IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX (CRIMINAL DIVISION "2") HELD IN ACCRA ON MONDAY, 20TH DAY OF DECEMBER, 2023 BEFORE HER LADYSHIP JUSTICE MARIE-LOUISE SIMMONS (MRS.), JUSTICE OF THE HIGH COURT

SUIT NO.: CR/0448/2023

THE REPUBLIC

VRS.

VINCENT MAWULI FEDIELEY
EX-PARTE: ESTHER ATTA-KONADU

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JUDGMENT

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THE APPLICATION FILED AND SERVICE OF SAME

The Applicant originated this action, praying this Court to commit the Respondent for Contempt of Court for failing to respect and act upon the Orders of the District Court, Teshie-Nungua, Accra given on the 2nd September 2021. The said order was for the Applicant to go for her grandchild, Emmanella Abena Fedieley from the Respondent's house on the 4th September 2021 at 8:30am to 3:00pm same day. This order, according to the Applicant, she was unable carry out because the Respondent, who is the father of the child made it difficult, impracticable or impossible for her to fulfill. I will later come back to provide the detailed facts leading to the making of this order.

The application was filed on the 29th September 2023, it is supported by a 17 paged affidavit in support and two (2) annexures. Exhibit A is a memorial picture of the

beautiful deceased daughter of the Applicant and wife of the Respondent, Deborah Abena Minka Atta-Konadu, indicating her death in 2019. Exhibit B is a certified true copy of the proceedings of the District Court, Teshie-Nungua dated the 2nd September 2021. On the return date of the application on the 16th October 2023, there was an affidavit of non-service of this application on the Respondent. The affidavit indicated that the bailiff had made three (3) attempts at service on the Respondent without success. The bailiff stated that on all three (3) occasions, the Respondent was not met at home. He further indicated that, he had sent a personal text message to the Respondent who replied that he was "not around". Counsel for the Applicant on this day, also informed the Court that the bailiff had called to inform her that the Respondent had expressed to him his intention to meet him, the bailiff to pick up the application.

The case was therefore adjourned for service to be effected. On the subsequent adjourned date, it had become obvious that the Respondent was in some way not available to be served. The application was adjourned to the 30th October 2023. On this day, the Applicant's counsel now informed the Court of her intention to request to apply for Substituted Service of the application on the Respondent since he seemed to be avoiding service of the application.

On the basis of that information, the Court obliged the Applicant and her counsel another date to file their application for Substituted Service. After demonstrating three (3) attempts at service without success on the Respondent, the Court granted the said application for Substituted Service on 6th November pursuant to Order 7 Rule 6 of C.I 47. The Applicant was to paste copies of the Contempt application on the Notice Board of this Court and at the Respondent's place of residence at Teshie in Accra, which orders were subsequently complied with.

The Respondent now having been served and being aware of the application appeared in Court on the 20th November with his counsel and was granted the opportunity to file his response which he did by the filing of an affidavit in opposition on the 20th November 2023. The 28 paragraphed Affidavit in Opposition was annexed by documents that included the **Exhibit 1 series** comprising, the application for Grant of Access filed before the Family Tribunal, Teshie-Nungua on the 8th June 2021 by the Applicant herein, the 64 paragraphed affidavit of the Respondent herein in opposition to that application. There is also annexed to the application, the proceedings of the aforementioned District Court on the 22nd July 2021, 10th August 2021, 2nd September 2021 and 5th October 2021. The **Exhibit 2 series** attached also include an application for Leave to Appeal against the Orders of the Court on 22nd July 2021 and the 5th October 2021 which had attached to it the proceedings of the 2nd September 2021 as well as a proposed Notice of Appeal to the Court of appeal.

In addition, the affidavit in opposition also has attached to it, the **Exhibit 3 series** documents which also include the Writ of Summons and claim of the main Application for access before the Family Tribunal. There is proof of service of his opposition on the Applicant's counsel on the 21st November 2023. **Upon receipt of same, the Applicant through her lawyers filed a supplementary affidavit in support on the 5th December 203 which application was later withdrawn and struck out accordingly on the 11th December 2023.**

THE ANTECEDENTS OF THIS APPLICATION

The Applicant herein was the mother in-law of the Respondent until the death of her daughter and wife of the Respondent respectively. The late, Deborah Atta-Konadu is said to have married the Respondent on the 4th November 2017 and died on the 23rd January 2019. Before her death, she had a child, the subject matter of this application,

who according to the Applicant's affidavit was born on the 20th September 2018 while the Respondent also disputes that and states in his affidavit in his opposition that the child was born rather on the 11th September 2018. From the affidavit of the Respondent, the deceased was a known sickle cell patient who died of complications of the said disease and died about five (5) months after delivery. Both parties agree that after the death of Deborah, the Respondent allowed the baby to live with and to be taken care of by the Applicant for about one and half to two (2) years until the Respondent went for the child and didn't send her back to the Applicant. It was as result of not allegedly being granted access to the child that the Applicant and her daughter, Bridget Atta-Konadu, in their capacities as grandmother and aunt instituted the action for access to the child at the District Court.

THE DEPOSITIONS AND SUBMISSIONS MADE

The Applicant deposed to her affidavits, the most relevant portions to the determination of this application are:

> *4. That I am the maternal grandmother of the infant named Emmanuella Abena Fedieley (hereinafter called the infant) and the Applicant in suit No. GTNDCA 11/ 14/21*
>
> *5. That the Respondent herein (my ex son in-law) and Deborah Atta-Konadu (my deceased daughter) got married on the 4th November 2017.*
>
> *6. That on the 20th September 2018, the infant was born to Respondent and Deborah*
>
> *9. That I was with my granddaughter since she was born and had to continue to take care of her upon the demise of my daughter until she was two (2) years old when Respondent took her away for as sleepover for the first time without returning the infant since 4th December 2020.*
>
> *10. That all efforts to have access to the infant have been rendered fruitless by the Respondent.*

11. That pursuant to the Respondent's attitude, I filed an application for Grant of Access to Emmanuella Abena Fedieley at the Teshie-Nungua District Court on the 8th June 2021.

12. That in the course of the proceedings, the Court on 2nd September 2021 gave an Order for the Respondent to grant me interim access to the infant. Attached hereto is a copy of the Court Notes containing the said Order marked exhibit B.

13. That the said Court Order for the grant of interim access to the infant was to take effect on Saturday 4th September 2012 from 8:30am to 3pm the same day.

14. The Respondent refused to comply with the said Court Order.

15. That till date, Respondent has still refused to grant me access to the infant contrary to what the Court ordered. Respondent has refused to answer my calls and has refused to allow me entry into his house to pick the infant since the Court Order was given.

16. The conduct of the Respondent demonstrated clearly demonstrates his total disregard and contempt for the administration of justice and the orders of the Honourable Court.

In her *viva voce* submissions, counsel for the Applicant relied on the motion paper and its supporting affidavit and annexures. She submitted *inter alia* to the Court, the law on Contempt of Court and gave three (3) grounds that constitutes same as laid down in the case of **THE REPUBLIC VS. SITO, EX-PARTE: FORDJOUR (2001-2002) SCGLR page 322**. In support of the 3rd ground on contempt as submitted that being present in Court on the day the Order was made constitutes sufficient notice of the Order of the Court on the Respondent, counsel referred the Court to the case of the **REPUBLIC VS. BEKOE AND ORS, EX-PARTE: ADJEI (1982-1983) GLR at page 95.** It was emphasized that, the Applicant took legitimate steps to have access to the child after the Order. The steps included placing several calls to the Respondent in order to pick up the child, but who never answered the calls. There was also several attempts to go to the house of the Respondent every Saturday for four (4) weeks without being granted entry by the Respondent. It was finally submitted that, the Respondent had

willfully disobeyed the Court's Orders and had exhibited total disregard for the authority of the Court and to the administration of justice and "*must be dealt with according to law until he purges himself of the contempt*".

The Respondent's affidavit in opposition also has the following relevant depositions:

1. That I am the Respondent in the above application and the deponent herein.

3. That I have been served with the Applicant's Motion on Notice for Committal for Contempt of Court and I am opposed to same.

5. That my attention was called to the fact that the application for contempt had been pasted on the gate of my house on Tuesday the 14th November 2023 with an Order to put in an appearances on the 20th November 2023.

6. That I find that the application is premised on alleged breached of the Orders of the District Court, Family Tribunal at Teshie-Nungua.

11. That in further opposition to paragraph 9 of the affidavit in support, I went for my daughter from the house of the Applicant when she developed an infection and was admitted at the Ridge Hospital for more than two weeks, which hospital bills were paid by me, and on the day I removed her from the premises, I had paid a visit to the house to check on Emmanuella in the absence of both the Applicant and her daughter by name Bridget who left Emmanuella in the custody of Applicant's uncle when she was running a very high temperature and vomiting.

13. That I wished for my daughter to be brought fully recuperated by my side and that is when my woes with my mother in-law, not my ex-mother in-law, begun.

I7 That in opposition to paragraph 10 of the affidavit in support, I say that I have not denied the Applicant access to my daughter and she and my sister in-law have always been allowed into my house to be with my daughter, but after the Applicant formed the idea to persecute me, and one occasion forcefully attempt (sic) to put a huge chain around her neck when she came for one of her visits which left Emmanuella screaming to come from her fold. ***I have decided as the father of my child not to leave Emmanuella in her house alone without supervision until she is no longer vulnerable and can defend herself.***

Part of paragraph 18 which is relevant reads as follows:

18. I have the primary duty to seek the welfare and safety of my only child and that is not to allow a woman who screams curses and insults on me even in Court, to be given the opportunity to be alone with my daughter, until she is of an age to decide who she associates with.

20. That in opposition to paragraphs 12, 13, 14 and 15 of the affidavit in support, I avers that on the 22nd July 2021, a month after an application had been filed by the Applicant, I was denied to fair trial by the Court as the request to be given access to the child was made orally by the Applicant's lawyer after I had then just informed the Court my lawyer had withdrawn her services and I was being taken by the turn of events when the merits of my case had not been considered by the Court. Attached for the perusal of the Court is Exhibits 1 series which are copies of the Application for Grant of Access to Emmanuella Abena Fedieley, my affidavit in opposition and the Court Notes.

21. That on the 5th October 2023, the Court made additional Orders affirming the decision made on the 22nd July for the child to be given to the Respondent on the 4th September 2023.

22. That my lawyer sought to bring to the attention of the Court that she had not been instructed on this and that the case granted on the 4th September 2023 could not be executable but the Court paid no heed to her in my absence as I was working on that day. Attached for the perusal of the Court is Exhibit 2 which is copy of the Motion on Notice for Leave to Appeal against the Orders/Rulings of the Court dated 22nd July 2021 and 5th October 2021 which is yet to be moved

24. That the Applicant should only ask for particular day to come visit her granddaughter as all grandmothers do at my house (sic)

25. That as the Applicant has chosen the law Court to air her grievances against me, and no final or interim executable Order having been given by the trial Court, I have been advised and verily believe same that I should be given the opportunity to be heard on the issue of whether the Applicant is entitled to the application for which I have been summoned before the District Court, Teshie-Nungua

In her *viva voce* response to the application, counsel for the Respondent recapped most of the depositions made by the Respondent in his response to the effect that the trial Magistrate failed to listen to the Respondent on the day the Order was a made when he informed the Court that his counsel had withdrawn from the case. Counsel also submitted that with the Applicant not having made a formal application to the Court for interim access but just a *viva voce* one, the Court ought not to have entertained nor granted the said application. Again the argument of the Respondent and his counsel, was that the further confirmation of the Magistrate on the next adjourned date after the Order for the Respondent to grant the Applicant access to the child when the date for the said Order had already passed was void and of no effect and prayed the Court to dismiss the application. .

THE BEST INTEREST OF THE CHILD PRINCIPLE

I must state that this action arising out of proceedings that relates to access of an infant of about five (5) years, this Court is enjoined to seek to abide by the above stated principle in the determination of this application.

Section 2 of the **Children's Act of Ghana, 1998 (Act 560)** states as follows:

> *"(1) the best interest of the child shall be paramount* ***in any matter concerning a child***
>
> *(2) the best interest of the child shall be primary consideration by any court or person, Institution or other body* ***in any matter concerned with a child****"*

Section 1 defines a child as a person below the age of eighteen (18) years. The Welfare Principle has been espoused in several decided cases including the following:

ATTU VS. ATTU (1984-86) 2 GLR 743-752, GRAY VS. GRAY (1971) 1 GLR 422, OPOKU-OWUSU VS. OPOKU OWUSU (1973) 2 GLR 349, MICHEAL KYEI

BAFFOUR VS. GLORIA CARLIS ANAMAN DATED 23RD JANUARY 2018, CA. WELBOURNE JA

THE LAW ON CONTEMPT

The power to punish for Contempt of Court as a common law offence has been saved by the Constitution of Ghana and reserved for the Superior Courts. See **Article 19 (2) and 126 (2) of the 1992 Constitution; Section 36 of the Courts Act, 1993 (Act 459) as amended by the Courts (Amendment) Act, 2002 (Act 620).**

The law of contempt has been defined by the Merriam – Webster's Dictionary of Law as follows:

> "*willful disobedience or open disrespect of the orders, authority, or dignity of a Court or a judge acting in a judicial capacity by disruptive language, or conduct or by failure to obey the court's orders*."

The **Black's Law Dictionary, 9th Edition by Bryan A. Garner as Editor in Chief** at page 360 also defines contempt as:

> "*a conduct that defies the authority or dignity of a Court or legislature. Because, such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment."*

In the old English case of **HELMORE VS. SMITH (NO.2) (1887) 35 CHANCERY DIVISION, 449 AT 455,** Lord Justice Bowen succinctly explained the object of the Law of contempt as follows:

> "*The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the judge, but to prevent undue interference with the administration of justice. The question, therefore, here is whether there has been an interference with the administration of justice*."

The power of contempt is rarely invoked by the Court. It is only invoked when the dignity, respect and the authority of the Court is threatened. It has been said that these powers are given to the Courts to keep the course of justice free. The power of contempt by the Court is of great importance to society. By the exercise of the power of contempt, law and order prevail. Those who are interested in wrong are shown that the law is irresistible.

See cases such as **REPUBLIC VS. MENSAH BONSU AND OTHERS; EX-PARTE: ATTORNEY GENERAL (1995-1996) 1 GLR 377 SC, REPUBLIC VS. LIBERTY PRESS LTD & OTHERS (1968) GLR 123, REPUBLIC VS. HIGH COURT (LAND DIVISION) ACCRA, EX-PARTE: KENNEDY OHENE AGYAPONG (2020) 170 GMJ 1 SC** and **OPOKU VS. LIBHERR FRANCE SAS AND ANOTHER (2012) 1 SCGLR 159**

The jurisdiction of the Court in Contempt Proceedings is properly invoked under the Rules of Court by either **(i) Order 50 or (ii) Order 43 of C.I. 47 depending on the nature of the Application**. The procedure is, however, not exhaustive but for the purpose of this ruling the Court would consider only the above two.

Order 50 Rule (1) of C.I. 47 under which the Applicant mounted his application provides:

(i) Order 50 Rule 1:

"1. (1) the power of the Court to punish for Contempt of Court may be exercised by an order of committal.

(2) Committal proceedings shall be commenced by an application to the Court.

(3) The application shall be supported by an affidavit stating inter alia the grounds of the application."

(ii) <u>Order 43 Rules (5) and (7) of C.I. 47</u>

It is respectively stated in C.I. 47:

Order 43 rule 5:

"5. (1) Where

(a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or within that time as extended or reduced under Order 80 rule 4; or

(b) a person disobeys a judgment or order requiring the person to abstain from doing an act.

The judgment or order may subject to these Rules be enforced by one or more of the following means

(c) an order of committal against that person or, where that person is a body corporate, against any director or other officer."

Order 43 Rule 7:

*"7. (1) in this Rule references to an **order** shall be construed as including references to a **judgment**.*

(2) Subject to Orders 21 Rule 14 (2) and 22, Rule 6 (3) and sub-rule (6) of this rule, an order shall not be enforced under Rule 5 unless

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

(b) in the case of an order requiring a person to do an act, the copy has been served before the expiration of the time within which the person was required to do the act.

(4) There shall be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served

(a) in the case of service under sub-rule (2), that if the person neglects to obey the order within the time specified in the order, or, if the order is to abstain from doing an act, that if the person disobeys the order, the person is liable to process of execution; and

(5) With the copy of an order required to be served under this rule, being an order that requires a person to do an act, there shall also be served a copy of any order made under Order 80 rule 4 extending or reducing the time for doing the act and, where the first-mentioned order is made under rule 5 (3) or 6, a copy of the previous order requiring the act to be done,

(6) Without prejudice to its powers under Order 7 rule 6, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so."

From the above authorities, two situations by which a person may be liable for contempt ***are (i) disregarding an Order of the Court, or (ii) conducting oneself in a manner that interferes with the fair administration of the law/justice.*** The Applicant brought her application under Order 50.

CLASSIFICATION OF THE LAW OF CONTEMPT

The law on contempt as found in the constitution and in Statutory provisions and Rules aforementioned have not been classified. However, textbook writers and case law have over the years provided the Courts with some classification which have aided in the determination of contempt cases. The renowned S.A Brobbey JSC (Retired) in his book **"THE LAW OF CHIEFTANCY IN GHANA"** incorporating, *inter alia* Contempt of Court, has stated at page 461 the different types of accepted

classification as "direct and indirect" on one hand and "civil and criminal" on another. This classification is supported by cases such as **THE REPUBLIC VS. NUMAPAU, PRESIDENT OF THE NATOINAL HOUSE OF CHIEFS, EX-PARTE: AMEYAW 11 (NO.2) (1998-1999) SCGLR 639** which espoused the classification as follows:

> *"Contempt of Court might be classified either as direct or indirect or civil and criminal. Direct contempt were those committed in the immediate view and presence of the Court (such as insulting language or acts of violence) or so near the presence of the Court as to obstruct or interrupt the due and orderly course of proceedings. Indirect or constrictive contempt were those arising from matter's occurring in or near the presence of the Court which tends to obstruct or defeat the administration of justice, such as failure or refusal of a party to obey a lawful order, injunction or decree of the Court laying upon him a duty of action or forbearance. Civil contempt's were these quasi contempt's consisting in failure to do something which the party was ordered by the Court to do for the benefit or advantage of another party to pending proceedings, while criminal contempt's were acts done in respect of the Court or its processes or which obstructed the administration of justice or tended to bring the court into disrespect."*

In the case of **THE REPUBLIC VS. THE MANAGING DIRECTOR, STATE HOUSING CO. LTD., EX-PARTE: MRS. M.Y. N ACHIAMPONG (2018) JELR 65309 CA**, the court of appeal confirmed that:

> *"a civil contempt, consists in the refusal of a party to do something which it is ordered to do for the benefit or advantage of the opposite party, and the punishment is intended to satisfy the party whose interest has been injured."*

IN THE REPUBLIC VS. ESSASOHENE NANA BOAKYE AGYEMAN, EX-PARTE: NANA KAWAKU NSIAH (2016) JELR 65573, CA, AYEBI JA explained civil contempt thus:

> *"…on the other hand, civil contempt is an act by a person which is an affront to an order or decision delivered by a Court. Such an order shall be clear and unambiguous and the Applicant should have willfully disobeyed it."*

See also **THE REPUBLIC VS. OPANIN F.O. OSEI AND OTHERS, EX-PARTE: ABUSUAPANIN SAMUEL ODOI & OTHERS (2017) JELR 655901, CA**

In view of the above stated decisions and others, this Court will treat this application as a civil contempt and therefore regulated by **Order 43 of C.I 47**

THE ELEMENTS OF CONTEMPT

Upon reliance on the 1992 Constitution, Statutory provisions and Rules on contempt, the Courts have developed the elements or ingredients of contempt for an Applicant to fulfil in order to succeed. In the case of **REPUBLIC VS. SITO 1, EX-PARTE: FORDJOUR (2001-2022) SCGLR 322**, the Supreme Court set down the ingredients which have to be proved in contempt as follows:

a. *There must be a judgment or an order requiring the contemnor to do or abstain from doing something.*
b. *It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing.*
c. *It must be shown that he failed to comply with the terms of the Judgment or the order and that his disobedience was wilful.*

BURDEN OF PROOF

The burden of proof in the sense of the burden of establishing the guilt of a Respondent is always on the Applicant. To obtain a Committal Order for Contempt, the Applicant must strictly prove beyond all reasonable doubt that the Respondent had willfully disobeyed and/or violated the Court's Order and/or the conduct of the Respondent tends to bring the authority and the administration of the law into disrepute. In the absence of such evidence, the Respondent cannot be guilty of Contempt of Court.

See **REPUBLIC VS. S.K. BOATENG & ORS, EX-PARTE: AGYENIM BOATENG & ORS (2009) 25 MLRG 34; (2009) SCGLR 154, AGBLETA VS. THE REPUBLIC (1977) 1 GLR 445, C.A**

In the **Evidence Act, 1975 (NRCD 323), Section 15 (1**), the same principle is put thus:

> *"unless and until it is shifted, the party claiming that a person is guilty of a crime or wrongdoing has the burden of persuasion on that issue".*

STANDARD OF PROOF

The Standard of Proof required in the case of a quasi-criminal case like Contempt is proof beyond reasonable doubt and has been amply stated in **Section 13 (1) of the Evidence Act, 1975 (NRCD 323)** as follows:

> "*in any civil or criminal action the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt*."

Thus a quasi-criminal case cannot be proved on a balance of probabilities. On the standard of proof required to ground Contempt of Court, it was held in the **REPUBLIC VS. S.K. BOATENG & ORS, EX-PARTE AGYENIM BOATENG & ORS (2009) 25 MLRG 34 @ 39** as follows:

> "*Since Contempt of Court was quasi-criminal and the punishment for it might include a fine or imprisonment, the standard of proof required was proof beyond reasonable doubt, an Applicant must, therefore, first make out a prima facie case of contempt before the Court considers the defenses put upon by the Respondents*."

See **IN RE EFFIDUASE STOOL AFFAIRS (NO. 2); REPUBLIC VS. NUMAPAU, PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS** (supra) it was stated:

> "*The burden of proving contempt in the instant case rests on the Applicant and the standard of proof required in proving contempt is proof beyond reasonable doubt"*

The principle was also stated by the Supreme Court in the case of **AKELE VS. COFFIE & ANOR (CONSOLIDATED) (1979) GLR 84-90** as follows:

> "…i*n order to establish contempt of court even* ***when it was not criminal contempt but civil contempt,*** *there must be proof beyond reasonable doubt that a contempt of court had indeed been committed…"*

See also **KANGA VS. KYEREH (1979) GLR 458**.

THE ANALYSIS BY THE COURT

I have carefully read the application, the affidavits both for and against the application as well as listened to and taken note of the oral submissions made by counsel for the parties. Considering the elements for an Applicant to establish for a civil contempt as enumerated above, there is no doubt that an order was made by the District Court, Teshie-Nungua sitting as the family tribunal on the 2nd of September 2021. The proceedings of the court for the day has been attached to the application's application as exhibit B well as to the respondents affidavit also as exhibit A. the order states as follows:

> *"This Court having duly considered the viva voce application for interim access of the child in question and a grandchild to the Applicant herein is minded to grant the said application and same is hereby granted to the extent that the Applicant goes for her grandchild, Emmanuella Abena Fedieley from the Respondent house on Saturday 4th September, 2021 at 8:30am and return her the same day at 3pm."*

It is important to point out that somehow, perhaps inadvertently, the Respondent's counsel failed to state the date of the order in her oral submissions. Similarly, the Respondent's affidavit in opposition also failed to state same. In fact, in the affidavit in opposition, the date that the said order is said to have been made (in alleged disregard of the Respondent's right to fair trial) is stated as 22nd July 2021. Meanwhile, the proceedings for 22nd July 2021 as attached indicates that no order in relation to this case was made by the District Court, Teshie-Nungua. Be that as it may, at least both counsel acknowledge in their oral submissions made and in their respective affidavits that the order was for the Applicant to have access to the child on the 4th September 2021.

A careful reading of the order shows that the Respondent was not expressly or actually asked to do anything. It was rather the Applicant who was to go for her grandchild from the house of the Respondent on a particular day and time and return her same day. However, it is obvious and common sense will dictate, that without the consent, permission or means of entry granted by the Respondent, the child could not be picked up and therefore access to the Applicant would be impossible. The Applicant under her paragraph 15 of her supporting affidavit explains that she made positive efforts to go for the child and to have access to her as ordered by the Court but could not, due to the refusal of the Respondent to allow her. She states that she made calls to the Respondent who refused to pick the calls and also went to the house of the Respondent who refused her entry to pick up the child.

In Respondent's affidavit in opposition, paragraph 23 in direct response to paragraph 15 of the Applicant's affidavit in support, the Respondent denies that he failed to grant the Applicant access to the child. Quite contrary however, he went on to provide reasons why he is "scared and apprehensive" to release his daughter into the custody of the Applicant "without supervision". He makes similar depositions of his reluctance and perhaps refusal to grant the Applicant access in paragraphs 17 and 18. For emphasis may I restate the relevant part of 17 as follows:

> *"I have decided as the father of my child not to leave Emmanuella in her house alone without supervision until she is no longer vulnerable and can defend herself."*

Paragraph 18 reads as follows:

> *"…that in further opposition to paragraph 10 of the affidavit in support, I aver that the Applicant and her relatives have tries severally to intimidate me and cause disaffection in my workplace seeking my dismissal by making unfounded allegations against me and seeking to turn my colleague's against me and the lengths at which they have gone to only strengthen my resolve not to give them unfettered access to my daughter, and by this, as the only living parent of my daughter, I have the primary duty to seek the welfare and safety of my only child, and that is not to allow a woman who screams curses and insults on me, even in Court, to be given the opportunity to be alone with my daughter, until she is of an age to decide who she associates with."*

It is clear from the above depositions quoted that the Applicant's assertion that the Respondent refused her access to the child cannot be in doubt. Both the affidavit in opposition and the *viva voce* submissions of the Respondent portrays the two main inhibitions he has, the reason for his failure to grant access. One was the reasons quoted above, being that the Applicant's alleged insultive and bad behaviors towards him, and two (2), the alleged failure of the Magistrate to grant him audience in the absence of his counsel on the day of the order.

His paragraphs 20, 25 and 26 makes it clear that it is his belief that no final or executable interim order has been given by the District Court and believes that he must have been given a chance to be heard on whether the Applicant is entitled to the said order for access. He goes ahead under paragraph 26 of his affidavits in opposition to state that he has caused to be filed on his behalf an appeal against the order of the District Court. No such Notice of Appeal has been exhibited before this Court, but rather a proposed Notice of Appeal filed on the 29th October 2021 attached to a Motion for Leave to file an Appeal out of time. A perusal of the proposed Notice of Appeal points out that the proposed appeal will be against the order of the District Court, Teshie-Nungua on the 22nd July 2021 and 5th October 2021 and not the order of the 2nd September 2021 which the Applicant exhibited which granted her access to the child on the 4th of September 2021.

I need to comment that the Respondent and his counsel seem to have been confused with the dates and order of proceedings and have presented quite a murky response in the arrangement of documentation. At paragraph 8 of his response even the date of birth of his daughter in issue is obviously stated wrongly, giving the year of birth as 2023. The response of the Respondent and numerous outburst of reluctance to give the child to the Applicant makes it certain that he knew exactly what the order was about and knew that he had to give the Applicant access. As quoted above, he has also provided his reasons why he believes the Applicant should not have been granted access. At his paragraph 24, he provides his own perspective on what kind of access grandmothers should have to their grandchildren when he states:

> *"That the applicant should only ask for a particular day to come visit her granddaughter as all grandmother's do (at my house) (sic).*

I have found as a matter of fact that there was an order of the District Court, Teshie-Nungua given on the 2nd September 2021, which order relates to the grant of access for the Applicant herein of her grandchild, Emmauella Abena Fideiley for the 4th

September 2021 from 8:30am to 3pm. The Respondent's counsel in her submission argues that the Applicant failed to provide evidence before this Court that the Respondent was served with a copy of the order of the District Court. On the other hand, the Applicant's counsel in her submission also submitted that the Exhibit B, which she attached the proceedings of the Court on the 2nd September 2021 clearly confirms that the Respondent was in Court on the day the order was made and therefore had sufficient notice of the order. She supported her argument with the case of **REPUBLIC VS. BEKOE AND OTHERS** (stated supra).

Civil contempt as enumerated above, involves the disobedience of a Court's injunctive or enforceable order, and those proceedings are regulated by **Order 43 of C.I 47**, precisely 5 (1) (b) and Rule 7 (2). The Supreme Court speaking through Atuguba JSC in the case of **THE REPUBLIC VS. HIGH COURT (COMMERCIAL DIVISION) ACCRA, EX-PARTE: MILLICOM GH LTD AND OTHERS (2009) SCGLR 41** on the legal effect of **Order 43 Rule 5 (1) (b) (c)** and **Order 43 Rule (7) of C.I 47** stated *inter alia:*

> *"…that specifically relates to the enforcement of (a) judgment or orders to do or abstain from doing an act and therefore governs the application in this case… as the Applicant chose enforcement by means of committal, the relevant provision is particularly on the facts of the case, Order 43 Rules 5 (1) (b) (c) … it is plain that under these rules, without service on the relevant Directors or Officers, as in this case, committals cannot lie. I say this not oblivious to the fact that the word "may" is used in the Rule 5 (1) (b) (c) in* ***REPUBLIC VS. BEKOE OSEI HWERE J,*** *as aptly quoted by the Applicant's counsel also held* ***that it was a legitimate defense to a charge of contempt that the person charged had had no notice of the order, a person could not be guilty of an order of the Court of which he had had no notice. The application had failed to satisfy the Court that the Respondent had notice of the order of the Judicial Committee prior to the date of the alleged contempt, either because they were present in Court when the interim orders were made or that they***

were subsequently served on them. Although on the evidence, Respondents were represented by counsel before the committee, in matters of contempt, which would deprive the liberty of a subject actual, but not imputed, notice of the specific terms of the orders must be proved"

Also in **OKAI VS. MAWU (1976) 1 GLR 265,** the court held that:

"the alleged contemnor could not be convicted for breach of an order of injunction when he had ***no knowledge of the existence of the order****''*

It is evident from the cases cited that the emphasis has been that a person cannot held liable for contempt if he had no knowledge of the order. In such a situation, the Applicant is under a duty to ensure and proof actual service of the order.

The Supreme Court in the relatively recent case of **THE REPUBLIC VS. BANK OF GHANA AND 5 OTHERS, EX-PARTE: BENAJMIN DUFFOUR, CIVIL APPEAL NO. J4/43/2018 DATED 6TH JUNE 2018** explained in detail what constitutes contempt especially civil contempt to include:

"where a party knowing that a case is 'sub judice' engages in an act or omission which tends to prejudice or interfere with the fair trial of the case despite the absence of an order of the Court"

It can be therefore established even if there was no order granted or made but it is proved that the Respondent knew that the case was *sub judice* and acted in a manner that brought the administration of justice into disrepute or undermined that authority of the Court, contempt will lie. It goes without saying therefore, that if a person was in Court and had actual notice of the order and by virtue of the said notice of the order even goes ahead to file an application hoping to challenge the order then, good conscience and common sense must prevent that person from saying that he had no knowledge of the said order. It is sufficient if the contemnor knew of the order.

See the case of **CLEVELAND VS. ALEXANDRA (1966) GLR 758 at 761, per Edusei** J.

The depositions of the Respondent under paragraphs above mentioned paragraphs including his paragraphs 17, 18 23 24 and 25 establishes that he knew of the order and had provided reasons why he had willfully failed to obey the order of the Court. Willful disobedience has been defined as "not being accidental or unintentional". See **LUGUTERAH VS. NORTHERN ENGINEERING CO. LTD (1980) GLR 62**. The Applicant has proved the willful disobedience of the Respondent when she deposed that, the Respondent failed to pick several telephone calls after the order was made in order to pick up the child and also failed to allow her entrance of his house. The obvious responses of the Respondent that he would not allow the child to be with the Applicant until he believes the child is of good age to decide for herself and protect herself and the fact deposed to under paragraph 24 that, the Applicant should rather ask for a day to visit her grandchild at where the child is as all grandmothers do fully supports the Applicant's case of willful disobedience of the Respondent

In determining what was willful disobedience or inability to obey an order, the cases of **BAAH VS. BAAH (1973) 2 GLR 8** and **ASUMADU SAKYI 11 VS. OWUSU (1981) GLR 201, CA** must be referred to and distinguished. In the BAAH case, some executor's refused to pay monies as ordered by the Court because in their belief that the order was unreasonable and incorrect, and were held liable for contempt for disobedience of the Court Order. On the other hand in ASUAMDU SAKYI supra, the Court of Appeal found that the Appellant could simply not pay the amount ordered by the Court within the stipulated time. He was not held in contempt.

From a reading of the affidavit in opposition and the submission made it seems to me that the Respondent with the advice of his counsel have developed their own concept that the Magistrate acted unfairly against the Respondent, coupled with the allegations of the untoward attitude of the Applicant. **It must be borne in mind that,**

and it has been established that a party is not entitled to disobey an order of a Court merely because he thinks it is incorrect, wrong, unfair irregular or null and void.

The case of **REPUBLIC VS. HIGH COURT, ACCRA, EX-PARTE: AFODA SC (2001-2002) SCGLR AT PAGE 768**, the sanctity of the judicial system and the Courts is explained as follows:

> *"The fact that an order of, or a process from a Court of competent jurisdiction is perceived and considered void or erroneous should not give a party who is affected by the order, or to whom the process is directed, the slightest encouragement to disobey it, and when cited for contempt, only to turn round to justify the said disobedience by the fact that that order ought not to have been made or the process issued in the first place. The proper thing to do, is to either obey or sue for a declaration to that effect or apply to have it set aside. The proponent of the order then assumes the burden to justify the order on which he relies and so prove that the order or the process was not improvidently made. As a matter of public policy, it is important that the authority of the Court and the sanctity of its process be maintained at all times. It is dangerous to give a party and his counsel the right to decide which orders or process of the Court are lawful and therefore deserving of obedience, and if not, must be disobeyed. An order or process of a Court of competent jurisdiction cannot be impeached by disobedience.''*

In this case the Respondent, notwithstanding how unfair or wrong he believes the order of the District Court was, he has not taken any steps to set it aside apart from filing an application for leave to file an appeal out of time. Even if an appeal has been filed, which has not been exhibited in this Court, counsel may know or ought to know that it has been decided severally that an appeal does not operate as a stay. With the order having been still in existence on the 4th September 2021 and with the Magistrate having repeated the said order in the presence of the Respondent and his counsel, and having the chance to object to it, on the subsequent adjourned date of 5th September, the Respondent knew of the order and understood it but willfully failed to obey it.

From the forgoing, I find that the Applicant has proved her case against the Respondent for Contempt of Court. The Applicant has therefore been able to prove her application beyond reasonable doubt. The Respondent's non-compliance with the order is intentional and willful.

I accordingly find the Respondent liable for contempt and proceed to make a committal order against him. In deciding to punish the Respondent/contemnor, I have chosen to be mindful of the principle of best interest of the child as this application as stated earlier, is in relation to the custody of a child. The facts before this Court has made it clear that the Respondent has custody of the child and lives with her. I take cognizance of the fact that the 5year old whose only surviving parent is the Respondent stands to be affected by any punishment this Court may give out.

In the case of **ATTU VS. ATTU (1984-1986) 2 GLR 743-752**, as quoted in the case of **MICHEL KYEI BAFFOUR VS. GLORIA CARLIS ANAMAN, UNREPRTD DATED 23RD JANUARY 2018, CA**, Brobbey J explained the best interest principle when the Respondent of that case, the wife, a foreigner had taken the children of the marriage outside the country against the orders of the Court and without the consent of her husband, the Applicant.

The Court stated as follows:

> *"her conduct in spiriting the children out of Ghana in the full knowledge that the Court had ordered her not to take them away was held not to be that which any Court could condone. Her brazen disregard for the laws and Courts of the country is roundly deprecated. Taking children out of countries under such circumstances has been described as ''kidnapping'' and has also been frowned upon by all Courts all over the world. No Court of law would allow a person like that to benefit from the reprehensible conduct. Left with the conduct of the Respondent, the custody order would have been*

made in favor of the Applicant, but when one considers the welfare of the children, and weighing up where the children will profit better by staying with the Respondent."

Of course I appreciate the fact that this not a matrimonial case, however as earlier quoted, the best interest principle is to be applied in **any matter involving a child or infant.**

In the case of Michael Kyei Baffour stated supra, the Court of Appeal after quoting the case of **ATTU VS ATTU** aforementioned stated in similar terms that though the Respondent had also acted contemptuous, nonetheless, the paramount interest of the issues in the case will be considered and her conduct will not be used against her since the focus of the Court was always on the welfare of the child.

In the circumstance, having considered the relationship of the parties, with the view to promote peace and harmony and upon relying on the aforementioned cases, and principle of the best interest of the child, as well as listening to the Applicant's counsel and listening to the Respondent and his promise to the Court not to repeat such behavoiur, the Respondent is hereby cautioned and discharged.

JUSTICE MARIE-LOUISE SIMMONS (MRS)
(JUSTICE OF THE HIGH COURT)

COUNSEL:

PRINCESS ANITA NARTEY WITH WILLIAM FIANU HOLDING THE BRIEF OF SIMON OKYERE FOR THE APPLICANT

SARAH KUSI FOR THE RESPONDENT