law in existence in Ghana that makes 1<sup>st</sup> and 2<sup>nd</sup> Respondents the only empowered bodies to accredit and regulate the Accounting programme/profession respectively in Ghana.
- h. A declaration that the conduct of 1<sup>st</sup> Respondent in not publishing public notices about all the other professional chartered bodies that by its own logic do not have enabling Acts, not having been granted a Presidential

Charter or not being affiliated to any mother institution in the United Kingdom at the same time it caused the publications in the Daily Graphic on Tuesday, July 7, 2015, Graphic Business of Tuesday, July 7, 2015 and the Ghanaian Times of July 8, 2015 as well as The Spectator of Saturday July 11 2015 is discriminatory and amounts to a violation of **Article 17 (1) (2) and (3) of the 1992 Constitution** and 1<sup>st</sup> Respondent's obligation thereof.

- i. A declaration that **Section 9 (2) (a) of Act 170** is coterminous to **Section 2 of NRCDC 143**, Applicant is not subject to accreditation by 1<sup>st</sup> Respondent since 2<sup>nd</sup> Respondent is also not subject to accreditation by 1<sup>st</sup> Respondent.
- j. An order of perpetual injunction directed at respondents, their agents, assigns, officials, servants and/or any person claiming under or through them and howsoever described not to jointly or severally interfere in any manner, whether by way of advertisement/Public Notices or media announcements of whatever description (s) informing the public, students and/or members of Applicant that Applicant is not entitled to use the word 'Chartered' in its registered name which is the Chartered Institute of Certified Tax Accountants (Ghana).
- k. A declaration that the publications made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents under the guise of Public Notices about Applicant in the Daily Graphic of Tuesday, July 7, 2015, Graphic Business of Tuesday, July 7, 2015, Ghanaian Times of July 8, 2015 as well as The Spectator of Saturday, July 11, 2015 are defamatory of Applicant.
- l. General Damages.
- m. An order directed at Respondents to buy space in the Daily Graphic, Ghanaian Times, Graphic Business and The Spectator and all other media

that have published the defamatory publications of and about Applicant retracting and apologizing to Applicant for the publications made of and about Applicant; which have become the subject matter of this suit within a stipulated number of days after the judgment of this Honourable Court.

n. Costs.

o. Any other relief (s) which this Honourable Court deems just and equitable.

### **THE CASE OF THE APPLICANT**

According to the Applicant, it is a professional body duly registered under the **Professional Bodies Act, 1973 (NRCD 143)**. The Applicant states that it trains and qualifies its members as Certified Chartered Tax Accountants in Ghana. The Applicant tendered in evidence, its Certificate of Registration and Gazette Publication as Exhibits A and B respectively.

According to the Applicant, without due process, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on the 8<sup>th</sup> and 9<sup>th</sup> of December 2014, published in the press a notice warning the public not to do business with the Applicant and others. That they do so at their own risk.

The Applicant continues that the publication has caused it to loose its students and members and credibility. The Applicant contends that the said publication is further defamatory of it. The Applicant further states that it petitioned the Minister of Education then and efforts were made to deal with the situation. However, same did not produce any meaningful results.

It is the case of the Applicant that the 1<sup>st</sup> Respondent has no regulatory autonomy over its affairs. It is the further case of the Applicant that its activities do not fall within the scope of mandate of the 2<sup>nd</sup> Respondent in terms of the **Chartered Accountants Act, 1963 (Act 170)**.

### **THE CASE OF THE 2<sup>ND</sup> RESPONDENT**

In summary, the 2<sup>nd</sup> Respondent contends that it is the only body charged statutorily with the regulation and registration of chartered accountants in Ghana. According to 1<sup>st</sup> Respondent, the publication jointly made by it and the 1<sup>st</sup> Respondent is justified to save the public from the negatives of the Applicant's training and or certification.

### **THE CASE OF THE 1<sup>ST</sup> AND 3<sup>RD</sup> RESPONDENTS**

1<sup>st</sup> Respondent justifies the publication in terms of the **National Accreditation Board Act, 2007 (Act 744)**. According to it, it wanted to protect the interest of the public by ensuring the unsuspecting public or students not enroll in programmes that will be useless in the end. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents further contend that the Applicant's registration under **NRCD 143** was procured by misrepresentations and therefore same is void. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents again affirmed the case of the 2<sup>nd</sup> Respondent that under the laws of Ghana, the 2<sup>nd</sup> Respondent is the sole legally mandated body to regulate accounting profession in Ghana. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents interestingly counterclaimed, as a "counter-application" for the following:

- a. A declaration that the registration of the Applicant as a registered Professional Body under the Professional Bodies Registration Act, 1973 (NRCD 143) and as such null and void.
- b. A declaration that the purported advertisement, education, training and award of certificate and admission to membership of persons as "Chartered Certified Tax Accountant" by the Applicant herein is contrary to law and as such null and void.
- c. That one has first to be qualified as a Chartered Accountant and certified as such by the 2<sup>nd</sup> Respondent before specializing to be a Professional Tax Accounting Expert.

**PRELIMINARY OBSERVATION FROM THE 1<sup>ST</sup> AND 3<sup>RD</sup> RESPONDENTS' "COUNTER-APPLICATION"**

I do not find it difficult to dismiss the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' counterclaim described as "Counter-application". It is trite that a counterclaim is a separate action. However, an action within the confines of **Article 33 (1)** of the 1992 Constitution must be anchored on a violation of the personal fundamental human rights of an Applicant. That said, granted that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents can maintain a counterclaim, the question that begs answer is which provisions of fundamental human rights as enshrined in Chapter Five of the 1992 Constitution are 1<sup>st</sup> and 3<sup>rd</sup> Respondents contending to have been violated in relation to them? The 1<sup>st</sup> and 3<sup>rd</sup> Respondents have not pointed to any such right and in fact the counter-application reveals this. In the circumstance, same is accordingly dismissed.

**ANALYSIS**

The principal issue that warrants interrogation is whether the publications made at the instance of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents against persons involving the Applicant violate the rights of the Applicant.

In determining this all important issue, the under-listed sub issues are worthy of interrogation:

- a. Whether in Ghana, all forms of accounting disciplines, including tax accounting, are to be regulated and or administered by only the 2<sup>nd</sup> Respondent.
- b. Whether by virtue of the provisions of the Professional Bodies Registration Act, 1973 (NRCD 143), the Applicant needs no accreditation from the 1<sup>st</sup> Respondent before engaging in professional training and issuance of professional certifications to its members.

**A. ISSUE A. WHETHER IN GHANA, ALL FORMS OF ACCOUNTING DISCIPLINES, INCLUDING TAX ACCOUNTING, ARE TO BE REGULATED AND OR ADMINISTERED ONLY BY THE 2<sup>ND</sup> RESPONDENT**

The 2<sup>nd</sup> Respondent is the institute of Chartered Accountants (Ghana). It was established under the **Chartered Accountants Act, 1963 (Act 170)**. The Act creates a governing council of the institute whose functions are detailed under **Section 8** thereof to be:

- i. to conduct or provide for the conduct of the qualifying examinations for membership of the Institute or for registration as a registered accountant under this Act and to prescribe or approve courses of study for such examinations;*
- ii. to supervise and regulate the engagement, training and transfer of articled clerks;*
- iii. to specify the class of persons who shall have the right to train articled clerks and to specify the circumstances in which any person of that class may be deprived of that right;*
- iv. to maintain and publish a register of chartered accountants and of practicing accountants;*
- v. to secure the maintenance of professional standards among persons who are members of the institute and to take such steps as may be necessary to acquaint such persons with the methods and practice necessary to maintain such standards;*
- vi. to maintain a library of books and periodicals relating to accountancy and to encourage the publication of such books; and*

- vii. *to encourage research in the subject of accountancy and generally to secure the well being and advancement of the profession of accountants.*

Further, **Section 20** of the Act proscribes person who are not chartered accountants from engaging in that practice. It provides:

- (1) No person who is not a chartered accountant or is not a practicing accountant shall carry on practise as defined in section 23 of this Act.*
- (2) No person who is a chartered accountant or is a practicing accountant shall practice as an accountant unless he is a holder of a certificate to practise which is for the time being in force.*
- (3) Every certificate to practice shall be issued by the Council upon payment of the prescribed annual subscription.*
- (4) Every certificate to practice shall be in force until the thirty-first day of December of the year of issue of that certificate, and may from time to time be renewed upon payment of the prescribed annual subscription.*

The provisions under **Section 21** restricting the use of “Chartered Accountant” is worthy of consideration. The section provides:

- (1) No person, not being a chartered accountant, shall take or use the title “Chartered Accountant”.*
- (2) Notwithstanding anything contained in the preceding subsection, any firm of accountants, each for the partners of which is a member of the Institute not being a practicing accountant, may take and use the title “Chartered Accountants”.*
- (3) No person, not being a person for the time being registered under section 13 of this Act shall take or use the title “Practising Accountant”.*

*(4) Notwithstanding anything contained in the immediately preceding subsection, any firm of accountants, each of the partners of which is a practicing accountant may take and use the title "Practising Accountants."*

A contravention of these provisions constitutes an offence.

**Section 23** also defines what amounts to "practice". It provides that a person shall be deemed to practise as an accountant if, in consideration of remuneration received or to be received, and whether by himself or in partnership with any other person, he,

- (a) engages himself in the practice of accountancy or holds himself out to the public as an accountant;
- (b) offers to perform or performs service involving the auditing or verification of financial transactions, books, accounts or records or the preparation, verification, or certification of financial accounting and related statements;
- (c) renders professional service or assistance in or about matters of principle or detail relating to accounting procedure or certification of financial facts or data; or
- (d) renders any other service which may be prescribed by the Institute by Regulations to be servicing constituting practice as an accountant.

Per the above provisions, it is clear that the law makers intended that the 2<sup>nd</sup> Respondent's Council should be the regulator of the accounting profession in Ghana. Thus, in matters of certification of members of the accounting profession, and or qualifying examination to become an accountant, a person engages in illegality if it side steps the 2<sup>nd</sup> Respondent's regulatory regime to

engage in some form of accounting. The Court observes however, that nowhere in **NRCD 170** is tax accounting and or chartered tax accounting mentioned. The thorny question then becomes, does the 2<sup>nd</sup> Respondent's powers under **NRCD 170** cover tax accounting and or chartered tax accounting? Put differently, is chartered accounting inclusive of tax accounting and or is tax accounting a form of accounting? To this question, the Applicant testified as follows during his examination-in-chief on 10<sup>th</sup> May 2017:

*Q: Please tell the Court what is the difference between a chartered tax accountant and a chartered accountant?*

*A: Accounting has several disciplines. One can qualify as a chartered accountant meaning he has reached the peak of financial accounting. Hence a chartered accountant is technically a financial accountant. Similarly, a chartered tax accountant has equally reached the peak of tax accounting as a subject discipline. Other related accounting professions are Costs Accountant or Management Accountant, Public Accountant, Forensic Accountant, etc.*

Now during cross-examination of the Applicant by Counsel for the 2<sup>nd</sup> Respondent on Tuesday the 2<sup>nd</sup> of July 2019, this is what ensued:

*Q: I also put it to you that what your institution purported to do falls under the ambit of the 2<sup>nd</sup> Respondent.*

*A: No, my Lord. Because the core description of the 2<sup>nd</sup> Respondent is accounting whereas that of the Applicant is taxation.*

*Q: I put it to you that the core mandate of the Applicant's institution is tax accounting as your name purports and not just taxation.*

*A: No. My Lord. Tax accounting combines tax and accounting.*

This line of cross-examination of the Applicant's representative is also pertinent:

*Tell this Court the basic professional qualification to become a professional member of the Applicant?*

*A: A candidate with 1<sup>st</sup> Degree in accounting or finance with a minimum 3 years' experience qualifies to be a member of the Applicant.*

*Q: Take a look at the list of members that you have attached as the members of the Applicant forwarded to the Registrar General's Department for registration, Exhibit "1" series, specifically the minutes of the executive meeting dated 4<sup>th</sup> January, 2012. Look at the attendant No. 1 Daniel K. Drapor B.A. Economics, Tell the Court if that fits the qualification you just described to the Court?*

*A: Yes, because according to the constitution of the Applicant all members in attendance were admitted as qualified members of the Applicant.*

*Q: So in effect any degree will qualify one to be a member of the Applicant body not so?*

*A: Yes, provided the Council deems it appropriate for admission per Section 6 (1) of the constitution of the Applicant.*

*Q: So if a person is holding a BA in Religious Studies, will that person qualify to be a member of the Applicant?*

*A: Yes, subject to approval of the Council.*

*Q: I am putting it to you that it is a condition provided by statute that you must be trained and qualified in that profession to become a member of any professional body?*

*A: Yes.*

From the above discourse, I find that indeed tax accounting is one of the disciplines of accounting such as financial accounting. From **NRCD 170**, I do not find that the framers intended that the 2<sup>nd</sup> Respondent should be limited to regulate only financial accounting but rather any form of accounting. I say so, particularly if regard is had to the areas of practice where the Act mentions financial accounting practice as only one of such areas. That said, I am inclined towards the Respondents' argument that the form of accounting practice and or training engaged in the by the Applicant falls within the purview of the practice and or training statutorily reserved for the 2<sup>nd</sup> Respondent.

It is therefore my holding on this issue that in Ghana presently and by virtue of **NRCD 170**, all forms of disciplines of chartered accounting are to be regulated by the 2<sup>nd</sup> Respondent's Council. The Applicant, by engaging in tax accounting, a discipline of accounting, violated the dictates of **NRCD 170**.

**B: WHETHER BY VIRTUE OF THE PROVISIONS OF THE PROFESSIONAL BODIES REGISTRATION ACT, 1973 (NRCD 143) THE APPLICANT NEED NO ACCREDITATION FROM THE 1<sup>ST</sup> RESPONDENT BEFORE ENGAGING IN PROFESSIONAL TRAINING AND ISSUANCE OF PROFESSIONAL CERTIFICATIONS TO ITS MEMBERS**

Having held that the Applicant acted and or has been acting in violation of **NRCD 170**, this issue becomes redundant. However, it is important for the direction of the parties in this matter and indeed the entire public to clarify the

regulatory powers of the 1<sup>st</sup> Respondent. The evidence before this Court makes little controversy that the 1<sup>st</sup> Respondent's regulatory powers cover institutions offering tertiary education and or engaged in tertiary academic disciplines. The 1<sup>st</sup> Respondent has no such power over professional bodies such as alleged by the 2<sup>nd</sup> Respondent for instance. Hence, it will be against the spirit of the law for the 1<sup>st</sup> Respondent to assume supervisory duties over the 2<sup>nd</sup> Respondent. On this premise, I agree with Counsel for the Applicant when he submits at page 49 of his written address to the Court that:

*There are Professional Bodies in the country which run academic programmes and award university certificates, diploma and degrees. Classical examples are the Armed Forces Staff College, Nurses and Midwifery Training College, The Police Training School, National Film and Television Institute (NAFTI etc. These bodies run professional programmes leading to the award of university degrees and certificates. In fact, their administration falls within the purview of the 1<sup>st</sup> respondent and the National Accreditation Board Act 2007 (Act 744) embodies their administration.*

*However, professional bodies registered under the Professional Bodies Act 1973, Example are Institute of Chartered Accountants (the 2<sup>nd</sup> Respondent), The Chartered Institute of Bankers. The Institute of Taxation...do not run academic programmes and therefore do not award diploma or degrees. Per their constitution, they award practicing Membership Certificates and Fellows. Clearly, the Professional Bodies mentioned in the National Accreditation Board Act, 2007 (Act 744) refers to professional bodies which run tertiary programmes and award degrees.*

**Section 2 of NRCD 143** details the functions of the 1<sup>st</sup> Respondent's board to amongst others, be responsible for the accreditation of both public and private

institutions with regards to the content and standards of their programmes. **Section 8 (1)** of the Act further prohibits an institution from maintaining or running a programme without accreditation.

During cross-examination of the 1<sup>st</sup> Respondent's representative, he admitted that to the extent that the Applicant is not a tertiary institution, the 1<sup>st</sup> Respondent did not have regulatory powers over it.

This is what ensued on 20<sup>th</sup> day of July 2020:

*Q: You will agree with me that the 1<sup>st</sup> Respondent does not have any of the professional bodies registered under the Professional Bodies Act, 1973 including the Applicant and the 2<sup>nd</sup> Respondent.*

*A: I do not know.*

*This line of cross-examination was continued on 23<sup>rd</sup> July 2020, as follows:*

*Q: You will further agree with me that the Applicant and the 2<sup>nd</sup> Respondent are not in the list of institutions which are under the accreditation of the 1<sup>st</sup> Respondent at its website?*

*A: Yes.*

*Q: It is a fact or not that the 90 professional bodies in the Country registered under the Professional bodies Act, 1973 are classified as Associations and cannot issue academic certificates.*

*A: I do not know.*

*Q: I suggest to you that the Applicant is a creation of Statute.*

*A: That is so, by the professional Bodies Act, 1973.*

*Q: Therefore, the Applicant is not under the jurisdiction of the 1<sup>st</sup> Respondent?*

*A: I disagree. Where the Applicant intends to run a tertiary programme it needs the approval of the 1<sup>st</sup> Respondent.*

*Q: I put it to you that the Applicant does not need the approval of the 1<sup>st</sup> Respondent because it does not run tertiary programmes.*

*A: Once the Applicant does not run a tertiary programme it does not need our approval.*

The answers of the witness affirms the case of the Applicant and indeed, the law, that the 1<sup>st</sup> Respondent has no regulatory supervision over professional bodies registered under **NRCD 143**.

From the analysis above, can we then say, that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents violated the rights of the Applicant through their acts of joint publication? That publication, in essence, was to caution the public not to engage some institutions, including the Applicant herein, on professional development since, according to the publication, those institutions have not been accredited by the 1<sup>st</sup> Respondent. I have already resolved that the 1<sup>st</sup> Respondent has no regulatory mandate over the Applicant. I have also held that the Applicant's activities fall within the mandate of the 2<sup>nd</sup> Respondent. In such circumstance, which right of the Applicant has been violated?

The Applicant complains amongst others of its rights to work and be heard as well as the right to administrative justice. Regarding the right to work, I understand the Applicant to mean that the publication has deprived it of economic benefits from its activities. On the issue of administrative justice and the right to be heard, I understand the Applicant to cry foul of the procedure adopted by the Respondents in not first giving it a hearing.

Since the Court has held that the Applicant was acting illegally by usurping the powers of the 2<sup>nd</sup> Respondent, the Applicant cannot complain of a deprivation of a right to work and or economic means. The simple reason is that that right to engage in that type of professional training and or certification belongs to the 2<sup>nd</sup> Respondent and not the Applicant. While recognising that the 1<sup>st</sup> Respondent did not have supervisory role over the Applicant, the publication as admitted by all parties was jointly done by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Thus, whereas in appropriate circumstances the 2<sup>nd</sup> Respondent would have been justified in curtailing intrusions on its statutory powers, the 1<sup>st</sup> Respondent will have no such justification. But what is the effect of the publication? The Applicant itself states that through the publication, it has lost most of its members and that it has had its affairs crippled. Indeed, if the Applicant was engaging in an illegal exercise and the publication has caused a ceasure to that exercise, then it is the respectful view of the Court that same is in the best interest of the public. It needs mention that human rights anywhere is not absolute, but subject to the respect of the rights of others and that of the public interest as provided under **Article 12 (2)** of the 1992 Constitution. The 2<sup>nd</sup> Respondent's rights were being violated through the activities of the Applicant. Again, the public ought to be put on notice of such unsanctioned activities of the Applicant. In that regard, despite the 1<sup>st</sup> Respondent forcing a status it did not have, the Court forms the opinion that the effect of the publication has been in the interest of the public, except with the qualification that the public must know that the activities of the Applicant falls within the remit of the 2<sup>nd</sup> Respondent. Further, in an action such as the instant, wherein I have found that the Applicant has no such right as claimed, then it cannot be heard to say that that it is aggrieved by the conduct of the 1<sup>st</sup> Respondent.

It needs further emphasis also that the portion of the publication that sought to suggest that members of professional bodies registered under **NRC 170**, such

as the Applicant's, required accreditation from the 1<sup>st</sup> Respondent is misleading. This however is not to suggest, as already noted, that the Applicant is justified in conducting the activities it was engaged in since as indicated those fall within the purview of the regulatory powers of the 2<sup>nd</sup> Respondent.

That said, it is resolved that the Applicant has no such rights, as it states, have been violated.

## **CONCLUSION**

By way of conclusion, I reiterate that in terms of **NRCD 170**, it is only the 2<sup>nd</sup> Respondent's Council that has the mandate to regulate the accounting profession in Ghana; whether financial accounting, audit accounting, tax accounting etc. The 1<sup>st</sup> Respondent has no power to supervise or regulate professional bodies established under **NRCD 143**.

In so far as the Applicant did not have the mandate to conduct the activities it was engaged in within the context of accounting, the Applicant cannot be heard to complain of a violation of its rights.

I therefore declare and make the following orders:

1. The Applicant's registration under **NRCD 143** to practice and or regulate chartered tax accountancy in Ghana is unlawful.
2. The 1<sup>st</sup> Respondent has no authority to regulate professional bodies registered under **NRCD 143**.
2. The Applicant is restrained from advertising, educating, training and or awarding certification and admission to memberships as "Chartered Certified Tax Accountants".

There shall be no order as to Costs.

(SGD)

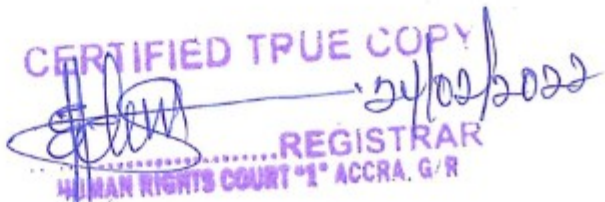
**JUSTICE GIFTY AGYEI ADDO  
HIGH COURT JUDGE.**

## **COUNSEL**

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**PATRICIA AYIREBI (A.S.A.) FOR THE 1<sup>ST</sup> AND 3<sup>RD</sup> RESPONDENTS.**

**ISAAC OFOSU BOATENG FOR THE 2<sup>ND</sup> RESPONDENT.**

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