

IN THE SUPERIOR COURTS OF JUDICATURE IN THE HIGH COURT OF JUSTICE HELD IN KUMASI ON THURSDAY THE 23RD DAY OF NOVEMBER, 2023 BEFORE HER LORDSHIP ROSEMARY BAAH TOSU – HIGH COURT JUDGE

SUIT NO: C12/33/23

IN THE MATTER OF:

OHENEYERE AGO MANU II. --- PLAINTIFF

H/NO: PLOT 6 NKANKUM LANE

ATWIMA-ADUMASA

ASHANTI

VS.

1. **ABUSUAPANIN KWEKU YEBOAH**
H/NO: PLOT 53, HEMANG- ASHANTI
2. **YAW AGYEI**
2. **OTENANEE STOOL**



AND

IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT
BY OHENEYERE AGO MANU II

AND

IN THE MATTER OF:

THE REPUBLIC

VS

KOFI BEDIAKO

--- RESPONDENT

JUDGMENT

FACTS AND BACKGROUND

The facts giving rise to this application is that the Plaintiff, the occupant of the Ago Manu Stool sued three Defendants, one Abusupanin Kwaku Yeboah, Yaw Agyei and the Otenanee Stool for:

1. A declaration that all that piece or parcel of land trespassed unto by the Defendants which forms part of the Plaintiff's larger/mega lands herein described and bounded on the northern part by the Ahenema Kokoben Stool lands and the North Eastern part by Ahenema Kokoben Stool lands, South Eastern part by Brofoyedru lands, Southern part by Adumasa (Akwamu) Stool lands which said land is contained in a composite base map approximately measuring 238 acres signed by Nana Kwaku Frimpong (Adumasa Dikro) Berko (Ahenema Kokobenhene, Nana Yaw Osei Asibbey (Asafo Dwantoafohene, Ampatia) and Opanin Kwaku Adu (Brofoyedru Abusuapanin) is exclusively and customarily vested in the Plaintiff free from all encumbrances as Oheneyere of Ago Manu Stool.
2. A declaration that, the judgment obtained by the 3rd Defendant herein for a declaration of title to a portion of the disputed land dated 29th day of August

2018 was fraudulently obtained as both the equitable and legal title/ interest comprised in the said land is legally and exclusively vested in the Plaintiff free from all encumbrances.

3. Recovery of possession.
4. Damages for trespass.
5. Perpetual injunction.

In the course of proceedings, the Plaintiff, the Applicant herein filed an application seeking to restrain the said Defendants from developing, purporting to develop or alienate any portion of the land pending the final determination of the suit.

On the 7th February, 2022, per a ruling of Obeng Diawuo J, (as he then was), the application was granted and the Defendants and all persons claiming through them were restrained from having anything to do with land subject matter of the suit until the final determination of the suit.

THE PRESENT APPLICATION

The Applicant filed the present application praying the Honourable Court for an order attaching and committing the Respondent to prison for his contemptuous act of being illegally in possession of a portion of said land with a view to overreaching the order of this Court and in order to interfere with the due administration of justice.

In her affidavit in support of the application, the Applicant attached a copy of the ruling referred to supra and marked it as Exhibit A. She deposes that the Respondent was present when the said order for injunction was made on the 7th February, 2022.

According to the Applicant despite the pendency of this injunction order, the Respondent has taken over portions of the land in dispute and is actively working on it.

The Applicant deposes that she reported this incident to the Ahenema Kokoben Police, who invited the workers in order to foster peace. She says that at the time of this incident, the workers had just started to roof the building. She attaches exhibit B, a picture of an officer interacting with the workers. She also attaches as exhibit C, a picture of the building as at 2nd November, 2022, when she says the Respondent had commenced roofing the said building.

She further deposes that at the Police station, the Respondent was confronted with the injunction order which was read and explained to him. That the Respondent however argued that the said order did not affect him because he was a developer and the Court did not use the word Developer.

That in order to overreach the Court, the Respondent has gone ahead after his attention was drawn to the injunction order to roof the said building in flagrant disregard of the Court order.

A picture of the roofed building is attached as exhibit D. The Applicant says that the actions of Respondent are willful and deliberately calculated to interfere with the due administration of justice. The Applicant therefore prays for Respondent to be attached and committed to prison for his disobedience of Court orders and undue interference in the administration of justice.

In an affidavit in opposition to this application, the Respondent denied all the allegations levelled against him by the Applicant. He states that he is not the owner of the building neither does he owe the land in dispute.

The Respondent admits that he was at the Police Station but disputes that the injunction order was read and explained to him. The Respondent claims to know the actual owner of the property in question that he received a call from the owner after the workers were apprehended. That the said owner implored him to go to the Police Station to use his influence to secure bail for the workers. He deposes that that is the only reason he went to the Police Station.

Finally, the Respondent denies that the workers were there on his orders and also insists that he is not an agent nor assign or a person claiming through the Defendant. He prays that the application be dismissed with punitive and exemplary costs. He attaches exhibit NKB1, which he says is the allocation note from the owner of plot in question.

WRITTEN SUBMISSIONS FILED ON BEHALF OF APPLICANT

The Counsel for the Applicant rehashed the facts leading up to the filing of the present application. He describes the actions of the Respondent as the worse possible kind of contempt. He submits that the Respondent who happens to be working under the authority of the Defendants has taken over and building on portions of the land with the full knowledge that the Defendants have been restrained by this Court.

Counsel submits that this conduct is very grave and threatens the very existence and administration of justice. He submits further that in such situations, the Court is duty bound to deal swiftly, severely and authoritatively with such persons in order to assert the dignity and authority of the Court.

In fact, Counsel for the Applicants listed and relied on as many as eleven authorities. All of these happen to pronouncements on the punishment for contempt of Court. These cases are listed below:

- **AG VS TIMES NEWSPAPERS LIMITED (1974) AC 273 @ 302**
- **HELMORE VS SMITH 9NO)2 (1887) 35 CHD 449 @ 445**
- **MENSAH VS G.F.A 1989/90 1 GLR**
- **IN EX-PARTE AMEYAW II 1998/99 SCGLR 639 @ 641**
- **NICHOLLS VS NICHOLAS 1997 1 WLR 314**
- **AMOA VS THE REPUBLIC 1966 GLR 737 @ 739 CA**
- **NICOLS VS CEPS 1992 1 GLR 135**
- **BALOGUN VS EDUSEI (1958) 3 WALR 517**
- **IN RE ONNY (CONTEMNOR) (1967) GLR 38**
- **JENNISON VS BAKER 91972) 2 QB**

WRITTEN SUBMISSION FILED ON BEHALF OF RESPONDENT

Counsel for Respondent also rehashed the cases of both the Applicant and the Respondent put forward through their affidavits in support and in opposition. He also considered the authorities on contempt of Court. He relied on cases such as

- **REPUBLIC VS ISAAC B SACEY & 2 ORS, EX-PARTE COMMERCIAL INVESTMENT LTD (2019) JELR 107406**
- **EX-PARTE AMEYAW II**
- **COMET PRODUCTS UK LTD VS HAWKEX PLASTICS LTD (1971) 1 ALL ER 144 @ 1143-1144 CA**
- **AKELE VS COFFIE & ANOR AND AKELE OKIE & ANOR (CONSOLIDATED) (1979) GLR 84-90**
- **REPUBLIC VS BEKOE & ORS; EX-PARTE ADJEI (1982-83) 1 GLR 91**
- **REPUBLIC VS AO ZHANXIN AKA TONY EX-PARTE: KRAH BROTHERS (2017) JELR 67871 (HC).**

Counsel concludes that per the standard set out in the Ex-Parte Fordjour case, the Applicant has been unable to prove all the essential elements to constitute contempt. He submits that the Applicant has failed to establish that

1. The Respondent is a party to the suit
2. The Respondent is aware of the orders of the Court but still went ahead to disobey the orders of the Honourable Court
3. The Respondent is the owner of the said subject matter property as exhibit NKB 1 attached to the Respondent's affidavit in opposition bears the name of the original owner of the subject matter property.
4. That the Respondent is the agent or assign or workmen of the original owner.

Counsel finally submit that the actions of Respondent are not contemptuous and that there has been no attempt on his part to ridicule the Court. He says that the Applicant has failed to show per affidavit evidence that the Applicant has interfered in the administration of justice. He prays that the application be dismissed.

ANALYSIS AND DECISION

According to Oswald on Contempt of Court (3rd Edition),

“contempt of court is constituted by any act or 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 the litigation.”

See the case of **IN RE EFFIDUASE STOOL AFFAIRS II (NO2); REPUBLIC VS NUMAPAU, PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS AND ORS; EX-PARTE AMEYAW II (NO.2) 1998-99 639 holding 1** where Acquah JSC held as follows on the types of contempt:

“And contempt of court might be classified either as direct and indirect or civil and criminal. Direct contempts are those committed in the immediate view and presence of the court (such as insulting language or acts of violence) or so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. Indirect or constructive contempts were those arising from matters not occurring in or near the presence of the court, but which tend to obstruct or defeat the administration of justice, such as the failure or refusal of a party to obey a lawful order, injunction or decree of the court laying upon him a duty of action or forbearance”.

Considering the facts of this matter, we are clearly dealing with indirect or constructive contempt since the alleged contemptuous acts did not take place in the face of this Court.

In the case of **REPUBLIC VS BANK OF GHANA & ORS; EX-PARTE DUFFOUR (J4 34 OF 2018) (2018) GHASC (6TH JUNE 2018)**, Baffoe- Bonnie JSC noted how onerous it is to prove indirect contempt. He stated as follows:

“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 of 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 first hand 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.”

What are the elements then that an Applicant must establish to prove contempt of Court? Adzoe J, held in the case of **REPUBLIC VS SITO1; EX-PARTE FORDJOUR (2001-2002) SCGLR 322**

“The type of contempt charged against the appellant involves willful disobedience to the judgment or order, or other process of a court; it must import a demand to do or abstain from something. A refusal to comply with that demand of the court is what constitutes the offence of

*contempt which the courts
consider as an obstruction to the
fair administration justice because its effects denies
a party his right to enjoy the benefits of the
judgment or order; it is an affront
to the dignity of the court in this sense that it is
viewed as an act deliberately contrived to
undermine the authority of and
respect for the court. And the law
treats it as a quasi-criminal offence to
vindicate the cause of justice. Some degree of fault or
misconduct must be established
against the contemnor to show that his
disobedience was willful."*

The elements to establish contempt therefore are:

- a. That there is a judgment or order requiring the contemnor to do or abstain from doing something.
- b. That the contemnor knows what precisely he is expected to do or abstain from doing and
- c. It must be shown that he failed to comply with the terms of the judgment or order and that his disobedience is willful.

See the case of **REPUBLIC VS HIGH COURT ACCRA, EX-PARTE LARYEA MENSAH (1998/99) SCGLR 360.**

An Applicant must establish all three elements stated above in order to prove his case beyond reasonable doubt.

The first issue then is whether or not there was a judgment or order of the Court giving rise to the issue of contempt. This issue is easily answered by Exhibit A of the Applicant, the ruling delivered by Obeng Diawuo J, granting an application for injunction.

The next issue is Whether or not the Respondent had knowledge of the said order and the duty imposed on him to do or abstain from doing the particular act the order referred to.

The Applicant deposes in paragraph 6 of her affidavit in support of her application that the Respondent was with the Defendants when the injunction order was made on 7th February, 2022.

However, apart from this bare assertion she has not attached any record of proceedings for that day to prove to the Court that the Respondent was indeed in Court.

Counsel for the Respondent argues that the Respondent is not a party to the suit and he has not been served with any order which required him to do or abstain from doing anything he therefore cannot be committed for contempt of Court.

This argument of Counsel for Respondent would fall flat in the face of cases such as the **REPUBLIC VS MOFFAT & ORS EX PARTE ALLOTEY 2 GLR 391-403**, where Abban J held that once the respondents became aware of the pendency of the motion before the High Court, which motion gave notice in clear terms of the court's intention to inquire into the matter any conduct on the part of the respondents which was likely

to prejudice a fair hearing of the matter was likely to interfere with the due administration of justice would amount to contempt of Court despite not having been served. He referred to Oswald on Contempt (3rd ed) (1910) p.97

If therefore during the pendency of the suit the appellants did an act which would have the effect of interfering in any way with the trial of that case, they would be in contempt of court, and it would be of no avail to them to show that they were not served personally with the writ. For neither lack of knowledge of the pending suit, nor lack of an intention to commit contempt is a defence.

In this matter however, the Applicant has been unable to prove that even if the Respondent was not a party to the suit, that the order of this Court had been brought to his attention or that he was aware of the pendency of the suit in Court.

The Respondent has explained that his presence at the Police Station was to help facilitate the bail of the workers, that he is neither the owner of the building nor an agent of the Defendants in the suit.

To this explanation, the Applicant has not provided any rebuttal worth considering by this Court. I therefore find that the Respondent did not have any knowledge of the order of this Court and a duty upon him to refrain from interfering with the land the subject matter of the suit.

In fact, the Applicant has not offered any proof to this Court that the Respondent was at the Police Station to do otherwise than to facilitate the bail of the arrested workers.

Having failed to prove the first two elements which would ground the offence of contempt, I cannot conclude or find that the Respondent failed to comply with the

terms of the Court order and further conclude that any such disobedience which remains unproven was a willful act of the Respondent.

The Applicant has therefore failed to prove beyond reasonable doubt, which is the standard of proof in Contempt cases that the Respondent is liable to be attached for contempt of Court.

The Application is dismissed. Costs of GH¢4,000 in favour of Respondent against Applicant.

H/L. ROSEMARY BAAH TOSU

(HIGH COURT JUDGE)

COUNSEL:

1. AKWASI ARHIN FOR APPLICANT ABSENT
2. EUGENE ASARE FOR ISAAC OWUSU ANSAH FOR RESPONDENT
PRESENT