

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, PROBATE AND L/A DIVISION, COURT '1' HELD IN ACCRA ON 19<sup>TH</sup> DECEMBER 2023, BEFORE HER LADYSHIP EUDORA CHRISTINA DADSON, HIGH COURT JUDGE.

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SUIT NO. PA/0077/2021

IN THE MATTER OF  
MARGARET MARTINA MAMAVI  
FLAT 21 BLEUBELL APARTMENT SWAN LANE  
WOODBERRY DOWN MANOR HOUSE  
LONDON N4 2GZ UNITED KINGDOM  
SUING PER HER LAWFUL ATTORNEY  
ROBERT QUAYE  
H/NO. B708/10  
AWUDOME ESTATE, NEA TV AFRICA STUDIOS  
ACCRA

VRS

1. ADMINISTRATORS OF THE ESTATE OF EMELIA FOFO MAMAVI NEE CLOTTEYFIO CLOTTEY
2. CHARLES OFORI OKINE
3. MARGAREET AKYEPONGMA BAAFO AKA BERFI ACHEAMPOMAA
4. NII TEIKO AKORSORKU IV
5. LOVE WAYNE ALL OF ACCRA

AND IN THE MATTER OF  
THE REPUBLIC

VS

1. ADMINISTRATORS OF THE ESTATE OF EMELIA FOF MAMAVI NEE CLOTTEYFIO CLOTTEY
2. CHARLES OFORI OKINE
3. MARGAREET AKYEPONGMA BAAFO AKA BERFI ACHEAMPOMAA
4. NII TEIKO AKORSORKU IV

RESPONDENTS

5. LOVE WAYNE  
ALL OF ACCRA

EX PARTE

MARGARET MARTINA MAMAVI  
FLAT 21 BLEUBELL APARTMENT SWAN LANE  
WOODBERRY DOWN MANOR HOUSE  
LONDON N4 2GZ UNITED KINGDOM

SUING PER HER LAWFUL ATTORNEY

APPLICANT

ROBERT QUAYE

H/NO. B708/10

AWUDOME ESTATE, NEA TV AFRICA STUDIOS  
ACCRA

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**PARTIES:           APPLICANT'S LAWFUL ATTORNEY PRESENT  
RESPONDENTS PRESENT**

**COUNSEL:           VINCENT GARR FOR APPLICANT PRESENT  
                          NAA DJAMAH AYIKOI OTOO WITH ALBERT TURKSON  
AND DANIEL AHADZIE FOR RESPONDENT PRESENT       -----**

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**DECISION**

**APPLICATION FOR COMMITTAL FOR CONTEMPT**

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**[1]   Introduction**

Contempt of Court is the only common law offence still known to our law, as same is saved by Article 19(12) of the 1992 Constitution and section 10 of the Criminal and other offences Act,1960 (Act 29). Unlike other countries where the offence is codified like the English Contempt of Court Act of 1981, ours is still case law.

According to S.A Brobbey in his book on the Law of Chieftaincy in Ghana, page 466, the learned author and former Justice of the Supreme Court of Ghana said that:

*"In Ghana, the law of contempt is statutory. The theory, practice and procedure of the law of contempt are however based mainly on the English law of contempt. The statement that the*

*law of contempt is statutory literally means that in this country no conduct can be punished for being in contempt of court unless there is a constitutional or statutory provision that sets up a forum for investigating and punishing it<sup>1</sup>.*

Black's Law Dictionary 7<sup>th</sup> Edition, page 313 defines "contempt" as:

1. *"The act or state of despising; condition of being despised.*
2. *Conduct that defies the authority or dignity of a court or legislature".*

According to the learned Author, Justice S.A. Brobbey in his invaluable book, The Law of Chieftaincy in Ghana, page 452 writing on contempt opined as follows:

*"in the simplest sense, contempt of court means any conduct that interferes with or undermines the administration of justice. This definition covers criminal as well as civil contempt."*

Oswald on Contempt of Court, 3<sup>rd</sup> ed. at page 6 states as follows:

*"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during litigation".*

Justice K. Ackah-Boafo J (as he then was) opined in the unreported case of **Republic versus Kamassah & 4 Others** (Suit No: AP 227/2016 delivered on 11<sup>th</sup> October 2016 as follows:

*"In my respectful opinion, contempt of court is the big stick of civil litigation. Because of the serious nature of a contempt finding, a finding should be made sparingly and only in the clearest cut of cases. A direct intention to disobey a Court order or an act to prejudice a pending application is required and it ought to be a willful disregard of the order or prejudice the outcome of a pending suit in the Court".*

## [2] Background and affidavit evidence of the Applicant

The Applicant filed a motion on 25<sup>th</sup> November 2022 for an order attaching Respondents for contempt of court. On 24<sup>th</sup> January 2023 the Respondents were served the Application

through substituted service. The Applicant pursuant to leave granted filed a supplementary affidavit on 20<sup>th</sup> November 2023.

The Applicant's lawful attorney in a 17-paragraph affidavit in support deposed that on 20<sup>th</sup> October 2021 he issued a Writ of Summons against the Respondents for the reliefs endorsed thereon. Essentially the Writ of Summons was filed to distinguish between the properties of Mr. Mamavi Cyriaque Robert Eugene and his wife Mrs Emelia Fof Clottey which were shared together to people after letters of administration was fraudulently obtained by the Respondents. Two of the properties were not distributed, they were left out and on a whole there were misrepresentations of facts and the properties were not properly distributed to the beneficiaries.

The Administrators of the estate were ordered to produce copies of the letters of administration to the Court for proper distribution but they have refused. See Exhibit B attached.

The 2<sup>nd</sup> Defendant – Charles Okine died and though there was a motion for interlocutory injunction pending the Respondents went ahead to celebrate the funeral in the disputed house for which they were found guilty of contempt. See Exhibit C ruling of the Court attached.

The Lawful Attorney states as follows:

*“As they begun the preparations, they moved out all my properties from the house which include my school materials, books, laptops, dresses, jewelries, TV set, phones, electrical gadgets, shoes to mention a few and deposited them at unknown location. That after the funeral celebration was completed, the defendants took over the properties and leased the properties to tenants and are collecting rents without making any accounts to the children of the late Cyriaque Robert*

*Eugne*

*Mamavi whilst the issue concerning the distribution of these properties are still in court."*

According to the Deponent she cannot locate her properties which were removed from the house she was staying and *"the defendants also assaulted me and I made a report to the police station at Kaneshie"*.

It is the case of the Applicant that the behavior of Respondent has prejudiced fair trial and interfered with the administration of justice and that she has no place to live and have to perch with someone even though her grandfather's property is there.

According to the Deponent *"That I want the court to commit the defendants/respondents for contempt of court and to purge themselves of the contempt by refunding all monies collected from the tenants and releasing my properties to me."*

The Applicant filed a supplementary affidavit in support on 20<sup>th</sup> November 2023 pursuant to leave granted and relied on the depositions 1 to 15 and Exhibits A to H attached to support her case.

### **[3] The Respondents' Case**

The 4<sup>th</sup> Respondent ( Nii Teiko Akorsorku IV) filed a 24-paragraph affidavit in opposition on 24<sup>th</sup> February 2023.

It is the case of the Respondents that their lawyer will raise a preliminary legal objection to the effect that Order 43 (5&7) of CI 47 was not complied with and therefore the Court does not have jurisdiction to entertain the present Application.

According to the Deponent there was the need to comply with the condition precedent for a relief of revocation of grant of Letters of Administration which the Applicant did not comply with.

It is the case of the Respondents that they do not have any personal belongings in their possession.

The Plaintiff's lawful attorney is a distant relative to the deceased and it was Applicant who brought him into the house without the consent of the family and he does not inherit from the deceased. He has a place at his grandmother's place at Bubuashie.

[3.1] I shall consider the Respondent's preliminary legal objection alongside the main application.

#### [4] **Court's Analysis and Opinion**

Our law is now settled that after a Court case has been filed any action, omission or conduct that is likely to prejudiced the fair trial of the case or interfere with the due administration of justice will be tantamount to contempt of Court. A number of cases have been decided by our superior Courts which clearly demonstrate this well settled principle. The principle is that if a party knowing the existence of a case – a writ, a petition or a motion - pending before an adjudicating body seeking to restrain an act, makes a decision himself to deal with and grant the very remedy to himself without giving opportunity to the adjudicating body to hear the matter, he commits contempt<sup>2</sup>. See the following line of cases:

1. **Balogun v Edusei [1958] 3 WALR 517**
2. **Narh v Dombo [1970] C.C. 64**
3. **R v Akenten, Ex parte Yankyera [1993-94] 1 GLR 246 CA.**

In the case of **R v Sangaril, Ex parte Sangari [1994-95] GBR 246 -A** solicitor who gave wrong advice for the Respondent to go into execution while a motion for stay of execution was pending was convicted for contempt by the Supreme Court.

One can therefore be cited for contempt in the absence of a Court Order but based on a pending suit or motion.

#### [4.1] **So what constitutes contempt in Ghana?**

In **R v SITO I; EX PARTE FORDJOUR (2001-2002) SCGLR 322** the Supreme Court gave

the elements constituting the offence of contempt as that:-

- a) there should have been a judgment or order which required the contemnor to do or abstain from doing something;
- b) the contemnor knew what precisely he was expected to do or abstain from doing; and

<sup>2</sup> Suit No: HI/211/2003, *The Republic vs Nugblanua Eha II & 3 others*, CA, 15<sup>th</sup> April 2005

c) that he failed to comply with the terms of that judgment or the order and that his disobedience was willful.

Also, in **IN RE: EFFIDUASE STOOL AFFAIRS (No.2); EX PARTE AMEYAW II SUPRA** Acquah JSC (as he then was) gave an apt summary of the definition of contempt. He said:

*“In brief, contempt is constituted by any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority.”*

In the Supreme Court decision of **THE REPUBLIC v. BANK OF GHANA & 5 OTHERS; EX PARTE BENJAMIN DUFFOUR [2018-2019] 1 GLR 445**, the apex Court speaking through Baffoe-Bonnie, JSC stated that:

*“A respondent to a contempt proceeding may be found guilty in many ways. The party may be found guilty of direct contempt or indirect contempt which may be proved depending on the facts of the case in several ways. The proof of direct contempt seem not to be as burdensome as proof of indirect contempt. In most cases direct contempt such as insulting the judge or a party to a proceeding, or committing acts of violence in court, the judge has the advantage of having a firsthand view of the act constituting contempt. The opposite can be said of indirect contempt where the Court will have to rely on the testimony of third parties to prove the offense of contempt”.*

His Lordship further stated after examining the standard of proof in a contempt proceeding that: “Contempt may be committed intentionally or unintentionally. It is no defence to a charge of contempt for a party to prove he did not intend to commit contempt of Court.”

In **Republic v Moffat; Ex parte Allotey [1971] 2 GLR 391**, it was held that it was no defence for a party facing attachment for contempt to swear to an affidavit deposing that he did not intend to commit contempt of court.

Intentional contempt may arise in two ways:

- Where a party willfully disobeys an order or judgment of a court, and
- 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.

By definition and based on the principles articulated in the above cases, a person commits contempt of court if he has willfully and/or intentionally disobeyed an order of Court requiring him to do an act other than the payment of money or to abstain from doing some act.

See also the Supreme Court case of **REPUBLIC v. BOATENG & ODURO; EX PARTE AGYENIM-BOATENG & OTHERS [2009] SCGLR 154**. To hold a party liable for contempt however, the rule is that the order sought to be enforced should be unambiguous and the party must be aware of the order and must be clearly understood by the party concerned.

See also the case of **R v. HIGH COURT ACCRA, EX PARTE LARYEA MENSAH (199899) SCGLR 360**.

*“In sum, therefore, any act or omission done to prejudice the fair trial or outcome of a case, or likely to bring the administration of justice into disrepute or interfere with any pending litigation and or to scandalize a court even after the trial of a case is contemptuous of the court. Also, wilfulness is required in the sense that the conduct alleged to be contemptuous must be deliberate and not*



*accidental. Contempt of court therefore serves the primary function of protecting the sanctity and integrity of the court and court proceedings and it also serves to sustain the rule of law, a check on conduct that potentially renders civilized society vulnerable to the dynamics of a Hobbesian state of anarchy and chaos. I take the liberty to add that the feature of contempt does not serve the ends of judicial aggrandizement. Rather, it is a safeguard to ensure that might is not right. Without contempt as a Sword of Damocles, bullies in our society will run roughshod over the marginalised<sup>3</sup>.”*

#### **[4.2] Burden of proof in Contempt Application**

Contempt of court is a quasi-criminal and the punishment for it may take various forms including a fine or imprisonment. The standard of proof required is that of proof beyond reasonable doubt. Thus, in **Re Bramblevale Ltd [1969] 3 All ER 1062 CA** the appellant, the managing director of a company which had gone into liquidation, failed to comply with the registrar’s order calling on him to produce the company’s cash book and the creditor’s ledger. The High Court regarded the defendant’s explanation that the books had been soaked in petrol in the boot of his car and had then found their way into a dustbin before the deadline for producing them as “a cock and bull

story”. He was accordingly committed to prison for an indefinite time, the court evidently being of the opinion that the books were still in his possession. On appeal, the Court of Appeal regarded that conclusion as being based on “surmise rather than proof” and ordered for his immediate arrest. Winn LJ at page 1064 said:

*“...unless the guilt of the appellant was proved with such strictness of proof as is consistent with the test ‘beyond reasonable doubt’, or as Lord Denning, MR, has more than once put it, consistent with such as the court, with its responsibility, regards as consistent with the gravity of the charge*

<sup>3</sup> Per Justice Ackah-Boafo J (as he then was) in the case of: *The Republic v Kamal Penchstein In Re Contempt – Suit No: CR0253/2020 (Unreported)*: See the case of: *The Republic vs Justice Hagan; Ex Parte: Kwadwo Kanpordina and Sarah Kanpordima, CR 1568/2018, 11<sup>TH</sup> April 2019*

– a charge which I personally prefer – the decision that he should be imprisoned for contempt of court cannot be sustained”.

In the case of **Kyereh v Kangah [1979] GLR 458** the Court held that “to obtain a committal order for contempt, the applicant must strictly prove beyond reasonable doubt that the respondents had willfully disobeyed and violated the court order.”

In the Supreme Court case of **Republic v Bank of Ghana, Ex parte Benjamin Duffuor [2018]123 GMJ 205 SC**, the court per Baffoe-Bonnie JSC, stated as follows on the standard of proof in contempt proceedings as follows:

*“The standard of proof in contempt proceeding is well settled. Contempt of court is a quasicriminal process which requires proof beyond reasonable doubt. This is so whether the act complained of is criminal contempt or civil contempt as was rightly stated in **Commet Products UL Ltd v Hawkex Plastics Ltd [1971] 1 All ER 1141 CA** where the court held that:*

*“Although this a civil contempt, its partakes of the nature of a criminal charge. The defendant is liable to be punished for it. He may be sent to prison. The rules as to criminal charges have always been applied to such proceedings. It must be proved with the same degree of satisfaction as in a criminal charge.”*

#### **[4.3] Preliminary objection by Counsel for Respondents**

Counsel for Respondents in paragraph 7 of the affidavit in opposition contends that Order 43 (5 &7) was not complied with and the Court does not have jurisdiction to entertain the present application.

The Applicant’s Exhibit **B** was a Notice to produce the letters of administration obtained in 2015. If Penal Notice that Respondent Counsel is raising is in reference to the Exhibit B it is not clear the basis of the preliminary objection raised. Presently in terms of the substantive case there is no order made by the Court which must be served on the Respondents. The motion for interlocutory injunction was struck out as withdrawn. As Counsel for Respondent rightly noted the Applicant

has failed to comply with the combined effect of Order 66 rule 33(3), and 37(1) and Section 67 of Act 63.

In any case what is the nature of the order the Applicant is saying has been willfully disobeyed by the Respondents necessitating them to be committed for contempt by this Court?

**[4.4] Whether the Applicant has met the onus to be successful**

Has the Applicant discharged the onus the law places on her?

Justice Ackah-Boafo in the case of **The Republic vs Justice Hagan; Ex Parte: Kwadwo Kanpordina and Sarah Kanpordima, CR 1568/2018, 11<sup>TH</sup> April 2019** opined on the concept of proof beyond reasonable doubt as follows:

*“The concept of proof beyond reasonable doubt is not an easy one to define because it is clearly more rigorous than the balance of probabilities standard applied generally in civil cases. The balance of probabilities requires a party who bears the onus to establish that the proposition he or she advances is “more likely than not”. In other words it is more probable or likely or better than 50/50 scenario.*

*I wish to state that my statement above that because this is a quasi-criminal matter “the standard of proof is one beyond reasonable doubt” and more rigorous does not mean that it cannot be met. Indeed in my respectful opinion when the law speaks of reasonable doubt it is not a fanciful doubt. To paraphrase the Supreme Court of Canada in a case called R. v. VILLAROMAN, [2016] 1 SCR 1000, 2016 SCC 33 (CanLII) at p. 1023,*

*“A reasonable doubt is a doubt based on ‘reason and common sense’; it is not ‘imaginary or frivolous’; it ‘does not involve proof to an absolute certainty’; and it is ‘logically connected to the evidence or absence of evidence’ (see also R. v. LIFCHUS, [1997] 3 SCR 320, 1997 CanLII 319 (SCC).*

*In other words, the reasonable doubt threshold does not require a fantastical suspension of disbelief. It is a doubt that logically arises from the evidence, or the lack of evidence based on common sense and reason.*

*The presumption of innocence along with the standard of proof beyond reasonable doubt required in a charge of contempt are important safeguards to ensure that no person should be deprived of his liberty or found guilty of the charge of contempt based on wrong or unproven facts in a free and democratic society."*

Now, the question is, has the Applicant discharged the onus the law places on her? In the case under consideration there is no Court order which has been flouted for which the Respondents are being charged for contempt.

The gravamen of the Applicant's case is that the Respondents in a common enterprise on a particular day succeeded in throwing her things out of the house in dispute and renting the property out to tenants. The 3<sup>rd</sup> Respondent is alleged to have made the advertisement to rent the house and collected rent from six tenants spelt out in paragraph 9 of the supplementary affidavit in support. The 5<sup>th</sup> Respondent is alleged to be an accomplice in all this. Being mindful of the burden of proof which is proof beyond reasonable doubt what evidence was proffered in support of these assertions? The Applicant relies on Exhibit E. What is Exhibit E, it is a WhatsApp communication between one Nana and Florence. These names is not reflective of the Respondents herein present. The Applicant does not establish the nexus between Exhibit E and the Respondents. Florence writes "*Guys I have a controversial view not sure how this will sit with all but this would be an opportunity to get that boy out of grandma's house by using the living room paaa*". The name of the Applicant or the Lawful Attorney is not mentioned.

This Court cannot use conjectures and fanciful deductions to deprive the Respondents of their personal liberty or fine them.

The case of the Applicant is met strongly by the case of the Respondents who have denied that they threw the Applicant's belongings out the house in dispute. What proof did the Applicant provide, Exhibit D, G and H, photographs of two men and paint containers, a gate and an unclear image of some items behind a wall. The Applicant could not even provide the Court with very legible photographs. How is the Court to draw the requisite

deductions from these Exhibits of steps taken by the Respondent to bring the administration of justice into disrepute?

With the contending depositions on oath the burden is cast on the Applicant to prove her depositions beyond reasonable doubt.

It is for these reasons that the Deponent has urged on the Court that the conduct of the Respondents constitute contempt of the Court since those conducts are not only meant to put the Court and administration of justice into disrepute but are also calculated to hinder and reduce the authority of the Court for which they should be committed to prison. The Applicant further contends that the conduct of the Respondents prejudices the outcome of the action pending before the court.

The present application may fall under the category of indirect contempt as opined by Baffoe-Bonnie JSC in the Supreme Court case of **The Republic vs Bank of Ghana & 5 Others; Ex Parte Benjamin Duffour Civil Appeal No. J4/34/2018** delivered on June 6, 2018, the apex Court speaking through Baffoe-Bonnie, JSC stated that:

*“A respondent to a contempt proceeding may be found guilty in many ways. The party may be found guilty of direct contempt or indirect contempt which may be proved depending on the facts of the case in several ways. The proof of direct contempt seem not to be as burdensome as proof of indirect contempt. In most cases direct contempt such as insulting the judge or a party to a proceeding, or committing acts of violence in court, the judge has the advantage of having a firsthand view of the act constituting contempt. The opposite can be said of indirect contempt where the Court will have to rely on the testimony of third parties to prove the offense of contempt”*

Is the onus on the Applicant discharged by tendering Exhibit **A** to **H**? I do not think so. What further proof did the Applicant provide? Nothing! At least a police extract to show that the matter was reported to the police under the Domestic Violence Act would have bolstered up Applicant’s case considerably.

What has an unauthorized person allegedly renting out a property got to do with a contempt charge absolutely nothing. The Applicant is not entirely without a remedy.

As the Supreme Court per Anin Yeboah JSC (as he then was) stated in the case of **Boamah & Ansah Sikatuo V. Amponsah [2012] 1 SCGLR 58 @ page 63-64** in a case where the affidavit evidence presented rival depositions and there were two equally possible situations, the apex Court stated:

*“The Court must be satisfied beyond all reasonable doubt that they had done so based solely on the affidavit evidence. There is no room for conjecture and evidence is required to be placed before the Court to enable it come to a decision on the matter. By evidence, we mean proof beyond reasonable doubt. We would add that it was not enough for the purposes of the application for contempt of court with which we are concerned in instant application, to have left the serious depositions of fact at large, as it was not possible to say which of the two versions of the matter was correct. In the absence of further evidence”*

I note that despite the paucity of affidavit evidence in support of the charge of contempt, the Applicant and Counsel have implored the Court to convict the Respondents by committing them to prison because their behaviour have prejudiced fair trial and interfered with the administration of justice. Should the Respondents be cited for contempt of court because the Applicant will have to take legal action to eject the tenants and it will waste time and cause a lot of money, the Respondents should be deprived of their personal liberty?

The Supreme Court has held in the case of **Republic v High Court (Fast Track Division) Accra; Ex parte P P E Ltd & Paul Juric (Unique Trust Financial Services Ltd Interested Party)**

**(2007-2008) SCGLR 188**, the courts should be anxious to contain the power to punish for contempt, (which has been castigated as wide and arbitrary), within the narrowest possible confines in order to safeguard the fundamental constitutional right of the individual to liberty.

With the greatest respect and with due deference to Counsel that is not the law. A conviction for contempt of Court cannot be based on such an inference, conjecture and speculation.

**[5] Conclusion**

Having evaluated the process filed, I am of the respectful opinion that the application filed by the Applicant “fell short of the basics” and therefore same ought to fail. It has not been established that the Respondents have embarked on a course of action aimed at bringing the administration of justice into disrepute or prejudice the outcome of the present proceedings.

The Applicant has failed to meet the evidential burden the law places on her. Consequently, the Application for Contempt is **DISMISSED**. In the result, I **ACQUIT** and **DISCHARGE** the three **RESPONDENTS** on the charge of Contempt of Court.

But, no order as to cost.

**(SGD.) H/L EUDORA CHRISTINA DADSON (MRS.) JUSTICE OF THE HIGH COURT**