

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL COURT DIVISION '4' HELD IN ACCRA ON TUESDAY THE 22ND DAY
OF FEBRUARY, 2023 BEFORE HER LADYSHIP JUSTICE AFI AGBANU KUDOMOR
(MRS.)

SUIT NO.: CM/TAX/0205/2022

IN THE MATTER OF AN APPEAL AGAINST TAX ASSESSMENT
BY THE COMMISSIONER GENERAL

ANGLOGOLD ASHANTI (IDUAPRIEM) LIMITED
GOLD HOUSE, PATRICE LUMUMBA ROAD
ACCRA.

... APPELLANT

VRS

THE COMMISSIONER – GENERAL
GHANA REVENUE AUTHORITY MINISTRIES – ACCRA.

... RESPONDENT/

TIME: 9:39 AM.

PARTIES: APPELLANT REPRESENTED BY PHILIP ADADZIE AS TAX
MANAGER

RESPONDENT REPRESENTED BY ABDULLAI IDDIRISU

COUNSEL: BENEDICT ASARE WITH WISDOM ANKAH AND DR. NANA
GYAMERA AFFUL FOR THE APPELLANT - PRESENT

MOHAMMED IBRAHIM FOR CEPHAS ODARTEY LAMPTEY
FOR RESPONDENTS – PRESENT

CONSENT JUDGMENT

WHEREAS:

1. The Appellant herein being dissatisfied with the Respondent's Tax Assessment dated 28th July 2020 and Objection Decision dated 12th November 2021 and served on the Appellant on 26th November 2021, filed a Notice of Appeal on 29th December 2021 against the said Final Objection Decision of the Respondent to this Honourable Court on the following grounds:

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.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION LCC-ACCRA

- i. The Respondent erred in law by disallowing the Appellant capital allowances on the Stripping Costs of **Thirty-Nine Million and Six-Three Thousand, Two Hundred and Ninety United States Dollars (US\$39,063,290.00)** for the 2017 and 2018 years of assessment and on **Thirty Five Million, Two Hundred and Eighty-Eight Thousand, Five Hundred and Eleven United States Dollars (US\$35,288,511.00)** for the 2018 year of assessment.
- ii. The Respondent erred in law by applying the provisions of new tax laws which came into force after 18th February, 2004 to the Appellant in contravention of the terms of the Stability Agreement ratified by the Parliament of the Republic of Ghana on 18th February, 2004.
- iii. The Respondent wrongly treated a reversal of overpayment to the Appellant's supplier as income and also assessing 2017 withholding tax credits as income thereby increasing the Appellant's income for the 2018 year of assessment by **Eighty-Seven Thousand, Three Hundred and Twenty-Three United States Dollars Eighty Cents (US\$87,323.80)**.
- iv. The Respondent erred in law by assessing the Appellant to a withholding tax of **Four Million One Hundred and Seventy-Nine Thousand, Eight Hundred and Forty-Three United States Dollars Sixty Cents (US\$4,179,843.60)** and interest of **One Million, One Hundred and Ten Thousand, Six Hundred and Fifty-Eight United States Dollars Ninety-Two Cents (US\$1,110,658.92)** on goods, works and service fees in contravention of the terms of the Deed of Warranty dated 27th April, 1989 entered into between the Government of the Republic of Ghana and the Appellant.
- v. The Respondent wrongly surcharged the Appellant to a withholding tax on Wages and Salaries of **Four Hundred and Seventy-Three Thousand, Three Hundred and Forty- Five United States Dollars, Fifty-Three Cents (US\$473,345.53)** and interest of **One Hundred and Twenty-Five Thousand, Seven Hundred and Seventy-Six United States Dollars Thirty-Four Cents (US\$125,776.34)**.

2. The Appellant prayed the Court for the following reliefs:

- i. A declaration that the Stability Agreement made between the Government of the Republic of Ghana and the Appellant ratified by the Parliament of the Republic of Ghana on 18th February 2004 is valid and binding on the Government or any of its political sub-divisions including the Respondent.
- ii. A declaration that the Deed of Warranty dated 27th April, 1989 made between the Government of the Republic of Ghana and the Appellant is valid and

binding on the Government or any of its political sub-divisions including the Respondent.

- iii. A declaration that the Appellant is entitled to withholding tax exemptions in relation to any payments made in foreign currency from the external account of the Appellant in accordance with clause 9 of the Deed of Warranty dated 27th April, 1989.
- iv. A declaration that the Respondent erred in law by assessing the Appellant to a withholding tax of **Four Million One Hundred and Seventy-Nine Thousand, Eight Hundred and Forty-Three United State Dollars Sixty Cents (US\$4,179,843.60)** and interest of **One Million, One Hundred and Ten Thousand, Six Hundred and Fifty-Eight United States Dollars Ninety-Two Cents (US\$1,110,658.92)** on goods, works and service fees in contravention of the terms of the Deed of Warranty dated 27th April, 1989 entered into between the Government of the Republic of Ghana and the Appellant.
- v. A declaration that the Respondent erred in law by disallowing the Appellant capital allowances on the Stripping Costs of **Thirty-Nine Million and Six-Three Thousand, Two Hundred and Ninety United States Dollars (US\$39,063,290.00)** for the 2017 and 2018 years of assessment and on **Thirty Five Million, Two Hundred and Eighty-Eight Thousand, Five Hundred and Eleven United States Dollars (US\$35,288,511.00)** for 2018 year of assessment.
- vi. A declaration that the Respondent wrongly treated a reversal of overpayment to the Appellant's supplier as income and also assessing 2017 withholding tax credits as income thereby increasing the Appellant's income for the 2018 year of assessment by **Eighty-Seven Thousand, Three Hundred and Twenty-Three United States Dollars Eighty Cents (US\$87,323.80)**.
- vii. An order for the annulment of the tax liability assessed in the Objection Decision against the Appellant, with the exception of a withholding tax liability **Two Hundred and Three Thousand, One Hundred and One United States Dollars, Seventy-Eight Cents (US\$203,101.78)** and PAYE tax liability of **Four Hundred and Forty- Four Thousand, Seven Hundred and Twenty- Eight United States Dollars, Eighty-Nine Cents (US\$44,728.89)** which the Appellant has since paid.
- viii. An order for the Respondent to grant the Appellant capital allowances on stripping costs of **Three Thousand, Two Hundred and Ninety United States Dollars (US\$39,063,290.00)** for the 2017 and 2018 years of assessment and on **Thirty Five Million, Two Hundred and Eighty-Eight Thousand, Five Hundred and Eleven United States Dollars (US\$35,288,511.00)** for the 2018 year of assessment.

- ix. An order for the Respondent to recognize and grant the Appellant exemption in respect of the withholding tax of **Four Million One Hundred and Seventy-Nine Thousand, Eight Hundred and Forty-Three United States Dollars Sixty Cents (US\$4,179,843.60)** and interest of **One Million, One Hundred and Ten Thousand, Six Hundred and Fifty-Eight United States Dollars Ninety-Two Cents (US\$1,110,658.92)** on goods, works and service fees in accordance with the terms of the Deed of Warranty dated 27th April, 1989 entered between the Government of the Republic of Ghana and the Appellant.
 - x. An order confirming the Appellant's treatment of the reversal of supplier's overpayment and the withholding tax credits, all amounting to **Eighty-Seven Thousand, Three Hundred and Twenty-Three United States Dollars Eighty Cents (US\$87,323.80)** for the 2018 year of assessment.
 - xi. An order for the Respondent to issue a revised tax assessment to the Appellant for the 2017 and 2018 years of assessment taking into consideration all the reliefs granted by this Honourable Court.
 - xii. An order for a refund of excess taxes paid by the Appellant to the Respondent, if any, based on the annulment of the Objection Decision dated 12th November 2021 and the issuance of a revised tax assessment/Objection Decision.
 - xiii. Costs including Lawyer's fees.
 - xiv. Any other order(s) that the Court may deem fit.
3. The Respondent filed his Reply to the Notice of Appeal against the Tax Assessment on 11th March, 2022.
 4. On 13th July, 2022, the Parties sought leave of the Appellate High Court presided over by Her Ladyship Afi Agbanu Kudomor to attempt out-of-court settlement of the matter and same was granted by the Court.
 5. Pursuant to the leave of the Court, the parties went into settlement of the matter and have successfully settled all the matters between themselves in respect of the Appellant's Income for 2018 year of assessment, Withholding tax liability and its related interest, Wages & Salaries (P.A.Y.E) liability and its related interest, and grant of capital allowances on Stripping costs for the 2017 and 2018 years of assessment.
 6. The parties herein have agreed to settle this matter amicably upon the following terms:

IT IS NOW AGREED AS FOLLOWS:

- a. That the Appellant is entitled to full capital allowances on the Stripping Cost of **Thirty-Nine Million and Six-Three Thousand, Two Hundred and Ninety United States Dollars (US\$39,063,290.00)** for the 2017 and 2018 years of assessment as well as on the Stripping Cost of **Thirty Five Million, Two Hundred and Eighty-Eight Thousand, Five Hundred and Eleven United States Dollars (US\$35,288,511.00)** for the 2018 year of assessment.
- b. That there is no increase of **Eighty-Seven Thousand, Three Hundred and Twenty-Three United States Dollars Eighty Cents (US\$87,323.80)** in the Appellant's income for the 2018 year of assessment.
- c. That the Appellant's company income tax amounts to an overpayment of **Four Hundred and Forty-Five Thousand, Two Hundred and Twenty-Two United States Dollars, Thirty –Seven Cents (US\$445,222.37)**.
- d. That the Appellant's withholding tax liability on "goods, works and service fees" due the Respondent is **Two Hundred and Ninety-Nine Thousand, Three Hundred and Ninety Eight United States Dollars Ninety-Three Cents (US\$299,398.93)**.
- e. That the Appellant's withholding tax liability with regard to employment tax (P.A.Y.E) due the Respondent is **Forty-One Thousand Six Hundred and Two United States Dollars Ninety Cents (US\$41,602.90)**.
- f. That the Appellant had paid an additional tax of **Two Hundred and Forty Eight Thousand United States Dollars (US\$248,000.00)** to the Respondent on 17th December 2021 and the Respondent acknowledges receipt of same.
- g. That the only disagreement existing between the Appellant and the Respondent is on the legality of an additional withholding tax liability of **One Million, Four Hundred and Thirteen Thousand, Nine Hundred and Ninety-Five United States Dollars, Eighty-Nine Cents (US\$1,413,995.89)** on "goods, works and service fees" (relating specifically to payments for services in foreign currency from the Appellant's external accounts), which is a matter for determination by this Honourable Court under Grounds (ii) and (iv) of the Tax Appeal.
- h. That this document embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations, oral or written, express or implied other than those contained in this document.

- i. That no variation or amendment of this document or oral promise or commitment related to this shall be valid unless committed to writing and signed by or on behalf of the parties.
- j. That these Terms of Settlement be entered as Consent Judgment between the parties herein and clause 6(a) to 6(f) herein be adopted as part of the Final Judgment of this Honourable Appellate High Court.

DATED IN ACCRA THIS 18TH DAY OF OCTOBER, 2022.

(SGD.)

.....
APPELLANT

(SGD.)

.....
RESPONDENT

(SGD.)

.....
LAWYER FOR THE APPELLANT

(SGD.)

.....
LAWYER FOR THE RESPONDENT

DATED IN ACCRA, THIS 22ND DAY OF FEBRUARY, 2023

BY COURT

The Court hereby adopts the Terms of Settlement filed on behalf of the parties on 25th October, 2022 as the Consent Judgment of the Court.

**AFI AGBANU KUDOMOR (MRS.)
(JUSTICE OF THE HIGH COURT)**

IT IS NOW AGREED AS FOLLOWS:

- a. That the Appellant is entitled to full capital allowances on the Stripping Cost of **Thirty-Nine Million and Six-Three Thousand, Two Hundred and Ninety United States Dollars (US\$39,063,290.00)** for the 2017 and 2018 years of assessment as well as on the Stripping Cost of **Thirty Five Million, Two Hundred and Eighty-Eight Thousand, Five Hundred and Eleven United States Dollars (US\$35,288,511.00)** for the 2018 year of assessment.
- b. That there is no increase of **Eighty-Seven Thousand, Three Hundred and Twenty-Three United States Dollars Eighty Cents (US\$87,323.80)** in the Appellant's income for the 2018 year of assessment.
- c. That the Appellant's company income tax amounts to an overpayment of **Four Hundred and Forty-Five Thousand, Two Hundred and Twenty-Two United States Dollars, Thirty –Seven Cents (US\$445,222.37)**.
- d. That the Appellant's withholding tax liability on "goods, works and service fees" due the Respondent is **Two Hundred and Ninety-Nine Thousand, Three Hundred and Ninety Eight United States Dollars Ninety-Three Cents (US\$299,398.93)**.
- e. That the Appellant's withholding tax liability with regard to employment tax (P.A.Y.E) due the Respondent is **Forty-One Thousand Six Hundred and Two United States Dollars Ninety Cents (US\$41,602.90)**.
- f. That the Appellant had paid an additional tax of **Two Hundred and Forty Eight Thousand United States Dollars (US\$248,000.00)** to the Respondent on 17th December 2021 and the Respondent acknowledges receipt of same.
- g. That the only disagreement existing between the Appellant and the Respondent is on the legality of an additional withholding tax liability of **One Million, Four Hundred and Thirteen Thousand, Nine Hundred and Ninety-Five United States Dollars, Eighty-Nine Cents (US\$1,413,995.89)** on "goods, works and service fees" (relating specifically to payments for services in foreign currency from the Appellant's external accounts), which is a matter for determination by this Honourable Court under Grounds (ii) and (iv) of the Tax Appeal.
- h. That this document embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions or obligations, oral or written, express or implied other than those contained in this document.

- i. That no variation or amendment of this document or oral promise or commitment related to this shall be valid unless committed to writing and signed by or on behalf of the parties.
- j. That these Terms of Settlement be entered as Consent Judgment between the parties herein and clause 6(a) to 6(f) herein be adopted as part of the Final Judgment of this Honourable Appellate High Court.

DATED IN ACCRA THIS 18TH DAY OF OCTOBER, 2022.

(SGD.)

.....
APPELLANT

(SGD.)

.....
RESPONDENT

(SGD.)

.....
LAWYER FOR THE APPELLANT

(SGD.)

.....
LAWYER FOR THE RESPONDENT

DATED IN ACCRA, THIS 22ND DAY OF FEBRUARY, 2023

BY COURT

The Court hereby adopts the Terms of Settlement filed on behalf of the parties on 25th October, 2022 as the Consent Judgment of the Court.

(SGD.)

**AFI AGBANU KUDOMOR (MRS.)
(JUSTICE OF THE HIGH COURT)**

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL COURT DIVISION '4' HELD IN ACCRA ON TUESDAY THE 22ND DAY
OF FEBRUARY, 2023 BEFORE HER LADYSHIP JUSTICE AFI AGBANU KUDOMOR
(MRS.)

SUIT NO.: CM/TAX/0205/2022

**IN THE MATTER OF AN APPEAL AGAINST TAX ASSESSMENT
BY THE COMMISSIONER GENERAL**

ANGLOGOLD ASHANTI (IDUAPRIEM) LIMITED ... **APPELLANT**
GOLD HOUSE, PATRICE LUMUMBA ROAD
ACCRA.

VRS

THE COMMISSIONER – GENERAL ... **RESPONDENT/**
GHANA REVENUE AUTHORITY MINISTRIES – ACCRA.

TIME: 9:39 AM.

PARTIES: **APPELLANT REPRESENTED BY PHILIP ADADZIE AS TAX
MANAGER**

RESPONDENT REPRESENTED BY ABDULLAI IDDIRISU

COUNSEL: **BENEDICT ASARE WITH WISDOM ANKAH AND DR. NANA
GYAMERA AFFUL FOR THE APPELLENT - PRESENT**

**MOHAMMED IBRAHIM FOR CEPHAS ODARTEY LAMPTEY
FOR RESPONDENTS – PRESENT**

CONSENT JUDGMENT

WHEREAS:

1. This document is supplemental to the Terms of Settlement filed by the parties in this matter on 25th October 2022.
2. Pursuant to clause 6(g) of the Terms of Settlement dated 25th October 2022, Grounds (ii) and (iv) of the tax appeal were set down for legal determination by this Honourable Court.

3. By an order dated 25th January 2023, this Honourable Court ordered the parties to file their respective written submissions simultaneously on grounds (ii) and (iv) and file the same in court by 15th February 2023.
4. In the interest of the parties, the parties herein wish to settle their differences in respect of clause 6(g) of the Terms and Settlement dated 25th October 2022 and have agreed to settle this matter amicably upon the following terms:

IT IS NOW AGREED AS FOLLOWS:

- a. That the parties wish to settle their differences in respect of clause 6(g) of the Terms of Settlement dated 25th October 2022, so the parties further reconciled the transactions relating to clause 6(g) and arrived at a reconciled amount of **One Million Two Hundred and Four Thousand, Two Hundred and Twenty-Six United States Dollars Ninety-Five Cents (US\$1,204,226.95)**.
- b. That, therefore, the Appellant will pay the sum of **One Million Two Hundred and Four Thousand, Two Hundred and Twenty-Six United States Dollars Ninety-Five Cents (US\$1,204,226.95)** subject to any amount standing to the Appellant's credit, as a sign of good faith without admission of liability and discontinue the litigation.
- c. That this document hereby amends clause 6(g) of the Terms of Settlement dated 25th October 2022.
- d. That this document embodies the entire understanding of the parties in respect of the matters contained or referred to in it and there are no promises, terms, conditions, or obligations, oral or written, express or implied other than those contained in this document.
- e. That no variation or amendment of this document or oral promise or commitment related to this shall be valid unless committed in writing and signed by or on behalf of the parties.
- f. That these Terms of Settlement are supplemental to the Terms of Settlement dated 25th October 2022 and the same shall be entered as Consent Judgment between the parties herein and clause 4(a) to 4(e) herein be adopted as supplementary Final Judgment of this Honourable Appellate High Court.

DATED IN ACCRA THIS 14TH DAY OF FEBRUARY 2023.

(SGD.)

.....
APPELLANT

(SGD.)

.....
RESPONDENT

(SGD.)

.....
LAWYER FOR THE APPELLANT

(SGD.)

.....
LAWYER FOR THE RESPONDENT

DATED IN ACCRA, THIS 22ND DAY OF FEBRUARY, 2023

BY COURT

The Court hereby adopts the Supplementary Terms of Settlement filed on behalf of the parties on 15th February, 2023a as the Consent Judgment of the Court.

(SGD.)

**AFI AGBANU KUDOMOR (MRS.)
(JUSTICE OF THE HIGH COURT)**

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