**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE COURT OF APPEAL – ACCRA**

**CORAM - OWUSU-ANSAH, JA {PRESIDING}**
**PIESARE, JA**
**APALOO, JA**

**CIVIL APPEAL**
**NO. HI/334/05**
**12TH MAY, 2006**

**THE REPUBLIC**

**V E R S U S**

**ALFRED NII LANTE ADDY … RESPONDENT**

**EX-PARTE:**

**(1) AUGUSTINA NAA DEI NEEQUAYE**
**(2) ERIC OKOE NEEQUAYE … APPLICANTS/APPELLANTS**
**(3) BENJAMIN TAWIAH NEEQUAYE**

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**J U D G M E N T**

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**APALOO, JA** - In a ruling dated 22nd March, 2005 the High Court Accra presided over by His Lordship Kofi Akwaa J held as follows:

> "It is clear that the Plaintiffs herein not being parties in that suit are not entitled to derive any benefit from the judgment in this said suit. It follows that any order made under this judgment in favour of the applicants is null and void…..
> Application is therefore refused and Respondent discharged."

The Respondent was before the High Court on an application for contempt for disobeying the orders of the High Court pursuant to a judgment obtained by the appellant's father Jonas Kotei Neequaye against the Respondent's father Francis Addy and his mother Madam Aku Allotey in respect of a piece of land at Abossey Okai in Accra. The suit was titled **Jonas Kotei Neequaye Vrs. Francis Addy** (substituted by Washington Addy) and **Madam Aku Allotey as Co-defendant.** It was numbered as

L. 94/64 and on 22ND December 1993, Emelia Aryee J delivered judgment in favour of the Plaintiff. In addition the trial Judge restrained the Defendants, their agents, workmen and assigns from further acts of trespass on the land.

In March 2000 Appellants armed with Letters of Administration commenced proceedings in the High court to attach the Respondent who had re-emerged unto the premises notwithstanding that the Plaintiff had taken control of the land immediately after judgment. The Plaintiff according to the Letters of Administration died on 15th August 1994.

The hearing of the contempt application was subjected to delays and adjournments arising out of the multiple applications which were filed. It is pertinent to refer to two paragraphs in the Respondent's affidavit in opposition at the Court below filed on 12/4/2000.

"2. I do not deny that there was a judgment in favour of the Plaintiff/Applicant as stated in paragraph 6 of the affidavit in support.

"4 After the judgment the Plaintiff/A/Applicant wrongfully extended their boundary beyond the area adjudged by the judgment to be their property."

Arising out of those depositions orders were made for survey of the land. The original order was amended further to accommodate the interests of the parties. Eventually when all the formalities had been concluded and the case appeared before Akwaah J on 5th February 2004 the Learned Judge after hearing Counsel stated as follows:-

> "It is clear that Respondent has refused to obey the order of this Court. However I shall adjourned to 27/2/04 for ruling."

From this point the record became unclear as the Respondent was referred to as contemnor and was to remain on his former bail. The Court ruled however on 7th April 2004 that Respondent is given up to 30/4/04 to give vacant possession of a whosale to the applicants.

The court notes on 30/4/04 is both revealing and instructive. I shall quote the notes hereunder

> **"By Court:** Applicant (sic) has already been convicted by this Court for contempt and has been given more than enough time to purge himself for the contempt. His blatant refusal to purge himself leaves me with no option than to commit him to prison for one month."

On 4th May 2004 the case took a sudden twist when the Respondent was granted bail on an ex-parte application and the case was further adjourned. It is pertinent to note here that the High court which had earlier convicted the Respondent, sentenced him to a month's imprisonment, and subsequently granted him bail observed that the Respondent was still disobeying the Court order by 27/7/04. Just the next day the Respondent eventually vacated the warehouse and surrendered the keys to the Court which in turn handed them over to Counsel.

Again based on the same facts another application for contempt was brought against the Respondent for erecting a fence wall within the property of the applicants and thus sealing off the entrance. The decision of the court in respect of this second application earlier referred to in this judgment resulted in this appeal.

The appellants who were the applicants at the Court below filed two grounds of appeal attacking the ruling for being erroneous in law.

From the affidavit evidence on record and the undisputed facts both parties trace their respective interests in the adjoining lands to the parties in suit No. 94/64 which was determined by Emelia Aryee J on 22nd December 1993. The restraining order by Emelia Aryee affected both the parties who had litigated and the land itself, the subject matter of the litigation. As children of the victorious party in the suit who were armed with the Letters of Administration they stood to be considered as beneficiaries of the Plaintiff's estate and successors in title. The appellants were duty bound to protect the estate and enforce any rights accruing from the judgment.

The Respondent has not denied his relationship with the Defendant and Co-defendant in the earlier suit. On the contrary he has assumed certain controlling interests in the land the subject matter of the litigation as if he is the successor to the Defendant and Co-defendant. In these circumstances it is my view that the Respondent is bound by the High Court's decision on the land as rendered by Emelia Aryee J.

The legal position that the Applicants and Respondents are privies to the land suit cannot be questioned. As privies they are bound by the decision of the Court. **Robertson Vrs. Reindorf {1971} 2 GLR 289** is clear that for a judgment to operate as estoppel against a person, he or those he represents must have been a party or privy to a party in the case. Again in **Andani Vrs. Abudulai {1981} GLR 866** the Court of Appeal held that the Court would not permit the same parties or their privies to open the same subject matter of litigation in respect of a cause already adjudicated upon by a Court of competent jurisdiction except in certain special circumstances……An estoppel per rem judicatam would operate against a person bringing a second action against the same party for the same cause…..per Denning W.R in **Fidelitas Shipping Co. Ltd. Vrs. V/O Exportchleb {1965} 2 All ER 4.**

The Court's ruling of 22nd March 2005 the subject matter of this appeal in my view appears to be erroneous and palpably wrong and ought to be set aside. Indeed a view to the contrary ought to be the right and legally correct view having regard to the law. That ruling is accordingly set aside.

Having determined that the appellants are entitled to enforce the judgment against the Respondent, the conduct of the Respondent in disobeying the order of the court must be properly considered. The record shows clearly that the trial judge was in no doubt that the Respondent was guilty of contempt. In connexion with that finding the Respondent was imprisoned for one month but admitted to bail. He was reluctant to purge himself of the contempt and when he eventually purged himself he quickly constructed a wall on the appellant's portion of the land thus sealing off the entrance.

Counsel for the Respondent Mr. Willie Amarfio in his submissions to this court strenuously advanced the view that at the Lower Court the Appellant's late father as Plaintiff did not endorse his Writ with a relief for recovery of possession and therefore Emelia Aryee J could not have granted that relief and accordingly the right to recover possession did not avail to the victorious party. Though the argument is sound in law this forum is not the appropriate place to advance such an argument. An appeal against that judgment could have afforded him the opportunity.

It is noted that there is a world of difference between judgments emanating from the lower Courts and those from the Superior Courts. Those from the lower Courts may be resisted for being invalid whereas decisions of the Superior Courts are valid and must be obeyed fully unless set aside.

I have no doubt in my mind that the contumacious acts of the Respondent is well known to the law. Abban J as he then was in **Republic Vrs. Maffat; Ex-parte Allotey {1971} 2 GLR 391** said "An order or judgment from the superior Courts unlike those from inferior Courts are presumed valid….A person who willfully disregards such orders does so at the risk of being brought up for contempt." In Republic Vrs. Brew {1992} 1 GLR 14 the relevant principle was stated thus.

> "It was an established rule that an order of a Court of competent jurisdiction whether considered erroneous illegal, indiscreet or irregular had to be obeyed. Accordingly, non compliance with an order amounted to contempt."

See also the Supreme Court case of **Republic Vrs. High Court Accra, Ex parte Afoda {2001-2002} SCGLR 768.**

The Respondent is no doubt in contempt having failed to comply with the order of injunction ordered by Emelia Aryee J. As at now there is nothing to show that the offending wall has been demolished and accordingly the Respondent is ordered to purge the contempt within 10 days hereof by demolishing the wall. The appeal succeeds therefore and the decision of the High Court dated 22nd March 2005 in respect of the Respondent is set aside.

**R.K. APALOO**
**JUSTICE OF APPEAL**

**I agree.**

**E.K. PIESARE**
**JUSTICE OF APPEAL**

**I also agree.**

**P.K. OWUSU-ANSAH**
**JUSTICE OF APPEAL**

**MR. ALBERT ADAARE FOR THE APPELLANTS PRESENT.**
**MR. WILLIE AMARFIO FOR THE RESPONDENT PRESENT.**

**~eb~**