IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA, GHANA - A. D. 5

CORAM - MRS. VIDA AKOTO BAMFO, JA
A. ASARE KORANG, JA
J.A. OSEI, JA

HI/211/2003
15TH APRIL, 2005.

IN THE MATTER OF ANLO AWOAMEFIA STOOL AFFAIRS PENDING AT THE JUDICIAL COMMITTEE OF THE VOLTA REGIONAL HOUSE OF CHIEFS, HO

AND TITLED

1. AMEGA KOFI TOGOBO
2. LT. COL. (RT) COURAGE TOGOBO … **PETITIONERS**
3. AMEGA C.N. KWAWUKUME
4. AMEGA SETH K.A. KWAWUKUME

V E R S U S

1. TOGBUI NYAHO TAMAKLOE OF WHUTI
2. TOGBUI ADDO OF KLIKO
3. LOGOSU ADZAKLO OF ATIAVI … **RESPONDENTS**
4. BEN SAKPAKU OF ACCRA
5. JOHN FIAFOR OF ACCRA

A N D

IN THE MATTER OF :

THE REPUBLIC

V E R S U S

1. NUGBLANUA EHA II … **1ST RESPONDENT/APPELLANT**
2. TOGBUI HONI OF KLIKOR … **2ND RESPONDENT/APPELLANT**
3. TOGBUI ADDO VIII OF KLOKOR … **3RD RESPONDENT/APPELLANT**
4. AMEGA DOTSE GAGADOSU AGBOADA … **RESPONDENT**

5. AMEGA PATRICK AGBOBA … 4TH RESPONDENT/APPELLANT

EX PARTE

1. AMEGA KOFI TOGOBO
2. LT. COL. COURAGE TOGOBO } **APPLICANTS/RESPONDENTS**
3. AMEGA C.N. KWAWUKUME
4. AMEGA SETH A.K. KWAWUKUME

J U D G M E N T

ASARE KORANG, JA - On 26th November, 2003, Apaloo, J (as he then was) sitting in the High Court, Ho, found the 1st, 2nd, 3rd and 4th Respondents/Appellants (hereafter referred to as the Appellants) guilty of contempt and fined each of them ¢1,000,000.00 (One Million cedis) or in default a sentence of one month's imprisonment. In addition, the Respondents were each mulcted in costs of ¢300,000.00 (three hundred thousand cedis) and bonded to be of good behaviour for 12 months, in default a sentence of 3 months imprisonment.

The contempt proceedings were founded upon a complaint by the applicants/Respondents (hereafter referred as the Applicants) that the Appellants had, during the pendency and in defiance of three petitions challenging the purported nomination, election, installation and confinement of the 4th Appellant in this appeal, Amega Patrick Agbogba and a motion for an order of interim injunction filed in addition to the first of the petitions, purported to outdoor the said Amega Patrick Agbogba as the Awoamefia of Anlo under the stool name of Tobgui Sri III. It was contended by the Applicants that the Appellants were fully aware of the pendency of the three petitions and the motion for interim injunction before the Judicial Committee of the Volta Regional House of Chiefs but went ahead and outdoored the 4th Appellant, Amega Patrick Agbogba at 4 O'clock in the morning on 21st August 2003, thus interfering with the

judicial process which made it impossible for the Judicial Committee of the Volta Regional House of Chiefs to determine the petitions before it.

In his judgment, the learned trial judge found as follows:-

"Finally as against the 1st Respondent, Nyigblanua Eha II, the 2nd Respondent, Togbe Honi II, the 3rd Respondent Torgbui Addo and the 4th Respondent Amega Dotse Dosee Agboada there is evidence that in the company of others amidst the firing of guns outdoored the 5th Respondent knowing well their conduct was not in conformity with the law. I have no doubt in my mind that they knew and were aware of the pending litigation involving the succession to the Stool of Awoamefia, nevertheless they deliberately and willfully decided to outdoor the 5th Respondent and they participated in the outdooring. I find also that the 5th Respondent being in confinement allowed himself to be outdoored knowing very well that his eligibility was being contested before the Judicial Committee."

On the basis of this finding the trial judge found the Appellants guilty of contempt, While hearing the contempt application, the learned trial judge was constrained to conduct an enquiry on the rule of Anlo custom applicable to the installation of the Awoamefia of Anlo, after which he delivered himself as follows:

"This piece of evidence was clear that the Awoamefia of Anlo is installed first before confinement and the witness was also aware that he knew of other stools which confined before installation."

Having so found, the trial judge then decided:

"There is however one interesting point which attention must be drawn to. The installation of the Awoamefia is not a single event. It is a process, an installation process in which series of rituals are deliberately performed to achieve one objective only and that objective is the installation of the Fia. First the nomination and/or election, then the enstoolment and confinement and finally the outdooring. These steps in my view go together to constitute the installation. It is my further view that without going through these steps one after the other successfully, the installation process cannot be said to be complete….."

Against this decision of the court and other findings the Appellants took this appeal alleging in the original grounds of appeal that the decision convicting the Appellants of Contempt of Court cannot be supported having regard to the evidence and the law.

Fifteen additional grounds of appeal were filed and in his written submissions, counsel for the Appellants stated that he had abandoned the original ground of appeal.

Grounds 1 to 8 of the additional grounds were argued together and lumped with the other additional grounds. Learned counsel for the Appellants distilled the issues of relevance in this appeal as follows:

"(a) the total lack of proof that 2nd Appellant and the 4th Appellant were aware of the pending suits and motion.

(b) the total lack of evidence in proof that the 1st, 2nd 3rd and 4th Appellants by any conduct of theirs breached any legally cognizable injunction, or in any legal sense interfered with pending petitions.

(c) the judge's wanton disregard of the standard of proof required in a case of contempt of court."

On his part counsel for the Appellants found the issues to be:

"(1) Whether the conduct and acts of the Appellants in outdooring the 4th Appellant Amega Patrick Agbogba from confinement as Awoamefia….. during the pendency of the Respondents petitions before Judicial Committee of the Volta Regional House of Chiefs challenging the purported nomination, election installation and confinement of the 4th Appellant as the Awoamefia of Anlo constitutes Contempt of Court.

(2) Whether the conduct and acts of the Appellants in outdooring the 4th Appellant during the pendency of the motion for interim injunction to restrain the Appellants or their agents or privies from confining or installing or doing anything towards the confinement or installation of Amega Patrick Agbogba or any other person as Awoamefia constitutes an act of contempt of court and

(3) Whether the 4th Appellant allowing himself to be outdoored as the Awoamefia knowing very well there are pending before the Judicial

Committee petitions and a motion challenging his nomination,

Selection, installation and confinement constitute contempt of court."

Strongly and specifically attacked by the appellants was the finding by the learned trial judge that installation of the Awoamefia of Anlo is not a single event but a process in which successive rituals, namely, the nomination, election, enstoolment, confinement and outdooring finally are performed for the sole purpose of installing the Awoamefia. Counsel for the Appellants argued that the enstoolment of the Awoamefia is the single event of installation which is not fettered by any strands or steps. And therefore, the Appellants could not be liable for contempt because the 4th Appellant in the opinion of the Appellants was duly installed as Awoamefia before the Respondents filed their petitions in the Judicial Committee of the Volta Regional House of Chiefs.

The question as I see it that arises is this:

If the singular act of installation that precedes confinement and outdooring is sufficient to constitute the installation of the Awoamefia of Anlo, then wherein lies the necessity to confine the Awoamefia and outdoor him after installation?

The learned trial judge apparently delved into the matter and from persuasive books and documents, discovered that in Anlo custom, installation is followed by confinement. There was therefore a sound basis for the finding by the trial judge that confinement and outdooring crown the installation of the Awoamefia and therefore the installation is a process and not the single event of "installation." It is thus clear that the proclamation of Awoamefia is only complete after confinement and outdooring which are processes concomitant with the event of installation.

It was argued on behalf of the Appellants that the petitions of the Appellants were not pending in the Judicial Committee of the Volta Regional House of Chiefs when the 4th Appellant was installed as Awoamefia. On this issue, the learned trial judge noted that the maximum period for the confinement of an Awoamefia was 6 months but the Appellants delayed for 3 years before outdooring the 4th Appellant.

Therefore obviously the delay in outdooring the 4th Appellant was founded on the pendency of the petitions in the Judicial Committee of the Volta Regional House of Chiefs.

What was the contempt alleged to have been committed in this case? It was not that the appellants had breached or disobeyed any order of injunction made against them by the Judicial Committee of the Volta Regional House of Chiefs. The basis for the charge of contempt was that the Appellants with full knowledge of the pendency of litigation in the Judicial Committee of the Volta Regional House of Chiefs, bearing on the qualification of the 4th Appellant as Awoamefia undermined and tended to bring the authority and administration of law into disrespect and also interfered with the pending litigations.

The principle is that if a party knowing of the existence of a case – a writ, a petition or a motion – pending before an adjudicating body seeking to restrain an act, makes a decision himself to deal with and grant the very remedy to himself without giving opportunity to the adjudicating body to hear the matter, he commits contempt.

See **NARH V. DOMBO** 23rd March 1970 (unreported) where, the applicant's case was effectively killed frustrated, prejudiced and rendered purposeless when the applicant was bundled out of Ghana and removed from the jurisdiction before the court could hear the case.

The applicants in the instant appeal say that Narh v. Dombo (supra) is on all fours with this case.

The Appellants deny this and say in the Dombo case the subject of the suit was removed out of the jurisdiction while in this case the subject matter is intact.

For my part, I believe that though the facts and circumstances of the Dombo case and the instant appeal may be different, the principle elucidated in the Dombo case and this case is the same. There are petitions and motions pending in this case before the Judicial Committee of the Volta Regional House of Chiefs (an adjudicating body), challenging the validity of the installation of the 4th Appellant; the Appellants have pressed forward and completed the final act of the installation process, that is, outdooring the 4th Appellant, the very act which the applicant's petitions and motion seek to avert and halt; the petitions and motions are yet to be heard and determined by the Judicial Committee and that is the contempt complained of – an interference with the judicial process calculated to bring the administration of justice into disrepute and disrespect. With regard to the ground of appeal that the 1st, 2nd and 3rd Appellants were not present at

the outdooring of the 4th Appellant of Awoamefia, the trial judge found as a fact that they were present and knew of pending litigation involving succession to the Awoamefia stool. Yet they deliberately and willfully participated in the outdooring of the 4th Appellant.

The trial judge also found that the 4th Appellant being in confinement and knowing very well that his eligibility as Awoamefia was being challenged allowed himself to be outdoored.

With these findings of fact, I am of the view that there was no need for the trial judge to embark on an enquiry into the standard and burden of proof in contempt proceedings.

The facts spoke for themselves as there was ample evidence that the 1st, 2nd, 3rd and 4th Appellants by their conduct willfully and deliberately put themselves to the task of outdooring the 4th Appellant for in the affidavit of the 3rd appellant, Togbui Addo VIII sworn on his own behalf and on behalf of the 1st, 2nd and 4th Appellants on 13th October 2003, he made the following deposition in paragraph 17 and 1 quote:

> "17. In the situation which we found ourselves, we thought as there was no application for injunction to restrain the outdooring of the Respondent (4th appellant) we should outdoor him."

Now3 how much of a resonating indictment bearing on the guilt of the Appellants does one need after reading this deposition in paragraph 17.

I am of the view that the learned trial judge rightly found the Appellants guilty of contempt and sentenced them accordingly.

In the circumstances, the appeal is dismissed.

A. ASARE KOANG
JUSTICE OF APPEAL

I agree.

VIDA AKOTO-BAMFO
JUSTICE OF APPEAL

I also agree. **J.A. OSEI**
JUSTICE OF APPEAL

COUNSEL – JONES MENSAH FOR APPELLANTS.

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