

**IN THE SUPERIOR COURTS OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD IN KUMASI ON MONDAY THE 18TH DAY OF SEPTEMBER,
2023 BEFORE HER LORDSHIP ROSEMARY BAAH TOSU- JUSTICE OF THE
HIGH COURT SITTING AS A VACATION JUDGE**

SUIT NO: C12/64/23

THE REPUBLIC

VS

YAW AMOAH

RESPONDENT

UNNUMBERED HOUSE

AGOGO, ASANTE AKYEM

EX-PARTE

1. MR NTI

APPLICANTS

2. KOFI AKOMEA

UNNUMBERED HOUSE

AGOGO, ASANTE AKYEM

JUDGMENT

The Applicants pray this Honourable Court to commit the Respondent to prison for contempt of Court. Particularly for disobeying the judgment of the Circuit Court, Juaso dated 7th September, 2020.

According to the Applicants, the Juaso Circuit Court in a Suit titled '**Yaw Amoah vs Obeng Agyei & 3 Ors No. C1/19/2012**', ruled in their favour in a land suit brought by the Respondent as Plaintiff. That the Circuit Court, ruled that the land in question did not belong to the Respondent. A copy of the judgment is attached as Exhibit A.

The Applicants aver that despite this judgment, the Respondent has been carrying out vigorous and sustained bulldozing on the said land with the aim of building a fuel station on the land the subject matter of the judgment.

The Applicants attached exhibit D series, pictures of the work being undertaken by the Respondent to their affidavit in support.

In very quick succession to the presentation of this contempt application, the Applicants filed supplementary and further supplementary affidavits in support of their application on the 22nd and 31st of May, 2023.

The facts canvassed by these two affidavits are basically that whilst the application for contempt against the Respondent was pending in Court and having been served with these processes, the Respondent in gross disregard and disrespect for the Court's authority, has brazenly gone ahead to almost complete one of the buildings on the land, subject matter of the circuit court suit.

They attached exhibits E, F, G, H, J, K, L, M, NO, O1 and O2, pictures showing the various activities on the land at Dansa.

ARGUMENTS BY COUNSEL FOR APPLICANTS

In his submissions before this Court, learned Counsel for the Applicants, urges this Court to commit the Respondent to a maximum security prison for one year, to serve as a deterrent to persons who willfully disobey Court orders.

He rehashed the facts as already presented in the affidavits in support. He prays the Court to take note of the Respondent's dishonest approach to the matters presented against him. He also draws the Court's attention to the exhibits which are similar from both sides but have different dates. Particularly, the dates on the Respondent's exhibits which create the impression that the works had been completed before the Respondent was cited for contempt.

Counsel for the Applicant concludes that the Respondent has obviously backdated his pictures to deceive this court. Counsel again disputes Respondent's assertion that after the judgment he bought the land from District Assembly and the Agogo Stool.

Counsel relies on the cases of **THE REPUBLIC VS HIGH COURT EX-PARTE LARYEA MENSAH (1998/1999) SCGLR @ 360, THE REPUBLIC VS BOATENG, EX-PARTE AGYENIM BOATENG & ORS (2009) SCGLR PGE 154** and **IN RE-EFFIDUASE STOOL CASE.**

He concludes that the Applicants have capacity to bring this action and prays that the Respondent should be committed to prison for bringing the administration of justice into disrepute.

In his defence, the Respondent filed an affidavit in opposition to the motion for committal for contempt, a supplementary, and further supplementary affidavits.

The Respondent admits the fact of the suit in the circuit court. Respondent says that even though the Circuit Court refused to grant him, his reliefs of declaration of title, the court also made definite pronouncements that the land in question does not belong to the Applicants, but it was the property of the community. Respondent attached the judgment as exhibit YA.

The Respondent says further that he contacted the Asante Akyem North Municipal Assembly which is vested with the power to hold all community lands within the Asante Akyem area and began negotiations with them to acquire the land after the court delivered its judgment.

Respondent avers that it was during negotiations that it can to light that the land had been re-demarcated and re-zoned and given a different purpose, that is for a Petrol Fueling Station. He says further that upon advise from the Assembly, he contacted the Agogo Stool for their concurrent approval since they are the allodial owners of the land. He was issued with the necessary documentation after paying the required consideration and drinks. He attached as YA3 and YA4, documents showing the grant and receipts of payments.

The Respondent insists that he has not done anything to erode the sanctity and dignity of the Court.

In response to the supplementary and further supplementary affidavits of the Applicants, the Respondent averred that prior to this application, he had already constructed the structures for the fuel station. He attaches exhibits YA5, YA6, YA7, YA8, YA9 and YA10. These exhibits are photographs of works done allegedly before the application was filed and some receipts showing payments made to the Agogo Stool and the Municipal Assembly.

ARGUMENTS BY COUNSEL FOR RESPONDENT

Counsel for the Respondent submits that the subject matter of the contempt application is not land as Counsel for the Applicants sought to project, but a judgment of the circuit court. He further relied on the Ex-parte Laryea case and submits the principle laid down therein is that the judgment, decision or order based on which the

contempt application is brought must be clear, unambiguous and must not lend itself to any confusion.

Counsel further submits that the Circuit Court judgment in question unfortunately does not lend itself to this principle. He notes that in the said judgment, even though the learned judge refused to grant the Respondent's reliefs and further found that the Applicants did not have any personal interest in the land subject matter of the suit, she still went ahead to declare title in them.

He submits that it is for this reason that the Applicants were never able to fully execute the judgment by taking possession even though they took the costs awarded against the Respondent.

Counsel for the Respondent therefore submits that the Applicants are mere busy bodies who have no capacity to bring the present application.

Counsel referred to the case of **REPUBLIC VS DSP GEORGE ASARE EX-PARTE IBRAHIM JAJA SUIT NO C1/178/2019** dated 20/6/19 and the case of **THE REPUBLIC VS HIGH COURT, ACCRA EX-PARTE DR. KWABENA APPENTENG, INTERESTED PARTIES; STEPHEN KWAKU ASIEDU APPENTENG & ORS (2010) MLRG @ 59.**

Counsel again referred to exhibits YA4, YA5 and YA6, documents which he says proves that the Asante Akyem Municipality and the Agogo Stool sold the parcel of land to the Respondent.

Counsel for the Respondent submits that the Respondent had completed the building even before the application was filed as is shown by their attached pictures. He further

notes that a contempt application is not an application for injunction and the Court's duty is not to decide who owns the land in question.

ANALYSIS & DECISION

Counsel for the Respondent has challenged the capacity of the Applicants to bring this application. The issue of capacity, when it is raised must be determined first before dealing with the merits of the case.

The case of **SARKODIE I VS BOATENG II (1977) 2 GLR 343** held

"It is now trite learning that where the capacity of a plaintiff or complainant or petitioner is put in issue, he must, if he is to succeed, first establish his capacity by the clearest evidence".

See the cases of **ASANTE -APPIAH VS AMPONSAH AKA MANSA (2009) SCGLR 90** and **CHAPMAN VS OCLOO & KPORHANU (1957) WALR 84**.

It has also been settled by judicial authorities that a contempt application is a substantive matter standing on its own as a separate cause or matter. See the case of **THE REPUBLIC VS HIGH COURT, EX-PARTE YALLEY (GYANE & OTTOR INTERESTED PARTIES (2007-2008) SC 512**

It is also noteworthy that when the capacity of a party is challenged, it is not the one alleging this lack of capacity who bears the burden of proof but it is the party whose capacity is challenged who must take steps to prove that he is clothed with the said capacity.

It is therefore incumbent on the Applicants to lead credible affidavit evidence to show the capacity in which they bring this action.

In the **EX-PARTE JAJAH** case, Lovelace Johnson JSC noted

“Contrary to the position of counsel, lack of capacity is always a defence in any litigation before the court. The merits of a matter are irrelevant when a party has no capacity. It does not matter that there is a subsisting order of a court. Without the requisite capacity, a party cannot purport to enforce a court’s order if that enforcement calls for using a process which requires proof that one has authority so to do.”

I must say that apart from a flat denial that the Applicants lack capacity to bring this action, there has been no effort made on their part to show that they indeed have capacity to bring this application.

Since a contempt application is fought on affidavit evidence, I proceed to consider the evidence led therein.

The first piece of evidence and probably the only piece of evidence is the said judgment upon which this application was brought, the Applicants’ exhibit A and Respondent’s exhibit YA1. In the said judgment as clearly construed by both the Applicants and Respondents, in their affidavits, the circuit court found that the Applicants do not have any direct personal interest in the land, which she concluded belonged to the Ward 2 Community.

See paragraphs 5 and 6 of the Respondent’s affidavit in opposition and paragraph 10 of the Applicants’ affidavit in support.

Indeed, the learned trial judge noted that there was an issue as to the capacity of the Applicants but she overlooked it because, the Respondent had not challenged capacity.

See page 6 paragraph 2 of the circuit court judgment, where the learned judge delivered herself as follows:

“Now the Defendants did not claim to own the lands in their personal capacity but that as members of the Ward 2 community, they had interests in same on the basis that the land had been gifted to the community. In any case their capacity to claim the reliefs they sought was never contested by the plaintiff during trial.”

Based on this pronouncement, the learned judge went on to grant the Applicants their reliefs.

In the face of this challenge by the Respondent, the least that was expected of the Applicants would be to produce their source of authority for bringing this application, seeing that they were declared in the judgment not to have any personal interest in the land which was adjudged to be communal.

The Applicants have failed to provide even a power of attorney from the community or the municipal assembly to prosecute this contempt application. This without doubt is fatal to their case. I therefore hold that the Applicants have no capacity to bring this action. I therefore strike out the entire application.

I award costs of GH¢2,000.00 in favour of Respondent.

[SGD.]

**H/L. ROSEMARY BAAH TOSU
HIGH COURT JUDGE**

COUNSEL:

**ASAMOAHA AMOAKO FOR APPLICANTS
BENJAMIN D. ANDOH FOR RESPONDENT**