

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
WINNEBA, CENTRAL REGION OF GHANA HELD ON MONDAY, THE 13<sup>TH</sup> DAY  
OF DECEMBER, 2022, BEFORE HIS LORDSHIP, JUSTICE ABOAGYE TANDOH,  
HIGH COURT JUDGE.

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SUIT NO. E12/040/20

THE REPUBLIC

VS.

1. PATRICA AWORINDE

2. FLORENCE ACHEAMPONG                    ...                    RESPONDENTS

3. JULIANA ACHEAMPONG

4. ROCKSON SACKY

EX PARTE: EKOW WILSON                    ...                    APPLICANT

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**JUDGMENT**

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The Applicant by a motion on notice filed an application on the 10<sup>th</sup> day of February, 2020 for an order to commit the 1<sup>st</sup> – 4<sup>th</sup> Respondents to prison for Contempt of court pursuant to Order 50 rule 1 of C.I 47.

According the Applicant EKOW WILSON, he is the EXECUTOR in the Last Will and Testament of the late Theresa Ama Amaglo. The Applicant says he applied for the grant of probate of the said Will and Last Testament of the deceased duly attested by the two

subscribing witnesses therein, and which was read to the beneficiaries and some relatives of the deceased on the 26h of July,2019 at the Accra High 4 Court. **(SEE ATTACHED AS EXHIBIT "A" HER LAST WILL AND TESTAMENT).**

The Applicant contends that the deceased died on the 27h day of May in the year 2019 and he was granted the probate by the High Court, Winneba on the 27" of May 2019.**(SEE ATTACHED A COPY OF THE PROBATE AS EXHIBIT "B").**

According to the Applicant, the 1<sup>st</sup> Respondent Patricia Awurinde, 2<sup>nd</sup> Respondent Juliana Aceampong and the 3<sup>rd</sup> Respondent Florence Acheampong are preventing him from performing his lawful duty as executor of house No. GB 193 at Gomoa Budumburam, one of the properties of the estate of the deceased testator. That the 2<sup>nd</sup> Respondent Florence Acheampong and the 4<sup>th</sup> Respondnet Rockson Sackey have refused to vacate two rooms in the house. The Applicant contends further that Patricia Awurinde and Juliana Acheampong have on the 29" January 2020 moved in to stay in the house.

The Applicant avers that the Respondents also on the 30" of January 2020 attacked and forced out of the house the caretaker Mary Azaioo, of the house. The Applicant said they seize the caretaker's room keys and mobile phone which were later retrieved from them by the Police.

The Applicant said he gave the 2<sup>nd</sup> Respondent and the 4<sup>th</sup> Respondent letters to vacate at the end of January 31, 2020, but they are still occupying the rooms. And that the 3<sup>rd</sup> Respondent has also rented one room to the 4<sup>th</sup> Respondent and collecting the rent for them.

According to the Applicant, the conduct of these three persons amounts to intermeddling in my work as the Executor and administrator of the estate of the late

Theresa Ama Amaglo which I have sworn an oath to do. The Applicant further contends that, there are debts on the estate which I have to pay by collecting rent from the house to pay.

The Applicant avers that the conduct of the Respondents amounts to contempt of court and prays to the Honorable to punish them by committing them to commit them for contempt, and sentence them into prison custody.

The Respondents denied the assertion made by the Applicant. Also the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents said they were children the late husband of their deceased mother, whilst the 4<sup>th</sup> Respondent was only a tenant in the house in dispute.

According to the 1<sup>st</sup> Respondent, she is the biological daughter of the late Francis Augustus Acheampong who died intestate in 1996 which letters of Administration was obtained her late mother Theresa Ama Amaglo and all of them were in House No. GB193 Buduburam. The position of the 1<sup>st</sup> Respondent was corroborated by the Affidavit evidence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as they all respectively tendered in evidence **Exhibits PA and PA '1'** being the letters of Administration and the declaration of movable and immovable property of Francis Augustus Acheampong.

The 2<sup>nd</sup> Respondent also said following the grant of the letters of administration in April 1996, the administrators distributed House No. GB 193 Buduburam in the Central Region, among the siblings. The 2<sup>nd</sup> Respondent said the adjoining land was also distributed so she built on her portion of the land.

The 3<sup>rd</sup> Respondent said she was and administrator of the estate of her late father together with her late mother who distributed the estates among her siblings. The 3<sup>rd</sup> Respondent said her late mother encouraged her to develop her portion of the unused land and she built two rooms on the said land.

The 4<sup>th</sup> Respondent reiterated the fact he is a tenant of the 3<sup>rd</sup> Respondent in the said house and nothing more.

*The main issue in consideration is whether or not the Respondents obstructed the course of justice by preventing the Applicant the executioner of the estate of their late mother, having obtained probate on 5<sup>th</sup> May 2016 and so to do.*

In the case of **REPUBLIC V SITO I; EX-PARTE: FORDJOUR (2001-2002) SCGLR 322** the Supreme established that in an application for contempt, the burden of proof is beyond reasonable doubt just as in a criminal discourse. The party can only be shown to be guilty if there is an order or judgment of which he is aware that requires him to do or abstain from doing a particular thing

In deciding this application one way or the other, it is important to examine the alleged conduct of the Respondents being complained of within the perspective of the law on contempt. The law is trite that any conduct that constitutes disobedience to an order of court or the Court's process amounts to contempt of court.

Oswald on "**CONTEMPT OF COURT**" 2<sup>ND</sup> EDITION page 6 states of contempt of court in the following words:

*"...Contempt of court may be said to be constituted by any 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 litigation"*

In his recent academic work on the "LAW OF CHIEFTAINCY IN GHANA INCORPORATING CUSTOMARY ARBITRATION, CONTEMPT OF COURT AND JUDICIAL REVIEW" S. A. Brobbey (JSC) at page 460 stated as follows:

*"An act or omission will amount to contempt of court if it tends to lower the authority of the court or to pre - empt or forestall the outcome and thus undermine the power of the court to determine the case as it deems fit".*

The rationale for relief when contempt is brought to the attention of the Court by an Applicant is to ensure that orders of the Court are enforced and the sanctity of its processes are not unlawfully abused. ALDRIDGE, EADY & SMITH ON CONTEMPT 2<sup>ND</sup> EDITION 1999 states at paragraphs 12 to 15 at page 736 as follows:

*"It is obvious that any civilized society depends upon the authority and effectiveness of orders made in its court. There is thus a public interest in seeing that orders are enforced. Civil Contempt cannot be considered therefore merely as a means by which individual litigants can enforce orders in their favour. The court has an interest on behalf of the community at large in ensuring that orders are not disobeyed at the option of one party or even both".*

Further Lord Diplock in AG VRS. TIMES NEWSPAPER LTD. (1973) 3AER page 54 said as follows:

*"The provision of such a system for the administration of justice by the courts of law and the maintenance of public confidence in it are essential, if citizens are to live together in peaceful association with one another".*

In the face of the denials, is it the case that the Applicants having satisfied the *Sito test* or *principles of Sito* and *other cases* earlier mentioned to grind a contempt charge? One has to ponder over what the Court has been presented with. The Respondents do not have much of a burden except to deny the allegations against them which they have appropriately done. By the principles that establish Contempt and which are trite learning, which order are the Respondents stated to have breached, per the SITO principles?

The burden of prove in this allegation of contempt ought to be one beyond reasonable doubt. The Applicants contend various acts against the Respondents. A mere allegation without concrete prove is insufficient to establish contempt.

As has been held in a number of cases, in particular the Supreme Court in the case of **IN RE EFFIDUASE STOOL AFFAIRS (NO. 2) REPUBLIC VRS. NUMAPAU PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS; EX-PARTE: AMEYAW III (NO. 2) (1998 – 99) SCGLR 639 Holding 2).**

*“Since contempt of court was quasi criminal and the punishment for it might include a fine or imprisonment, the standard of proof required was beyond reasonable doubt. An Applicant must therefore first make out a prama facie case of contempt before the court could consider the defences put up by the Respondents”.*

At page 666 the Supreme Court in elaborating the principle further stated that:

*“...in this regard, an admission or proof of the factual allegation does not imply an admission of liability in contempt, as it would still be the burden of the Applicant to establish that the said actual allegations constitute contempt”.*

To my mind, the position of the Supreme Court buttresses the provisions of **SECTION 13(1) OF THE EVIDENCE ACT, 1975 (NRCD 323)** which 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 a reasonable doubt”.*

In an application of this nature, the Respondents need not prove anything. It is sufficient that they create doubts which the Applicants must help the Court resolve by providing concrete evidence.

It is not in doubt that the Applicant was duly granted probate to administer the estate of the late Theresa Ama Amaglo on 5<sup>th</sup> May 2016 and is being resisted by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to carry out his lawful duty as an administrator. The only reason advanced by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents was the fact that letters of Administration was granted to the 3<sup>rd</sup> Respondent and their late mother to distribute the estate of their late father with their late mother and that the property in issue belonged to their father and not their mother. They further argued that the said property was distributed among their siblings.

I have examined the affidavits evidence of the respective parties and legal submissions of the respective parties but I did not find any vesting assent evidencing the distribution of the property in issue and as belonging to their late father. Instead of forcibly and physically prevent the Applicant from doing his lawful duty, one will have expected the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to mount a legal challenge by way of a writ when it became necessary but waited until the contempt processes were initiated.

From the foregoing I find that the Applicant led evidence beyond

reasonable doubt to establish the charge of contempt against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents but failed to establish same against the 4<sup>th</sup> Respondent who being a mere tenant cannot be saddled with the contemptuous conduct of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

Upon consideration of the totality of affidavit evidence adduced the plethora of the authorities cited and the ensuing legal arguments for and on behalf of the respective parties and the applicable law, I hold that the led evidence beyond reasonable doubt per Section 13 (1) of the Evidence Act 1975 NRCD 323 to establish the guilt of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents of contempt of court and convict each one of them.

However, the guilt of the 4<sup>th</sup> Respondent was not so establish per Section 13 (12) of the Evidence Act 1975 NRCD 323 and he is accordingly acquitted and discharged.

In sentencing, the Court took into consideration the plea for mitigation for and on behalf of the contemnors that they have shown mercy and will ensure that such a thing do not recur.

Having considered the mitigating factors the contemnors are sentenced to fine of Two Hundred and Fifty (250) penalty units each in-default one month imprisonment in hard labour (I.H.L).

(SGD)

JUSTICE ABOAGYE TANDOH

HIGH COURT JUDGE



COUNSEL

KINGSFORD DEBRAH ESQ FOR THE RESPONDENTS.

PETER KWEASI NIMO ESQ, FOR THE APPLICANT.