

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION, HELD IN ACCRA ON THURSDAY, THE 8TH DAY OF
FEBRUARY, 2024 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/OCC/0579/2022

IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT:

THE REPUBLIC

Vs

JOHN KOMI SOUDI

- RESPONDENT

EX PARTE: SAM WHALEY & 2 ORS - APPLICANTS

AND

IN THE MATTER OF:

1. SAM WHALEY

- PLAINTIFFS

2. JANE WHALEY

3. WORD OF FAITH FELLOWSHIP INC

VS

1. JOHN KOMI SOUDI

- DEFENDANTS

2. TINA AKOUVI SOUDI

3. CHRISTIAN LIGHT BIBLE CHURCH

4. THE REGISTRAR

5. BIO-LINK PHARMACY LIMITED

6. DEBORAH SOUDI

JUDGMENT

On 2nd May 2023, the Plaintiffs/Applicants (hereinafter called the Applicants) filed a motion on notice before this Court. The motion is praying the court for an order to commit the 1st Defendant/Respondent (hereinafter called the Respondent) to prison for contempt of court.

The motion is supported by affidavit and exhibits. The relevant paragraphs of the motion are reproduced below.

3. That I have the consent of the Applicants to swear to this affidavit on their behalf on matters which have come to my attention in the course of performing my duties.
5. That the Applicants on the 6th of July 2022, instituted legal action against the Defendants for the following reliefs:
 - i. A declaration that an equitable trust existed between the Plaintiffs and the 1st and 2nd Defendants.
 - ii. A declaration that the 1st and 2nd Defendants acted in contravention and in breach of the trust that existed between them and the Plaintiffs.
 - iii. An order directed at the 1st and 2nd Defendants to render accounts to the Plaintiffs for all monies received from the operation of the school, pharmacy

and all businesses set up on the Church premises as well as businesses set up with funds belonging to the Church.

- iv. An order directed at the 4th Defendant to expunge from its register, the names of the 1st and 2nd Defendants, the names of all persons appointed by them as Directors or subscribers of the 3rd Defendant.
 - v. An order to the 4th Defendant to restore the names of the 1st and 2nd Plaintiffs and install their names as subscribers of the 3rd Defendant.
 - vi. An order of perpetual injunction on all unauthorized businesses operating on the Church premises.
6. That the Applicants on 23rd August 2022, filed a motion on notice for an order of Interlocutory Injunction against the 1st, 2nd and 6th Defendants to restrain the Defendants/Respondents therein, from holding themselves out as pastors, directors and officers and operating the 3rd Defendant, the word of Faith Christian School (now Foothill Christian School), the 5th Defendant and affiliates, and from accessing funds and assets/properties as well as bank accounts belonging to the 3rd Defendant, the word of Faith Christian School (now Foothill Christian School), the 5th Defendant and their other affiliates pending the final determination of the action.
7. That the motion was duly served on the Defendants/Respondents therein. 8. That the 1st, 2nd and 6th Defendants filed affidavits in opposition to the application for injunction on 30th August 2022, and filed further affidavits in response to the Plaintiff's affidavit.
9. That ever since this suit commenced, the 1st Defendant/Respondent as Head Pastor of the 3rd Defendant and Administrator of the school, has resorted to intimidation, harassment and assault targeted at a section of the membership of the church and the school, including persons occupying critical positions in the Ministry, who he has

adjudged to be unsupportive of him in his resolve to take the Ministry and the Pharmacy from the Plaintiffs.

10. That unfortunately, the Headmaster/Director of Academic of the school, who is also the assistant pastor of the 3rd Defendant, Stephen Narthey has particularly come under the 1st Defendant/Respondent's outrage and incessant attacks. (Attached and marked as exhibit WOF 1 series are official correspondence written by Steven Narthey in the ordinary course of his duty).

11. That on 25th March 2023, whilst the motion for the interlocutory injunction was pending, the 1st Defendant/Respondent launched an unprovoked assault on the said Stephen Narthey leaving him with severe pains around his neck and the shoulder area, which had to be medically attended to by medical personnel. (Attached and marked as exhibit WOF 2 is copy of the medical report).

12. That the matter was reported by Stephen Narthey to the Dodowa Police and the 1st Defendant/Respondent is currently the subject of criminal proceedings before the Dodowa District Court. (Attached and marked as exhibit WOF 3 is a copy of Stephen Narthey's statement given at the Dodowa Police station following the assault).

13. That the Plaintiffs motion was heard by this honourable court on 17th of April 2023, with counsel for the 1st, 2nd and 6th Defendants being present, and participated in the proceedings.

14. That the object and the intent of the application was unequivocally clear to the 1st Defendant/Respondent.

15. That this court adjourned proceedings to 24th May 2023, for the delivery of its ruling on the application for the injunction.

16. That despite the fact that the motion is seeking, inter alia, to restrain the Respondent from acting as aforesaid and also to maintain the status quo pending the final

determination of the suit, having been moved before this honourable court, the 1st Defendant/Respondent immediately proceeded after court, to serve Stephen Nartey, the Headmaster/Director of Academic and assistant pastor, a letter terminating his employment instantly with the school. (Attached and marked as exhibit WOF 4 is copy of the termination letter)

17. That I am advised and verily believe the same to be true, that the actions of the 1st Defendant/Respondent who is a party to this suit amount to disrespect of the Court's authority and its processes and has brought the administration of justice into disrepute.

18. That the actions of the 1st Defendant/Respondent are unwarranted, deliberate, wilful and are only calculated to undermine the objective of the injunction Application, as well as overreach the court's decision.

The Respondent resisted the application by filing affidavit in opposition. The relevant paragraphs are reproduced below:

3. That I have been served with Plaintiffs/Applicants application for Committal for contempt filed on the 2nd day of May 2023.

4. That I am vehemently opposed to the instant application.

5. That the matters the Plaintiffs/Applicants are bringing are completely unrelated to the instant suit.

6. That I have in no way flouted the orders of the court for which I am to be committed for contempt of court.

7. That the Applicants are doing all they can to victimize me with unrelated matters to the suit.

8. That I have at all material times been the Proprietor and not the Administrator of the school as the Applicants want the court to believe.

11. That per the Plaintiffs/Applicants' application for injunction before the court, the Plaintiffs were praying for the status quo to be maintained until the final determination of the suit.
12. That the said injunction was to injunct myself together with the 2nd and 6th Defendants, our agents, assigns or workers by restraining us from holding ourselves out as pastors, directors and officers and operating the 3rd Defendant, the school, the 5th Defendant and affiliates and from accessing funds and assets and properties as well as bank accounts belonging to the school, (5th Defendant) and their other affiliates pending the final determination of the substantive action.
13. That if the status quo is to be maintained, it does not prevent me from taking measures to deal with employees who neglect their duties and flagrantly disregard the rules and regulations that govern the school.
14. That I have never intimidated, harassed or assaulted any member of the church or school as is being alleged by the Applicants.
17. That the said Stephen Nartey who claims he is the headmaster of the school has ceased to be the Headmaster/Director of Academic as far back as May, 2022 and all the letters labelled as exhibit WOF1 series are old letters dating as far back as from the year 2010 to 2019. Attached and marked as exhibit JKM 2 series are copies of the Letter of appointment of a new director of Academic, letters written by the new Director in his capacity as such and the new Governance and Organization Chart that governs the school.
18. That being the proprietor of the school, I have the onerous responsibility of ensuring that the school maintains the highest standards as well as protecting the pupils from any unlawful act that will endanger their lives.
19. That the said assault of Stephen Nartey are mere allegations of which the veracity or otherwise is yet to be determined by a court of competent jurisdiction.

20. That I have not been convicted of any crime by any court for which the Applicants are portraying me as a criminal before this Honourable Court.

21. That this application is another attempt by the Applicants to mislead the court.

22. That the Applicants did not employ any of the current employees of the school. For that reason, they cannot determine who should continue to be in the employment of the school or otherwise.

23. That there is no law preventing a person from terminating the appointment of an employee who fails to fulfil the purpose for which he or she was employed and disregards the rules and regulations governing the institution that employed him or her.

24. That if the said Stephen Nartey is aggrieved by his termination of employment, there are avenues provided by law for him to address same, and it does not lie with the Applicants to use his termination as a basis for contempt application against me.

25. That the said Stephen Nartey has already instituted proceedings against me at the National Labour Commission in respect of his termination and as such, same cannot be used as the basis for contempt proceedings against me.

26. That the instant application is littered with falsehood, frivolous, vexatious and unmeritorious allegations and an attempt by the Plaintiffs/Applicants to muddy the waters in respect of the suit before the Honourable Court.

27. That I have in no way disrespected or flouted any orders of the Honourable Court for which I should be committed for contempt of court.

When the application came up for hearing, counsel for the Applicants prayed the court to grant the application and commit the Respondent for contempt of court. Counsel relied basically on the affidavit in support of the application. Counsel for the Respondent on

the other hand prayed the court to dismiss the application. Counsel relied on the affidavit in opposition.

The Respondent's counsel further contended, that the application should be dismissed in limine because; it was not any of the Applicants who deposed to the affidavit in support of the application but a non-applicant.

Counsel submitted, that in contempt application which is quasi-criminal, the affidavit in support should be deposed to by the Applicant. Counsel for the Applicant contended otherwise.

I will first deal with the Respondent's counsel submission in respect of the deponent to the affidavit in support of the application This is because; if it is successful, then the merits of the application will not be considered. It will mean that the application is not properly before the court for the merits to be determined.

Under Order 50 rule 1(2) of C.I 47, contempt proceedings are commenced by an application to the Court.

Under Order 50 rule 1(3) of C.I 47, contempt application should be supported by an affidavit stating the grounds of the application.

Order 50 rule 1(3) of CI 47 does not give any special criteria as to who can deposed to affidavit in support in contempt proceedings.

This therefore takes us to Order 20 of C.I 47 which is on affidavits. It is trite law, that since C.I 47 is a statute, it will override any case law which decides contrary to the provisions in C.I 47.

See: EDUSEI v DINERS CLUB SUISSE S.A [1982-83] GLR 809 CA

BAAH v ATTORNEY-GENERAL [2012] 49 GMJ 57 CA

The deponent to the Applicants affidavit in support of the Application is one Lydia Kukua Ocran. She described herself as a private legal practitioner and an associate of the law firm representing the Applicants and had such authority to depose to the affidavit.

It is trite law, that there is no case law or procedural rule which prohibits a lawyer or a clerk from the chambers of a lawyer handling a case from swearing to affidavit in support of an application if his/her source of information or authority can be disclosed.

See: 18TH JULY v YEHANS INTERNATIONAL LTD. [2012] 1 SCGLR 167

The law is also settled, that it is not a deponent to an affidavit in support of an application who, seeks to invoke the jurisdiction of the court. It is the applicant. An application stricto sensu belongs to the Applicant and not the deponent to the affidavit. Therefore, the capacity of a deponent in respect of affidavit in support to invoke the jurisdiction of a court in an application is irrelevant, that is why law firm clerks, or lawyers can depose to affidavits on behalf of the clients the firm is representing.

See: REPUBLIC V HIGH COURT, (COMMERCIAL DIVISION) ACCRA, EX PARTE NANA OWUSU AFRIYIE & ANOTHER (FIRST ATLANTIC BANK LTD – INTERESTED PARTY [2021] 172 GMJ 424 SC

Even in strict criminal cases where the stakes are high, there is no law which can compel a complainant or a victim to testify in the case by himself.

It is trite law, that the depositions in affidavit in support of an application is the evidence of the applicant which does not necessarily need to be deposed to by an applicant himself as a deponent.

However, since contempt is quasi-criminal, an affidavit in opposition must be deposed to by the Respondent himself, which is like the taking of a plea of an accused person under section 171 of Act 30. This is because; in contempt applications, the affidavit in opposition is like the plea of the respondent which must be taken or given by the

respondent himself. However, it is not so in respect of an affidavit in support of an application.

Therefore, if there are more than one respondent in contempt proceedings, each respondent must depose to a separate affidavit in opposition. One person cannot depose to the affidavit in opposition on behalf of the others.

See: ACKAH v ADJEI ACHEAMPONG [2005-2006] SCGLR 1

Again, it is the law, that a party need not testify by himself before he can prove his case like an Applicant in contempt proceedings. In the case of **AGBOSU & ORS v KOTEY & ORS [2003-2005] 1 GLR 685 at 714-715**, The Supreme Court speaking through Wood JSC (as he then was) held as follows:

“I know of no rule of law which states that a party would succeed in his case only if he testified at the trial. The standard test in any given case is not whether the party himself gave evidence at the trial but whether he was able through whomever, to provide the needed evidence. So that even if a party did not make himself available at the trial as a witness, provided sufficient evidence was led on his behalf in proof of his case, he ought not to lose the action on the basis that he himself did not testify at the trial”.

A court therefore cannot compel a party to testify in a case.

See also, ARMAH v HYDRAFOAM ESTATES GHANA LTD [2013-2014] 2 SCGLR 1551

It is therefore my view, that the deponent to the Applicants affidavit in support of the application can depose to it.

I will now proceed to discuss the law on contempt in Ghana.

Contempt application is provided under section 36(1) of the Courts Act, 1993 (Act 459) which provides as follows:

“The Superior Courts of Judicature shall have the power to commit for contempt to themselves and all such powers as were vested in a court of record immediately before the coming into force of the Constitution in relation to contempt of court”

Almost the same provision is found in Article 126 (2) of the 1992 Constitution. The power to commit for contempt is a power possessed at common law by the superior courts. This power has been retained by our laws which has been stated above.

See: ASUMADU SAKYI II v OWUSU AND OTHERS [1981] GLR 201 CA

In Oswald’s contempt of court, 3rd Edition at page 6, it is stated that **“ 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 disrepute or disregard or to interfere with or prejudice parties, litigants or their witnesses during litigation. This means that a person commits contempt and may be committed to prison for wilfully disobeying an order of a court requiring him to do any act other than payment of money or to abstain from doing some act”**

The order which a person can be said to have disobeyed should be unambiguous, so that the person will know what he is to do or not to do.

See: REPUBLIC v HIGH COURT ACCRA, EX PARTE LARYEA MENSAH [1998-1999] SCGLR 360

IN RE EFFIDUASE STOOL AFFAIRS; (NO.2), REPUBLIC v NUMAPAU; PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS AND ORS; EX PARTE AMEYAW II (NO. 2) [1998-1999] 639

REPUBLIC v JAFRO MENSAH LARKAI & 4 ORS [2012] 48 GMJ 112 CA

The Black's Law Dictionary, 9th Edition by Bryan A. Garner as editor in chief at page 360 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 Oxford Advanced Learner's Dictionary of Current English by A.S Hornby (7th Edition) defines contempt of court as **“the crime of refusing to obey an order made by a court, or not showing respect for a court or judge.”**

To constitute contempt generally, it must be proved that the disobedience was a wilful breach of a court's order which requires the party to do or abstain from doing something. This is because, it is not an absolute offence. Therefore, the intentional act of a respondent must be proved.

See: REPUBLIC v HIGH COURT, EX PARTE LARYEA MENSAH (SUPRA)

YOURI v ABOAGYE [2013] 67 GMJ 49 CA

AGBLETA v THE REPUBLIC [1977] 1 GLR 445 CA

However, contempt of court may be committed intentionally or even unintentionally. And it is no defence to a charge of contempt of court for a party to say, that he did not intend to commit contempt of court. Where a party knowing that a case is sub-judice but engage in an act or omission which tendered to prejudice or interfere with the fair trial of the case, despite the absence of a court's order, it may constitute contempt.

See: REPUBLIC v BANK OF GHANA AND OTHERS EX PARTE DUFFOUR [2018-2019] 1 GLR 445 SC

However, 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 to commit for

contempt by the court is great importance to society. By the exercise of the power to commit for 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: REPUBLIC v MENSA-BONSU AND OTHERS; EX PARTE ATTORNEY-GENERAL [1995-96] 1 GLR 377 SC

REPUBLIC v LIBERTY PRESS LTD. & ORS [1968] GLR 123

REPUBLIC v HIGH COURT (LAND DIVISION), ACCRA, EX PARTE KENNEDY OHENE AGYAPONG [2010] 170 GMJ 1 SC

REPUBLIC v BOATENG & ODURO; EX PARTE AGYENIM BOATENG AND OTHERS [2009] SCGLR 154

In the case of **REPUBLIC v SITO; EX PARTE FORDJOUR, [2001-2002] SCGLR 322**, the Supreme Court stated 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.

See also, THE REPUBLIC v AFEWU & ANOR; EX PARTE TAKORADI FLOUR MILLS AND ANOTHER [2018] 121 GMJ 210 CA

REPUBLIC v CONDUAH, EX PARTE AABA (SUBSTITUTED BY) ASMAH [2013-2014] 2 SCGLR 1032

REPUBLIC v NANA OSEI BONSU II EX PARTE AMADIE [2006] 9 MLRG 204 CA

**REPUBLIC v ANYETEI NUNOO; EX PARTE BENNET QUARCOO [2018] 121 GMJ 142
CA**

The Respondent counsel argued again in this case, that there was no order which was made by the court which the Respondent disobeyed.

However, the law is settled, that in a situation where there is a pending application like injunction which has not been determined, any act that seeks to do the very thing or act which the application is seeking to prevent will also amount to contempt of court.

See: REPUBLIC v MOFFAT AND OTHERS; EX PARTE ALLOTEY [1971] 2 GLR 391

In the case of **ARYEETAY v AGBOFU II AND ANOTHER [1994-1995] GBR 250**, the Supreme Court held at page 252 as follows:

“...The applicants having been served with the motion for the interim injunction to restrain them from carrying out any kind of installation until the outcome of the suit was known, deliberately stole the match over the respondent by doing the very thing for which the motion had been brought. While the motion for the interim injunction was pending. ...Once the applicants had become aware of the pendency of the motion, any conduct that was likely to prejudice a fair hearing of that motion was tantamount to contempt”.

Since contempt is quasi-criminal, the law requires that its proof by an applicant against a respondent should be beyond reasonable doubt. The proof of contempt is like any criminal case under section 13 (1) of NRCD 323. The rationale for the high standard of proof in contempt is that it can lead to the contemnor being imprisoned upon conviction.

See: REPUBLIC v MAJOR CLIFFORD ATTA WIRROM (RTD); EX PARTE ERASMUS QUAISON AND OTHERS [2013] 63 GMJ 133 CA

REPUBLIC v ACQUAYE ALIAS ABOR YAMOAH II; EX PARTE ESSEL AND OTHERS [2009] SCGLR 749

REPUBLIC v NII ACHIA II (ACHIAMAN MANTSE); EX PARTE JOSHUA NMAI ADDO AND EMMANUEL KWATEI QUARTEY-PAPAFIO [2015-2016] 1 SCGLR 350

In **KANGAH v KYEREH AND OTHERS [1979] GLR 458**, it was stated in the headnote as follows: **“To obtain a committal order for contempt, the applicant must strictly prove beyond reasonable doubt that the respondent had wilfully disobeyed and violated the court's order. ... In the absence of such evidence, the respondent could not be guilty of contempt”**.

See also, **REPUBLIC v HIGH COURT, KUMASI; EX PARTE KODUAH (PARAGON INVESTMENT LTD.-INTERESTED PARTY) [2015-2016] 2 SCGLR 1349**

The authorities have held further, that the purpose of the law of contempt is to protect the integrity of the justice system and the right of an individual litigants to have justice effectively administered.

To this end, punishment is imposed on persons found by words or acts, to have impeded or interfered with the administration of justice, or to have created a substantial right of the course of justice being seriously prejudiced or interfered with, or to have otherwise scandalized the court.

See: YOURI v ABOAGYE (SUPRA)

Coming back to the present application, the sole question for determination is whether the Respondent did anything to prejudice the injunction application in this case.

The Applicants filed an injunction application in this case on 23rd August 2022. It was served on the Respondent on 25th August 2022 as per the affidavit of service

Commissioned on 29th August 2022. The Applicants' injunction application prayed the Court as follows;

"...An order for interlocutory injunction restraining the 1st, 2nd and 6th Defendants, their assigns, agents and workers from operating and holding themselves out as pastors, directors and officers and interfering with the activities of the 3rd Defendant, the Word of Faith Christian School (now Foothill Christian School), the 5th Defendant and other affiliates and from accessing funds and other assets/properties as well as bank accounts of the 3rd Defendant, the Word of Faith Christian School, (now Foothill Christian School), the 5th Defendant and other affiliates pending the final determination of the case".

The Respondent herein was the 1st Defendant/Respondent in respect of the injunction application. The 1st, 2nd, 3rd, 5th and 6th Respondents in the injunction application filed separate affidavits in opposition on 30th August 2023. They were served on the Applicants. The parties subsequently filed various supplementary affidavits in support and in opposition to the injunction application. The injunction application was heard on 17th April, 2023. It was adjourned to 24th May 2023 for ruling.

The Applicants' contention in this application is that while the ruling in the injunction application was yet to be delivered, the Respondent assaulted one Stephen Nartey who was the Headmaster of the Word of Faith Christian School. The Applicants attached a complainant statement, dated 25th March 2023 in support of the allegation as exhibit WOF 3.

The Applicants further contend, that while the injunction application was pending for ruling to be delivered, the Respondent wrote a letter to terminate the appointment of Stephen Nartey. The Applicants attached the letter as exhibit WOF 4 to the affidavit in support of the application.

The Respondent's counsel in his submission insisted, that the Respondent is not in contempt of court.

I now wish to proceed to make my determination as to whether the Respondent was in contempt of court or not.

I have examined all the affidavits and the attached exhibits carefully. In respect of the allegation of assault by the Respondent against the said Stephen Nartey, the evidence before the court is that there is a criminal case pending before the Dodowa District Court as to whether the Respondent assaulted the said Stephen Nartey or not.

I am therefore unable to make any determination on it in this judgment. I am therefore unable to determine whether it has prejudiced or interfered with the administration of justice before this court.

In respect of the termination of the appointment of Stephen Nartey as Headmaster or teacher of Word of Faith Christian School, the Applicants attached the letter of termination of appointment to this application. It has been marked as exhibit WOF 4. It is dated April 2023. It has been signed by the Respondent as the author of the letter. The Respondent described himself as the proprietor of the Word of Faith Christian School.

It must be noted, that among the reliefs the Applicants were asking from this court in their injunction application was to restrain the Respondent and other people from holding themselves out as directors or officers of the Word of Faith Christian School, until the determination of this case.

Of course, if one describes himself as a proprietor of a school, then the person is holding himself out as an officer of the school.

The Respondent has not denied the contents of exhibit WOF 4. There is no indication that the letter has been withdrawn by the Respondent. The letter was written two days after

the Applicants injunction application had been moved and the court was yet to give a ruling on it.

The Respondent in paragraphs 23 and 24 of his affidavit in opposition admitted writing the termination letter which is exhibit WOF 4 and even justified it. The Respondent therefore admitted the contents of exhibit WOF 4.

The ruling in the injunction application was subsequently given and the Respondent was restrained from holding himself out as an officer of the Word of Faith Christian School which was headed by the said Stephen Nartey.

It is the law, that when a party makes an averment and the averment was not denied, then no issue is joined and no further evidence has to be led on that averment. Similarly, when a party had given evidence of a material fact and was not cross-examined upon it, he needs not call further evidence of that fact, it implies admission.

See: KUSI & KUSI v BONSU [2010] SCGLR 60

DANIELLI CONSTRUCTION LTD. v MABEY & JOHNSON LTD [2007-2008] 1 SCGLR 60

FORI v AYIREBI & ORS [1966] GLR 627 SC

WESTERN HARDWOOD ENTERPRISES LIMITED AND ANOTHER v WEST AFRICAN ENTERPRISES LTD [1998-99] SCGLR 105

It is also settled law, that where an opponent in an action failed to challenge the other party on an issue of fact alleged, then the court would take that failure to challenge as an admission of the truth of the fact as presented by the one who asserted it.

See: ARYEETAY v BROWN [2006] 5 MLRG 160 CA

Again, in the case of **IN RE ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) v AKOTIA OWORSIKA III (SUBSTITUTED BY LARYEA AYIKU III) [2005-2006] SCGLR 637 at 651**, it was held as follows;

“Where the adversary of a party has admitted a fact advantageous to the cause of that party, what better evidence does the party need to establish that fact than by relying on the admission of his opponent. This is really an estoppel by conduct. It is a rule whereby a party is precluded from denying the existence of some state of facts which he had formerly asserted.”

See also, ADAMS ADDY AND ANOTHER v SOLOMON MINTAH ACKAH [2021] 172 GMJ 363 SC

The contents of exhibit WOF 4 which the Respondent wrote while the injunction application was pending clearly interfered and undermined the injunction application before the court.

It is trite law, that an order or a process of a court of competent jurisdiction as in this case, the injunction application is considered right until it has been set aside or vacated. Therefore, so long as the injunction application had not been ruled upon, it was wrong for the Respondent to have written exhibit WOF '4'.

See: REPUBLIC v CONDUAH; EX PARTE AABA (SUPRA)

It is not the business of litigants and or their counsel to determine which orders or processes of court are lawful and deserving of obedience and those which must not be obeyed. The rule is that a party is obliged to take proper course to question the validity of an act or order or process of a court, even if it is perceived to be void, but while it exists, it must be obeyed.

See: REPUBLIC v HIGH COURT ACCRA, EX PARTE AFODA [2001-2002] SCGLR 768

REPUBLIC v BREW [1992] 1 GLR 14

KUMNIPAH II v AYIREBI AND OTHERS [1987-1988] GLR 265 SC

Again, it is the law that whatever the merits or demerits of an order or a process of a court such as injunction application, the order or the process stands and effect has to be given to it until it is set aside.

See: BAAH v BAAH AND ANOTHER [1973] 2 GLR 8

I do not think the Respondent has any justification for writing exhibit WOF '4' to terminate the appointment of the said Stephen Nartey when the injunction application had not been ruled upon. Indeed, the injunction application prayed the court to restrain him from writing such letters.

I do agree, that the law is based on what society can reasonably expect from its members. And that it should not set intractable standards of behaviour, which requires mankind to perform acts of martyrdom and brands as criminal or wilful any behaviour failing below those standards. However, the Respondent defence does not in any way justify his attitude of interfering with the injunction application by writing exhibit WOF' 4'.

The sanctity of the court must be maintained. It is clear disobedience to write a letter to prejudice an injunction application pending before a court of competent jurisdiction. I am of the view, that the Respondent's behaviour and conduct was intentional and wilful.

In conclusion, I am of the view, that the Respondent is clearly in contempt of court. The Applicants have proved their case beyond reasonable doubt. I find the Respondent liable and proceed to convict him as such.

SENTENCE

I have listened to the submissions by counsel for the Respondent and the Applicants for the court not to impose custodial sentence as first option against the Respondent.

Contempt of court has no minimum sentence, the statutes, which are the Courts Act, 1993 (Act 459), C.I 47 and the Constitution have also not prescribed any maximum or minimum sentence for it upon conviction. It means that the society takes a strong view of such conduct.

I have considered all the circumstances in this case. I will not impose a custodial sentence as first option. I hereby impose a fine of GHS 20, 000.00 on the Respondent. In default, he is to serve 14 days in prison. In addition, he is to sign a bond to be of good behaviour for 12 months. In default, he will serve 21 days in prison. The Applicants are awarded cost of GHS 5000 against the Respondent. I order accordingly.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

MAXWELL AMIHERE FOR THE APPLICANTS

DR. JUSTICE SREM-SAI FOR THE RESPONDENT

AUTHORITIES

- 1.** EDUSEI v DINERS CLUB SUISSE S.A [1982-83] GLR 809 CA
- 2.** BAAH v ATTORNEY-GENERAL [2012] 49 GMJ 57 CA
- 3.** 18TH JULY v YEHANS INTERNATIONAL LTD [2012] 1 SCGLR 167
- 4.** REPUBLIC v HIGH COURT, (COMMERCIAL DIVISION) ACCRA, EX PARTE NANA OWUSU AFRIYIE & ANOTHER (FIRST ATLANTIC BANK LTD – INTERESTED PARTY [2021] 172 GMJ 424 SC
- 5.** ACKAH v ADJEI ACHEAMPONG [2005-2006] SCGLR 1
- 6.** AGBOSU & ORS v KOTEY & ORS [2003-2005] 1 GLR 685 SC
- 7.** ARMAH v HYDRAFOAM ESTATES GHANA LTD. [2013-2014] 2 SCGLR 1551
- 8.** ASUMADU SAKYI II v OWUSU AND OTHERS [1981] GLR 201 CA
- 9.** REPUBLIC v HIGH COURT ACCRA, EX PARTE LARYEA MENSAH [1998-1999] SCGLR 360
- 10.** IN RE EFFIDUASE STOOL AFFAIRS (NO.2), REPUBLIC v NUMAPAU; PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS AND ORS; EX PARTE AMEYAW II (NO. 2) [1998-1999] 639
- 11.** REPUBLIC v JAFRO MENSAH LARKAI & 4 ORS [2012] 48 GMJ 112 CA
- 12.** YOURI v ABOAGYE [2013] 67 GMJ 49 CA
- 13.** AGBLETA v THE REPUBLIC [1977] 1 GLR 445 CA
- 14.** REPUBLIC v BANK OF GHANA AND OTHERS EX PARTE DUFFOUR [2018-2019] 1 GLR 445 SC
- 15.** REPUBLIC v MENSA-BONSU AND OTHERS; EX PARTE ATTORNEY-GENERAL [1995-96] 1 GLR 377 SC
- 16.** REPUBLIC v LIBERTY PRESS LTD. & ORS [1968] GLR 123
- 17.** REPUBLIC v HIGH COURT (LAND DIVISION), ACCRA, EX PARTE KENNEDY OHENE AGYAPONG [2010] 170 GMJ 1 SC

- 18.** REPUBLIC v BOATENG & ODURO; EX PARTE AGYENIM BOATENG AND OTHERS [2009] SCGLR 154
- 19.** REPUBLIC v SITO; EX PARTE FORDJOUR, [2001-2002] SCGLR 322
- 20.** THE REPUBLIC v AFEWU & ANOR; EX PARTE TAKORADI FLOUR MILLS AND ANOTHER [2018] 121 GMJ 210 CA
- 21.** REPUBLIC v CONDUAH, EX PARTE AABA (SUBSTITUTED BY) ASMAH [2013-2014] 2 SCGLR 1032
- 22.** REPUBLIC v NANA OSEI BONSU II EX PARTE AMADIE [2006] 9 MLRG 204 CA
- 23.** REPUBLIC v ANYETEI NUNOO; EX PARTE BENNET QUARCOO [2018] 121 GMJ 142 CA
- 24.** REPUBLIC v MOFFAT AND OTHERS; EX PARTE ALLOTEY [1971] 2 GLR 391
- 25.** ARYEETAY v AGBOFU II AND ANOTHER [1994-1995] GBR 250

- 26.** REPUBLIC v MAJOR CLIFFORD ATTA WIRROM (RTD); EX PARTE ERASMUS QUAISON AND OTHERS [2013] 63 GMJ 133 CA
- 27.** REPUBLIC v ACQUAYE ALIAS ABOR YAMOAH II; EX PARTE ESSEL AND OTHERS [2009] SCGLR 749
- 28.** REPUBLIC v NII ACHIA II (ACHIAMAN MANTSE); EX PARTE JOSHUA NMAI ADDO AND EMMANUEL KWATEI QUARTEY-PAPAFIO [2015-2016] 1 SCGLR 350
- 29.** KANGAH v KYEREH AND OTHERS [1979] GLR 458
- 30.** REPUBLIC v HIGH COURT, KUMASI; EX PARTE KODUAH (PARAGON INVESTMENT LTD-INTERESTED PARTY) [2015-2016] 2 SCGLR 1349
- 31.** KUSI & KUSI v BONSU [2010] SCGLR 60

- 32.** DANIELLI CONSTRUCTION LTD. v MABEY & JOHNSON LTD [2007-2008] 1 SCGLR 60
- 33.** FORI v AYIREBI & ORS [1966] GLR 627 SC
- 34.** WESTERN HARDWOOD ENTERPRISES LIMITED AND ANOTHER v WEST AFRICAN ENTERPRISES LTD. [1998-99] SCGLR 105
- 35.** ARYEETEY v BROWN [2006] 5 MLRG 160 CA
- 36.** IN RE ASERE STOOL; NIKOI OLAI AMONTIA IV (SUBSTITUTED BY TAFO AMON II) v AKOTIA OWORSIKA III (SUBSTITUTED BY LARYEA AYIKU III) [2005-2006] SCGLR 637
- 37.** ADAMS ADDY AND ANOTHER v SOLOMON MINTAH ACKAH [2021] 172 GMJ 363 SC
- 38.** REPUBLIC v HIGH COURT ACCRA, EX PARTE AFODA [2001-2002] SCGLR 768
- 39.** REPUBLIC v BREW [1992] 1 GLR 14
- 40.** KUMNIPAH II v AYIREBI AND OTHERS [1987] GLR 265 SC
- 41.** BAAH v BAAH AND ANOTHER [1973] 2 GLR 8