IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX (CRIMINAL DIVISION "2") HELD IN ACCRA ON MONDAY, 4TH DAY OF DECEMBER, 2023 BEFORE HER LADYSHIP JUSTICE MARIE-LOUISE SIMMONS (MRS.), JUSTICE OF THE HIGH COURT

SUIT NO.: CR/0373/2023

IN THE MATTER OF AN APPLICATION FOR CONTEMPT OF COURT

THE REPUBLIC

VRS.

1. ELIZABETH DANQUAH
2. EVELYN (THE INVESTIGATOR) } **RESPONDENTS**
3. INSPECTOR GENERAL OF POLICE

EX-PARTE: KWASI AKUFFO - APPLICANT

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JUDGMENT

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This is an application for Committal for Contempt of the three (3) Respondents herein who are two (2) Police Officers and the Inspector General of Police (IGP). The application was filed on 8th August, 2023. There was later a filed supplementary affidavit in support which only sought to attach a full version of the judgment of the trial Circuit Court in the criminal case.

This became necessary because the learned Attorney for the Respondents had filed a Notice of Preliminary Legal Objection stating that the application was incompetent and not properly before the Court due to the fact that the Respondents had not been served with the full judgment. With the Court having been served with a copy of the

full judgment attached to the Applicant's affidavit and knowing that it could have been an error, the Court asked the Applicant's counsel to file and serve the said judgment on the Respondents counsel which counsel for the Applicant readily agreed to do, hence the supplementary.

There is Affidavit of Service of the application on the 2nd Respondent personally at the Police Headquarters on the 1st Respondent personally at the Kaneshie Police Station and on the 3rd Respondent, the Inspector General of Police (IGP) through one, Corporal Albert Sanaman at the Police Headquarters. The application which was **mounted under Order 50 of C.I. 47 was accompanied by a 23 paragraph affidavit in support**.

The grounds of this application are the 1st Respondent was the District Commander of the Sakumono District Police in the Greater Accra region. The 2nd Respondent was also with the Sakumono police as a Detective and was the case investigator in the criminal case that led to this application. The 3rd Respondent is the Inspector General of Police (IGP) and by law is in charge of the entire Police Service of the country.

The Applicant deposes that he together with one, Issahaku Iddrisu were arrested by the police (period of arrest is not indicated) and he was charged for the offences of **"*Dishonestly Receiving Property*"** whilst the co-accused was charged with the offence of **"*Stealing*".** He said that as part of investigations, some electrical appliances being the subject matter of the offences against him and his co-accused which he said belonged to him were seized by the police. These items he listed to include seven (7) television sets, Samsung 55 inch television, Sony 55 inch television, Hisense 55 inch TCL television, Philips 40 inch and two (2) small as well as three (3) pressing irons and three (3) street lights.

The Applicant states further that on the 28th April 2018, he and his co-accused were put before the Circuit Court, Accra on the above stated charges in relation to the said items listed above with the case number, D3/34/2018. That on the 5th November 2021,

the Court presided over by Her Honour Priscilla Dapaah Mireku found both him and his co-accused not guilty for the charges levelled and acquitted and discharged them. That based on this acquittal, he filed an Application on Notice for Restitution of the items seizes from him during investigations being the items aforementioned.

Subsequently, the Applicant deposes that on the 15th March 2022, the Circuit Court presided over by Her Honour Patricia Amponsah ordered the police, Sakumono to release the items afore listed to be released to the Applicant forthwith and the said order was duly served on the commander of the Sakumono police through another police woman, Vivian Asamoah of the same station. That notwithstanding, the service of this order of the Court, the commander of the Sakumono police station has willfully and contemptuously refused to comply with the order. He added that up until the date of this present application, the Applicant had still failed to comply.

In support of his application, the Applicant attached exhibits KA being the five (5) page judgment of the trial Court that acquitted the Applicant, KA2, the order for the release of the items and KA3 the affidavit of service of the order.

The Respondents upon receipt of the said application have all resisted the application and each of them has accordingly filed an affidavit in opposition on 1st November 2023 wherein they have each denied the allegations leveled against them and indicated that they have not in any way acted in gross disregard of any orders of the High Court. The affidavit in opposition of all three (3) Respondents have been served on the Applicant as per an affidavit of service dated 13th November 2023.

The 3rd Respondent, the IGP had his affidavit deposed to on his behalf by one, ASP Dennis Anthony Adusei of the Legal and Prosecutions Directorate of the Police Service, Accra. The relevant paragraphs are that, the he has not willfully disobeyed the Courts orders dated 15th march 2022. He deposes that the items ordered to be released to the Applicant are not in the custody of the IGP and have never been.

Despite denying this at his paragraph 12, the deponent under his paragraphs 13 to 15 goes ahead to narrate the genesis of the matter between the Applicant and the complainant at the Sakumono police station and how the said items got to be released to the complainant by the police with the alleged consent of the Applicant herein on the 23rd January 2019. He goes further to state that since the said items are not in the possession of the IGP and have never been, it makes the enforcement of the order practically impossible to fulfill. **The 3rd Respondent in support of his case, attached to his response exhibit AG1 being a copy of a document which is alleged to contain the signature of the complainant in the criminal trial as evidence that he received the items in issue.**

The 1st Respondent was cited by the Applicant as Elizabeth Danquah however, she filed her response as Elizabeth Tiekubea Dankwa. In her affidavit in opposition, she narrates the genesis of the criminal case against the Applicant at the Circuit Court and deposes among others to the fact that she was formerly at the Sakumono District police as the District commander and was later transferred. Her affidavit indicated that she is currently at the Kaneshie police station as the District commander of the Criminal Investigation Division (C.I.D). It is important to reproduce the relevant parts of her affidavit in relation to this application:

> *5. That my attention has been drawn to the present application which application seeks to invoke the Court's power to commit me for contempt.*
>
> *6 .That I am vehemently opposed to the application for contempt filed on the 17th August 2023.*
>
> *8. That I am advised and verily believe same to be true that the Court will only punish as contempt a willful disobedience to its performance or abstinence, therefore for my acts to amount to contempt of Court, I must be found to have been guilty of willful disobedience to the Court or to have willfully violated the Courts order.*

10. That in the instant case, I have not willfully disobeyed the Courts order dated 15th March 2022 as the Applicant wished this Court to believe.

11. That I am advised and verily believe some to be true that I am not in contempt of Court because the said items ordered by the Honourable Court to be released to the Applicant herein are not in my custody and have not been in my custody since the 23rd January 2019.

23. That in the course of further investigations, both the complainant, Maxwell Dumfeh and the Applicant came to the station and informed the police that they intend to settle the problem among themselves and that they had agreed that the Applicant herein should pay an amount of money to the complainant, hence they needed time to report back to the police on the development.

24. That about month later, the parties reported back to the police that they were not successful at settlement as the Applicant herein and Issahaku Iddrisu could not pay an amount of money the complainant was quoting. The Applicant herein and Issahaku were accordingly charged and arraigned before the Court.

25. That it is very important that clarity is made that in the process of settling this case between the Accused persons and the complainant, the stolen items were released by the Sakumono District CID to the compliant on the 23rd January 2019.

26. That two years after the release of the said items, the Applicant herein procures a Court order dated 15th March 2023 ordering the release of the said items to the Applicants herein.

27. That respectfully, I am thus not in willful contempt disobediences of the Court on the grounds that, the said items were not in my possession at the time the order was made making the enforcement of such an order practically impossible.

The 1st Respondent also attached to her affidavit, exhibits AG4, a copy of a 2 paged document containing a list of electrical appliances among other items on the list. The document which had several signatures with one alleged to be that of the complainant of the case evidencing the fact that he signed for the said items to be released to him by the police.

The 2nd Respondent, Evelyn Oduraa Peprah also opposed the application stating that she was the case investigator in the criminal case against the Applicant and one other until she was transferred from the Sakumono District C.I.D. She went ahead to narrate how she received the complaint of the case, investigated same and subsequently charged the Applicant and one other before the Circuit Court. The relevant depositions of her affidavit are:

> *11. That in the instant case, I have not willfully disobeyed the Courts order dated 15th March 2022 as the Applicant wishes this Court to believe.*
>
> *12. That I am advised and verily believe same to be true that I am not in contempt of Court because I have been on transfer from the Sakumono District C.I.D since the year 2019 and have not been aware of a Court order as I left all my dockets and exhibits I was handling prior to my transfer from Sakumono at Sakumono.*
>
> *22. That while the case was pending at the Accra Circuit Court, I was transferred to Baatsona District C.I.D in the year 2019.*
>
> *23. That prior to proceeding on transfer from Sakumono to Baatsona, I handed over all case dockets and exhibits under my control to the Station Officer in charge C.I.D, Sakumono.*
>
> *24. That to the best of my knowledge, the items in question were exhibits relating to a matter in Court and same handed over to the 1st Respondent for safe keeping and so these could not be traced to me.*

25. That additionally, I have no personal knowledge of the Court order dated the 15th March 2022 for the release of the items or exhibits to the Applicant herein, since I have been transferred from the Sakumono police station in the year 2019 and no longer have any control or dealings with the said exhibits in the custody and control of the Sakumono District C.I.D.

26. That consequently, the issue of the order directing the release of the items or exhibits to the Applicant herein and the alleged refusals to comply with the said order is new and surprising to me.

27. That it bears stressing that, I have no knowledge of the Court order directing the release of the said exhibits and I no longer have control over the exhibits for which I have been alleged to have refused to release.

To support her assertion, **the 2nd Respondent attached to her response, a police wireless message which she had an attachment indicating a list of transfers of some personnel in September 2019 which list has her name**.

It is important for the Court to point out that the 2nd Respondent did not appear before the Court throughout the proceedings due to the presentation of a medical excuse duty with a medical report attached from the obstetrics and gynecology department of the 37 Military hospital.

On the 14th November 2023 with the leave of the Court, both counsel for the Applicant and Respondents made oral submissions to the Court, which submissions together with the affidavits filed by both parties have been carefully considered in this ruling.

By the denial of the Respondents of any disregard for any order/ruling of the Court, the onus is now on the Applicants to prove the guilt of the Respondents beyond reasonable doubt.

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.*"

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. Again, the purpose of contempt is to protect the whole system of administration of justice.

See cases such as **REPUBLIC VS. MENSAH BONSU AND OTHERS; EX-PARTE: ATTORNEY GENERAL (1995-96) 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, 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) Order 43 Rules (5) and (7) of C.I. 47

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. Thus where a person disobeys an order of Court, that person can be hauled before the Court under **Order 43 of C.I. 47** and where a person's conduct constitutes interference with a fair administration of the law/justice, the application can be commenced under **Order 50 of C.I. 47.**

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 a criminal case is proof beyond reasonable doubt as amply stated in **Section 11 (2) of the Evidence Act, 1975 (NRCD 323)** as follows:

> "*In a criminal action, the burden of producing evidence, when it is on the prosecution as to any fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt*".

Section 13 (1) of the NRCD 323 on the other hand provides that:

> *"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; EX-PARTE: AMEYAW II (NO. 2) (1998-99) SCGLR 639.**

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

> *"… In 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** where it was held that:

> *"To obtain a committal order for contempt, the Applicant must strictly prove beyond reasonable doubt that the Respondent had willfully disobeyed and violated the Court's order".*

THE ANALYSIS BY THE COURT

After reading the application, the affidavits both for and against the application as well as listening to the oral submissions made by counsel for the parties, it is the considered view of this Court that the response of the 3rd Respondent, the IGP cannot be entertained by this Court. This is in view of the fact that the affidavit in opposition was sworn to by one, ASP Dennis Anthony Adusei and not the Respondent himself. This is wrong in terms of procedure on contempt in respect of a Respondent's response in contempt. The law is that in respect of contempt, the Respondent or each of the Respondents must answer by way of swearing to the affidavit by himself, herself or themselves and not by another person on behalf of the Respondent.

In the case of **IN RE EFFIDUASE STOOL AFFAIRS (NO. 2)** as cited supra at page 651, the Supreme Court through Hayfron Benjamin JSC stated as follows:

> *"when the Respondents appeared before us, this Court pointed out to them that since the charge of contempt was quasi criminal, it was necessary for each Respondent to answer for himself."*

See also the case of **ACKAH-ADJEI VS. ACHEAMPONG (2005 – 2006) SCGLR 1**

I will therefore not attach any importance to the 3rd Respondent's affidavit in opposition. However, since it is a contempt application, even in the absence of an affidavit in opposition, the Applicant still has to prove his case against all Respondent beyond reasonable doubt.

On the 2nd Respondent, the Court has considered her Response especially at paragraphs 22 to 27. Her defense that while the case was pending in Court, she was transferred from the Sakumono District police and had no control or dealing with the items in issue and that she personally had no knowledge of the subsequent Court order has found favour with the Court.

It is obvious that the Applicant in his application has not been able to establish any act or omission of the 2nd Respondent, Evelyn Oduro Peprah which has exhibited disobedience to a Court order thereby bringing the administration of justice into disrepute. There has been no element established to proof that the order of the Circuit Court, Accra for the release of the items was known to her or served on her. Of course there has been evidence in support that there existed a Court order for the items to be released but no evidence that the said order was ever brought to the notice of the 2nd Respondent when the order was said to have been granted years after the acquittal of the Applicant when according to the 2nd Respondent, she was no longer at the said police station where the order was served. At paragraphs 15 and 16 of the Applicant's affidavit, where he states that the said order was served on the commander of the Sakumono police station, no mention or reference is made to the 2nd Respondent. Indeed, the entire affidavit in support does not establish any wrong doing by way of contempt against the 2nd Respondent.

In **THE REPUBLIC VS. BANK OF GHANA AND 5 OTHERS EX-PAPRTE: BENJAMIN DUFFOUR S.C CIVIL APPEAL NUMBER J4/ 34/ 2018 DATED 6TH JUNE 2018** (reported in Ghali), the Apex Court stated *inter alia* that:

> "*the burden on an Applicant in the case of intentional contempt (as in this case) is to establish all three elements as stated above in order to prove his can beyond reasonable doubt. The Applicants must establish that there is indeed a judgment or order in force giving rise to the issue of contempt. He must then go further to show that the contemnor had knowledge of the said order and the duty on him to do or abstain from doing a*

particular thing act. Lastly, the Applicant must establish that the contemnor intentionally or willfully disobeyed the order or judgement of the Court."

It is therefore a legitimate defense for a person accused of and cited for contempt arising out of a Court order if he or she can establish that, he or she did not know of the said order, this is especially when the Applicant as in this case, has failed to prove that the said Respondent had notice of the Court order.

See the case of **REPUBLIC VS. BEKOE; EX-PARTE: ADJEI (1982-83) GLR 91** also in the case of **THE REPUBLIC VS. JUSTICE HAGAN, EX-PARTE: KWADWO KANPORDIMA & ANOTHER REPORTED IN GHALI DATED 11TH APRIL 2019, S.C**, it was held *inter alia* that:

"But to hold a party liable in contempt, the rule is that the order sought to be enforced should be unambiguous and the party must aware of the order and must be clearly understood by the party concerned."

See also **REPUBLIC VS. HIGH COURT, ACCRA, EX-PARTE: LARYEA MENSAH (1998-99) SCGLR 260.**

On the basis of the above analysis, I find that the Applicant's case against the 2nd Respondent cannot hold.

As stated above, notwithstanding the rejection of the 3rd Respondents affidavits, the Applicant still has the burden to prove his case against the 3rd Respondent. Again as in the case of the 2nd Respondent, the Applicant has no deposition in his 23 paragraphed affidavit that suggests that the IGP as a person in his private or official capacity engaged in any act or omission involving a willful disobedience to a judgment or order of a Court, or had involved in any act that brought the administration of justice into disrepute. Throughout the submissions of the Applicant including the *viva voce* submissions made, no mention is made of the fact that the 3rd Respondent knew of the pendency of the criminal case before the trial Circuit Court

or that it was brought to his attention. There is again no supporting evidence that the 3rd Respondent knew of the said order of the Court for the release of the items by the Sakumono police nor encouraged the disobedience of the order by any of his subordinates. The order itself attached as exhibit KA2 does not have any bearing to the 3rd Respondent. **It is my belief that the Applicant in charging the 3rd Respondent, being the Head of the Police service seems to have imported the principle of vicarious liability in the law of torts to the law on contempt**. As has been repeated time without number, a Respondent in a contempt application can only be held accountable and punished for contempt personally, it being a quasi-criminal application.

See the case OF **REPUBLIC VS. S.K. BOATENG & ORS; EX-PARTE: AGYENIM BOATING @ 39** stated supra and also the case of **ACKAH-ADJEI VS. ACHEAMPONG (2005 –2006)** also stated supra.

On the determination of whether vicarious liability can be applied to a case of contempt. I chose to borrow from the Supreme Court of India in the case of **DR U.N. BORA EX CHIEF EXECUTIE OFFICER & ORS VS. ASSAM ROLLER FLOUR MILLS ASSOCIATION & ANOR. CRIMINAL APPEAL NO 1967, 2009 REPORTED @ LATESTLAWS.COM**. The Court stated at the very outset of its decision *inter alia:*

> *"we are dealing with a civil contempt. The contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court. Therefore, what is relevant is the 'willful' disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of willfulness vanished as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is proof beyond reasonable doubt since the proceedings are quasi criminal in nature."*

I choose to be persuaded by this decision from a common law country with similar law on contempt of Court.

In relation to the 1st Respondent, it is important to state that, the Applicant from the title of the motion paper names her as "Elizabeth Danquah" at paragraph 6 of his supporting affidavit, he states that:

> *"the 1st Respondent is the **police commander** in charge of the **Sakumono police station**".*

This Court has paid even more attention to the affidavit of service of the order of the Circuit Court attached as exhibit KA3. It indicates proof of service on the *"Commander of the police station at Sakumono through Inspector Vivian Asamoah".* There is therefore evidence that the service on the 1st Respondent was not personal as required for contempt applications. Again, there is every indication that the service was on an office, being "the commander" and not the named commander herself. Thus a committal proceeding for contempt brought for the disobedience of a Court order must have a copy served personally against the person cited unless where the justice of the case demands that the Court may dispense with personal service.

See cases such as **THE REPUBLIC VS. GEORGE ODAISE AND 5 ORS; EX-PARTE: GLORIE OSAFO AGYEMAN-DUAH AND ANOR (2019) JELR 66491 DATED 16TH JULY 2019**

THE REPUBLIC VS. MRS VIVIAN AKU BROWN AND 9 ORS EX-PARTE: ODWUMA LAKES FARMS AND RURLA ESTATES AND ANOR (2018) JELR C.A UNREPORTED SUIT NO.: H3/ 454/ 2018 where the Court stated:

> *"in all cases where contempt is in issue, the Courts always been concerned that because contempt is quasi criminal that ends up by taking away the liberty of the individual, it must be treated with extreme care ,thus the insistence that a person facing contempt proceedings in Court be served personally. But the law also recognized that personal*

service is not always possible in every situation hence the provision on order 7 rue 6 of CI 47 for substituted service"

It must however be stated that the insistence on personal service is to ensure that the contemnor had knowledge of the said order or judgment which he is to act upon. The emphasis is therefore on the awareness of the existence of such an order or judgment. The 1st Respondent has obviously filed a response to this application. She has done so by providing not only her full name which the Applicant failed to provide but she has gone ahead to depose that she was indeed the said commander of the Sakumono police station during the time of the criminal case, was the commander named in the order. She has also admitted receipt or knowledge of the present order when she stated as follows at her paragraph 5:

"5.*that my attention has been drawn to the present application which application seeks to invoke this Courts power to commit me for contempt"*

At paragraph 11, she also admits knowledge of the said Circuit Court order and deposes as such:

11. that I am advised and verily believe same to be true that I am not in contempt of Court because the said items ordered by the Honorable Court to be released to the applicant herein are not in my custody and have not been in my custody since the 23rd January 2019"

With this 1st Respondent having gone ahead and filed a response admitting knowledge of the order and this application and deliberately participating in this application notwithstanding wrong service, she is bound by her response.

In the case of **THE REPUBLIC VS. MRS. VIVIAN AKU BROWN AND 9 ORS EX-PARTE: ODWUMA LAKES FARMS** cited supra, the Court of Appeal citing an earlier Supreme Court decision in a similar situation stated:

> *"I agree that the appeal be dismissed. However, in **State vs. Asantehene's Divisional Court B1; Ex-parte Kusada (1963) GLR 238, SC**, it was held that the object of service is merely to bring to the notice of an affected party the institution or pendency of Court proceedings. If, therefore, a party without actual service, nonetheless pursuant to some notice of them, deliberately participates in the unserved proceedings, he should bound by them."*

In the case of **STATE VS. ASANTEHENES DIVISIONAL COURT B1 EX-PARTE: KUSAA (1963) GLR 238, S.C,** it was held that:

> *"the object of service is merely to bring to the notice of the affected party the institution or pendency of Court proceedings. If therefore a party, without actual service or in this case wrong service (my emphasize), nonetheless pursuant to some notice of them, deliberately participated in the unserved proceedings, he should be bound by them."*

I therefore proceed to analysis the response of the 1st Respondent.

I glean from her 27 paragraphed affidavit that the pivotal defense has been that because the said items, the subject matter of the order had been released in 2019, by the then Sakumono District CID commander, which was her good self, the said release had rendered the obedience of the subsequent order impracticable, and therefore there has not been any willful disobedience. In providing the history of the case from the time of the complaint of stealing and dishonesty received at the Sakumono police to the time of the trial at the Circuit Court, she does not provide the date when the Applicant and his co-accused were arraigned before the Court. She however did attach a document exhibit AG4 which she describes as a document evidencing the signing by the complainant of the case for receipt of the said items. The alleged date

of receipt of the items is stated as 23rd January 2019. Meanwhile per the Applicants affidavit, he states at his paragraph 11 that he was arraigned before the Circuit Court Accra, in suit number D3/34/2018 on the 5th April 2018. Per the judgment attached to the Applicant's application labeled as exhibit KA, it is obvious that the judgment was given on the 5th November 2021.

I have chosen to rely on the deposition of the Applicant on the date of his arraignment because as stated, the 1st Respondent under whose instructions the case went to Court failed to provide the date in her response. The records of the Court will indicate that when the Court asked the learned attorney for the Respondent for the date of arraignment on the day of her oral submission, she simply told the Court she couldn't provide the said date.

Upon reliance therefore on the date supplied by the Applicant and considering the date of judgment, it is clear that the said items were allegedly released to the said complainant during the pendency of the Court case. Meanwhile, there is no deposition or evidence of the 1st Respondent to support the fact that the Applicant herein, then an Accused, had knowledge or gave his consent to the release of these items. Again, even the attached document AG4 does not in any way confirm that it was the said complainant who actually signed for the items. At paragraph 25 which is highlighted by her, it is stated that the items were released by the Sakumono District C.I.D which command the Respondent has admitted she headed. There is nothing to show if the trial Court gave an order for the items to be released. The judgment of the Court (which incorporated the facts of the case provided by the police prosecutor), does not indicate whether in the course of the trial, the Prosecution informed the Court of that the fact that the items had been released to the complainant, either before the trial or during the trial.

The 1st Respondent herself has also not made such a deposition anywhere in her response both orally or in her affidavit. For clarity I will reproduce the relevant paragraphs of the 1st Respondent.

> 25 *That it is very important that clarity is made that in the process of settling this case between the Accused persons and the complainant, the stolen items were released by the Sakumono District C.I.D to the complainant on the 23rd of January 2019.*
>
> 26 *That two years after the release of the said items the Applicant herein procures a Court order dated 15th March 2023 ordering the release of the said items to the Applicants herein.*

By this admission at paragraph 25, the 1st Respondent had over reached the Court while the case was still *sub judice.* The 1st Respondent who directed the arraignment of the Applicant before the Court knew that the said items were the very items over which the offences of *Stealing and Dishonestly Receiving* were being charged. The 2nd Respondent has clearly stated that as the case investigator, she knew the items to be exhibits of the case. She also deposed that it was the 1st Respondent who directed the case be sent to Court. The said items according to the 2nd Respondent were handed over by her to the 1st Respondent before, she, the 2nd Respondent left on her transfer. Her paragraphs 22 to 24 reproduced above clearly depicts this finding.

It was therefore a disrespect to the authority of the Court that while the case was in Court, the 1st Respondent released the said items which were meant to be exhibits. As the commander of C.I.D, she knew that the trial Court was certainly going to make a determination at the end of the case. In a criminal trial, possible outcomes could be one of three scenarios, an acquittal and discharge, conviction and sentence, or a mere discharge depending on the case presented. This procedure was known or ought to have been known to the 1st Respondent.

In addition, by releasing the items before the end of the trial, the trial Court had been deprived of making consequential orders relating to the said items upon the determination of the case, hence the said consequential order was given by a different judge years after the case ended after an application by the Applicant. It is to be noted that per exhibit KA2 being the order for release of the items, it is apparent that an application upon which the order was made was heard on notice to whoever was obviously concerned or had custody of the said items.

In the case of **REPUBLIC VS. BANK OF GHNA AND OTHERS EX-PARTE: DUFOUR** cited supra, the Supreme Court explained contempt when a case is *sub judice* as follows:

> *"the Respondents in their statement of case avers that not a single one of them engaged in any act(s) which have the effect of bringing the administration of justice into disrepute and or scandalizing the Court. They further stated that an act to constitute contempt has to be a willful disobedience of an order of a Court. True that their contention may be, we believe that the Respondents missed an important aspect of contempt of Court. They failed to consider that fact that contempt of Court may arise where a party knowing that a case is sub judice engages in an at or omission which tends to prejudice or interfere with the fair trial of the case despite the absence of an of an order of Court"*

I find that this quote of the Apex Court on contempt is apt for the consideration of this case. The 1st Respondent can therefore not be found to be saying that after she caused the said items to be released when the case was *sub judice* and prejudiced the decision of the Court, she now has a defense to say that she has not willfully disobeyed the Courts orders. Having released the items without a Court order, and not knowing the outcome of the case, it was certain that it was going to be impossible for the same items to be released to anyone else if the Court gave an order contrary to her actions. If it

became '*practically impossible*' to obey the order in issue, it was due to the deliberate actions of the 1st Respondent and no one else.

Of utmost considerations also is the fact that upon receipt or having knowledge of the said order in March 2023, the 1st Respondent took no steps to challenge the said order by way of appeal, judicial review or other lawful means available if she knew it had become impracticable or impossible to obey or act on the order. She rather decided to ignore the order until this application was brought in August 2023. It has been determined in various cases including the case of **REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE: AFODA S.C (2001-2002) SCGLR PAGE 768**

In respect of the sanctity of the judicial system and the Courts 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.''*

I am of the view that the Respondent's disobedience to the orders of the Circuit Court, Accra dated 15th March, 2022 was willful and intentional as she had already made it

impossible to obey the orders of the Court by her own intentional actions. The Applicant has therefore been able to prove his application beyond reasonable doubt against the 1st Respondent. I therefore find her liable and proceed to convict him. She is sentenced to a **fine of five hundred (500) penalty units being GHC6, 000.00 to be paid forthwith or in default, she is to serve a prison term of one (1) month**. A copy of this judgment is to be served on the Head of Legal and Prosecutions Directorate, Accra Region, Ghana Police Service for the attention of the Inspector General of Police (IGP).

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

COUNSEL:

JAMES ADODO MENSAH HOLDING BRIEF OF KWESI BAFFOE INTSIFIL FOR THE APPLICANT.

JASMIN ARMAH FOR ALL THE RESPONDENTS.