IN THE SUPERIOR COURT OF JUDICATURE

IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) SITTING AT MANKESSIM ON THURSDAY, THE 15TH DAY OF DECEMBER, 2022 BEFORE HER LADYSHIP, MRS. JUSTICE CECILIA N.S. DAVIS

SUIT NO. E13/10/2022

THE REPUBLIC

V.

KWEKU TETTEH **RESPONDENTS**

ROBERT SAMPSON

EX PARTE:

NANA KORSA VII **APPLICANT**

JUDGMENT

This is the judgment on an application for committal for contempt of the Respondents herein.

Per his affidavit in support of his application, the Applicant claimed that since 21st September, 2018, he has been the stool occupant and Odikro of Ekumfi Ekumpoano. He

tendered exhibit NK, a copy of an extract from the National register of Chiefs, showing his name as duly registered.

According to the Applicant, on 17th July, 2019, almost a year after his enstoolment, the second Respondent, with the active support of the first Respondent, who purported to be the head of the royal Aboradze family of Ekumpoano and one Ekua Braman, filed a petition before the Judicial Committee of the Ekumfi Traditional Council to challenge his enstoolment and also applied for interlocutory injunction to restrain him from styling himself as the Odikro. In support, he tendered exhibit NK1, a copy of the application for writ of summons to issue, exhibit NK2, the motion for interlocutory injunction and exhibit NK3, the amended writ to initiate chieftaincy proceedings. He stated that he filed a motion to dismiss the Respondents' suit (exhibits NK4 to NK7). However, the Judicial Committee, in its ruling on 7th July, 2020, declined to dismiss the suit but rather granted an order for interlocutory injunction, restraining the second Respondent, his agents, etc., from styling and parading himself as the stool occupant or Odikro of Ekumfi Ekumpoano until the determination of the suit. He tendered exhibit NK8, a copy of the said ruling of the Judicial Committee. He added that the ruling of the Judicial Committee was publicly read out and interpreted in the Fante language to the parties, including the Respondents herein.

The Applicant pointed out that in spite of the pendency of the suit before the Judicial Committee and the restraining orders, the Respondents have persisted in disobeying same by continuing to style and parade the second Respondent as the stool occupant or Odikro of Ekumfi Ekumpoano under the purported name of Nana Odiasempa Korsah Yeboah VII. In support, he tendered exhibit NK9, a copy of a witness statement filed by the second Defendant in the High Court, Winneba, describing himself as the Odikro of Ekumfi Ekumpoano, exhibit NK10, a copy of a witness statement filed by the first Respondent before the Judicial Committee, describing the second Respondent as the

Odikro of Ekumfi Ekumpoano and exhibit NK11, a copy of a supplementary witness statement filed by the second Respondent at the High Court, Mankessim, describing himself as the Odikro of Ekumfi Ekumpoano.

The Applicant contended that the acts and conduct of the Respondents are a clear violation of the restraining orders of the Judicial Committee against the Respondents and they are determined to continue their disobedience and disrespect of the Judicial Committee which amounts to contempt.

The first Respondent responded to the application, stressing that he has never willfully disobeyed the orders of the Judicial Committee. He explained that the exhibit NK10, being relied on by the Applicant herein, is his witness statement as the first Plaintiff before the Judicial Committee and that as per the exhibit NK3, which is their writ of summons before the Judicial Committee, one of their reliefs is that the third Plaintiff in that case, who is the second Respondent herein is the accredited stool occupant and therefore he was entitled to lead evidence to prove his case by mentioning who, in his opinion and belief, is the occupant of the Ekumfi Ekumpoano stool, notwithstanding the orders of the Judicial Committee as indicated in exhibit NK8. He added that it will be unfair and an affront to justice to say that because of the interlocutory injunction, he cannot lead certain evidence to prove his case before the Judicial Committee and that his use of the description of the second Respondent as the Odikro of Ekumfi Ekumpoano is by no means a disobedience of the orders of the Judicial Committee but only a candid attempt to prove the facts pleaded in the case.

He added that apart from the contents of Exhibits NK9, NK10 and NK11, which are witness statements tendered in evidence in courts of competent jurisdiction to support his cases before those Courts, he had never styled and/or paraded the second Respondent in any forum as the chief or Odikro of Ekumfi Ekumpoano is disobedience

to the orders of the Judicial Committee and that in the unlikely event that the Court finds the Applicant's exhibit NK10 as contemptuous, he humbly apologises and purges himself accordingly.

The second Respondent also filed his response to the application, denying that he has willfully disobeyed the orders of the Judicial Committee of the Ekumfi Traditional Council. He added that since the order in exhibit NK8 was made, he has never styled or paraded himself as the Odikro of Ekumfi Ekumpoano in any forum.

He explained that exhibits NK9 and NK11 are a witness statement and a supplementary witness statement respectively, filed in his name and yet to be tendered in evidence to support the case of the Defendants', including the first Respondent herein who is the first Defendant, pending before the High Court, Mankessim, which said case commenced after the chieftaincy case was instituted before the Judicial Committee and that his description of himself as the Odikro of Ekumfi Empoano in those witness statements were merely based on the pleadings of the Plaintiff, especially at paragraph 7, in that case. In proof, he tendered exhibit 1, a copy of the statement of claim filed by the Plaintiff in that case before the High Court, Mankessim. He pointed out that the Plaintiff's pleading as to his status was denied by the first Defendant, the first Respondent herein, in his statement of defence at paragraph 13, at a time when the orders of the Judicial Committee had not been made. In support, he tendered exhibit 2, a copy of the first Respondent's statement of defence.

He pointed out that the description of himself as the Odikro of Ekumfi Ekumpoano in his witness statements, based on the pleadings in that case to assist the first Respondent to prove his case, does not amount to willful disobedience of the injunction orders and that to use exhibits NK9 and NK11 to cite him for contempt will allow the Applicant to prevent the first Respondent from proving his case before the High Court, Mankessim.

He added that the use of his stool name and the description of himself as the Odikro of Ekumfi Ekumpoano are by no means a disobedience of the orders of the Judicial Committee but only a candid attempt to prove the facts pleaded in that case and that apart from his descriptions in the said witness statements in support of the cases pending before those Courts, he has not styled himself and/or paraded in any forum as chief or Odikro of Ekumfi Ekumpoano in disobedience of the orders of the Judicial Committee.

He further stated that this application has been brought in bad faith and ought to be dismissed and that in the unlikely event that this Court finds the Applicant's exhibits NK9 and NK11 as contemptuous, he humbly apologises and purges himself accordingly.

In his written submissions, Counsel for the Applicant sought to prove that the Respondents have willfully disobeyed the orders of the Judicial Committee whilst Counsel for the Respondents points out that the Applicant has not been able to prove beyond reasonable doubt that the action or conduct of the Respondents amounted to a willful disobedience of the orders of the Judicial Committee.

Black's Law Dictionary, 7th edition at page 313 defines contempt as:

"*1. The act or state of despising; condition of being despised and (2) conduct that defies the authority or dignity of a Court or Parliament.*"

It is the second definition and precisely the conduct that defies the authority or dignity of a Court that we are interested in.

In **Agbleta v. The Republic (1971) 1 GLR** 445, the Supreme Court cited with approval, the definition of contempt as stated in Oswald's book, titled "Contempt of Court", third edition at page 6, as follows:

"To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrepute or to disregard or to interfere with or prejudice parties, litigants or their witnesses during litigation."

The objective of the law of contempt is to uphold the effective administration of justice. In **Dr. Patricio and Eileen Youri v. Justina Aboagye (2013) 67 GMJ 49,** the Court of Appeal stated the aim and purpose of the law of contempt as follows:

"*The aim and purpose of the law of contempt is to protect the integrity of the justice system and the right of an individual litigant to have justice effectively administered."*

At common law and in Ghana, the law of contempt of court has been classified in different ways.

In Ghana in particular, in the case of **In Re Effiduase Stool Affairs (N0. 2); Republic v. Numapau, President of the National House of Chiefs; Ex parte Ameyaw II (No. 2)(1998-99) SCGLR 639**, the Supreme Court authoritatively classified contempt of court into direct and indirect contempt on the one hand and civil and criminal contempt on the other hand. However, in Ghana, the basic distinction is between civil and criminal contempt.

In the **In Re Effiduase Stool Affairs** case, cited above, the Supreme Court stated that criminal contempt consists of acts, such as, those committed in the immediate view and presence of the court, such as insulting language or acts of violence or acts so near the presence of the court as to obstruct or interrupt the due and orderly course of proceedings. Most of the acts which constitute criminal contempt can be found in the Criminal Offences Act, 1960 (Act 29).

Civil contempt, on the other hand, is the act arising from matters not occurring in or near the presence of the court but which tended to obstruct or defeat the administration of justice, such as, (1) conduct of a party which tends to bring the administration of justice into disrepute or (2) the failure or refusal of a party to obey the lawful orders, injunction or decree of the court laying upon him a duty of action or forbearance, in other words, failure to do something which that party was ordered by the court to do for the benefit or advantage of another party to pending proceedings.

It is the second type of civil contempt, i.e., the failure or refusal of a party to obey the lawful orders, injunction or decree of the court, laying upon him a duty of action or forbearance, in other words, failure to do something which that party was ordered by the courts to do for the benefit or advantage of another party to pending proceedings, which is in issue in this instant case.

According to the Applicant, the Judicial Committee of the Ekumfi Traditional Council had restrained the Respondents herein from styling and parading the second Respondent in any forum as the stool occupant or Odikro of Ekumfi Ekumpoano until the ineligibility of the Applicant herein is determined. However, the Respondents have referred to the second Respondent in certain documents as the stool occupant or Odikro of Ekumpoano, in order to undermine the administration of justice by the Judicial Committee and thus bringing the administration of the Judicial Committee into disrepute.

Per the provisions of the 1992 Constitution, it is only the superior courts which have the power to try contempt of court cases. The power and authority of the High Court to commit a person for contempt of court is guaranteed by article 126(2) of the 1992 Constitution, section 36 of the Courts Act, 1993 (Act 459) and Order 50 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47).

This means that the lower Courts do not have any jurisdiction to determine contempt of court cases. Lower courts have been defined under section 5 of the Courts (Amendment) Act, 2002 (Act 620) to include *"the National House of Chiefs, Regional Houses of Chiefs and every Traditional Council, in respect of the jurisdiction of any such House or Council to adjudicate any cause or matter affecting chieftaincy."*

Now, under the Chieftaincy Act, 2008 (Act 759), traditional councils exercise their judicial functions through their judicial committees and so decisions of the judicial committees are decisions of the traditional councils. Therefore, in law, contempt committed against a judicial committee is contempt against the traditional council. See **Republic v. Akenten II; Ex Parte Yankyerah (1993-94) 1 GLR 246 CA.**

Flowing from the fact that the lower courts, including traditional councils, do not have power to try contempt cases, per the principles of case law, the proper forum to bring contempt cases committed before a judicial committee is the High Court. See the **Re Effiduase Stool Affairs case**, already cited above.

It has also been decided that civil contempt, i.e. disobedience of an order of the court, is a quasi-criminal matter because the punishment for it might include a fine or a term of imprisonment and therefore the standard of proof required is proof beyond reasonable doubt. In **Republic v. Bekoe & Others; ex parte Adjei (1982-83) GLR 91**, the Court held that:

"*a civil contempt partook of the nature of a criminal charge because conviction might entail imprisonment. Consequently, the principle of law was quite clear that where a person was charged with contempt of court, his guilt should be proved with the same strictness as required in a criminal trial, i.e. proof beyond reasonable doubt."*

This principle was also stated forcefully in the case of **Re Effiduase Stool Affairs (No. 2)** case cited above.

Again, section 13(1) of the Evidence Act, 1975 (NRCD 323) 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 reasonable doubt.*"

In **Republic v. Boateng & Oduro; Ex Parte Agyenim-Boateng**, cited above, Dotse JSC had this to say:

"It is therefore clear that just as in criminal cases, in which an alleged contemnor is presumed innocent until proven guilty, so it is with civil contempt applications. An applicant must therefore adduce sufficient evidence, documentary or oral, to establish the essential elements of the offence of contempt. An applicant who fails to meet the required standard of proof beyond reasonable doubt must fail in his quest to have a contemnor convicted of contempt."

Again, **in Agyenim Boateng & 27 Others v. S.K. Boateng (2009) MLRG 34**, the Supreme Court added that an applicant must therefore first make out a prima facie case of contempt before the court considers the defence put up by the respondents.

In the case of **Republic v. Sito I; ex parte Fordjour (2001-2002) SCGLR 322,** the Supreme Court laid down the following, as the essential elements that the Applicant must prove in order to succeed in an action for contempt of court:

"(i) there must be a judgment or order, requiring the contemnor to do or abstain from doing something; (ii) it must be shown that the contemnor knows precisely what he is expected to do or abstain from doing; and (iii) it must be shown that he failed to comply with the terms of the judgment or order and that (iv) the disobedience was willful."

In this instant case, the charge against the Respondents is that they have willfully disobeyed the lawful restraining or injunctive orders of the Judicial Committee of the Ekumfi Traditional Council.

Exhibit NK8 is the ruling of the said Judicial Committee dated 7th July, 2020, on a motion by the Applicant herein who is the defendant in that case to dismiss the case against him instituted by the Respondents herein as Plaintiffs in that case. The last paragraph at the last page of the ruling reads as follows:

"*In order to ensure that peace and tranquility prevails at Ekumpoano at all times, the committee also orders the 3rd plaintiff, his agents, assigns, personal representatives whosoever, to restrain from styling and parading himself in any forum as the stool occupant or Odikro of Ekumfi Ekumpoano or having anything to do with the Odikro stool of Ekumfi Ekumpoano, until the ineligibility of the Defendant is determined.*"

Applying the conditions to be satisfied for a successful contempt proceeding against an alleged contemnor as stated in the **Republic v. Sito case**, already cited above, it is my considered view that the above quotation was a clear lawful order of the Judicial Committee, expressly made, requiring the Respondents herein to abstain or refrain from styling and parading himself in any forum as the stool occupant or Odikro of Ekumfi Ekumpoano.

From the record of proceedings before me, it is clear that the Respondents knew or ought to have known that the second Respondent herein was not to style or parade himself as the stool occupant or Odikro of Ekumfi Ekumpoano. According to the Applicant, at paragraph 5 of his affidavit in support of his application, the import of the restraining order, which was publicly read out, was interpreted in the Fante language to the parties present, including the Respondents on the date on which the ruling was

read. Both Respondents admitted to this fact at paragraph 6 of their respective affidavits in opposition.

Again, from the record, the Respondents failed to comply with the order of the Judicial Committee. From exhibit NK8, the ruling of the Judicial Committee, which contains the restraining order against the Respondents were delivered on 7th July, 2020. The Applicant tendered exhibit NK10, a copy of a witness statement authored by the first Respondent on 25th April, 2022 and filed before the Judicial Committee on 25th May, 2022, almost two clear years after the restraining order was made against the Respondents. At paragraph 5 of the said witness statement, the first Respondent styled the second Respondent in the following words:

"*The 3rd Plaintiff is presently the occupant of Ekumfi Ekumpoano, having been nominated and installed as the Odikro in accordance with custom.*"

From the record before me, the 3rd Plaintiff referred to is the second Respondent herein.

The Applicant also tendered exhibits NK9 and NK11, which are copies of witness statements dated 26th May, 2021 and filed at the High Court, Winneba on 7th June, 2021 and a supplementary witness statement dated 13th July, 2022 and filed at the High Court, Mankessim on 18th July, 2022, both authored by the second Respondent herein, long after the restraining order of the Judicial Committee had been made against them.

At paragraph 1 of the said exhibit NK9, the second Respondent styled himself as follows:

"*My name is Robert Sampson. My stool name is Nana Odiasempa Korsa Yeboah VII. I am the Odikro of Ekumfi Ekumpoano…….*"

Again, at paragraph 1 of exhibit NK11, the second Respondent herein styled himself as follows:

"My name is Robert Sampson. I am the Odikro of Ekumfi Ekumpoano. My stool name is Nana Odiasempa Korsa Yeboah VII……."

The explanation given by the first Defendant for styling the second Respondent as the occupant or Odikro of Ekumfi Ekumpoano, in his affidavit in opposition, is that because one of their reliefs before the Judicial Committee is for a declaration that the second Respondent is the accredited stool occupant, he needed to give evidence to prove his case by mentioning who, in his opinion and belief, is the occupant of the Ekumfi Ekumpoano stool, notwithstanding the orders of the Judicial Committee.

The second Respondent, on the other hand, explained in his affidavit in opposition that the description of himself as the Odikro of Ekumfi Ekumpoano were based on the pleadings of the parties; that for example, in the writ of summons for which he had filed exhibit NK11 at the High Court, Mankessim, the Plaintiff therein had described him as the current chief of Ekumfi Ekumpoano; that this does not amount to willful disobedience of the injunction orders and that he was only assisting the first Respondent to prove his case.

It is my considered opinion that these explanations are unacceptable. This is because the Respondents knew clearly that by the restraining orders of the Judicial Committee, they were not to refer or describe or style or parade the second Respondent as the occupant or Odikro of Ekumfi Ekumpoano. However, per exhibits NK9, NK10 and NK11, the Respondents made categorical statements of fact that the second Respondent is the occupant or Odikro of Ekumfi Ekumpoano.

In my view, two words – "style" and "forum" - stand out in the restraining orders of the Judicial Committee which the Respondents are failing to appreciate. These words, in my view, have no legal or technical meaning in the sense in which they have been used by the Judicial Committee in their restraining order.

The Oxford Learners Dictionary defines "self-styled" as "*using a name or title that you have given yourself, especially when you do not have the right to do it*."

It is my considered view that whether or not the second Respondent has been properly nominated and installed, the order of the Judicial Committee was to restrain or prevent the Respondents from referring or describing or styling the second Respondent as the occupant or Odikro of Ekumfi Ekumpoano.

On the other hand, the Webster's Dictionary defines "forum" as a market place or public place where matters of public interest are discussed, etc.

It is my considered opinion that by using the word "forum", the Judicial Committee meant that the Respondents were not to describe or style the second Respondent as the occupant or Odikro of Ekumfi Ekumpoano anywhere or in any place whatsoever. In my view, the forum referred to includes even in a court of competent jurisdiction, including the sittings of the Judicial Committee itself.

In my considered opinion, describing or styling the second Respondent as the occupant or Odikro of Ekumfi Ekumpoano, even in a court of competent jurisdiction, including the Judicial Committee, is a clear disobedience of the lawful injunctive or restraining orders of the Judicial Committee by the Respondents herein, as evidenced by exhibits NK9, NK10 and NK11.

It is also my considered view that the Respondents' disobedience of the restraining orders of the Judicial Committee was willful.

According to the first Respondent, at paragraph 12 of his affidavit in opposition, he had to style and describe the second Respondent as the occupant or Odikro of the Ekumfi Ekumpoano stool because he is "*entitled to lead evidence to prove my case by mentioning*

who in my opinion and belief is the occupant of the stool of Ekumfi Ekumpoano, notwithstanding the orders contained in Exhibit NK8." (Emphasis mine.)

Again at paragraph 14, he made the point that "*that having pleaded those facts, I am entitled to lead evidence to establish those facts to prove my case, the injunction order notwithstanding."*

The second Respondent also insists, per his affidavit in opposition, he had described and styled himself as such based upon the pleadings before the courts and to assist the first Respondent to prove his case.

It is my considered opinion that the Respondents are very much aware of the injunctive orders of the Judicial Committee but decided to hide behind the court cases to defy those lawful orders. A careful reading of exhibits NK9 and NK11, authored by the second Respondent, shows that apart from styling and describing himself, as prohibited by the injunctive orders of the Judicial Committee, at paragraphs 1 respectively, there is nothing in the body of those documents to warrant the use of the names and titles as prohibited by the Judicial Committee. The second Respondent was giving evidence in support of the first Respondent only in his capacity as a member of the first Respondent's family and not in any other capacity and the subject matter is land.

With respect to exhibit NK10, it is my considered opinion that once the Judicial Committee made the injunctive or restraining orders against the Respondents, it was expected that subsequent processes filed before the Judicial Committee would indicate the name of the third Plaintiff, the second Respondent herein, simply as Robert Sampson, Ekumpoano and this description would have no effect to whatever evidence the Respondents would give before the Judicial Committee to prove their case. However, they failed to do so by persisting in the use of the prohibited title of the

second Respondent in clear defiance and disobedience of the lawful restraining orders of the Judicial Committee. This is willful.

After all, even though the Respondents acknowledge at paragraph 36 of their statement of claim before the Judicial Committee and also at paragraph 6 of their respective affidavits in opposition that the Applicant has been installed as the stool occupant or Odikro of Ekumfi Ekumpoano, they still choose to refer to him only by his private name, Isaac Oppong @ Kofi Gyambibi of Agona Swedru and not by his stool name, Nana Korsa VII. From exhibits NK1, NK2 and NK3, the claim of the Respondents before the Judicial Committee is that the Applicant "*is not a fit and qualified person to style or parade himself as the stool occupant or Odikro of Ekumfi Ekumpoano, not hailing from the appropriate family and lineage.*" Put differently, the Respondents are only challenging the enstoolment of the Applicant as the stool occupant or Odikro of Ekumfi Ekumpoano because they claim he is not from the appropriate family and lineage.

In conclusion, I find, declare and hold that the allegation of contempt levelled against the Respondents by the Applicant has been proven beyond reasonable doubt. I find the Respondents herein guilty of contempt of court and each of them is hereby committed for the offence.

The Respondents have stated in their respective affidavits in opposition that in the event that this Court finds them contemptuous, "*I humbly apologise and purge myself accordingly.*"

However, it is my considered opinion that reading through their respective affidavits in opposition, these Respondents are not apologetic of their actions at all and cannot be forgiven.

At paragraph 18 of the first Respondent's affidavit in opposition, he stated that:

"That it is very petty and disingenuous for the Applicant to seek to commit me for contempt ……."

The second Respondent also used the exact same words quoted above at paragraph 20 of his affidavit in opposition.

It is my view that the use of such words to describe an opponent smacks of arrogance and disrespect and cannot be tolerated in a court of law. They should avoid the use of such words in court because one can never be sure of the outcome of a case.

Accordingly, as punishment, I sentence each of the Respondents to a fine of GHC5,000.00 each to be paid on or before 31st December, 2022 or in default serve a term of seven (7) days imprisonment.

I award costs of GHC2,000.00 against each of the Respondents in favour of the Applicant.

SGD.
CECILIA DAVIS J.
JUSTICE OF THE HIGH COURT

LAWYERS:

1. **JOHN AIDOO FOR THE APPLICANT**

2. **MICHAEL NANA FYNN FOR THE RESPONDENTS**