

THE HIGH COURT OF JUSTICE, HELD IN SOGAKOPE ON THURSDAY THE 1ST
DAY OF DECEMBER, 2022 BEFORE HER LADYSHIP JUSTICE DOREEN G.
BOAKYE-AGYEI (MRS.) JUSTICE OF THE HIGH COURT

SUIT NO: E13/05/2023

THE REPUBLIC

--- APPLICANT

-VRS-

TOGBE GBADAWU IV

--- RESPONDENT

EX-PARTE: TOGBE LUGU AWADALI IV

PARTIES:

- PRESENT

COUNSEL:

MR. SENANU AFAGBE, ESQ., COUNSEL FOR RESPONDENT - PRESENT

JUDGMENT

INTRODUCTION

The Applicant on the 16th day of August, 2022 filed the instant application against the Respondent pursuant to Order 50 of C. I 47 praying for an order to commit the Respondent for Contempt of Court. The Applicant is praying that the Respondent be convicted to punitive custodial sentence to serve as a deterrent to others who might contemplate

following his recalcitrant behavior. The Respondent on the 16th day of September, 2022 filed an affidavit in opposition to the instant application and denied the contentions or allegations of the Applicant especially the contention or allegation that the Respondent recently constructed a dyke with traps at the junction where fish from the Avu Lagoon swim into the Adutor Creek and thus trapped all fishes that ought to have swum into the ADUTOR Creek to replenish the stock of fish therein and by so doing, he sought to exclusively enjoy the goodies of ADUTOR Creek to the exclusion of all other fishermen and or users of the creek in defiance of the decision of the Supreme Court. The Respondent also in his affidavit in opposition denied ever engaging in conduct that was contemptuously contumacious which is an affront to the dignity and reputation of the Supreme Court which had in its judgment Exhibit F cautioned the Family members over the wet and the dry creeks on the disputed land. The Respondent having denied the Applicant's allegations, the burden is cast on the Applicant to prove his allegation levelled against the Respondent beyond reasonable doubt as per the law and authorities.

THE FACTS: The summary of history lesson of a myriad of cases between the parties from civil and contempt spanning the High Court, Court of Appeal and Supreme Court are that the Applicant herein instituted an action against the Respondent at the High Court, Ho in a suit **NO. L.S No. 2/2001 entitled TOGBE LUGU AWADALI IV VRS TOGBE GBADAWU IV** in respect of the ownership and or allodial title of a land that according to Respondent has long been in effective and uninterrupted possession and occupation of the Respondent's Gbadawu family. The dispute was further provoked by the Respondent's preparation and registration of a Statutory Declaration covering the land at the Lands Commission, Ho. At the end of the trial in the aforementioned case, judgment was in the opinion of this Court declared partly in favour of Applicant and also the Respondent.

The Applicant states that he is the Chief of Adutor and the Head and Lawful Representative

of the Anyigbe Clan of Agave and also the Head of the Awadali Family which owns the whole of the Anyigbe Clan lands. That his capacity as the Head and Lawful Representative of the Anyigbe Clan of Agave was as far back on the 19th day of July, 2005 affirmed and confirmed by the High Court, Ho in its Ruling in the case titled TOGBE LUGU AWADALI IV – VRS – DR. BERNARD KWASI GLOVER & ANOR of which he Attached hereto a copy of the said Ruling herein marked Exhibit “A”). That recently the Court of Appeal in Civil Appeal No H1/11/2021 adjudged and declared him the Head of the Anyigbe Clan and the Head of the AWADALI Family and therefore the authority to alienate the Anyigbe Clan lands vest in him of which he again attached hereto a copy of the said judgment herein marked Exhibit “B”). According to him, as far back as the 29th day of November, 1957 the TONGU DISTRICT NATIVE APPEAL COURT, SOGAKOPE in its judgment in the Suit titled HONU ADIGBLI & AVAFIA ABORDOR – VRS – AVAFIA AVUSU II & ADABADJIE AGUZE held inter alia that “Awadali family are the Head of the whole of the Anyigbe Clan lands and the power to alienate, rests in them” and he attached hereto a copy of the said judgment herein marked Exhibit “C”). His case is that the aforesaid judgments confirm the exclusive right of the Awadali Family to grant and or alienate Anyigbe clan lands and also confirm that the Awadali Family was and is the Head of the whole Anyigbe Clan lands and so the power to alienate Anyigbe Clan lands vest in him to the exclusion of all others. That the Awadali Family holds the allodial title to all the lands commonly called Anyigbe Clan lands which include the Fodoe Creek, the Adutor Creek, the Todor and other Creeks and the adjoining lands, founded by his ancestor Togbe Awadali, whose name he bears.

Applicant contends that the Respondent and his Gbadawu Family who are not members of the Anyigbe Clan were strangers from the Fievie Clan who came to Adutor and were permitted to settle and farm on part of Awadali family lands which are in their possession and also to fish in the Fodoe Creek, the Adutor Creek, the Todor and other Creeks belonging to the Awadali Family. That sometime before 2001, the Respondent herein Togbe Gbadawu

IV sought to falsely claim that he holds allodial title to the lands in and around the Fodoe Creek, the Adutor Creek, the Todor and other Creeks inclusive of the creeks which are for the Awadali Family of the Anyigbe Clan. That in exercise of his false claim, Respondent sought to exact tolls from members of the Awadali Family and members of the Anyigbe Clan who as of right fished in the Fodoe Creek, the Adutor Creek, the Todor and other Creeks and farmed on the adjoining lands. Applicant states that he later discovered that the Respondent herein had surreptitiously prepared a Statutory Declaration, declaring that he was the allodial owner of the lands which Applicant's ancestors gave to Respondents ancestors to settle on and to farm thereon and included the farmlands of members of the Awadali and the Anyigbe Clan and that of their grantees, licensees and lessees and also included the Fodoe Creek, the Adutor Creek, the Todor and other Creeks as belonging to his family.

That in consequences of this unjustifiable false claim of absolute ownership and or allodial title and also the conduct of seeking to exercise overt control over fishing and farming activities relating to the Anyigbe Creeks and lands, Applicant instituted Suit No. L.S. 2/2001 against Respondent at the High Court Ho which ended eventually at the Supreme Court. That the institution of the Suit was provoked and or precipitated by Applicant's discovery that the Respondent herein, had prepared the Statutory Declaration aforesaid and falsely declared therein that the farmlands of members of the Awadali and the Anyigbe Clan and that of their grantees, licensees and lessees and the Fodoe Creek, the Adutor Creek, the Todor and other Creeks which were in their possession and not in his possession or that of Gbadawu family belonged to him. That without Applicant's knowledge, the Respondent succeeded and did register the land contained in the schedule attached to the Statutory Declaration dated 8/7/1981 at the Lands Commission, Ho as the property of his Gbadawu Family at the Land Registry as No. 27/18/1981. That when Applicant instituted SUIT NO. L.S. 2/200, as the Head and Lawful Representative of the Anyigbe Clan and the Head of the

Awadali Family, he did lay claim to the allodial ownership of the land and the creeks, which the Respondent herein had registered.

In Response thereto, the Respondent asserted absolute ownership and or allodial title to parts of his (Applicant's) Adutor lands and Avuto lands and the creeks and did allege that his ancestress called Borkanu, purchased the lands and the creeks from one Anyigbe also called Gli. Applicant contends that Agorvigli or Gli was a stranger who sojourned with one of Applicant's predecessors by name Faname and he permitted him to fish and farm on some parts of land adjoining the creeks and he acted also as Faname's agent in collecting tolls on his behalf but at a point in time, he escaped as a fugitive. That there was no means by which Agorvigli or Gli who was a stranger could have acquired the allodial title which he could lawfully sell to Borkanu, the ancestress of the Respondent. That on the 3rd day of February 2012 the High Court delivered its judgment and at Paragraph 3 Page 9 of the said Judgment held that; "By reason of his [Gli] connection with Anyigbe tribe, he [Gli] became vested with the usufruct or the possessory title. As a possessory title holder, he (Gli) was at liberty to transfer his interest in the land by sale. **The purchaser then acquired Gli's interest that is the possessory title and not the absolute title. The absolute title continued to be vested in the Anyigbe clan while the Gbadawu family became vested with the possessory title to the lands.**" Attached hereto was a copy of the said Judgment herein marked Exhibit "D"). It is Applicant's case that from the foregoing, the Gbadawu family only has possessory title to the lands which were and are in their actual physical and effective possession and not all the lands contained in the Schedule attached to the Statutory Declaration dated 8/7/1981 at the Lands Commission, which the Gbadawu Family registered as their property at the Land Registry as No. 2718/1981

Applicant contends that the High Court declared that his Anyigbe Clan is the allodial title holder of the disputed land and in consequence thereof held as follows; **"I find the facts**

recited in the statutory declaration inaccurate, misleading and wrongful. I shall therefore set it aside on that ground with a caution that a new statutory declaration which contains a true and accurate statement of facts regarding the respective rights of the parties may be executed by the defendant"

Concerning the creeks, the High Court at Paragraph 4, page 9 of the judgment, Exhibit "D", delivered itself as follows; **"The creeks are water bodies and therefore a natural resource which Gli could not have reduced into his possession. He did not exert any human skill or activity over them in order to make him the owner of the creeks. He was permitted to enjoy the goodies of the creeks. There is no evidence; at least none has been suggested that he had exclusive use of the creeks.**

The creeks were family assets and for that reason the permission granted to Gli to feed in them did not abridge the rights of the members of the Anyigbe clan to also fish in them. Undoubtedly, this is the underlying cause of the numerous disputes between the Anyigbe clan and the Gbadawu family over the creeks. It is important to limit the Gbadawu family's interest to the interest held in them by Gli."

The High Court further held that, **"The interest the Gbadawu family has in the creeks is not supposed to supersede that of Anyigbe tribe'**. The trial judge in conclusion of the judgment (EXHIBIT D) expressed himself as follows; **"For the reasons expressed above, I am unable to grant the other reliefs of the Plaintiff and same are hereby dismissed. I am also unable to declare the defendant's family as the absolute owners of the disputed land. The Gbadawu family must continue to hold the disputed land as usufructuary owners subject to the rights of the Anyigbe clan, the allodial owners of the disputed land. I make no order as to cost"**

The trial court also at page 12 from lines 4 to 10 of the judgment (EXHIBIT

D) stated as follows;

"For the avoidance of doubt, I must emphasize that as possessory title holders of the lands adjoining the creeks; the Gbadawu family is legally entitled and qualified to alienate portions thereof either by sale or granting leases to strangers or any person without the consent and or prior approval of the allodial title holders. They can only alienate their interest in the land. It must be noted that the allodial owner cannot interfere with the occupation of the possessory or usufructuary owner"

The said judgment also at page 12 from line 16 to 19 states that:

"The rights and benefits which accrue to a possessory title holder at custom cannot be swept away by the allodial title holder for no apparent reason. In the instant case, the granting of leases by the Gbadawu family to prospective developers is consistent with their ownership rights; and it is within their power to so act"

At the tail end of page 13 through to page 14 of EXHIBIT D, the High Court stated as follows;

"Now, it has been declared that the Anyigbe Clan is the allodial owner of the disputed land. This interest must be captured in the statutory declaration. In effect, the statutory declaration fails to accurately trace the defendant family's root of title to the disputed land. I find that the facts recited in the statutory declaration inaccurate, misleading and wrongly. I shall therefore set aside on that grounds with a caution that a new statutory declaration which contains a true and accurate statements of facts regarding the respective rights of the parties may be executed by the defendant"

It is the case of Respondent herein that it is erroneous on the part of Applicant to state that the Gbadawu family only has possessory title to the lands which were and are in their actual physical and effective possession and not all lands contained in the Schedule attached to the Statutory Declaration dated 8/7/1981 at the Lands Commission, Ho. That

the Court only stated that the Respondent's family should prepare a new Statutory Declaration to reflect the interest of the Anyigbe Clan and the root of title of the Respondent's family land.

The Applicant and the Respondent both aggrieved by the judgment of the High Court appealed to the Court of Appeal, Accra. The Court of Appeal set aside the judgment of the High Court and in effect ruled in favour of Respondent herein. The Applicant being dissatisfied and aggrieved by the Court of Appeal decision appealed to the Supreme Court. The Supreme Court in its judgment set aside the judgment of the Court of Appeal. The Supreme Court in affirming and restoring the judgment of the High Court held inter alia at page 11 of the judgment that: *"As allodial owners, it was wrong for the Respondent to attempt in any way, to fetter the fishing and farming rights of the Appellant's family members over the wet and dry creeks on the disputed land"*

The Supreme Court also held that, **".....the Court of Appeal erred when it set aside the judgment of the trial High Court on the ground that Applicant's family had sold its absolute interest in the land to the Respondent's family when there was no evidence to support the finding."**_____The Supreme Court in conclusion of its judgment at page 11 stated that: *"We accordingly allow the appeal and restore the decision of the trial High Court save the order that the respondent should prepare a new Statutory Declaration to replace the one that has been set aside"*

The Respondent not satisfied with the Supreme Court judgment applied for Review but the said Review Application was dismissed by the Supreme Court. According to Respondent, it is therefore inaccurate for the Applicant to claim that the Gbadawu family only has possessory title to the lands which were and are in their actual physical and

effective possession and not all the lands contained in the schedule attached to the said Statutory Declaration dated 8/7/1981 at the Lands Commission, Ho. That the High Court only stated that Respondent's family should prepare a new Statutory Declaration to reflect the interest of the Anyigbe Clan and root of title of his family land.

It is Applicant's case that by the said Review, the Respondent herein erroneously sought to challenge the Anyigbe Clan and or the Awadali Family's Allodial Ownership and or absolute ownership of the land in dispute including the creeks. That per the Respondent's Review Application he sought for a declaration that the Allodial Ownership and or absolute ownership of the land in dispute including the creeks belonged to his Gbadawu family. That because his Review Application was of no merit the same was dismissed on the 22nd day of January, 2019 of which was attached hereto a copy of the Court Notes of the Review Panel herein marked Exhibit "G". **Respondent however submits that** the Review Application was dismissed on grounds that he did not demonstrate the existence of exceptional circumstances to warrant a Review.

Applicant contends that by the aforesaid dismissal, the dispute as to the Allodial and or absolute ownership of Anyigbe Clan lands particularly the land in dispute and the creeks became settled forever in Applicant's favour. That after the Supreme Court set aside the judgment of the Court of Appeal and restored the judgment of the High Court in its entirety in Applicant's favour and whilst the Review Application of the Respondent aforesaid was pending, the Respondent defied the judgment of the Supreme Court and challenged Applicant's capacity as the de facto and the de jure Allodial owner of Adutor Creek. Applicant submits that Applicant in his capacity as the de facto and the de jure owner of the Adutor Creek and in line with customary practice, caused gong gong to be beaten to invite all the persons who fish in the Adutor Creek to a meeting held on the 15th day of July, 2018.

That at that meeting the closed season for the Adutor Creek was discussed and it was agreed that the closure of the Adutor Creek to allow the fishes to breed and grow to replenish the stock of fishes therein should commence from 6th day of August, 2018. That in consequence thereof, Applicant on the 29th day of July, 2018 caused gong gong to be beaten to announce the commencement of the closed season but the Respondent herein counteracted by beating gong gong to announce that the closed season announced by Applicant should be disregarded because the Adutor Creek was for him. That the Respondent herein further instigated a good number of the fishermen to fish in the Adutor Creek with impunity thus Applicant caused a Motion to be filed for the Committal of the Respondent herein for contempt. That on the 18th day of December, 2018, the High Court, Sogakope committed the Respondent for contempt and he was sentenced to a fine of GH¢3,000.00 or in default 1 (one) month IHL for contempt. Attached hereto was a copy of the Ruling herein marked Exhibit "H".

Respondent contends that per the judgment of the High Court, Ho and that of the Supreme Court, it is also settled that Respondent's family is possessory owner of the land adjoining the creeks and that they can alienate same without the consent and approval of the Anyigbe Clan. That the Supreme Court set aside the judgment of the High Court but Respondent was not invited to any meeting allegedly called by the Applicant.

It is Applicant's contention that in spite of the aforesaid the Respondent on the 27th day of December 2018, threw caution to the winds and in total disregard for the subsistence of the Judgment of the Supreme Court of Ghana, which restored and affirmed the judgment of the High Court, Ho, in its entirety in Applicant's favour, Respondent caused and or used one Afetorgbor Drah of Bekpo Township to beat gong gong for him and without any justification whatsoever laid adverse claim to the ownership of the Fodoe Creek which had been adjudged as belonging to the Anyigbe Clan. That the Respondent herein drove other

users of the Fodoe Creek from the creek and he removed their fishing traps which he threw ashore. That he then caused four fishing dams or dykes to be made for him at various locations in the Fodoe Creek, to trap the fishes therein to the exclusion of all other fishermen and or users of the Creek. According to Applicant the aforesaid conduct of Respondent herein was undoubtedly contemptuously contumacious and was also an affront to the dignity and reputation of the Supreme Court which had in its judgment, Exhibit "F" cautioned the Respondent not **to attempt to fetter the fishing and farming rights of Applicant's family members over the wet and the dry creeks on the disputed land.**"

Applicant states that he therefore filed another Motion for an Order for the Committal of the Respondent which was refused and dismissed on the 16th day of May, 2019 by the High Court, Sogakope presided over by His Lordship Justice Amos Lawer Buerthey Esq. of which he attached hereto a copy of the Ruling herein marked Exhibit "J". That being dissatisfied and aggrieved with the Ruling of the High Court, Sogakope, he launched an appeal at the Court of Appeal (Civil Appeal Division) Ho in CIVIL APPEAL: H1/01/2020, and that on the 26th day of February, 2020 the Court set aside the Ruling of the High Court Sogakope and allowed the appeal because it was meritorious. Applicant attached hereto a copy of the Judgment herein marked Exhibit "K". That the Court of Appeal having set aside the judgment of the High Court below on the evidence on record, convicted the Respondent for contempt and did demonstrate the gravity of the Respondent's offence by imposing a fine of GH¢10,000.00 on him, or in default, six months IHL. That the Court of Appeal, Ho, in convicting the Respondent and in sentencing him, noted that, while it deprecated the conduct of the Respondent, it had no intention of further inflaming passions in the community by imposing a custodial sentence on him. That the Respondent did not appreciate and or place any value on the magnanimous magnanimity of the Court of Appeal which it extended to him for good reason and thus did not give him custodial sentence but he rather from thence senselessly had thrown caution to the winds and

resorted to gratuitous and contumelious acts of contempt.

Applicant contends that contrary to the decision of the Supreme Court that Applicant holds the allodial title to the land in dispute and that the Respondent has usufruct interest and or possessory right over the disputed lands, the Respondent has intentionally misrepresented to the whole community that he has been declared the absolute owner of the lands in dispute and in consequence thereof he and his cohorts, with gratuitous violence have been intimidating and extorting monies from Applicant's family members, his grantees, lessees and licensees who are in physical and effective possession of Applicant's lands. That recently Respondent was resisted by a maternal descendant of Applicant's Family, Fekpe Issaka, who Applicant says is his grantee, when he sought to extort money from her and the Respondent sued her at the Sogakope High Court for recovery of possession for the Respondent and or his Gbadawu Family. Attached hereto was a copy of the Writ of Summons and the Statement of Claim and the Statement of Defence herein marked respectively Exhibits "L" and "M".

Applicant contends that even though the Respondent was granted possessory title by the High Court and affirmed by the Supreme Court, that did not give the Respondent and his Gbadawu family the right and or licence to claim possessory title to any land which was not in his or their physical and or effective possession and to do so was an affront to the decision of the Supreme Court. That the Court of Appeal in its judgment in CIVIL APPEAL NO. H1/01/2002 Exhibit "K" at the last paragraph of page 12 delivered itself thus that, **"What the said judgment (Exhibit "F") stated was that the Defendant and his privies who had usufructuary interest in the land did not have exclusive user rights over the creek, which was to say while they could exclude others from the use of the terra firma included in the land in their possession, they could only enjoy the use of the creek in comity with others.**

Applicant again contends that in spite of the fact that the High Court, Ho whose decision was affirmed by the Supreme Court had declared that **“The creeks were family assets and for that reason the permission granted to Gli to feed in them did not abridge the rights of the members of the Anyigbe clan to also fish in them and also in spite of the fact that, the High Court succinctly stated that, “It is important to limit the Gbadawu family’s interest to the interest held in them by Gli”,** *the Respondent and his agents, without Applicant’s permission, entered the Fodoe Creek on the 15th day of March, 2022, blocked same at two ends and harvested the fishes therein.* That in spite of the decision of the High Court, Ho affirmed by the Supreme Court, to wit that, **“The interest the Gbadawu family has in the creeks is not supposed to supersede that of Anyigbe tribe”** *the Respondent herein contumeliously claiming to be the absolute owner of the Adutor Creek, caused Apetorgbor Sorsorkpliwo to beat gong gong through Avuto commanding all who fish in the Adutor Creek to pack off all the fishing gears from the Adutor Creek for his exclusive use.*

Applicant makes reference to the contempt appeal to the Court of Appeal where the Court of Appeal in its judgment Exhibit “K” in CIVIL APPEAL: H1/01/2020 titled REPUBLIC VRS TOGBE GBADAWU IV. EX-PARTE TOGBU LUGU AWADALI IV referring to the judgment of the High Court as confirmed and affirmed by the Supreme Court noted at the last paragraph of page 12 lines 6 that **the defendant and his privies who had usufructuary interest in the land did not have exclusive user rights over the creeks..... they could only enjoy the use of the creek in community (commity) with others.** That this is what the Defendant refused to do and instead engaged in acts intended to interfere with the rights of others to fish in the creek.

Applicant states that sometime in the year 2021, the Respondent with gratuitous coercion sought to unjustifiably induce Lucia Adedzo, Awusi Blewutor and Nico Ziggah, members of the family of Agorkpa, Applicant’s licensee, who were at all material times in physical

and effective possession of a part of the Anyigbe lands at Adutor Kpodzi, with money for them to yield vacant possession to him so as to sell the land they were on, at Applicant's behest, which land the Respondent and his Gbadawu family had never ever been in possession thereof. That when Lucia Adedzo, Awusi Blewutor and Nico Ziggah refused to accept the money, they reported the matter to Applicant and the Respondent and his agents with gratuitous violence unlawfully entered the land, cut the trees thereon and destroyed the farms on the land and commenced building thereon.

According to Applicant, he sued the Respondent and his accomplices at the Sogakope High Court, but the Court in a Ruling dated 19th day of August, 2021 dismissed the case on the grounds that the same Sogakope High Court, differently constituted, had adjudged that Applicant was not the Head of the Anyigbe Clan in SUIT NO: E12/27/2016 titled GLORYLAND ESTATE – VRS – TOGBE ABORDOE IX which matter was then pending at the Court of Appeal Ho. That the erroneous decision by the Sogakope High Court that Applicant was not the Head of the Anyigbe Clan was resolved in Applicant's favour on the 8th day of July, 2022 which adjudged and declared that the Applicant is the Head of the Anyigbe Clan and the Head of the AWADALI Family and therefore the authority to alienate the Anyigbe Clan lands vests in Applicant. (Vide; Exhibit "B).

Applicant submits that by virtue of section 5(1) of the Land Act, 2020 Act 1068, even though the Respondent has usufruct interest in parts of Applicant's land, and the Respondent and his Gbadawu Family are entitled to deal with the land in their possession, they cannot alienate such land without Applicant's written consent. That recently Applicant's grantees Paul Atsu Tome and Peter Este Tome were on their cashew farms at Adutor Kpodzi working and the Respondent and his agents with gratuitous violence unlawfully entered thereon and sought to survey the land which belongs to Applicant. That the Respondent subsequently caused the Sogakope Police to arrest Paul Atsu Tome and Peter Etse Tome for resisting him unlawfully

dispossessing them which matter is pending. That the Respondent ought not to hide behind the usufruct and or possessory title granted him by the High Court and confirmed and affirmed by the Supreme Court to alienate lands not in his effective and physical possession or that of his Gbadawu Family.

The Respondent herein according to Applicant, without Applicant's permission recently constructed a dyke with traps at the junction where fish from the Avu Lagoon swim into the Adutor Creek and thus trapped all the fishes that ought to have swum into the Adutor Creek, to replenish the stock of fish therein and by so doing, he sought to exclusively enjoy the goodies of the Adutor Creek to the exclusion of all other fishermen and or users of the creek in defiance of the decision of the Supreme Court. That the aforesaid conduct of Respondent herein was undoubtedly contemptuously contumacious and was also an affront to the dignity and reputation of the Supreme Court which had in its judgment, Exhibit "F" cautioned the Respondent not to attempt to fetter the fishing and farming rights ofApplicant's family members over the wet and the dry creeks on the disputed land."

That from all indication the Respondent has demonstrated that he has no regard for the law and the courts and is unwilling to face reality in spite of his two previous convictions and monetary sentences for similar contumacious conduct and he is thus a sure candidate for custodial sentence. That the conduct of the Respondent was undoubtedly contemptuous and the same scandalized the administration of justice.

The Respondent in response was vehemently opposed to the instant Application as was to be expected. Respondent says he was not a party to the suits referred to in **EXHIBITS A, B and C and therefore not bound by them**. He says that his ancestors bought the land from Agorvi Clan and that the Statutory Declaration was in respect of land his Gbadawu family has possessory title to, which the Supreme Court in its judgment ordered that same be

prepared to replace the one that has been set aside. He again states that save that the Applicant instituted suit NO. L.S 2/2001 in respect of the land the Superior Courts declared that the Gbadawu family has possessory right and prepared Statutory Declaration on same. He asserts that he does not need the consent of the Applicant before he registers the Statutory Declaration at the Lands Commission, Ho. That the same judgment (**EXHIBIT D**) stated at page 12 from lines 4 to 10 as follows; **“For avoidance of doubt, I must emphasis the point that as possessory title holders of the land adjoining the creeks; the Gbadawu family is legally entitled and qualified to alienate portions thereof either by sale or granting leases to strangers or any person or persons without the consent and or prior approval of the allodial title holder. They can only alienate their interest in the land. It must be noted that the allodial owner cannot interfere with the occupation of the possessory or usufructuary owner”**. That the said judgment at page 12 from line 16 to 19 states **“That rights and benefits which accrue to a possessory title holder at custom cannot be swept away by the allodial title holder for no apparent reason. In the instant case, the granting of lease by the Gbadawu family to prospective developers is consistent with their ownership rights; and it is within their power to so act”**.

Respondent submits that Exhibit H per the High Court has determined matters between them and likewise matters determined by the Court of Appeal as in Exhibit K. That the said Fekpe Issaka unlawfully and without the consent of Respondent’s family entered into Respondent’s family land which the High Court and Supreme Court held that Respondent’s family holds possessory title in same. That the suit against Fekpe Issaka is in connection with the land the High Court declared as affirmed by the Supreme Court that Respondent’s family holds usufructuary or possessory title to. According to Respondent, he invited the said Fekpe Issaka for an amicable settlement but she refused leading to the issuance of Writ of Summons as in Exhibit L against her. He asserts that his family restricts itself to the land the High Court as affirmed by the Supreme Court that his family holds usufructuary or

possessory title over and that his family is not claiming any more land beyond same.

Respondent vehemently denied that any alleged agents and himself entered the Fodoe Creek on 15th day of March, 2022, blocked same at two ends and harvested the fishes therein and that the High Court's decision as affirmed by the Supreme Court stated that **"the interest the Gbadawu family has in the creeks is not supposed to supersede that of the Anyigbe tribe"**. Respondent submits that his predecessors granted the land the High Court declared that his family holds possessory title of to the forebears of Luci Adedzo, Awusi Blewutor and Nico Zigger. That he did not however induce or coerce the aforementioned persons to yield vacant possession of the land to him and the Applicant even went contrary to the High Court and Supreme Court judgments by granting the land to the said persons.

Respondent denied the Applicant's assertion that his Gbadawu family had never been in possession of the land stating that his family has been in possession of the land prior and after the High Court and Supreme Courts judgments which judgment declared Respondent's family as usufruct owner of the land with the right to alienate same without the consent of the Anyigbe Clan. Respondent denies that the Applicant's claim that his alleged agents and he, with gratuitous violence unlawfully entered the land, cut trees and destroyed the farms on the land and commenced building thereon. Respondent says that the judgments of the High Court and the Supreme Court predated the enactment of the Land Act, 2020 Act 1068 and that the High Court judgment clearly declared that Respondent's family is legally entitled and qualified to alienate portions of the land either by sale or granting leases to strangers or any person or persons without the consent and or prior approval of the allodial title holder. Respondent also says that he entered onto the land the High Court and Supreme Court held that his family holds possessory title and that Paul Atsu Tome and Peter Etse were on his family land. He however denies that his alleged agents and he unlawfully entered the land with gratuitous violence. That Paul Atsu Tome

and Peter Etse Tome rather unlawfully entered the land with gratuitous violence.

Respondent also asserts that his family as usufruct owner of the land has the right to alienate the land in his effective control and possession without the consent of the Anyigbe Clan. He says further that he has not alienated any land not in his effective and physical possession and that he has not alienated any land which does not form part of the land in possession and occupation of his Gbadwu family. Respondent contends that he has not done anything that scandalized the administration of justice. Respondent contends also that his family being the **usufruct owner** of the land has jealously protected its interest in the land by warding off encroachers from trespassing onto the land in the Respondent's family effective possession and occupation and even lodged complaints against Paul Atsu Tome and Peter Etse Tome at the Sogakope Police Station for unlawfully entering onto the Respondent's family land without the consent and approval of the Respondent's family. That also as the usufruct owner, the Respondent has alienated portions of its land and even issued a Writ of Summons against trespassers such as Fekpe Issaka as in **EXHIBIT L** for trespassing onto the Respondent's family land with the said suit still pending before this Court. That the Applicant who claimed to be the grantor of the said Fekpe Issaka and the alleged owner of the land has so far failed to apply to be joined to the suit.

The Court having gone through this arduous process of putting each side's case in the proper perspective, notes that for whatever earlier infractions, same were dealt with and where necessary punishment meted out. Applicant's main contention or allegation in this application is that the Respondent without permission recently constructed a dyke with traps at the junction where fish from the Avu Lagoon swim into the Adutor Creek and thus trapped all the fishes that ought to have swum into the Adutor Creek, to replenish the stock of fish therein and by so doing, he sought to exclusively enjoy the goodies of the Adutor Creek to the exclusion of all other fishermen and or users of the creek in defiance of the

decision of the Supreme Court. The Applicant claimed that the Respondent's alleged conduct is an affront to the dignity and reputation of the Supreme Court. The Respondent denied the said allegations as contained in paragraphs 70, 71, 72 and 73 of the affidavit in support of the motion in paragraph 41 of the affidavit in opposition.

THE APPLICABLE LAW

Contempt of court has been defined as a conduct that interferes with or undermines the administration of justice. The conduct must be such as will undermine the authority of the rule of law generally. Oswald on Contempt (3rd edition) at page 6 contains what is often cited as the locus classicus on contempt of court which is: *"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 disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation"*.

The Supreme Court defined contempt of court as follows in **REPUBLIC VRS HIGH COURT, ACCRA; EX-PARTE LARYEA MENSAH [1998-99] SCGLR 360** at page 368 *"By definition, a person commits contempt and may be committed to prison for willfully disobeying an order of court requiring him to do any act other than the payment of money or abstain from some act; and the order sought to be enforced should be unambiguous and must be clearly understood by the parties concerned"*

The various elements or ingredients of Contempt of Court that an Applicant must establish or prove has been laid down in the case of **REPUBLIC VRS SITO I, EX-PARTE FORDJOUR [2001-2002] SCGLR 322** as follows;

- a. There must be *a* judgment or order requiring the contemnor to do or abstain from doing something;
- b. It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing;
- c. It must be shown that he *failed* to comply with the terms of the judgment or order and that his obedience was willful.

The burden of proof in contempt proceedings is that of proof beyond reasonable doubt. In the case of **REPUBLIC VRS NII ACHIA II; EX-PARTE JOSHUA NMAI ADDO [2015] 83 G.M.J 13** it was held as follows; "Without doubt, a contempt application is a quasi-criminal relief. *Section 13 (1) of NRCD 323* provides that 'in any civil or criminal *action* the burden of *persuasion as to commission by a party of a crime which is directly in issue requires proof beyond reasonable doubt*'"

There must be a judgment or order requiring the contemnor to do or abstain from doing something. In this instant matter, there is no doubt that there is a judgment (which travelled from the High Court, Court of Appeal and Supreme Court) which recognized the rights of both sides, allodial title holder and usufructuary/possessory holders delivered by the High Court, Ho as in **EXHIBIT D**. This judgment declared the Respondent's family as the usufruct or possessory title holder/owner of the subject matter land of the said suit. The said judgment also declared the Applicant's Anyigbe Clan as the allodial title holder/owner of the subject matter land. This judgment (**EXHIBIT D**) was set aside by the Court of Appeal as in **EXHIBIT E**. The Court of Appeal judgment was also set aside by the Supreme Court. The Supreme Court in setting aside the judgment of the Court of Appeal affirmed and restored the judgment of the High Court, Ho as in **EXHIBIT F**. The Supreme Court held at page 11 of **EXHIBIT F** in respect of the creeks as follows; "**As allodial owners, it was wrong for the Respondent to attempt in any way to fetter the fishing and farming rights of the**

appellant's family members over the wet and dry creeks on the disputed land"

These judgments in the candid and considered opinion of this Court, effectively and conclusively determined the respective rights of the Applicant's Clan and the Respondent's family in respect of the subject matter land and the creeks.

It must be shown that the contemnor knows *what* precisely he is expected to do or abstain from doing. The parties herein in the considered opinion of this Court, understood the terms and content of the judgments delivered by the Courts since both parties were represented by learned lawyers from the High Court through to the Supreme Court. They clearly ought to appreciate their respective rights as declared by the High Court and the Supreme Court in respect of the land and the creeks.

It must be shown that the Respondent failed to comply with the terms of the judgment or order and that his obedience was willful. In this instant application, the Applicant alleged in paragraph 70 of his affidavit in support that the Respondent without the permission of the Applicant recently constructed a dyke with traps at the junction where fish from the Avu Lagoon swim into the Adutor Creek and thus trapped all the fishes that ought to have swum into the Adutor Creek, to replenish the stock of fish therein and by so doing, he sought to exclusively enjoy the goodies of the Adutor Creek to the exclusion of all other fishermen and or users of the creek in defiance of the decision of the Supreme Court. The Applicant continued in paragraph 71 of the affidavit in support that the conduct of the Respondent was undoubtedly contemptuously contumacious and was also an affront to the dignity of the Supreme Court. The Respondent denied the above allegations of the Applicant in paragraph 41 of his affidavit in opposition.

The Respondent having denied the allegations of the Applicant, the burden is cast on the

Applicant to prove his allegations beyond reasonable doubt. See **Republic vrs Nii Achia II; Ex-parte Joshua Nmai Addo [2015] 83 G.M.J 13 supra.**

The Court was surprised that beyond the Affidavit which was long on words, it was short on substance as no other evidence like pictorial or conduct caught on tape with Respondent in flagrante delicto. The Applicant woefully failed to prove his allegation levelled against the Respondent. The Applicant did not adduce any cogent and reliable evidence in the form of pictures and or videos showing the Respondent allegedly constructing the dyke with traps at the junction where fishes from the Avu Lagon swim into the Adutor Creek and thus trapped all the fishes. The Applicant also failed to produce any cogent evidence to show the alleged dyke constructed by the Respondent. The Applicant also failed to call any witness or attach any affidavit evidence of any witness who saw the Respondent allegedly constructing the dyke. The allegation of the Applicant remains a mere assertion and nothing more. The Applicant failed to prove his allegation against the Respondent beyond reasonable doubt.

It was not too clear to the Court if the Respondent is the only person who fishes in the creeks. If the Applicant was diligent enough, he would have thoroughly investigated the circumstances leading and or surrounding the alleged construction of the dyke and the person who allegedly did same. The Applicant in the opinion of this Court, only acted on an assumption or speculation that because he and the Respondent litigated over the ownership of the land and the creeks, it might be the Respondent who constructed the dyke. Mere suspicion and or assumption cannot constitute proof.

The Applicant claimed in paragraphs 65 and 66 of his affidavit in support that his grantees Paul Atsu Tome and Peter Etse Tome were on their cashew farms at Adutor Kpodzi

working and the Respondent and his agents with gratuitous violence unlawfully entered thereon and sought to survey the land which belongs to the Applicant. He continued that the Respondent caused the Sogakope Police to arrest Paul Atsu Tome and Peter Etse Tome. The Applicant again failed to adduce any evidence to prove that the land he granted to Paul Atsu Tome and Peter Etse Tome belongs to him or same is part or portion of his land. The Applicant also failed to prove that the said land falls outside the land the High Court and the Supreme Court conclusively declared the Respondent's family as the usufruct owner thereof.

The Respondent in paragraph 36 of the affidavit in opposition insists that he entered onto the land the High Court and the Supreme Court held that his family holds possessory title and that Paul Atsu Tome and Peter Etse Tome were on his family land.

The Applicant also claimed in paragraph 53 of the affidavit in support that the Respondent was resisted by the maternal descendant of his family, Fekpe Issaka who was the Applicant's grantor when the Respondent sought to extort money from her and the Respondent sued her at Sogakope High Court. The Applicant however failed to prove that the land he granted to the said Fekpe Issaka falls outside the Respondent's family land.

The Respondent contends that in order to protect his family interest in the land, he sued Fekpe Issaka before this Honourable Court for declaration of title, recovery of possession, damages for trespass among others per Exhibit L. The Applicant who claims to be the owner of the land did not apply to join the suit to protect his interest.

The Applicant at the end of the day has failed to prove the third ingredient/element of contempt as laid down in the case of **Republic vrs Sito I, Ex-Parte Fordjour** supra. The Applicant's allegations remain unsubstantiated. Indeed the Applicant woefully failed to

prove the charge of contempt against the Respondent. From the facts and the law it cannot be said that the Respondent was in violation of the judgment of the Supreme Court. The Applicant has failed to lead any cogent and reliable evidence to prove his allegations. The Court will thus have to dismiss the instant application and discharge Respondent accordingly. Cost of GHC2000 for Respondent herein.

[SGD]

**H/L JUSTICE DOREEN G. BOAKYE-AGYEI MRS. ESQ.
JUSTICE OF THE HIGH COURT**

CASES CITED

**REPUBLIC VRS HIGH COURT, ACCRA; EX-PARTE LARYEA MENSAH [1998-99]
SCGLR 360**

REPUBLIC VRS SITO I, EX-PARTE FORDJOUR [2001-2002] SCGLR 322

REPUBLIC VRS NII ACHIA II; EX-PARTE JOSHUA NMAI ADDO [2015] 83 G.M.J 13