

**IN THE SUPERIOR COURTS OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD IN KUMASI ON TUESDAY THE 7TH DAY OF NOVEMBER, 2023
BEFORE HER LORDSHIP ROSEMARY BAAH TOSU- HIGH COURT JUDGE**

SUIT NO: GJLMISC/60/22

IN THE MATTER OF THE REPUBLIC

VS

1. NANA ADUMATTA. ----- RESPONDENTS

2. AKWASI PEPRAH

ALL OF KRONUM ABOAHIA, KUMASI

EX-PARTE ATTA GYAMFI PANIN --- APPLICANT

JUDGMENT

FACTS AND BACKGROUD OF THE CASE

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Applicant in his affidavit in support of this application deposed that sometime in the past, the Respondent trespassed upon a portion of his building plot at Kronoum Aboahia, Kumasi. That as a result of this trespass the Applicant issued a Writ of Summons and Statement of Claim in suit number GJ1/44/22 against the Respondents.

Based on this action, the Applicant was granted an order of interlocutory injunction restraining particularly, the 2nd Respondent, his agents, assigns, workmen etc from interfering with the land in dispute, developing or undertaking any further constructional work on it until the final determination of the suit.

The Applicant attached the said order to the application as exhibit SSG1.

The Applicant further deposes that the order was served on the 2nd Respondent by substituted service by posting on the disputed property. He attached evidence of the posting as exhibits SSG2 and SSG3.

The Respondents despite having notice of the Court order, defiantly continued to build. The Applicant further exhibited more photographs allegedly of the Respondents and their workmen flouting the Honourable Court's orders as exhibits SSG4, SSG5 & SSG6.

According to the Applicant, even though, the 1st Respondent is not the owner of the property being constructed, he is the 2nd Respondent's unlawful grantor. That the said 1st Respondent is always on the disputed land encouraging or urging the workers to ignore the Honourable Court's orders.

The Applicant prays for an order committing the Respondents to prison for flouting the Court's order dated 22nd December, 2021.

The Applicant in his written submissions supporting this application, narrated the background to the contempt application. The Applicant says he bought the property on 10th September, 2009 from the Regent or Occupant of the Obaapanin Stool of the Akuanana Stool, in Kumasi.

He erected a two -bedroom self -contained building on the plot and also carted large quantities of blocks and sand unto the vacant portion of the land.

The Applicant says in November, 2021, the 1st Respondent without his permission brought persons on the land to take measurements. He resisted this, however the 1st Respondent went ahead and carved out a portion of his land out for 2nd Respondent.

He details how the 2nd Respondent with the aid of land guards entered upon his property and dug a foundation and put up a structure on the land in question.

The Applicant relied on the cases of **RE EFFIDUASE STOOL AFFAIRS (NO.2) THE REPUBLIC VS NUMAPAU EX-PARTE AMEYAW II (1998-1999)** and **REPUBLIC VS MOFFAT EX-PARTE ALLOTTEY (1971) 2 GLR 391.**

AFFIDAVITS IN OPPOSITION BY 1ST AND 2ND RESPONDENTS

The 1st Respondent deposed that he is the Odikro of Botantia, that he ascended the stool in 2018. He acknowledged being served with the application to commit him for contempt of Court.

The 1st Respondent denies the depositions of the Applicant and states that he has no interest whatsoever in the subject matter of the application. He deposed that even before the injunction order made in relation to the said property, the Asantehene's great oath had been invoked as a result of a dispute between the Buosie Stool and Botantia Stool. That the Asantehene had directed that no one should go onto the whole area including the land in dispute.

He attached a copy of the order by the Asantehene as exhibit 1. The 1st Respondent says due to this he does not even go into the said area much less encourage others to continue building there.

He prays that the said application be dismissed as being unmeritorious.

The 2nd Respondent, likewise in his affidavit in opposition deposes that he has been served. He denies having any interest in the land subject matter of the suit.

He says that he has not been on the said land and neither has he directed any one to work on the land. He says that the allegations against him are baseless and not supported by any shred of evidence.

The 2nd Respondent claims that he is not even aware of the pending suit.

ANALYSIS AND DECISION

The offence of Contempt of Court was defined by Acquah J as he then was in the case of **IN RE: EFFIDUASE STOOL AFFAIRS (No.2), EX PARTE AMEYAW II (1998-1999) SCGLR 639 @ 660**

“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.”

The Black’s Law Dictionary, 8th Edition also defines contempt to be:

“conduct that defies the authority or dignity of a court or legislature. Because such conduct interferes with the administration of justice, it is punishable, usually by fine or imprisonment”

In the case of **REPUBLIC VS SITO 1, EX- PARTE FORDJOUR (2001-2002) SCGLR 322**, the Supreme Court offered the following as constituting the offence of contempt of Court.

1. That there should have been a judgment or order which required the contemnor to do or abstain from doing something.
2. That the contemnor knew what precisely he was expected to do or abstain from doing and
3. That he failed to comply with the terms of that judgment or order and that his disobedience was willful.

See the cases of **REPUBLIC VS AFEWU & ANOR** and **REPUBLIC VS CONDUAH, EX-PARTE AABA (2013-2014) 2 SCGLR.**

To constitute contempt of court, the Applicant must in addition to the above, prove that the breach of the Court order which requires the Respondents to do or refrain from doing something was intentional or willful. Acts that are done mistakenly are not punishable.

See the case of **REPUBLIC VS HIGH COURT, EX- PARTE LARYEA MENSAH (1998-1999) SCGLR 360.**

It is without debate that since the offence of contempt of court is quasi criminal, the standard of proof then is proof beyond reasonable doubt. This ultimately shows the serious nature of this offence because the alleged contemnor's liberty is at risk.

See the case of **KANGAH VS KYERE (1979) GLR 458** which held as follows:

"To obtain committal for contempt, the applicant must strictly prove beyond reasonable doubt that the Respondent has willfully disobeyed

and violated the Court's order. In the absence of such evidence, the Respondent's could not be guilty of contempt."

Section 13(1) of the Evidence Act, 1975 NRCD 323 also 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."

The case of **REPUBLIC vs BEKOE EX-PARTE ADJEI (1982/83) GLR 91** it was held that:

"Where a person has been charged with contempt his guilt should be proved with the same strictness required in a criminal trial that is beyond reasonable doubt"

Seeing that the burden on the Applicant is very high, I start by analyzing the order of the Court that the Respondents are said to have disobeyed marked as exhibit SSG1.

I noticed that in the said exhibit, the order was directed to the 2nd Respondent, his agents and assigns who were allegedly building on the plot in dispute. There is no mention of the 1st Respondent in the order. Apart from the affidavit in support of the application which in paragraph 11, which describes the 1st Respondent as an unlawful grantor of the 2nd Defendant, there is nothing more.

This order does not affect the 1st Respondent nor was it directed at 1st Respondent. I cannot therefore conclude that in relation to the 1st Respondent there was an order which required him to do an act or abstain from doing an act which he has willfully disobeyed as provided in the ex-parte Fordjour case referred to supra.

Apart from the affidavit of non-service of the said processes on 1st Respondent, dated 22nd April, 2022, there is no affidavit on file proving service of the said order on 1st Respondent by way of substituted service.

There is even some confusion if 1st Respondent was the right person to be sued. In the written submissions filed on behalf of Applicant, 1st Respondent is described as the occupant of the Akuanana Stool, however, 1st Respondent in his affidavit in opposition describes himself as the Odikro of Botantia.

There has been no attempt to convince this Court that the two persons are the same.

In fact, in respect of 1st Respondent, I find that the jurisdiction of this Court has not been properly invoked. The application is dismissed as against the 1st Respondent.

In the case of the 2nd Respondent he has totally denied the depositions of the Applicant and actually claims that he is not even aware of any civil suit against him.

Considering that the offence of contempt of court is criminal in nature, and it needs to be proved beyond reasonable doubt since the punishment is by fine or imprisonment, the Applicant has a huge burden to discharge.

I have to say that the allegations of the Applicant appear a little bit incredulous to me especially in the light of the 2nd Respondent's denial of the whole case against him.

For example, in paragraph 5 of the affidavit in support, the Applicant deposed as follows:

“That at the time I personally accompanied the bailiff to do the said postings but unfortunately the Respondent and his workmen then at the site working threate made(sic) a total nonsense of the said postings thus removed them and further tore them into pieces and in defiance continued to develop the land thence I filed an application seeking to indict them for contempt of court.”

This averment does not find any support in the evidence attached by the Applicant to his application. Exhibits SSG 2 and SSG3 show perfectly posted orders, there is no evidence of torn up orders as alleged by the Applicant. Again, the exhibits indicating workers on a parcel of land do not connect to the 2nd Respondent in any way.

Prima facie evidence is said to be evidence that should leave no doubt in the mind of a reasonable person that it was the Accused person who committed an offence, it is when such evidence is led that a Court will call upon a person to open his defence.

The affidavit evidence led by Applicants does not meet this standard, I therefore conclude that Applicants have not made out a prima facie case against 2nd Respondent and there is thus no need to consider his defence in the affidavit in opposition.

The Applicant, has failed to make out even a prima facie case against the Respondents. The denial of the whole affair meant the Applicant had to lead evidence connecting the Respondents to the said contemptuous acts. However, the Applicant has failed woefully to do this!

It is clear from the affidavit evidence that the Applicant herein has not made any effort at all in making out a case before this Court nor proving the guilt of the Respondents. Somehow, the Applicant hoped that merely exhibiting photographs of

buildings and workers who are not clearly linked to the Respondents on an unknown piece of land was enough for this Court to find them guilty of contempt of Court. Unfortunately, not.

I therefore dismiss this application to commit the Respondents to prison as being unmeritorious. I award costs of GHS2000 of in favour of Respondents.

[SGD.]

H/L. ROSEMARY BAAH TOSU

HIGH COURT JUDGE

COUNSEL:

- 1. WISDOM SMITH AKORLI FOR SARFO GYAMFI FOR APPLICANT**
- 2. DENNIS KUMAH KWAKYE FOR RESPONDENTS**