



## STAMP DUTY AND ACCESS TO JUSTICE IN GHANA: CONFRONTING LEGAL UNCERTAINTY, INSTITUTIONAL EXPLOITATION, AND THE NEED FOR TRANSPARENT REFORM

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**ABSTRACT:** Ghana's stamp duty regime, anchored in the Stamp Duty Act, 2005 (Act 689) and the Evidence Act, 1975 (NRCD 323), has long been marked by statutory ambiguity and administrative opacity. For decades, courts oscillated between excluding unstamped documents and permitting curative stamping, creating uncertainty for litigants and practitioners. This doctrinal inconsistency was resolved by the Supreme Court in *Nii Aflah v. Boateng* [2023], which affirmed stamping as a statutory precondition for admissibility and declared earlier precedents permitting post-execution regularization per incuriam. Yet deeper institutional challenges persist. Although the Stamp Duty (Amendment) Act 2023 codifies instruments requiring stamping and outlines exemptions, Lands Commission practices remain opaque. Officers indiscriminately stamp all documents, impose per-page rather than per-instrument charges, and conceal portions of duty paid through undisclosed revenue splits. These practices inflate costs, erode trust, and impair access to justice, disproportionately burdening poor litigants. This study employs doctrinal analysis, qualitative interviews, and comparative perspectives to demonstrate that ambiguity and discretion are not inevitable features of stamp duty systems. Codified schedules, transparent fee structures, and technological innovations such as e-stamping and blockchain verification have proven effective elsewhere in embedding predictability and fairness. The study advances an integrated reform agenda encompassing statutory enforcement, institutional accountability, technological modernization, and equity-oriented policy interventions. It concludes that Ghana must transform stamp duty from a barrier to justice into a transparent, predictable, and accountable instrument of fiscal policy and legal procedure.

**KEYWORDS:** Stamp Duty; Statutory Interpretation; Lands Commission; E-stamping and blockchain verification; Access to justice; Institutional transparency.



## INTRODUCTION

### Background of Stamp Duty in Ghana

Stamp duty in Ghana is a statutory levy imposed on certain instruments and documents to give them legal validity and admissibility in judicial proceedings. The principal legislation is the Stamp Duty Act, 2005 (Act 689), which consolidates and modernizes earlier colonial-era provisions on stamping of instruments, particularly those relating to land, contracts, and financial transactions<sup>1</sup>. The Act prescribes that specified instruments must be duly stamped before they can be admitted in evidence in court or registered with public authorities<sup>2</sup>. The Evidence Act, 1975 (NRCDC 323), further reinforces this requirement by conditioning admissibility of certain documents on compliance with statutory formalities, including stamping.<sup>3</sup> Historically, stamp duty was introduced as a fiscal measure to raise revenue for the colonial administration, but over time it acquired a dual role: both as a revenue source and as a procedural safeguard ensuring authenticity of documents in litigation and land administration.<sup>4</sup> In Ghana today, the Lands Commission, through its Land Valuation Division, plays a central role in assessing and collecting stamp duty, particularly in relation to land transactions.<sup>5</sup>

### Statement of the Problem

Despite its statutory basis, the administration of stamp duty in Ghana has become fraught with uncertainty, opacity, and exploitation. There are indications, as this study's data will show, from stakeholder accounts that officials at the Lands Commission, at times, engage in informal negotiations over charges, potentially resulting in payments that appear to exceed the official duty reflected on the stamped document. This practice undermines transparency, erodes trust in public institutions, and disproportionately affects poor litigants who cannot afford unpredictable costs. Crucially, administrative opacity at the Lands Commission fuels judicial confusion. When litigants and lawyers cannot ascertain the correct duty payable, courts are left to grapple with inconsistent documentation and contested charges. This uncertainty translates into delays<sup>6</sup>, disputes, and conflicting judicial approaches to admissibility, thereby linking institutional malpractice directly to doctrinal inconsistency. In effect, corruption and opacity in stamp duty administration create the very evidentiary ambiguities that courts must resolve, perpetuating a cycle of administrative exploitation and judicial confusion.

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<sup>1</sup> *Stamp Duty Act, 2005 (Act 689)*, ss. 1–14

<sup>2</sup> *Ibid*, ss. 1–14 (requirements for stamping instruments).

<sup>3</sup> *Evidence Act, 1975 (NRCDC 323)*, ss. 117–120.

<sup>4</sup> See generally, colonial ordinances on stamp duty (pre-1957), discussed in S. N. K. Phixon Owoo, *The Admissibility or Otherwise of Documents Requiring Stamping in Light of the Stamp Duty Act (2024)*.

<sup>5</sup> *Lands Commission Act, 2008 (Act 767)*, s. 22 (functions of the Land Valuation Division).

<sup>6</sup> *AB Asare Bediako & Co, Admissibility of Evidence in the Ghanaian Court with Specific Reference to Stamping of Exhibits (2024)*.



## Research Objectives

This study seeks to:

- Critically examine Ghana's stamp duty regime, focusing on its statutory framework and the implications of recent Supreme Court clarification in *Nii Aflah v. Boateng [2023] GHASC 58*<sup>7</sup>.
- Assess the impact of stamp duty requirements on litigation, particularly the economic and procedural burdens created by statutory silence and institutional opacity.
- Compare Ghana's stamp duty practices with international best practices, drawing on comparative perspectives from selected common law jurisdictions.
- Propose reforms, legal, institutional, technological, and policy-oriented, that can enhance transparency, efficiency, and fairness in stamp duty administration.

## Research Questions

The study was guided by the following questions:

1. How does Ghana's current stamp duty regime, in light of the Supreme Court's clarification, affect the admissibility of documents and the broader conduct of litigation?
2. Why does opacity in pricing and enforcement persist, particularly within the Lands Commission and Ghana Revenue Authority?
3. What lessons can Ghana draw from jurisdictions that have achieved clarity and transparency in stamp duty administration?
4. In what ways can technology, such as e-stamping, online calculators, and blockchain verification, be leveraged to improve efficiency, predictability, and fairness in Ghana's stamp duty regime?

## Significance of the Study

The significance of this study lies in its potential to **clarify and reform one of the most opaque aspects of Ghana's legal and institutional framework**: the administration of stamp duty. Although stamp duty is intended to serve as both a fiscal instrument and a procedural safeguard for the authenticity of documents, its current application has become a barrier to justice rather than a facilitator (*Cal Bank Ghana Ltd v. Ferbrit International & Others*, 2023)<sup>8</sup>.

First, the study addresses a **critical gap in judicial efficiency and fairness**. Courts in Ghana have long grappled with the admissibility of unstamped or improperly stamped documents, leading to inconsistent rulings and doctrinal uncertainty. By systematically analyzing statutory provisions, case law, and institutional practices, this research provides clarity that can guide judges, lawyers, and registrars in applying the law consistently. Second, the study

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<sup>7</sup> *Nii Aflah v. Benjamin Kwaku Boateng [2023] GHASC 58*

<sup>8</sup> *Cal Bank Ghana Ltd v. Ferbrit International & Others*, High Court (Commercial Division, Accra, Feb. 14, 2023)



has **direct implications for access to justice**. The unpredictability of stamp duty charges, coupled with exploitative practices at the Lands Commission, disproportionately affects poor litigants who cannot afford arbitrary or inflated costs. By exposing these inequities, the research contributes to ongoing debates about how procedural rules can either enable or obstruct the constitutional right to a fair trial under Article 19 of the 1992 Constitution of Ghana<sup>9</sup>. Third, the study is significant for **policy and institutional reform**. By comparing Ghana's regime with international best practices, such as e-stamping in India, transparent schedules in the United Kingdom, and digital verification systems in Kenya, it provides actionable recommendations for policymakers and administrators. These reforms can enhance transparency, reduce corruption, and modernize Ghana's legal infrastructure.

Finally, the study contributes to **academic discourse and legal education**. For law students, scholars, and practitioners, it offers a comprehensive doctrinal and comparative resource on stamp duty, bridging fiscal law, evidence law, and institutional accountability. It also provides a foundation for further research into the intersection of law, technology, and access to justice in emerging economies. In sum, this study is not merely descriptive; it is **normative and prescriptive**, aiming to transform stamp duty from a source of confusion and exploitation into a transparent, predictable, and justice-enhancing instrument.

## LITERATURE REVIEW

### Statutory Framework and Doctrinal Foundations

The statutory foundation of Ghana's stamp duty regime is the Stamp Duty Act, 2005 (Act 689), which prescribes instruments liable to duty, procedures for assessment and stamping after execution, and consequences for non-compliance. The Evidence Act, 1975 (NRCD 323), intersects with this framework by conditioning admissibility on compliance with statutory formalities, including stamping. Institutional mandates relevant to administration, particularly for land-related instruments, are anchored in the Lands Commission Act, 2008 (Act 767), which assigns functions to the Land Valuation Division. Secondary commentary consistently notes that while the legislative intent is clear on liability and process, operational clarity on pricing and enforcement remains weak (Acquah, 2024; Prempeh & Associates, 2024; Barnes et al, 2024; International Centre for Tax and Development, 2025).

### Judicial Treatment of Stamping and Admissibility

For many years, Ghanaian courts oscillated in their treatment of unstamped or insufficiently stamped documents. Some decisions excluded such documents outright, while others permitted post-execution stamping to cure defects, creating uncertainty for litigants and practitioners and inflating litigation costs through delays and adjournments (AB Asare Bediako & Co., 2024). Scholarly commentary noted a gradual consolidation toward pragmatism, with admissibility contingent on regularization, though trial courts remained inconsistent (Phixon Owoo, 2024). This doctrinal tension was decisively resolved by the Supreme Court in *Nii Aflah v. Boateng [2023] GHASC 58*. The Court held unequivocally that stamping is a statutory precondition for admissibility under section 32 of the *Stamp Duty Act, 2005 (Act 689)*, rejecting earlier precedents that had permitted admission subject to later

<sup>9</sup> Constitution of the Republic of Ghana, 1992, Article 19 (Right to fair trial).



stamping and declaring those decisions *per incuriam*. It affirmed that neither trial courts nor appellate courts have discretion to admit an unstamped instrument until the duty and any applicable penalty have been paid. Although the conveyance in dispute was inadmissible because it was unstamped, the Respondent succeeded on the strength of other evidence, including long possession (Phixon-Owoo, 2025).

The doctrinal significance of this ruling is reinforced by the Stamp Duty (Amendment) Act, 2023, which now provides a definitive statutory list of instruments requiring stamping and outlines exemptions, alongside updated charges reflecting redenomination and economic realities. Together, the Supreme Court's clarification and the statutory amendment have eliminated judicial oscillation and statutory silence. The challenge that remains is not doctrinal but institutional: officers of the Lands Commission continue to stamp all documents indiscriminately, disregard exemptions, and impose charges per page rather than per instrument, thereby undermining the clarity achieved by law and perpetuating exploitation.

### **Institutional Practice and Transparency Gaps**

Despite this doctrinal clarity, the administration of stamp duty in Ghana remains marked by uncertainty and opacity. Preliminary inquiries reveal a divergence of opinion among legal practitioners and judicial officers, many of whom continue to advise clients to stamp all documents, official and private, to avoid admissibility challenges. Others insist that only specific instruments attract duty under Act 689, yet they struggle to identify these instruments with precision from the statute itself. This divergence reflects a deeper institutional gap. There is no clear, publicly accessible schedule of documents requiring stamping, and guidance from the Lands Commission and Ghana Revenue Authority is inconsistent. Allegations of negotiated charges and discrepancies between amounts paid and amounts denoted on stamps further erode transparency (AB Asare Bediako & Co., 2024). Citizens often encounter hefty sums estimated by Lands Commission officers without any published breakdown, and many are unaware of the GhanaGov/Lands Commission revenue split that explains why the amount stamped on documents is lower than the total charged. This opacity not only burdens litigants but also undermines judicial efficiency, as courts are forced to adjudicate disputes over procedural compliance rather than substantive justice.

### **Access to Justice and Economic Burden**

The uncertainty surrounding stamping requirements has direct and profound implications for access to justice - a fundamental human right recognized across constitutional frameworks and international legal instruments. Litigants who are unsure whether their documents require stamping face the risk of exclusion at trial or costly delays to regularize documents mid-litigation, creating a form of procedural gatekeeping that undermines the principle of equal access to courts. For poorer litigants, the unpredictability of charges, sometimes negotiated informally, creates prohibitive costs that chill legitimate claims and prevent vulnerable populations from asserting their rights. The absence of transparent fee structures and clear regulatory guidance transforms what should be a procedural formality into a discretionary mechanism of exclusion, effectively operating as a form of informal taxation that disproportionately burdens those with the fewest resources.

Research respondents in preliminary inquiries reported abandoning otherwise strong cases because they could not afford the opaque and inflated charges demanded for stamping - a pattern well-documented in the access to justice literature across developing jurisdictions



(Hermansyah, 2025). This phenomenon reflects what scholars identify as structural institutional barriers that compound existing inequalities: when procedural costs become unpredictable, they no longer function as neutral administrative mechanisms but rather as selective enforcement tools that reinforce class-based exclusion from the justice system (Ismail et al., 2025). The broader literature on access to justice consistently underscores that opaque procedural costs disproportionately burden low-income litigants, prolong disputes, and erode confidence in the legal system (Haidar & Shumilo, 2025). Economic barriers to justice are not merely inconvenient; they represent a fundamental violation of what justice scholars term “substantive access” - the meaningful ability of all persons, regardless of economic status, to vindicate their legal rights (Wankhade, 2025).

In Ghana, the absence of certainty regarding stamping requirements exacerbates these challenges by introducing what administrative law scholars identify as institutional opacity - a systemic failure to articulate clear rules that govern procedural costs and requirements. This situation contravenes the constitutional guarantee of a fair trial under Article 19 of the 1992 Constitution, which presupposes that procedural rules should be transparent and consistently applied, reflecting principles of natural justice and procedural fairness. The Supreme Court’s clarification in *Nii Aflah v. Boateng* resolves doctrinal ambiguity but does not eliminate the economic burden created by administrative opacity: a critical distinction that reveals the gap between formal legal clarification and substantive justice reform. As administrative law scholars have documented, judicial pronouncements alone cannot remedy systemic institutional failings without accompanying transparency measures, clear administrative procedures, and accessible enforcement mechanisms (Zalukhu & Lie, 2025).

### **Comparative Jurisdictions and Best Practices**

Other jurisdictions have systematically addressed similar challenges through codifying clear schedules of instruments subject to duty and adopting technological solutions to reduce administrative discretion: strategies that offer valuable lessons for Ghana’s reform agenda. These comparative experiences demonstrate that access to justice improvements require a three-pronged approach: legislative clarity, administrative transparency, and technological innovation (Hermansyah, 2025).

In the United Kingdom, Stamp Duty Land Tax applies to specified transactions with clear statutory schedules that define precisely which instruments trigger duty obligations and at what rates. The UK approach is further enhanced by the provision of online calculators provided by Her Majesty’s Revenue and Customs (HMRC), ensuring that all parties can independently calculate their obligations without reliance on opaque administrative discretion or intermediaries. This model demonstrates how transparency can be achieved through accessible technological infrastructure that demystifies procedural requirements.

India’s e-stamping system represents perhaps the most comprehensive regional model relevant to Ghana’s context. The system specifies instruments subject to duty with absolute clarity, automates fee computation to eliminate calculation disputes, and generates tamper-proof digital certificates that reduce post-hoc disputes over admissibility (Rusakova, 2024). By automating the application of predetermined rules, India’s system has demonstrably reduced opportunities for institutional exploitation and informal fee collection: problems that plague many developing countries’ justice systems. The system functions as a form of



institutional constraint that channels administrative discretion into predictable, rule-bound pathways, thereby strengthening the rule of law while simultaneously improving efficiency.

Kenya's eCitizen platform similarly digitizes land transactions and duty payments while offering clear guidance on applicable instruments subject to duty, thereby reducing the space for administrative opacity. South Africa and Nigeria have pursued comparable strategies, providing statutory clarity supplemented by administrative guidance and deliberate digitization initiatives that render procedural requirements transparent and contestable (Tunde & Adefila, 2025). Nigeria's experience is particularly instructive for West Africa: by creating clear regulatory frameworks alongside technological solutions, the country has moved toward reducing informal payment practices that had previously characterized land registration systems (Zhao et al., 2025), though challenges remain regarding implementation consistency and institutional capacity.

These comparative models converge on a unified principle: certainty about which documents require stamping is indispensable to fairness and efficiency in the justice system. The mechanisms through which this certainty is achieved matter profoundly; thus, clear legislation establishes the formal rule; transparent administrative procedures demonstrate consistent application; and technological solutions create permanent, verifiable records that constrain discretionary interpretation. Ghana's failure to provide such clarity stands in sharp contrast to these regional innovations, particularly now that doctrinal ambiguity has been resolved by the Supreme Court. The comparative evidence demonstrates definitively that statutory clarity must be matched by administrative transparency and technological innovation to achieve meaningful reform. Without this integrated approach, judicial pronouncements remain formal but not truly effective, and access to justice remains compromised for those unable to navigate informal, discretionary administrative systems.

### **Technology-Enabled Reforms: E-Stamping and Digital Verification**

Technology provides a credible pathway to resolve Ghana's institutional ambiguities in stamp duty administration. E-stamping systems, successfully adopted in India and Kenya, embed certainty by automating fee computation, listing eligible instruments, and generating tamper-proof digital certificates that serve as reliable evidence of compliance. Their architecture constrains discretion through predetermined schedules, automatic calculations, and cryptographic security (Anomah et al., 2025). Complementary tools such as online fee calculators and public dashboards enhance transparency by giving litigants predictable cost information. South Africa's blockchain-based land registry illustrates measurable outcomes: property fraud reduced by 60%, administrative costs lowered by 30–40%, and registration timelines shortened from months to days (Faku & Amadi-Echendu, 2026). In Ghana, similar solutions would provide explicit guidance on applicable instruments, reduce discretion, and deter informal fee collection (Anomah & Amoah, 2024).

Currently, reliance on manual records allows Lands Commission officials to impose opaque, variable charges, undermining judicial confidence in stamped documents. Research across Nigeria and Kenya shows blockchain applications can generate immutable, time-stamped records that reduce corruption and restore public trust (Tunde & Adefila, 2025). Sudan's deployment of Hyperledger Fabric demonstrates the feasibility of secure, scalable systems in resource-constrained settings (Zein & Twinomurinzi, 2024). The Supreme Court's ruling in *Nii Aflah v. Boateng* underscores stamping's constitutional importance, creating an opportune



moment for reform. Integrated e-stamping, linked to electronic filing, digital payments, and standardized procedures, would enhance transparency, provide courts with verifiable compliance, and restore confidence by eliminating informal fee structures (Djuraev et al., 2025). International experience highlights phased adoption, infrastructure investment, and stakeholder training as critical to success (Tunde & Adefila, 2025; Firdaus et al., 2025).

### **Synthesis and Gaps**

The literature, preliminary inquiries, and recent legal developments converge on a critical insight. Doctrinal ambiguity regarding admissibility has now been resolved: the Supreme Court in *Nii Aflah v. Boateng [2023] GHASC 58* held that stamping is a statutory precondition, and courts have no discretion to admit unstamped instruments. This ruling eliminated decades of judicial oscillation and established a clear doctrinal baseline. The subsequent Stamp Duty (Amendment) Act, 2023 reinforced this clarity by providing a definitive statutory list of instruments requiring stamping, outlining exemptions, and updating charges to reflect redenomination and economic realities.

Yet despite this doctrinal and statutory clarity, uncertainty persists in practice. Officers of the Lands Commission continue to stamp all documents indiscriminately; disregarding exemptions provided in the Act. More troublingly, they often charge per page of a multi-paged instrument rather than per instrument, inflating costs far beyond the statutory intent. Citizens are further disadvantaged by opaque practices in which only half of the total duty paid is reflected on the face of the stamped document, with the remainder concealed in internal revenue splits. These practices undermine the transparency envisioned by the Amendment Act and perpetuate exploitation, leaving litigants fearful of prohibitive charges and, in some cases, abandoning claims altogether.

The gap is therefore no longer doctrinal but institutional. Ghana's challenge lies in ensuring that statutory clarity is matched by administrative compliance, transparency, and technological innovation. Comparative jurisdictions demonstrate that certainty can be achieved not only through codified schedules but also through digitized systems and public guidance. Unless Ghana addresses the institutional disregard for statutory exemptions and introduces mechanisms such as e-stamping, online fee calculators, and verifiable receipts, litigation will remain costly and unpredictable, undermining both fairness and efficiency.

### **Legal and Institutional Analysis**

#### **Statutory Provisions: Stamp Duty Act, 2005 (Act 689)**

The Stamp Duty Act, 2005 (Act 689) remains the principal legislation governing stamp duty in Ghana. It prescribes the chargeability of certain instruments, particularly those relating to conveyances of land, leases, mortgages, bonds, agreements, and financial instruments. Duties are assessed by the Commissioner of the Ghana Revenue Authority (GRA), often delegated to the Lands Commission for land-related instruments. Sections 12 to 14 of the Act stipulate that unstamped instruments may not be registered or admitted in evidence until duly stamped. Despite these provisions, the Act does not provide a comprehensive or easily accessible schedule of all documents requiring stamping. While some categories are clear, others remain ambiguous, leaving practitioners uncertain whether everyday agreements, receipts, or private contracts fall within the scope. This statutory silence has contributed to divergent interpretations and inconsistent practice, particularly at the trial level.



## The Evidence Act, 1975 (NRCD 323)

The Evidence Act reinforces the requirement that documents must comply with statutory formalities to be admissible. Section 117 provides that documents which by law require stamping cannot be admitted unless duly stamped. Yet, like the Stamp Duty Act, the Evidence Act does not specify which documents fall within this category. This creates a doctrinal gap: while the law clearly conditions admissibility on stamping, it fails to define the universe of documents subject to duty. As a result, some practitioners adopt a blanket approach, stamping all documents to avoid evidentiary objections, while others insist that only specific instruments are covered, though they cannot consistently identify them.

### Judicial Interpretation and Case Law

For decades, Ghanaian courts grappled with ambiguity in the treatment of unstamped documents. Some decisions excluded such documents outright, treating stamping as a mandatory precondition for admissibility, while others permitted post-execution stamping to cure defects, adopting a pragmatic approach to avoid injustice. This oscillation created uncertainty for litigants and practitioners, prolonging litigation and inflating costs. The Supreme Court has now provided authoritative guidance in *Nii Aflah v. Boateng* [2023] GHASC 58. The Court held unequivocally that stamping is a statutory precondition for admissibility under section 32 of the Stamp Duty Act, 2005 (Act 689), and declared earlier precedents that allowed admission subject to later stamping *per incuriam*. It affirmed that neither trial courts nor appellate courts have discretion to admit an unstamped instrument until the duty and any applicable penalty have been paid. Although the conveyance in dispute was inadmissible because it was unstamped, the Respondent succeeded on the strength of other evidence, including long possession.

This judgment settles the doctrinal oscillation and establishes stamping as a condition precedent to admissibility. Judicial inconsistency can no longer be described as a gap, since the apex court has provided authoritative guidance. The challenge now lies in the gap between statutory clarity and administrative practice. Practitioners and litigants remain uncertain about how exemptions under the Stamp Duty (Amendment) Act, 2023<sup>10</sup> are applied, while Lands Commission practices continue to impose opaque and sometimes inflated charges. The doctrinal clarity provided by the Supreme Court therefore intensifies the need for institutional reform. Without transparent fee structures and digitized systems, the clarified doctrine risks becoming a new barrier to justice, as litigants who cannot afford or anticipate charges may see their documents excluded outright. In this sense, *Nii Aflah v. Boateng* resolves one dimension of the problem while exposing another. The law is now clear that stamping is a condition precedent to admissibility, but the absence of administrative transparency and consistent application of statutory exemptions means that access to justice remains compromised. Reform must therefore move beyond harmonizing judicial practice to ensuring compliance with statutory provisions, publishing schedules, and digitizing processes so that doctrinal clarity translates into practical fairness.

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<sup>10</sup> Stamp Duty (Amendment) Act, 2023 (Act 1109)



## **Consequences of the Judicial Interpretation and Case Law on Prosecution of Cases using Unstamped Valid Contract Documents**

From the judicial interpretation and case law on provisions on the requirement of stamping instruments before they are admitted into evidence, it can be deduced that even though contracts entered into by parties to these contracts may fulfill all the elements of a valid contract which make them enforceable, lack of stamp duty will render such instruments inadmissible to provide documentary proof of existence of such contracts. At best, a party who decides not to engage the services of a lawyer and does not know of the provision of the Stamp Duty Act requiring that instruments are stamped before they become admissible, may not be able to prove his or her case once the unstamped contract document is excluded from admission. This will lead to a situation where a contract documents though executed by parties to same will still remain worthless until it is stamped when seeking enforcement of same.

It is trite law that in the absence of fraud or misrepresentation in a contract validly entered into, courts would enforce such contract.<sup>11</sup> The interpretation placed on the provisions of the Stamp Duty Act as Amended tends to modify the principle of law on enforceability of a valid documentary contract or agreement when it comes to seeking enforcement of such contract or agreement validly entered. This respectfully indirectly raises the bar on enforceability of contracts and other forms of agreements supported by documents as against enforceability of oral contracts and other forms of agreements which have not been reduced into writing and will not require stamping to make the oral evidence on these oral contracts or agreements admissible. Clearly, this makes the handling of admissibility of evidence of these two forms of contracts discriminatory to say the least. This discriminatory approach in handling evidence of oral contracts and documentary contracts respectfully breaches provisions of Article 17 of the 1992 Constitution of Ghana and ought to be revisited by parliament of Ghana to have same amended in order to avoid the discriminatory nature of the law on stamping instruments bordering on contracts and agreements validly entered into.

### **Institutional Practice: Lands Commission and GRA**

Although doctrinal and statutory clarity has now been achieved through *Nii Aflah v. Boateng [2023]* and the Stamp Duty (Amendment) Act, 2023, institutional practice remains deeply problematic. The Lands Commission, through its Land Valuation Division, continues to exercise wide discretion in assessing stamp duty for land-related instruments, often in ways that contradict the clear provisions of the law.

Field inquiries reveal that officers indiscriminately stamp all documents presented to them, regardless of whether the instrument is exempt under the Amendment Act. More troublingly, they routinely charge duty on a per-page basis rather than per instrument, multiplying costs for multi-paged documents and inflating charges far beyond the statutory intent. This practice has no basis in the Act, yet officers justify it by claiming they “do what they are instructed” rather than applying the law itself. The result is a system where statutory exemptions are ignored, and litigants are compelled to pay prohibitive sums to secure admissibility.

Transparency is further undermined by the way charges are recorded. Officers acknowledged that the duty is divided into two portions, with only one half reflected on the face of the

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<sup>11</sup> *L'Estrange v. F. Graucob Ltd.* [1934]2 KB 394; *Inusah v. D.H.L. Worldwide Express*[1992] 1 GLR 267.



stamped document and covered by the receipt. Citizens are rarely aware of this split, leaving them unable to verify whether the amounts paid correspond to statutory schedules. These practices foster exploitation, spark fear among litigants, and often lead to withdrawal of claims or bargaining for reductions.

The statutory intent of Act 689 and its 2023 Amendment, to raise revenue through specified instruments while exempting others, has therefore been distorted by opaque administration. Instead of implementing the clarity provided by law, institutional practice perpetuates uncertainty and inequity. This disconnect between legislative reform and administrative enforcement erodes public trust, disproportionately burdens poor litigants, and underscores the urgent need for institutional accountability, transparent fee publication, and technological innovation such as e-stamping to eliminate discretion.

### Comparative Lessons

Other jurisdictions have addressed similar challenges by codifying clear schedules and adopting technological solutions. In the United Kingdom, Stamp Duty Land Tax applies to specified transactions, supported by statutory guidance and online calculators provided by HMRC (HMRC, 2023). India's e-stamping system automates fee computation, specifies instruments subject to duty, and generates tamper-proof digital certificates, reducing disputes over admissibility (Sharma & Singh, 2021). Kenya's eCitizen platform digitizes land transactions and duty payments, offering clear guidance and reducing discretion (Kenya Law Reform Commission, 2020). South Africa and Nigeria also provide statutory clarity, supplemented by administrative guidance and digitization initiatives (National Treasury South Africa, 2022; FIRS Nigeria, 2021). These models demonstrate that certainty and transparency are achievable through legislative clarity and technological innovation, and they highlight Ghana's failure to provide similar safeguards.

### Identified Gaps

The analysis reveals that Ghana's stamp duty regime continues to suffer from statutory ambiguity and institutional opacity, even though judicial inconsistency has now been resolved by the Supreme Court. Neither Act 689 nor the Evidence Act provides a definitive and accessible list of documents requiring stamping. While the Stamp Duty Act was enacted primarily to raise revenue for the state, its scope is limited to specific instruments such as conveyances, leases, mortgages, bonds, and certain agreements. It was never intended to tax every document or exhibit tendered in court. The absence of clarity has led to a widespread but erroneous belief that all documents must be stamped before they can be admitted in evidence.

Institutional exploitation compounds this problem. Lands Commission practices introduce discretionary charges and opacity, with officials sometimes imposing sums beyond the statutory duty and failing to provide itemized receipts. On the field, the sums imposed as statutory duty on instruments vary from one regional office of the Lands Commission to the other. This undermines fairness and disproportionately affects poor litigants. Misinterpretation of legislative purpose has further contributed to over-application, where litigants are pressured to stamp documents unnecessarily. The Supreme Court's decision in *Nii Aflah v. Boateng* has eliminated doctrinal inconsistency, but statutory silence and administrative opacity remain pressing gaps. Without statutory clarity on the specific instruments subject to duty and institutional transparency in assessment, litigation will remain



costly and uncertain. The misapplication of stamp duty requirements not only compromises access to justice but also erodes public trust in the legal system.

### **Comparative Perspectives**

The challenges identified in Ghana's stamp duty regime, statutory ambiguity, judicial inconsistency, and institutional opacity, are not unique. Other jurisdictions have grappled with similar problems but have adopted reforms that provide useful lessons. A comparative analysis of selected common law jurisdictions demonstrates how clarity, transparency, and technological innovation can transform stamp duty administration into a predictable and equitable system.

In the United Kingdom, stamp duty has evolved into the Stamp Duty Land Tax (SDLT), which applies to specified transactions such as property transfers. The statutory framework is clear and supported by extensive administrative guidance from HM Revenue & Customs. Online calculators allow taxpayers to determine liability in advance, reducing disputes and ensuring predictability (HM Revenue & Customs, 2023). The UK model illustrates the importance of codified schedules and accessible tools in fostering transparency.

India provides another instructive example through its adoption of e-stamping. Introduced to combat fraud and discretionary practices, e-stamping generates tamper-proof digital certificates with unique transaction identifiers. The system specifies instruments subject to duty, automates fee computation, and allows real-time verification by courts and registries. Empirical studies show that e-stamping has reduced corruption and improved efficiency (Sharma & Singh, 2021). However, challenges remain, particularly regarding digital exclusion. Non-digital natives and rural populations have sometimes struggled to access the system, raising questions about inclusivity and equity.

Kenya's digitization of land transactions and duty payments through the eCitizen platform has streamlined processes and reduced opportunities for exploitation. Citizens can access clear schedules of fees, pay duties online, and verify compliance electronically (Kenya Law Reform Commission, 2020). Yet, implementation has faced resistance in some quarters, especially in rural areas where digital literacy and infrastructure gaps persist. These challenges highlight the importance of complementary measures such as public education and infrastructure investment.

South Africa and Nigeria also provide relevant lessons. In South Africa, stamp duties are governed by clear statutory provisions, with reforms focusing on digitization and taxpayer education to reduce disputes (National Treasury South Africa, 2022). Nigeria's Federal Inland Revenue Service (FIRS) has emphasized the publication of schedules and administrative guidance, though enforcement challenges persist (Federal Inland Revenue Service, 2021). Both jurisdictions underscore the need to combine statutory clarity with institutional accountability.

Taken together, these comparative perspectives converge on three pillars of effective stamp duty administration: codified schedules of instruments subject to duty, transparent and accessible fee structures, and technological innovations such as e-stamping and online calculators. Importantly, the experiences of India and Kenya demonstrate that while technology can embed transparency, reforms must anticipate resistance and digital exclusion. For Ghana, adopting these lessons would mean clarifying statutory provisions, harmonizing



judicial practice, and digitizing administrative processes, while simultaneously addressing inclusivity and institutional accountability to restore fairness and predictability.

## RESEARCH METHODOLOGY

This study's methodology is shaped by longstanding ambiguities in Ghana's stamp duty regime and the recent doctrinal clarification provided by the Supreme Court in *Nii Aflah v. Boateng* [2023]. For decades, courts oscillated between excluding unstamped documents and permitting curative stamping, creating uncertainty for litigants and practitioners. That inconsistency has now been resolved, with the Court holding that stamping is a statutory precondition for admissibility and rejecting earlier precedents that allowed admission subject to later regularization. While this ruling provides doctrinal clarity, it also exposes deeper statutory and institutional gaps, particularly the absence of a definitive schedule of instruments requiring stamping and the opacity of administrative practices at the Lands Commission.

Against this backdrop, the study adopts a mixed methodology integrating doctrinal analysis, qualitative empirical inquiry, and comparative legal perspectives. Doctrinal analysis alone cannot capture the lived realities of litigants and practitioners who confront opaque charges and inconsistent rulings. Empirical inquiry provides evidence of exploitation and inequity in practice, grounding the study in the experiences of those most affected by the system. Comparative analysis ensures that proposed reforms are informed by tested international models rather than speculative solutions, offering Ghana practical pathways to modernization. Taken together, these methods produce a comprehensive, multi-layered understanding of Ghana's stamp duty regime and its impact on access to justice.

### Doctrinal Legal Research

Doctrinal legal research forms the foundation of this study. It involves systematic analysis of statutes, case law, and judicial interpretations to clarify the meaning and application of legal rules (Hutchinson, 2012). The Stamp Duty Act, 2005 (Act 689), the Evidence Act, 1975 (NRC 323), and the Lands Commission Act, 2008 (Act 767) provide the statutory backbone of the inquiry. Case law from the Ghana Law Reports and High Court decisions is examined to trace the evolution of judicial treatment of unstamped documents, culminating in the Supreme Court's definitive ruling in *Nii Aflah v. Boateng*. This doctrinal stance is justified because the central problem is one of legal uncertainty: neither Act 689 nor the Evidence Act provides a definitive list of documents requiring stamping, leaving practitioners and litigants exposed to ambiguity. By analyzing statutory provisions and judicial precedents, the study clarifies doctrinal gaps and grounds its reform proposals in authoritative sources.

### Empirical Approach

To complement doctrinal analysis, the study employs a qualitative empirical approach designed to capture the lived realities of those directly engaged with stamp duty enforcement. Semi-structured interviews were conducted with thirty purposively selected respondents: ten lawyers, five judges, five judicial registrars, and ten officers of the Lands Commission. This composition enabled triangulation of perspectives from both judicial and administrative sides of the system.



Purposive selection was guided by clear criteria. Lawyers were included if they had at least five years of experience in land litigation or transactional practice involving stamp duty. Purposive selection was guided by clear criteria - lawyers with at least five years of land litigation or transactional practice, judges and registrars from courts with high volumes of land disputes, and Lands Commission officers from divisions directly responsible for duty assessment and collection. Judges and registrars were selected from courts with a high volume of land and contract disputes, while Lands Commission officers were drawn from divisions directly responsible for duty assessment and collection. These criteria ensured that participants possessed relevant expertise and practical exposure, thereby enhancing the credibility of the findings.

The interviews explored practitioner strategies around stamping requirements, contrasting precautionary approaches, where all documents are stamped to avoid evidentiary objections, with selective approaches that attempt to identify only those instruments specifically subject to duty. Judges shared experiences of admissibility disputes, while Lands Commission officers provided insights into charging practices, including the GhanaGov/Lands Commission revenue split, and acknowledged the opacity that arises when citizens are unaware of how charges are determined. Across all groups, respondents reflected on perceptions of transparency, fairness, and access to justice.

### Demographic Profile of Respondents

Table 1 below presents the demographic composition of respondents, summarizing their professional roles, average years of experience, and gender distribution.

**Table 1: Demographic Profile of Respondents**

Respondent Group	Number Interviewed	Average Years of Experience	Gender Distribution (M/F)
Lawyers	10	12 years	7M / 3F
Judges	5	18 years	4M / 1F
Judicial Registrars	5	10 years	3M / 2F
Lands Commission Staff	10	8 years	6M / 4F

The demographic distribution reflects a balanced mix of perspectives across the legal and administrative spectrum. Lawyers and judges brought extensive professional experience, averaging over a decade in practice, which ensured that their insights into evidentiary disputes and courtroom dynamics were grounded in long exposure to litigation. Judicial registrars contributed practical knowledge of procedural administration, while Lands Commission officers provided firsthand accounts of institutional practices in duty assessment. The gender distribution, though weighted toward men, included meaningful female representation across all groups, allowing for diversity of perspectives. Taken together, this composition strengthened the credibility of the inquiry by triangulating viewpoints from those who apply the law, those who interpret it, and those who enforce it administratively.

Responses were coded thematically through manual analysis. Transcripts were read repeatedly, codes were assigned to recurring concepts (e.g., “ambiguity,” “exploitation,”



“exclusion”), and themes were developed inductively to capture systemic patterns. Demographic data and key findings were summarized in tables to ensure clarity and comparability, but the qualitative narratives remain central to understanding systemic challenges.

### **Ethical Considerations**

Although formal Institutional Review Board (IRB) clearance was not sought, the study adhered strictly to ethical standards consistent with international best practices. Participants were fully informed of the study’s purpose and gave voluntary consent prior to participation. Anonymity was guaranteed: no names or identifiable details are reported, which was particularly crucial given that some officers discussed opaque charging practices. All interviews were conducted with strict confidentiality protocols, and data were stored securely. The absence of sensitive personal data and the professional nature of the questions justified the decision not to pursue formal IRB approval, but ethical safeguards were rigorously observed throughout.

### **Comparative Legal Analysis**

In addition to doctrinal and empirical inquiry, the study incorporates comparative legal analysis to benchmark Ghana’s stamp duty regime against international best practices. Jurisdictions such as the United Kingdom, India, South Africa, Nigeria, and Kenya were selected for their relevance and diversity, offering both common law parallels and innovative administrative reforms. These jurisdictions demonstrate how codified schedules of instruments subject to duty, transparent fee structures, and technological innovations such as e-stamping and online calculators can reduce ambiguity and enhance fairness. The comparative dimension strengthens the prescriptive aspect of the study by providing reform models that are not merely theoretical but tested in practice, thereby offering Ghana actionable pathways to modernize its stamp duty regime.

### **Normative and Prescriptive Dimension**

The methodological stance of this study is not confined to diagnosis; it is also normative and prescriptive. By combining doctrinal clarity, empirical evidence, and comparative lessons, the research moves beyond description to actively propose reforms. The normative dimension is grounded in the recognition that the current state of the law and its administration is doing a disservice to citizens, particularly those who are vulnerable to exploitation. The prescriptive element emphasizes the need for statutory amendment to clarify the scope of instruments requiring stamping, judicial guidance to harmonize admissibility rulings, and institutional transparency to eliminate discretionary charging practices. It also highlights the role of technological innovation, such as e-stamping and online fee calculators, in embedding predictability and accountability into the system. In this way, the methodology is designed not only to expose doctrinal and practical challenges but also to advance actionable recommendations that can restore fairness, efficiency, and public trust in Ghana’s stamp duty regime.



## Methods Limitations

While the qualitative empirical approach provided rich insights into the administration of stamp duty, certain limitations must be acknowledged. The sample size of thirty respondents, though respectable for a qualitative legal study, cannot capture the full diversity of experiences across Ghana's judicial and administrative landscape. The purposive sampling strategy, while guided by clear criteria, may still reflect the perspectives of a particular subset of practitioners and officials. Additionally, thematic coding was conducted manually rather than with specialized software such as NVivo or Atlas.ti. Although repeated readings and systematic coding enhanced reliability, manual analysis may lack the additional rigor and replicability associated with computer-assisted qualitative data analysis. These limitations do not undermine the validity of the findings but highlight the need for caution in generalizing results and point to opportunities for future research employing larger samples and digital analytic tools.

## Empirical Findings: Institutional Opacity and the Cost of Justice

### Overview of Field Enquiry

The field enquiry revealed a stark disconnect between statutory requirements and administrative enforcement of stamp duty. Interviews with practitioners highlighted distinct strategies for navigating this uncertainty. Lawyers described adopting precautionary approaches, stamping all documents to avoid evidentiary objections even when exemptions might apply. Others admitted to selective stamping, attempting to identify only those instruments clearly subject to duty, though acknowledging the risk of rejection in court. Judges reflected on their experiences with admissibility disputes, noting that prior to the Supreme Court's ruling in *Nii Aflah v. Boateng [2023]*, trial courts often oscillated between exclusion and pragmatic acceptance of curative stamping. One judge remarked that "*the lack of statutory precision forced us into discretion, which inevitably produced inconsistency.*"

Insights from Lands Commission officers highlighted the institutional dimension of the problem. Several officers confirmed that they stamp all documents indiscriminately, regardless of exemptions provided in the 2023 Amendment Act. More troublingly, they explained that charges are applied per page rather than per instrument, inflating costs for multi-paged conveyances and leases. One officer candidly stated, "*We do what we are instructed to do. All documents must be stamped to make them admissible in court. We have no instructions to look out for exempted documents. We work on instruction; we do not read the act to function.*" This reliance on internal directives rather than statutory provisions underscores the disconnect between legislative clarity and administrative practice.

A particularly striking example illustrates how opacity persists despite statutory exemptions. In one civil case, a bare letter of application written by a client to a financial institution, merely expressing an intention to borrow GHC 300,000 and not issued by the institution itself, was tendered in evidence. Although such a document is exempt under the 2023 Amendment Act, Lands Commission officers nonetheless demanded payment of 1% of the stated amount as stamp duty, amounting to GHC 3,000. This practice not only contravenes statutory exemptions but also demonstrates how administrative discretion can transform routine documents into costly liabilities. As one respondent observed, "*At the Commission, the law is secondary; the instruction is primary.*"



Across all groups, respondents emphasized the impact of opacity and discretion on access to justice. Lawyers and judges pointed to delays and inflated costs, while litigants often withdrew claims or sought to bargain for reductions in duty. Lands Commission officers acknowledged that only part of the duty paid is reflected on the face of stamped documents, with the remainder concealed in internal revenue splits. Together, these findings illustrate how institutional practices continue to undermine statutory clarity, perpetuating uncertainty, exploitation, and inequity in Ghana's stamp duty regime.

### **Divergent Practitioner Views on Stamping**

Interviews revealed a pronounced split in practitioner strategy, shaped more by uncertainty and risk aversion than by statutory guidance. Approximately sixty percent of lawyers and registrars adopt a precautionary approach, advising clients to stamp all documents, official and private, to avoid evidentiary objections. This includes letters, receipts, acknowledgments, and informal agreements. As one lawyer with twelve years' practice explained, "*We tell clients to stamp everything because you never know what the judge will say. It's safer, but it's costly.*"

By contrast, about forty percent of respondents pursue a selective approach, maintaining that only specific instruments such as conveyances, leases, mortgages, and bonds attract duty under Act 689. Yet they struggle to cite a definitive statutory list of exempted ones despite the fact that the Act makes them clear. A judicial registrar with eight years' service admitted, "*The Act doesn't say every document must be stamped. But when pressed, I don't have the time to refer to any list of exemptions. In any case, that is subject to interpretation. That's the problem.*"

Judges acknowledged the ambiguity, confirming reliance on discretion in the absence of uniform guidance. One judge reflected, "*I have struck out documents for lack of stamping, but I know colleagues who allow stamping later. We lack uniform guidance.*" The implication is clear: the lack of knowledge of a definitive list of documents not requiring stamping has normalized precautionary over-stamping, inflating costs and fueling unpredictability.

### **Judicial Inconsistency in Admissibility**

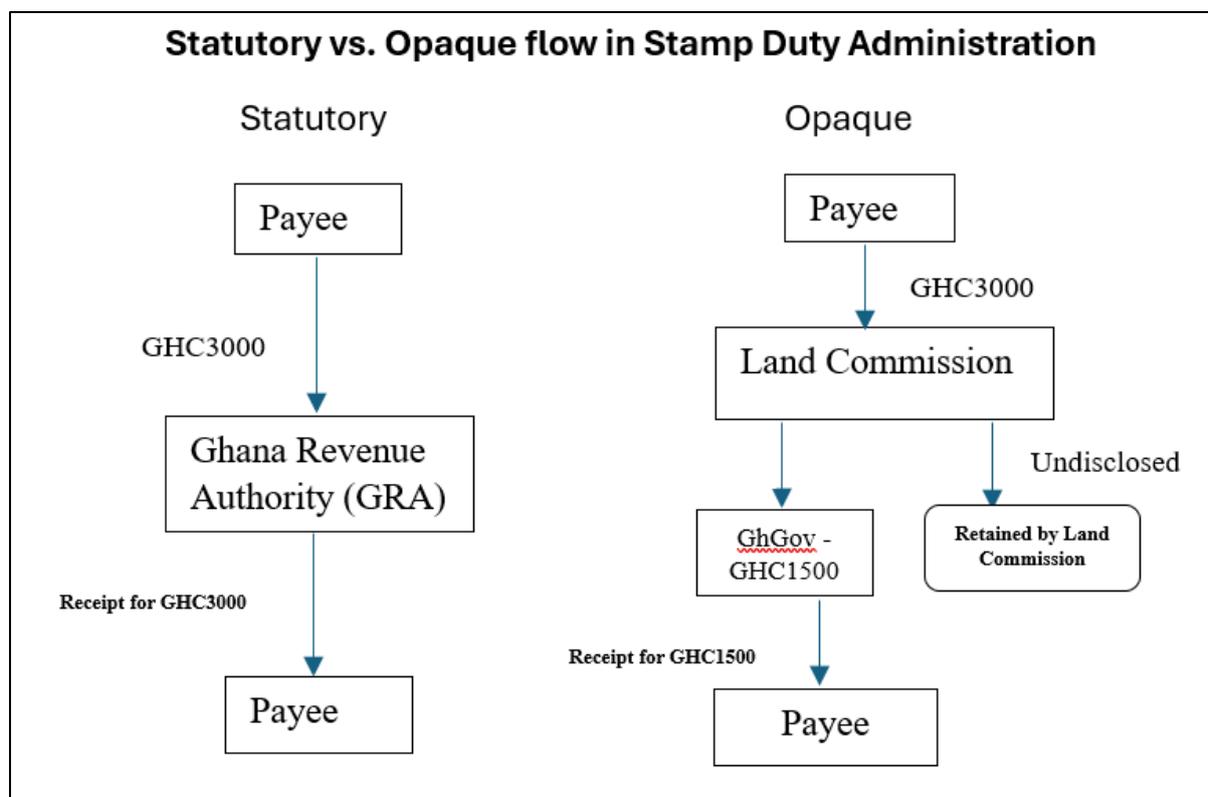
Prior to the Supreme Court's clarification in *Nii Aflah v. Boateng [2023]*, courts oscillated between strict exclusion of unstamped documents and permitting post-execution stamping to cure defects. This divergence often hinged on individual judicial interpretation rather than settled doctrine. Evidentiary objections triggered adjournments, compelled urgent trips to the Lands Commission, and introduced avoidable delays, especially harmful in time-sensitive commercial and land disputes. Judges expressed discomfort that procedural uncertainty disproportionately harmed poorer litigants yet felt constrained by the lack of authoritative guidance. The implication was that admissibility remained a lottery, raising costs, prolonging trials, and undermining confidence in procedural fairness. Although doctrinal clarity has now been achieved, the legacy of inconsistency underscores the need for reforms that ensure statutory clarity translates into predictable practice.

## Institutional Exploitation and Opaque Charging at the Lands Commission

Interviews with Lands Commission officers and practitioners revealed systemic opacity in charging practices. Officers confirmed that the amount stamped on a document is often lower than the total amount charged because a portion is remitted to GhanaGov while the Commission retains the remainder. The split varies by document type but is not publicly disclosed. Citizens remain unaware of this arrangement, encountering lump-sum estimates at the counter without any published breakdown or schedule. This fosters a negotiation culture, where charges are adjusted depending on circumstances. As one officer admitted, "We sometimes adjust charges depending on the situation. People in court are desperate, so they pay."

Clients reported persistent mismatches between payments made and stamp impressions received. One litigant recounted paying GH¢3,000 for stamping while the document reflected only GH¢1,500: "I checked the official receipt, and it showed only GH¢1,500 instead of GH¢3,000. I couldn't argue; I needed it for trial." This experience is not isolated. Interviews revealed that such discrepancies stem from an opaque internal revenue split between the Lands Commission and Ghana Revenue Authority, which is neither published nor standardized across document types. To illustrate this mechanism, Figure 1 below contrasts the statutory payment flow with the opaque administrative practice:

**Figure 1: Statutory vs. Opaque flow in Stamp Duty Administration**



*Note: In the statutory flow, the taxpayer's full payment of GH¢3,000 is remitted to the Ghana Revenue Authority, and the receipt reflects the actual amount paid. In the opaque flow, however, the taxpayer pays GH¢3,000 to the Lands Commission but receives an official*



*receipt for only GH¢1,500. The remaining GH¢1,500 is retained internally and undisclosed. This mismatch illustrates the transparency gap and the potential for exploitation.*

The implication is that the opaque split remittance model, unpublished, discretionary, and variable by document type, creates fertile ground for exploitation, erodes public trust, and incentivizes rent-seeking behavior. The lack of statutory clarity and administrative transparency transforms routine transactions into unpredictable liabilities, disproportionately affecting vulnerable litigants.

### **Impact on Access to Justice**

The cumulative effect of precautionary stamping, judicial inconsistency, and opaque charging is a regime that undermines access to justice. Poor litigants, already strained by legal fees, face unpredictable and inflated stamping costs, leading many to abandon claims or withdraw documents. Adjournments to regularize stamping extend litigation timelines and increase transaction costs for all parties. The opaque charging regime advantages wealthier litigants who can absorb costs, while poorer parties are priced out. Lawyers report advising clients against pursuing legitimate cases due to procedural hurdles, and judges lament court time consumed by stamping disputes rather than substantive adjudication.

The human cost of this system is stark. In one civil case, a poor woman seeking to defend her right to land was confronted with a stamp duty cost assessment. Overwhelmed by the demand, she broke down in tears, saying: *“How can I fight for my right when I cannot even pay for the paper they say must be stamped? Justice is only for those with money. I have lost before the case even begins.”* Her despair illustrates how opaque practices transform procedural requirements into insurmountable barriers, stripping vulnerable litigants of the ability to challenge dispossession.

As one judge with fifteen years’ service observed, *“Stamp duty has become a barrier to justice. It was meant to raise revenue, not to deny people their rights.”* The implication is that the current regime undermines constitutional commitments to fair trial and equal protection by imposing unpredictable, opaque burdens that disproportionately harm the poor.

### **Synthesis of Empirical Findings**

The empirical record highlights four interrelated dynamics that explain why opacity persists in Ghana’s stamp duty regime:

- **Ambiguity over chargeable instruments fuels over-stamping:** In the absence of a definitive statutory schedule, practitioners default to stamping all documents defensively, raising costs and encouraging precautionary lawyering. Even exempt documents, such as loan application letters, are sometimes assessed for duty, illustrating how statutory silence enables administrative overreach.
- **Judicial inconsistency prolongs trials:** Divergent admissibility rulings prior to the Supreme Court’s clarification incentivized tactical objections and consumed court time, with evidentiary disputes often overshadowing substantive adjudication.
- **Opaque charging breeds exploitation:** Practices such as per-page assessments and undisclosed GhanaGov/Lands Commission revenue splits invite discretionary charges, negotiation, and inflated costs, undermining statutory clarity.



- **Access to justice is impaired:** Poor litigants, already burdened by legal fees, abandon claims or withdraw documents when faced with unpredictable and excessive duty assessments. Wealthier parties absorb costs, while vulnerable citizens are priced out. As one judge observed, “*Stamp duty has become a barrier to justice. It was meant to raise revenue, not to deny people their rights.*”

The core insight is that the problem is structural. Unclear law, inconsistent adjudication, and opaque administration interact to produce a system that is costly, unpredictable, and inequitable.

### Practical Patterns and Charging Opacity

To illustrate these findings, three tables: tables 2, 3 and 4, summarize practitioner stances, charging mismatches, and litigation impacts.

**Table 2: Practitioner Stance on Stamping**

Stance	Group(s)	Share of Respondents	Rationale	Observed Consequence
Stamp everything	Lawyers, Registrars	≈60%	Avoid evidentiary objections; judicial variance	Higher costs; defensive practice
Stamp specific instruments	Lawyers, Registrars	≈40%	Belief Act 689 targets specific instruments	Inconsistent application; uncertainty

**Table 3: Charging and Stamp Impression Mismatch (Officer Confirmed)**

Document Type	Total Charged (Example)	Stamp Impression (Example)	Undisclosed Internal Split	Public Awareness
Land conveyance	GHC 717	GHC 358.50	Portion to GhanaGov; remainder retained	Low
Lease agreement	GHC 3000	GHC 1500	Varies by instrument type	Low
Mortgage	GHC 1,200	GHC 600	Varies by instrument type	Low
Power of Attorney	GHC 143	GHC 71.50	Portion to GhanaGov; remainder retained	Low

*Note: Figures are illustrative of reported patterns; the precise split and schedule are not publicly available, which itself constitutes a transparency failure.*

**Table 4: Litigation Impact**

Challenge	Interview Evidence	Impact on Justice
Ambiguity in law	Split practitioner strategies; judicial discretion	Overstamping; unpredictability
Admissibility inconsistency	Judges allow/deny curative stamping	Adjournments; tactical objections
Opaque charging	Lump-sum estimates; stamp impression mismatch	Inflated costs, negotiation, distrust
Financial exclusion	Poor litigants abandon claims	Substantive rights forfeited

### Proposed Reforms

The findings of this study reveal that Ghana's stamp duty regime continues to suffer from statutory ambiguity and institutional opacity, even though judicial inconsistency has now been resolved by the Supreme Court. The Court's ruling in *Nii Aflah v. Boateng* has clarified that stamping is a statutory precondition for admissibility, thereby eliminating doctrinal oscillation. The challenge now lies in the opaque practices of institutions charged with administering duties (Phixon-Owoo, 2025). Comparative perspectives demonstrate that these challenges are not insurmountable; other jurisdictions have successfully reformed their systems through legislative clarity, transparency, and technological innovation. Building on doctrinal analysis, empirical evidence, and comparative lessons, this section proposes reforms that are legal, institutional, technological, and policy-oriented.

### Institutional Reforms

Although the Stamp Duty (Amendment) Act, 2023, has provided statutory clarity by listing instruments subject to duty and exemptions, institutional practice at the Lands Commission continues to undermine the intent of the law. Officers routinely stamp all documents indiscriminately, disregarding exemptions, and often apply charges on a per-page basis rather than per instrument. This practice inflates costs far beyond the statutory schedule and contradicts the legislative framework. The situation is compounded by opaque revenue handling, where only part of the duty paid is reflected on the face of the stamped document, leaving citizens unaware of the full amount remitted and retained.

Institutional reform must therefore focus on compliance and transparency. The Lands Commission should be required to apply the exemptions provided in the Act and to charge duty per instrument rather than per page. Standardized fee schedules must be published and made accessible to the public, clearly indicating the total duty payable and the breakdown of remittances to GhanaGov and Commission retention. Itemized receipts should accompany every transaction, ensuring that litigants can verify charges against statutory schedules. Oversight mechanisms, including independent audits and mandatory public reporting, are essential to curb exploitation and restore trust. Training and accountability frameworks must also be introduced so that officers act in accordance with the law rather than informal instructions.

By aligning institutional practice with statutory clarity, these reforms would eliminate the current disconnect between legislation and enforcement, reduce opportunities for exploitation, and ensure that the benefits of the Amendment Act are realized in practice.

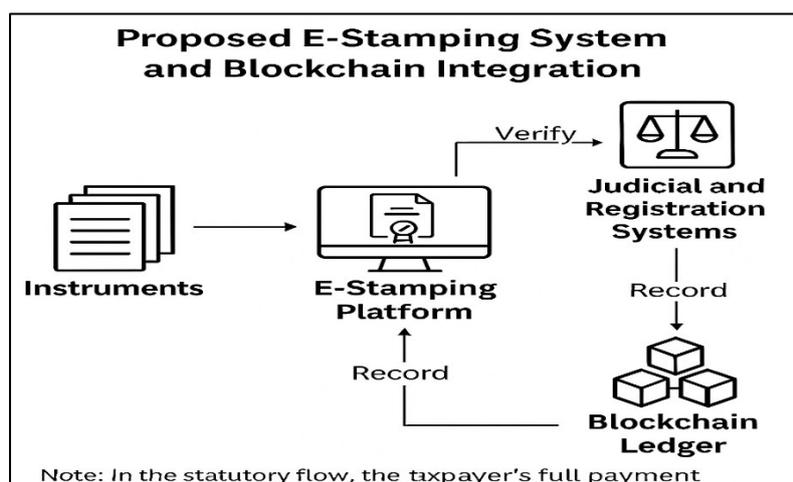
### Technological Reforms

Technology offers the most effective pathway to embed transparency, predictability, and compliance into Ghana's stamp duty administration. While the *Stamp Duty (Amendment) Act 2023* has codified instruments and exemptions, institutional practice continues to disregard these provisions, with officers indiscriminately stamping all documents, charging per page rather than per instrument, and concealing portions of the duty paid. These practices highlight the urgent need for technological systems that remove discretion and enforce statutory rules automatically.

An e-stamping platform, modeled on successful systems in India and Kenya, would automate fee computation, apply exemptions consistently, and generate tamper-proof digital certificates. By linking charges to instruments rather than pages, such a system would eliminate the inflationary practice of per-page stamping. Publicly accessible online fee calculators could further empower litigants to determine liability in advance, reducing opportunities for arbitrary negotiation. Integration with judicial and land registration systems would allow courts to verify compliance in real time, ensuring that admissibility disputes are resolved by reference to transparent, digital records rather than discretionary assessments.

In the longer term, blockchain-based verification could provide immutable records of duty payments, enhancing auditability and preventing concealment of revenue splits. To illustrate this proposed reform, Figure 2 presents a simplified diagram of how e-stamping and blockchain integration would function.

**Figure 2. Proposed e-Stamping System and Blockchain Integration.**



*Note. The diagram shows how instruments are processed through an e-stamping platform that applies statutory rules automatically. Verified records are shared with judicial and registration systems, while payment data is immutably recorded on a blockchain ledger. This system eliminates discretion, enforces exemptions, and restores transparency in stamp duty administration.*



The adoption of e-stamping is therefore not simply a modernization initiative but a necessary reform to align institutional practice with legislative intent and constitutional guarantees of access to justice.

### **Equity and Judicial Consequences in Stamp Duty Administration**

The judicial interpretation of the Stamp Duty Act, as affirmed in *Nii Aflah v. Boateng (2023)*, has clarified that unstamped instruments are inadmissible in evidence, even where they otherwise satisfy all elements of a valid contract. This interpretation, while doctrinally consistent, produces harsh consequences: litigants who enter valid agreements but fail to stamp them, often due to lack of legal guidance, find their documents excluded, rendering such contracts practically unenforceable until stamped. In effect, documentary contracts face a higher evidentiary threshold than oral agreements, which remain admissible without stamping. This disparity indirectly discriminates against parties relying on written instruments, raising constitutional concerns under Article 17 on equality before the law.

Beyond doctrinal clarity, reforms must also address the equity dimension of stamp duty. The law currently imposes uniform charges without regard to litigants' socioeconomic status, disproportionately burdening low-income citizens. Policy interventions could include subsidized or waived duties for indigent litigants, particularly in cases involving fundamental rights or small claims. While such measures require fiscal action by the Ministry of Finance rather than judicial reform alone, they remain essential for aligning tax policy with constitutional guarantees of fairness and access to justice. Complementary measures such as public education campaigns would further empower citizens to understand their obligations, reducing reliance on discretionary guidance from officials.

Taken together, these reforms, statutory amendment to remove discriminatory evidentiary effects, fiscal interventions to protect vulnerable litigants, and public education to enhance compliance, would transform stamp duty administration into a system that is not only transparent and predictable but also equitable in its impact across socioeconomic groups. Parliament and policymakers must therefore revisit the current regime to ensure that stamp duty serves justice rather than obstructs it.

### **Integrated Reform Agenda**

Taken together, these reforms form an integrated agenda: statutory clarity to eliminate ambiguity, institutional transparency to curb exploitation, technological innovation to embed predictability, and policy interventions to protect vulnerable litigants. Implementing this agenda would transform stamp duty from a barrier to justice into a transparent, predictable, and equitable instrument of fiscal policy and legal procedure.

## **CONCLUSION**

This study has shown that Ghana's stamp duty regime, though firmly anchored in statutory instruments such as the Stamp Duty Act, 2005 (Act 689) and the Evidence Act, 1975 (NRCD 323), has undergone significant transformation. Doctrinal ambiguity that once characterized judicial treatment of unstamped documents has now been resolved by the Supreme Court in *Nii Aflah v. Boateng [2023]*, which held that stamping is a statutory precondition for



admissibility. The Stamp Duty (Amendment) Act, 2023 further reinforced this clarity by codifying a definitive list of instruments requiring stamping, outlining exemptions, and updating charges to reflect redenomination and economic realities.

Yet despite this doctrinal and statutory clarity, institutional practice continues to undermine the regime. Officers of the Lands Commission indiscriminately stamp all documents, disregard exemptions, and impose charges on a per-page basis rather than per instrument. Citizens are further disadvantaged by opaque revenue handling, where only part of the duty paid is reflected on the face of the stamped document. These practices inflate litigation costs, disproportionately burden poor litigants, and erode public trust in the justice system. The problem is therefore no longer one of judicial inconsistency or statutory silence, but of administrative non-compliance and exploitation.

Comparative perspectives from jurisdictions such as the United Kingdom, India, Kenya, South Africa, and Nigeria demonstrate that clarity and fairness in stamp duty administration are achievable through transparent fee structures, digitized systems, and consistent application of statutory exemptions. Ghana must therefore move beyond doctrinal resolution to institutional reform, ensuring that the clarity provided by law is matched by compliance in practice.

Drawing on doctrinal, empirical, and comparative insights, this study has proposed an integrated reform agenda. Legal reforms should ensure statutory provisions are enforced as written; institutional reforms must eliminate per-page charging, publish standardized fee schedules, and disclose revenue splits; technological reforms should embed compliance through e-stamping, online calculators, and verifiable digital certificates; and policy reforms should protect indigent litigants and educate the public about their rights. Together, these reforms would transform stamp duty from a barrier to justice into a transparent, predictable, and equitable instrument of fiscal policy and legal procedure.

### **Future Research Directions**

Future research should now focus less on doctrinal ambiguity and more on institutional behavior and enforcement. Quantitative studies could measure the financial burden of per-page charging versus per-instrument charging, particularly for multi-paged conveyances and leases. Economic analyses could assess the feasibility and impact of e-stamping, including cost savings and efficiency gains. Socio-legal studies could explore how institutional disregard for statutory exemptions perpetuates inequality and undermines constitutional rights to fair trial and property. Finally, institutional research into the governance of the Lands Commission, including the dynamics of the GhanaGov/Lands Commission revenue split and the incentives driving officer behavior, would provide critical insights into accountability and reform.

Such research would enrich academic discourse and provide policymakers with evidence-based guidance for aligning Ghana's stamp duty regime with international best practices and constitutional commitments.



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